sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity or acquisition loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of § 207.259 of this chapter apply to subpart F of this part, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under § 207.259(c) of this chapter shall also include an amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of § 207.253a of this chapter apply to subpart F of this part, except that the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclosure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign the equity or acquisition loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity or acquisition loan.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan or acquisition loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of the insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances the Commissioner has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date that the equity or acquisition loan is endorsed, the Commissioner and the lender shall be bound by the provisions of subpart F of this part to the same extent as if they had executed a contract including the provisions of subpart F of this part and the applicable sections of the Act.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—General Eligibility Requirements

Sec.

Subpart B—Application Procedures and Commitments

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Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements

Subpart H—Miscellaneous Requirements

AUTHORITY: 12 U.S.C. 1709, 1710, 1715b, 1715n(f), and 1715u; 42 U.S.C. 3535(d).

SOURCE: 72 FR 67546, Nov. 28, 2007, unless otherwise noted.

Subpart A—General Eligibility Requirements

§ 242.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

Acquisition means the purchase by an eligible mortgagor of an existing hospital facility and ancillary property associated therewith.

Act means the National Housing Act (12 U.S.C. 1701 *et seq.*).

Affiliate means a person or entity which, directly orindirectly, either controls or has the power to control or exert significant influence on the other, or a person and entity both controlled by a third person or entity, which may be a parent entity. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity that has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity or as defined in the Medicare reimbursement regulations.

AMPO (Allowance for Making Project Operational) relates to nonprofit projects and means a fund that is primarily for accruals during the course of construction for mortgage insurance premiums (MIPs), taxes, ground rents, property insurance premiums, and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted; and also for allocation to such accruals after completion of construction, if the income from the hospital at that time is insufficient to meet such accruals. AMPO may also be used for such other purposes as approved by HUD. Any balance remaining unused in the fund at final endorsement will be treated in accordance with § 242.43.

Applicant means a HUD multifamily-approved lender that would be the mortgagee of record.

Capital debt means the outstanding indebtedness used for the construction, rehabilitation, or acquisition of the physical property and equipment of a hospital, including those financing costs approved by HUD.

Chronic convalescent and rest means skilled nursing services, intermediate care services, respite care services, hospice services, and other services of a similar nature.

Construction means the creation of a new or replacement hospital facility, the substantial rehabilitation of an existing facility, or the limited rehabilitation of an existing facility. The cost of acquiring new or replacement equipment may be included in the cost of construction.

Days of cash on hand means the number of days of operating cash available to the hospital, calculated pursuant to standards determined by HUD.

Debt service coverage ratio is a measure of a hospital's ability to pay interest and principal with cash generated from current operations. Debt service ratio is calculated as follows: Debt Service Coverage Ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses (not-for-profit) or net income (for-profit) plus interest expense plus depreciation expense plus amortization expense, all divided by current portion of long-term debt (including capital leases) from the previous year's audited financial statement plus interest expense. The calculation can be expressed as:

$$\frac{\text{(Excess of revenues over expenses OR net income)} + \text{interest expense} + \text{depreciation expense} + \text{amortization expense}}{\text{Current portion of long-term debt [prior year, including capital leases]} + \text{interest expense}}$$

Hard costs means the costs of the construction and equipment, including construction-related fees such as architect and construction manager fees.

Hospital means a facility that has been proposed for approval or has been approved by HUD under the provisions of this subpart, and:

(1) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(2) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous

and mental, and tuberculosis, except that the 50 percent patient day restriction does not apply to Critical Access Hospitals (hospitals designated as such under the Medicare Rural Hospital Flexibility Program) between January 28, 2008 and July 31, 2011.

(3) That is a facility licensed or regulated by the state (or, if there is no such state law providing for such licensing or regulation by the state, by the municipality or other political subdivision in which the facility is located) and is:

(i) A public facility owned by a state or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a state or unit of local government or by an instrumentality thereof;

(ii) A proprietary facility; or

(iii) A facility of a private nonprofit corporation or association.

Identity of interest means a relationship that must be disclosed and may be prohibited pursuant to the requirements of the Regulatory Agreement. Examples of a prohibited Identity of Interest relationship are, but are not limited to, a financial or family relationship between the mortgagor (which includes but is not limited to an officer, director, or partner of the mortgagor) and general contractor, subcontractor, seller of the land or property, any consultants, or other parties to the transaction.

Limited rehabilitation means additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment, in cases where the hard costs of construction and equipment are less than 20 percent of the mortgage amount.

Mortgage means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the state in which the real estate is located, together with any mortgage note secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other mortgage notes; and, by the same instrument or by a separate instrument, it may create a security interest in the personalty, including, but not limited to, the equipment, whether or not the equipment is attached to the realty, and in the revenues and receivables of the hospital.

Mortgagee or lender means the applicant for insurance or the original lender under a mortgage.

Mortgagor means the original borrower under a mortgage and its successors and assigns.

Mortgage Reserve Fund means a trust account, or an account held by the mortgagee, for and on behalf of the mortgagor, to which the mortgagor contributes and from which withdrawals must be approved by HUD. The purpose of the fund is to provide HUD a means to assist the hospital to avoid mortgage defaults and to preserve the value of the mortgaged property and the hospital's business.

Most recent audited financial statement means the audited financial statement required under the regulatory agreement for the prior fiscal year.

Net income means the net income of a for-profit entity, or, in the case of a nonprofit entity, the excess of revenues less expenses.

Non-operating revenues and expenses are those revenues and expenses not directly related to patient care, hospital-related patient services, or the sale of hospital-related goods. Examples of items classified as non-operating are state and federal income tax, general contributions, gains and losses from investments, unrestricted income from endowment funds, and income from related entities.

Classification of items as operating or non-operating shall follow written guidance by HUD.

Operating margin is operating income divided by operating revenue, where:

(1) *Operating revenue* is the revenue from the core patient care operations of the hospital. It includes revenues from the provision of such items as patient care (including, but not limited to, hospital-based nursing home and physicians' clinics); transfers from temporarily restricted accounts that are used for current operating expenses; and patient-related activities such as the operation of the cafeteria, parking facilities, television services to patients, sale of medical scrap or

waste, etc. (Additional sources of revenue, which are classified as non-operating, are excluded from this measure, provided, however, at HUD's discretion, that revenue that has historically been received reliably and is expected to continue to be received may be considered operating revenue for underwriting purposes); and

(2) *Operating income* is operating revenue minus operating expenses, where operating expenses are the expenses incurred in providing patient care, including such items as salaries, supplies, and the cost of capital.

Parent means an organization or entity that controls or has a controlling interest in another organization or entity.

Personalty means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than fixtures) that are owned or leased by the borrower or the lessee now or in the future in connection with the ownership, management, or operation of the land or the improvements or are located on the land or in the improvements, and any operating agreements relating to the land or the improvements, and any surveys, plans, specifications, and contracts for architectural, engineering, and construction services relating to the land or the improvements, chooses in action and all other intangible property and rights relating to the operation of, or used in connection with, the land or the improvements, including all governmental permits relating to any activities on the land. Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the hospital and to receive benefits and reimbursements under provider agreements with Medicaid, Medicare, state and local programs, payments from health care insurers and any other assistance providers (''Receivables''); all permits, instruments, rents, lease and contract rights, and equipment leases relating to the use, operation, maintenance, repair, and improvement of the hospital. Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: Depreciation reserve fund or mortgage reserve fund accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests, and endowment funds by donors, and all other revenues and accounts receivable from whatever source paid or payable. All personalty shall be securitized with appropriate UCC filings and any excluded personalty shall be indicated in the Regulatory Agreement.

Preapplication meeting means a meeting among HUD, a potential mortgagee (applicant), and a potential mortgagor for mortgage insurance where there has been a positive Preliminary Review of the proposed project. The preapplication meeting is an opportunity for the potential mortgagee and mortgagor to summarize the proposed project, for HUD to summarize the application process, and for issues that could affect the eligibility or underwriting of the proposed loan to be identified and discussed.

Preliminary Review Letter means a letter from HUD to a potential applicant communicating the result of the Preliminary Review. The letter may state that an application for mortgage insurance would probably not be successful and provide the reasons for this determination, or state that no factors that would cause an application to be rejected have been identified, and therefore there appears to be no bar to the applicant proceeding to a preapplication meeting.

Project means the construction (which may include replacement of an existing hospital facility), or the substantial or limited rehabilitation of an eligible hospital, including equipment, which has been proposed for approval or has been approved by HUD under the provisions of this subpart, including the financing and refinancing, if any, plus all related activities involved in completing the improvements to the property. However, in particular closing documents, ''project'' may be used to mean the mortgagor entity, the operation of the mortgagor, the facility, or all of the mortgaged property, depending on the context in which the term ''project'' is used.

Refinancing means the discharging of the existing capital debt of a hospital through entering into new debt.

Regulatory Agreement means the agreement under which all mortgagors shall be regulated by HUD, as long as HUD is the insurer or holder of the mortgage, in a published format determined by HUD, and such additional covenants and restrictions as may be determined necessary by HUD on a case-by-case basis.

Secretary means the Secretary of Housing and Urban Development or his or her authorized representatives.

Section 242/223(f) refers to a loan insured under Section 242 of the Act pursuant to Section 223(f) of the Act.

Security instrument means a mortgage, deed of trust, and any other security for the indebtedness, and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations, and HUD directives.

Service area means that geographical area, identified by zip codes, from which a substantial majority of a hospital's patients derive.

Soft costs means reasonable and customary legal, organizational, consulting, and such other costs associated with effecting the proposed project and its financing or refinancing, including, but not limited to, interest capitalized during construction; permanent financing fees; initial service charge; tax; title and recording expenses; special tax assessments; AMPO; insurance costs during construction; FHA fees and charges, including application, commitment, and inspection fees; mortgage insurance premium for advances during construction; prepayment penalties associated with retiring the hospital's existing bonds; and termination costs for interest rate protection facilities that are integrated into the original financing, as applicable.

State includes the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the United States Virgin Islands.

Substantial rehabilitation means additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment, in cases where the hard costs of construction and equipment are equal to or greater than 20 percent of the mortgage amount.

Surplus Cash means any cash remaining after all of the following conditions have been met:

(1) Final endorsement of the HUD-insured note has occurred;

(2) Mortgage payments for the preceding 12 months have been made when due, including any grace period;

(3) The Debt Service Coverage Ratio is greater than or equal to 1.50 in the most recent audited financial statements and as of the date of distribution;

(4) Days in Accounts Receivable are less than or equal to 80 in the most recent audited financial statements and as of the date of distribution;

(5) The average payment period is less than or equal to 80 in the most recent audited financial statements and as of the date of distribution;

(6) The Mortgage Reserve Fund (MRF) is fully funded as of the date of the distribution in conformity with the MRF schedule;

(7) All income, property, and statutory employer payroll taxes and employee payroll withholding contributions (including penalties and interest, if applicable) have been deposited as of the date of the distribution, as required;

(8) The Current Ratio is greater than or equal to 1.50 in the most recent audited financial statements and immediately after the distribution;

(9) Days of cash on hand are greater than or equal to 21 days in the most recent audited financial statements and immediately after the distribution;

(10) The distribution may not be more than 50 percent of Net Income as reflected in the most recent audited financial statements, unless the Mortgagor has an equity financing ratio equal to or greater than 20 percent in the most recent audited financial statements and immediately after the distribution; and

(11) The Equity less any assets excluded from the mortgaged property is greater than 0.00 in the most recent audited financial statements and immediately after the distribution is made. As used in this definition:

''Most recent audited financial statements'' refers to the audited financial statement required under section 242.58 for the prior fiscal year;

''Net Income'' means Net Income for for-profit entities; Excess of Revenues over Expenses for not-for-profit entities; and Excess of Revenues over Expenses before Capital Grants, Contributions, and Additions to Permanent Endowment for governmental entities; and

''Equity financing ratio'' means (Equity less any assets excluded from the mortgaged property)/(total assets less any assets excluded from the mortgaged property). Equity is defined as Equity for a for-profit entity, Total Net Assets for not-for-profit entities, and Total Net Assets for governmental entities.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008; 78 FR 8341, Feb. 5, 2013]

§ 242.2 Program financial self-sufficiency.

The Commissioner shall administer the Section 242 program in such a way as to encourage financial self-sufficiency and actuarial soundness; i.e., to avoid mortgage defaults and claims for insurance benefits in order to protect the mortgage insurance fund.

§ 242.3 Encouragement of certain programs.

The activities and functions provided for in this part shall be carried out so as to encourage provision of comprehensive health care, including outpatient and preventive care as well as hospitalization, to a defined population, and in the case of public and certain not-for-profit hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

§ 242.4 Eligible hospitals.

(a) The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital, the substantial rehabilitation (or replacement) of an existing hospital, the limited rehabilitation of an existing hospital, the acquisition of an existing hospital, or the refinancing of the capital debt of an existing hospital pursuant to Section 223(a)(7) or Section 223(f).

(b) This part applies only to applications for FHA mortgage insurance submitted after a pre-application meeting (as defined in § 242.1) with HUD that occurred on and after January 28, 2008. HUD's regulations and practices prior to January 28, 2008 apply to applications for FHA mortgage insurance submitted after a pre-application meeting that occurred before January 28, 2008.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8341, Feb. 5, 2013]

§ 242.5 Eligible mortgagees/lenders.

The lender requirements set forth in 24 CFR part 202 regarding approval, recertification, withdrawal of approval, approval for servicing, report requirements, and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, and governmental and similar institutions, apply to these programs.

§ 242.6 Property requirements.

The mortgage, to be eligible for insurance, shall be on property located in a state, as defined in § 242.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title;

(b) A lease for not less than 99 years that is renewable; or

(c) A lease having a term of not less than 50 years to run from the date the mortgage is executed.

§ 242.7 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 90 percent of HUD's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed.

§ 242.8 Standards for licensure and methods of operation.

The Secretary shall require satisfactory evidence that the hospital will be located in a state or political subdivision of a state with reasonable minimum standards of licensure and methods of operation for hospitals, and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

§ 242.9 Physician ownership.

Ownership of an interest in the mortgagor by physicians or other professionals practicing in the hospital is permitted within limits determined by HUD to avoid insurance risks that may be associated with such ownership. The Commissioner shall determine if the proposed mortgagor will be at low risk for violation of regulations of the U.S. Department of Health and Human Services, other federal regulations, and state regulations governing kickbacks, self-referrals, and other issues that could increase the risk of eventual default. The Commissioner's determination shall be based on an unqualified legal opinion as to compliance with applicable federal law, among other considerations.

§ 242.10 Eligible mortgagors.

The mortgagor shall be a public mortgagor (i.e., an owner of a public facility), a private nonprofit corporation or association, or a profit-motivated mortgagor meeting the definition of ''hospital'' in § 242.1. The mortgagor shall be approved by HUD and, except in those cases where the hospital is leased as permitted in § 242.72, shall possess the powers necessary and incidental to operating a hospital. Eligible proprietary or profit-motivated mortgagors may include for-profit corporations, limited partnerships, and limited liability corporations and companies, but may not include natural persons, joint ventures, and general partnerships. Any proposed mortgagor must demonstrate that it has a continuity of organization commensurate with the term of the mortgage loan being insured. For new organizations, or those whose continuity is necessarily dependent upon an individual or individuals, broad community participation is required.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008]

§ 242.11 Regulatory compliance required.

An application for insurance of a mortgage under this part shall be considered only in connection with a hospital that is in substantial compliance with regulations of the Department of Health and Human Services and the regulations of the applicable state governing the operation and reimbursement of hospitals. A hospital that is under investigation by any state or federal agency for statutory or regulatory violations is not eligible so long as the investigation is unresolved, unless HUD determines that the investigation is minor in nature; that is, the investigation is unlikely to result in substantial liabilities or to otherwise substantially harm the creditworthiness of the hospital.

§ 242.13 Parents and affiliates.

As a condition of issuing a commitment, HUD may require corporate parents, affiliates, or principals of the proposed mortgagor to provide assurances, guarantees, or collateral to protect HUD's interests. The Commissioner may also require financial and operational information on the parent, other businesses owned by the parent, or affiliates of the proposed mortgagor and may also require a parent or affiliate to be regulated by HUD as to certain actions that could impact on the insurance of a mortgage loan for the benefit of the hospital.

§ 242.14 Mortgage reserve fund.

As a condition of issuing a commitment, HUD shall require establishment of a Mortgage Reserve Fund (MRF). The mortgagor shall be required to make contributions to the MRF such that, with fund earnings, the MRF will build to one year of debt service at 5 years following commencement of amortization, increasing thereafter to 2 years of debt service on and after 10 years following commencement of amortization according to a schedule established by HUD, unless HUD determines that a different schedule of contributions is appropriate based on the mortgagor's risk profile, reimbursement structure, or other characteristics. In particular, hospitals that receive cost-based reimbursement may be required to have MRFs that build to more than 2 years of debt service. Expenditures from the fund are made at HUD's sole discretion or in accordance with the mortgagor's MRF Schedule. Upon termination of insurance, the balance of the MRF shall be returned to the mortgagor, provided that all obligations to HUD have been met.

§ 242.15 Limitation on refinancing existing indebtedness.

(a) Some existing capital debt may be refinanced with the proceeds of a section 242-insured loan; however, the hard costs of construction and equipment must represent at least 20 percent of the total mortgage amount.

(b) In the case of a loan insured under Section 242/223(f), there is no requirement for hard costs. However, if there are hard costs, such costs must total less than 20 percent of the total mortgage amount.

[78 FR 8341, Feb. 5, 2013]

Subpart B—Application Procedures and Commitments

§ 242.16 Applications.

(a) *Application process*—(1) *Market need.* The approval process entails a determination of the market need of the proposal and stresses, on a market-wide basis, the impact of the proposed facility on, and its relationship to, other health care facilities and services (particularly other hospitals with mortgages insured under this part and hospitals that have a disproportionate share of Medicaid and uninsured patients or provide a substantial amount of charity care); the number and percentage of any excess beds; and demographic projections. Generally, Section 242 insurance may support start-up hospitals or major expansions of existing hospitals only if existing hospital capacity or services are clearly not adequate to meet the needs of the population in the service area.

(i) If the state has an official procedure for determining need for hospitals, HUD shall require that such procedure be followed before the application for insurance is submitted, and that the application document that need has also been established under that procedure.

(ii) The following factors are relevant in evaluating market need for the project and should be addressed, as applicable, in the study of market need and feasibility submitted with the application. Because each hospital presents a unique situation, there is no formula or cutoff level that applies to all applications:

(A) Service area definition;

(B) Existing or proposed hospital;

(C) Designation as sole community provider, Critical Access Hospital, or rural referral center;

(D) Community-wide use rates (discharges and days/1000);

(E) Statewide use rates (for benchmarking purposes);

(F) Current population and 5-year projection by age cohort;

(G) Staffed versus licensed beds;

(H) Applicant hospital's occupancy rate;

(I) Competitors' occupancy rates;

(J) Outpatient volume;

(K) Availability of emergency services;

(L) Teaching hospital status;

(M) Services offered by hospitals in the service area;

(N) Migration of patients out of the service area;

(O) Planned construction at other facilities in the region;

(P) Historical market share by major service category;

(Q) Disproportionate Share Hospital designation; and

(R) Distance to other hospitals.

(2) *Operating margin and debt service coverage ratio.* (i) Hospitals with an aggregate operating margin of less than 0.00 when calculated from the three most recent annual audited financial statements are not eligible for Section 242 insurance, unless HUD determines, based on the financial data in those statements, that the hospital has

achieved a financial turnaround resulting in a positive operating margin in the most recent year, calculated using classifications of items as operating or non-operating in accordance with guidance that shall be provided in written directives by HUD. In any event, HUD shall not issue an insurance commitment for any hospital in a turnaround situation that has not achieved 2 consecutive years of positive operating margin immediately prior to issuance of the commitment.

(ii) Hospitals with an average debt service coverage ratio of less than 1.25 in the 3 most recent audited years are not eligible for Section 242 insurance, unless HUD determines, based on the audited financial data, that the hospital has achieved a financial turnaround resulting in a debt service coverage ratio of at least 1.4 in the most recent year. In cases of refinancing at a lower interest rate, HUD may authorize the use of the projected debt service requirement in lieu of the historical debt service in calculating the debt service coverage ratios for each of the prior 3 years. In cases where HUD authorizes the use of the projected debt service requirement in lieu of the historical debt service to determine the debt service coverage ratio, hospitals must have an average debt service coverage ratio of 1.4 or greater.

(3) *Threshold requirements—refinancing candidates*. For an application to be considered for refinancing pursuant to Section 223(f), a hospital must meet the following requirements in lieu of those described in paragraph (a)(2) of this section:

(i) The hospital must have an aggregate operating margin and average debt service coverage ratio as follows:

(A) The hospital must have an aggregate operating margin of at least zero percent, when calculated from the three most recent annual audited financial statements.

(B) The hospital must have an average debt service coverage ratio of at least 1.4 when calculated from the three most recent annual audited financial statements; or

(ii) If the requirements of paragraphs (a)(3)(i)(A) and/or (B) of this section are not satisfied, HUD will recast the operating margin and debt service coverage ratio for prior periods by applying its estimate of the projected interest rate at the time the mortgage is expected to close in lieu of the historical interest rate(s).

(iii) In performing the calculations called for in paragraphs (a)(3)(i)(A) and (B) of this section, if HUD finds that performance in one of the three years was affected by exceptional, one-time events that substantially altered financial performance, HUD may calculate the three-year performance based on the four most recent years with the unusual year omitted.

(iv) The hospital must document that it provides an essential healthcare service to the community in which it operates and that its financial performance would be materially improved by refinancing its existing capital debt.

(v) The hospital may show that it provides an essential healthcare service to the community in which it operates by submitting an analysis quantifying how the community in which it presently operates would suffer from inadequate access to an essential healthcare service that the hospital presently provides if the hospital were no longer in operation.

(vi) The hospital may show that its financial performance would be materially improved by providing documentation of the following:

(A) There are limited comparable affordable refinancing vehicles available to the hospital; and,

(B) The hospital meets three of the following seven criteria:

(*1*) The proposed refinancing would reduce the hospital's total operating expenses by at least 0.25 percent;

(*2*) The interest rate of the proposed refinancing would be at least 0.5 percentage points less than the interest rate on the debt to be refinanced;

(*3*) The interest rate on the debt that the hospital proposes to refinance has increased by at least one percentage point at any time since January 1, 2008, or is very likely to increase by at least one percentage within one year of the date of application;

(*4*) The hospital's annual total debt service is in excess of 3.4 percent of total operating revenues, based on its most recent audited financial statement;

(*5*) The hospital has experienced a withdrawal or expiration of its credit enhancement facility, or the lender providing its credit enhancement facility has been downgraded, or the hospital can demonstrate that one of these events is imminent;

(*6*) The hospital is party to bond covenants that are substantially more restrictive than the Section 242 mortgage covenants; and

(*7*) There are other circumstances that demonstrate that the hospital's financial performance would be materially improved by refinancing its existing capital debt.

(4) *Financial feasibility*. The approval process entails a determination of the financial feasibility of the proposal, i.e., a determination that it is probable that the proposed mortgagor will be able to meet its debt service requirements during the period projected. It includes analysis of the reimbursement structure of the proposed hospital (including patient/payer mix); actions of competitors; and the probable projected impact on the proposed hospital of general health care system trends, such as the development of alternative health care delivery systems and new reimbursement methods. In addition to historical operating margin, determination of financial feasibility includes, but is not limited to, evaluation of the following factors, which the application must address and which HUD will review:

(i) Current and projected gains from operations and a manageable debt load using reasonable assumptions;

(ii) Current debt service coverage ratio of 1.25 or higher and projected debt service coverage ratio of 1.40 or higher;

(iii) Cushion in the balance sheet sufficient to demonstrate the ability to withstand short periods of net operating losses without jeopardizing financial viability;

(iv) Patient utilization forecasts (including average length of stay, case intensity, discharges, area-wide use rates) that are consistent with the hospital's historical trends, future service mix, market trends, population forecasts, and business climate;

(v) The hospital's demonstrated ability to position itself to compete in its marketplace;

(vi) Organizational affiliations or relationships that help optimize financial, clinical, and operational performance;

(vii) Management's demonstrated ability to operate effectively and efficiently, and to develop effective strategies for addressing problem areas;

(viii) Systems in place to monitor hospital operations, revenues, and costs accurately and in a timely manner;

(ix) A Board that is appropriately constituted and provides effective oversight;

(x) Required licensures and approvals; and

(xi) Favorable ratings from the Joint Commission on Accreditation of Healthcare Organizations or other organizations acceptable to HUD.

(5) *Preliminary Review*. A Preliminary Review is a general overview of the acceptability of a potential mortgagor performed at the request of a hospital, a financial consultant representing a hospital, or a lender, to identify any factors that would likely cause an application to be rejected, should an application be submitted.

(i) The purpose of the preliminary review is for HUD to identify any obvious factors that would cause an application to be rejected, before the potential mortgagor or mortgagee expends resources to prepare one. The hospital, financial consultant, or lender shall submit a preliminary information package to HUD that provides evidence of statutory eligibility, market need, financial strength, and such other documentation as HUD may require. The scope of the preliminary review does not include approval of any specific site in the community.

(ii) If HUD identifies factors that would cause an application to be rejected, HUD shall issue a Preliminary Review Letter notifying the potential applicant that an application for mortgage insurance would probably not be successful and providing the reasons for this decision. Also, no further request from the proposed applicant for a Preliminary Review shall be entertained for a period of one year from the date of HUD's notification. HUD may grant an exception to this one-year limitation if, during the year, there is a major change in the circumstances that caused HUD to determine that the project would be rejected. For example, if the sole reason for HUD's determination was the hospital's failure to meet the historical operating margin test, and a new audited annual financial statement contains results that would cause the hospital to meet the test, then the lender may request a new Preliminary Review within one year of HUD's notification.

(iii) If HUD does not identify any factors that would cause an application to be rejected, HUD shall issue a Preliminary Review Letter advising the potential applicant that there appears to be no bar to the applicant's proceeding to the next step in the application process, provided that if a complete application is not received by HUD within one year following the date of HUD's letter, another Preliminary Review may be required, at HUD's discretion, before the application process may proceed.

(iv) The Commissioner's determination in the preliminary review phase that no factors have been identified that would cause an application to be rejected shall in no way be construed as an indication that a subsequent application will be approved.

(6) *Preapplication meeting.* The next step in the application process is the preapplication meeting (this step is optional, at HUD's discretion, in Section 242/223(f) cases). At HUD's discretion, this meeting may be held at HUD Headquarters in Washington, DC, or at another site agreeable to HUD and the potential applicant. The preapplication meeting is an opportunity for the potential mortgagor to summarize the proposed project and refinancing, if any; for HUD to summarize the application process; and for issues that could affect the eligibility or underwriting of the project to be identified and discussed to the extent possible. Following the meeting, HUD may:

(i) Advise the potential applicant that there appears to be no bar to submitting an application for mortgage insurance; or

(ii) Identify issues that must be resolved before a full application should be submitted for processing.

(b) *Application contents.* The application for mortgage insurance shall include exhibits that follow such guidance as to content and format that HUD shall provide from time to time. The application shall include:

(1) A description of the proposed sources and uses of funds;

(2) A description of the mortgagor entity, its ownership structure, and its directors and managers;

(3) A description of the project, the business plan of the hospital, and how the project will further that plan, or, for applications pursuant to Section 223(f), a description of any limited rehabilitation to be financed with mortgage proceeds and how that limited rehabilitation will affect the hospital;

(4) Historical audited financial statements and interim year-to-date financial results (for existing hospitals);

(5) A study of market need and financial feasibility, addressing the factors listed in paragraphs (a)(1)(ii) and (a)(2), or (a)(3) of this section, (whichever applies), with assumptions and financial forecast clearly presented. The study should be prepared by a certified public accounting firm acceptable to HUD. In the case of an application for Section 242/223(f) mortgage insurance, the study may not be required to address market need and there may be no requirement for involvement of a certified public accounting firm;

(6) Architectural plans and specifications in sufficient detail to enable a reasonable estimate of cost (not applicable to a Section 242/223(f) application, except when architectural plans and specifications are requested by HUD);

(7) Evidence that the hospital will be located in a state or political subdivision of a state with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital;

(8) If the state has an official procedure for determining need for hospitals, evidence that such procedure has been followed and that need has been established under that procedure;

(9) A Phase I environmental report; and

(10) Such other exhibits as HUD shall require based upon the facts pertaining to the particular case.

(c) *Fee.* An application fee of $1.50 per thousand dollars of the amount of the loan to be insured shall be paid to HUD at the time the application is submitted to HUD for approval.

(d) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form, by an approved mortgagee and by the sponsors of such project, to FHA.

(e) *Complete application.* Only technically complete applications will be processed. Partial applications cannot be processed. Upon determination that an application is complete, HUD shall issue a Completeness Letter to the applicant stating that the application is complete.

(f) *Application review.* Upon receipt of a complete application, HUD shall evaluate the application to determine if eligibility, market need, financial feasibility, and compliance with applicable regulations (including but not limited to federal environmental regulations, wage rate regulations, and health care regulations) have been demonstrated, and to evaluate any other factors, including but not limited to risk to the Insurance Fund, that should be considered in determining if the application for mortgage insurance should be approved. As a part of this review, HUD may solicit the advice of private consultants and expert staff in the Department of Health and Human Services and other federal agencies. Based on review of the complete application, HUD may request additional information from the applicant. The timeliness of the applicant's submission of the additional information may affect the approval or disapproval of the application. The Commissioner's decision shall be communicated in the form of a Commitment Letter or a Rejection Letter. HUD will not issue a Commitment Letter until HUD completes the environmental review under 24 CFR 242.79.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8341, Feb. 5, 2013]

§ 242.17 Commitments.

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by HUD setting forth the terms and conditions under which an insurance endorsement shall be issued for the hospital. The commitment shall include the following:

(1) A commitment for insurance of advances reflecting the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage and construction project;

(2) In the case of an application for Section 242/223(f) insurance where advances are not needed for funding any limited rehabilitation: a commitment for insurance upon completion, reflecting the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage and to any limited rehabilitation;

(3) HUD's computation of the replacement cost and maximum insurable mortgage amount;

(4) Financial requirements for closing;

(5) Approval covenants, including any special conditions that must be satisfied prior to initial endorsement;

(6) Mortgage Reserve Fund Agreement.

(b) *Type of commitment.* The commitment will provide for the insurance of advances of mortgage funds during construction. In the case of a commitment for Section 242/223(f) insured refinancing or acquisition financing of an existing hospital, the commitment shall provide for insurance upon completion unless insured advances are needed for funding any limited rehabilitation approved by HUD, in which case the commitment shall provide for insurance of advances.

(c) *Term of commitment.* (1) The initial commitment shall be issued for a period of 90 days.

(2) The term of a commitment may be extended in such manner as HUD may prescribe, provided, however, that the combined term of the original commitment and any extensions do not exceed 180 days.

(d) *Commitment fee*. A commitment fee that, when added to the application fee, will aggregate $3 per thousand dollars of the amount of the loan set forth in the commitment, shall be paid within 30 days of the date of issuance of the commitment. If such fee is not paid within this 30-day period, the commitment shall automatically terminate.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8342, Feb. 5, 2013]

§ 242.18 Inspection fee.

(a) The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. The inspection fee shall be paid no later than the time of initial endorsement.

(b) In the case of mortgages where the applicant is seeking only refinancing or acquisition, the inspection fee will not exceed 10 basis points on the loan. For applicants seeking a loan for refinancing or acquisition that also involves limited rehabilitation, the commitment shall provide for an inspection fee according to the following schedule:

Hard cost % of mortgage amount	Inspection fee limit (basis points)
Less than 5%	10
5% or greater but less than 10%	20
10% or greater but less than 15%	30
15% or greater but less than 20%	40
20% or greater	50

[78 FR 8343, Feb. 5, 2013]

§ 242.19 Fees on increases.

(a) *Increase in commitment prior to endorsement*. An application, filed prior to initial endorsement, for an increase in the amount of an outstanding commitment, shall be accompanied by an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment novation providing for the increased amount will automatically terminate and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of increase in commitment. The additional inspection fee shall be paid at the time of initial endorsement.

(b) *Increase in mortgage between initial and final endorsement*. Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment, consolidation agreement, or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the date that the increase is granted.

§ 242.20 Reopening of expired commitments.

An expired commitment may be reopened if a request for reopening is received by HUD no later than 90 days after the date of expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment that has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by HUD within the required 90-day period, a new application accompanied by an application fee must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

§ 242.21 Refund of fees.

Commitment, inspection, and reopening fees (but not application fees) may be refunded, in whole or in part, if HUD determines that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a government body or public agency, or in such other instances as HUD may determine as being beyond the control of the applicant and resulting from no fault of the applicant. A transfer fee may be refunded only in such instances as HUD may determine. However, the portion of the inspection fee paid in connection with early commencement of work is not refundable.

§ 242.22 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge not to exceed 2 percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. A permanent financing fee not to exceed 3.5 percent may be collected from the mortgagor; however, the combined initial service charge and permanent financing fee may not exceed 5.5 percent in bond transactions and 3.5 percent in all other transactions. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of HUD and shall be clearly disclosed in the Mortgagee's Certificate.

§ 242.23 Maximum mortgage amounts and cash equity requirements.

(a) *Adjusted mortgage amount-rehabilitation projects.* A mortgage financing the substantial rehabilitation of an existing hospital shall be subject to the following limitations, in addition to those set forth in § 242.7:

(1) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the property is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of HUD's estimate of the cost of the proposed substantial rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(i) The Commissioner's estimate of the cost of substantial rehabilitation, plus

(ii) Such portion of the capital debt as does not exceed 90 percent of HUD's estimate of the fair market value of such land and improvements prior to substantial rehabilitation.

(3) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(i) The Commissioner's estimate of the cost of substantial rehabilitation, plus

(ii) The actual purchase price of the land and improvements or HUD's estimate (prior to substantial rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

(b) *Section 242/223(f) refinancing and acquisition—additional limits.* (1) In addition to meeting the requirements of § 242.7, if the hospital's existing capital debt is to be refinanced by the insured mortgage (i.e., without a change in ownership or with the hospital sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The amount required to pay off the existing capital debt;

(ii) The estimated hard costs, if any, totaling less than 20 percent of the mortgage amount; and

(iii) Soft costs that would normally be allowable in a Section 242 insured loan.

(2) In addition to meeting the requirements of §242.7, if mortgage proceeds are to be used for an acquisition, the maximum mortgage amount must not exceed the cost to acquire the hospital, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The actual purchase price of the land and improvements or HUD's estimate (prior to repairs, renovation, and/or equipment replacement) of the fair market value of such land plus the replacement cost of improvements, whichever is the lesser;

(ii) The estimated hard costs, if any, totaling less than 20 percent of the mortgage amount; and

(iii) Soft costs that would normally be allowable in a Section 242 insured loan.

(c) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by HUD), which shall in all cases be less than the value or replacement cost of the property in fee simple.

(d) *Cash equity.* Depending on the financial circumstances of each hospital facility, HUD shall have the discretion to evaluate, on a case-by-case basis, the amount of equity that a mortgagor must supply in addition to the value of plant, property, and equipment and other values recognized as loan security in the commitment process. Exercise of this discretion shall never cause a loan to exceed 90 percent of estimated replacement cost, although it may cause it to be less than 90 percent. The equity contribution may not be made from borrowed funds. A private nonprofit or public mortgagor, but not a proprietary mortgagor, at the mortgagee's option and subject to 24 CFR 242.49, may provide any such required equity in the form of a letter of credit.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008; 78 FR 8343, Feb. 5, 2013]

§ 242.24 Initial operating costs.

In the case of a new hospital or a hospital expansion, HUD shall establish, on a case-by-case basis, the amount of initial operating capital, if any, that must be deposited in cash or a letter of credit (or combination) to be available to the new hospital upon commencement of operations. Generally, the initial operating capital other than AMPO shall not be borrowed funds unless HUD determines that there are offsetting financial strengths to compensate for the risk associated with borrowing.

Subpart C—Mortgage Requirements

§ 242.25 Mortgage form and disbursement of mortgage proceeds.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by HUD for use in the jurisdiction in which the property covered by the mortgage is situated; the form shall not be changed without the prior written approval of HUD.

(2) Executed by an eligible mortgagor.

(b) *Disbursement of mortgage proceeds.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to (or for the account of) the mortgagor or to his or her creditors for his or her account and with his or her consent.

§ 242.26 Agreed interest rate.

(a) The mortgage shall bear interest at the rate or rates agreed upon by the mortgagee and the mortgagor.

(b) The amount of any increase approved by HUD in the mortgage amount between initial and final endorsement in excess of the amount that HUD had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

§ 242.27 Maturity.

The mortgage shall have a maturity not to exceed 25 years from the date amortization begins.

§ 242.28 Allowable costs for consultants.

Consulting fees for work essential to the development of the project may be included in the insured mortgage. Allowable consulting fees include those for analysis of market demand, expected revenues, and costs; site analysis; architectural and engineering design; and such other fees as HUD may determine to be essential to project development. Fees for work performed more than 2 years prior to application are not allowable. Fees for work performed by any party with an identity of interest with the proposed mortgagor or mortgagee are not allowable.

§ 242.29 Payment requirements.

The mortgage shall provide for payments on the first day of each month in accordance with an amortization plan agreed upon by the mortgagor, the mortgagee, and HUD.

§ 242.30 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the following order:

(a) Premium charges under the contract of mortgage insurance;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

§ 242.31 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate, in the hands of the mortgagee one payment period prior to its due date, the next annual MIP payable by the mortgagee to HUD. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent. The mortgage shall also make provision for adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefore by the mortgagor. Notwithstanding the foregoing, in particular circumstances, a mortgagor may purchase required fire and hazard insurance through a consortium of affiliated institutions or related organizations or, in the case of public institutions, through required state purchasing arrangements. In such circumstances, the mortgage accrual requirement may be modified to reflect circumstances in which it is inappropriate for the mortgagee to collect monthly payments and to make payments on behalf of the mortgagor.

§ 242.32 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of any liens against the property, except for such liens as may be approved by HUD.

§ 242.33 Covenant for malpractice, fire, and other hazard insurance.

The mortgage shall contain a covenant binding the mortgagor to maintain adequate liability, fire, and extended coverage insurance on the property. The mortgage shall also contain a covenant binding the mortgagor to maintain adequate malpractice coverage. All coverage shall be acceptable to the mortgagee or HUD.

[73 FR 35923, June 25, 2008]

§ 242.35 Mortgage lien certifications.

At initial and/or final endorsement of the mortgage note, each of the following requirements must be met:

(a) The mortgage is the first lien upon and covers all of the property used in the operation of the entire hospital;

(b) The property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other secondary liens as may be approved by HUD;

(c) The Security Agreement and Uniform Commercial Code filings establish a first lien on the personalty of the mortgagor, including but not limited to equipment acquired with mortgage proceeds or otherwise not subject to a prior lien;

(d) The mortgagor has notified HUD in writing of all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction, limited rehabilitation, or substantial rehabilitation of the project, or the purchase of the equipment financed with mortgage proceeds.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35923, June 25, 2008; 78 FR 8343, Feb. 5, 2013]

§ 242.37 Mortgage prepayment.

(a) *Prepayment privilege.* Except as provided in paragraph (c) of this section or otherwise established by HUD, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee a 30-day notice in writing in advance of its intention to so prepay. The 30-day notice may be extended with the prior written approval of HUD.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage resulting from the certification of cost, which HUD may require, shall not be construed as a prepayment of the mortgage.

(c) *Prepayment of bond-financed or GNMA-securitized mortgages.* Where the mortgage is given to secure GNMA mortgage-backed securities or a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to HUD as to term, amount, and conditions.

(d) *HUD override of prepayment restrictions.* In the event of a default, HUD may override any lockout, prepayment penalty, or combination of penalties in order to facilitate a partial or full refinancing of the mortgaged property and avoid a claim.

§ 242.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of HUD for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Subpart D—Endorsement for Insurance

§ 242.39 Insurance endorsement.

(a) *New construction/substantial rehabilitation.* Initial endorsement of the mortgage note shall occur before any mortgage proceeds are insured, and the time of final endorsement shall be as set forth in paragraph (a)(2) of this section.

(1) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original mortgage note and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(2) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to HUD's satisfaction, HUD shall indicate on the original mortgage note the total of all advances approved for insurance and again endorse such instrument.

(b) *Section 242/223(f) refinancing/acquisition.* (1) In cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any limited rehabilitation, or upon assurance acceptable to the Commissioner that all limited rehabilitation will be completed by a date certain following endorsement.

(2) In cases where advances of mortgage proceeds are used to fund limited rehabilitation, endorsement shall occur as described in paragraph (a) of this section immediately above, for new construction/substantial rehabilitation.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance stated in subpart B of part 207, which is hereby incorporated by reference into this part.

[78 FR 8343, Feb. 5, 2013]

§ 242.40 Mortgagee certificate.

At initial endorsement, the mortgagee shall execute a Mortgagee Certificate in a form prescribed by HUD.

§ 242.41 Certification of cost requirements.

Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and HUD shall enter into an agreement in form and content satisfactory to HUD for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(a) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(b) To apply any cost savings in accordance with the provisions below.

§ 242.42 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by HUD, shall be submitted upon completion of the physical improvements to the satisfaction of HUD and before final endorsement, except that in the case of an existing hospital that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, any of its officers, directors, stockholders, partners, or other entity member ownership, of construction and other costs, as prescribed by HUD.

(b) The Certificate of Actual Cost shall be verified by an independent certified public accountant or independent public accountant in a manner acceptable to HUD.

(c) Upon HUD's approval of the mortgagor's certification of actual cost, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 242.43 Application of cost savings.

At the sole discretion of HUD, any cost savings shall be used to:

(a) Reduce the principal amount of the mortgage and the mortgagor's cash equity contribution proportionally, unless the mortgagor elects to have a greater portion of the savings used to reduce the mortgage; and/or

(b) Fund any additional construction or substantial rehabilitation approved by HUD.

Subpart E—Construction

§ 242.44 Construction standards.

Work designed and performed under this section shall conform to the standards adopted by HUD, which, at a minimum, shall include the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," which is regularly updated and published by the American Institute of Architects.

§ 242.45 Early commencement of work.

(a) *Site preparation.* Prior to or following the submission of an application, the mortgagor may request for good cause the commencement of certain limited site preparation for the project within legal guidelines and state law. Such work can commence only after the review of the work and concurrence by HUD, including the environmental review under 24 CFR 242.79, previous participation review, and the agreement to certain conditions by the applicant. HUD will not approve such request until it has completed the environmental review under 24 CFR 242.79. The work must meet all requirements and guidelines as if it were approved for mortgage insurance and is to be accomplished at the sole risk of the mortgagor.

(b) *Construction completed prior to application.* Structures completed more than 2 years prior to application are eligible to be refinanced with insured mortgage proceeds.

(c) *Pre-commitment work.* Subsequent to submission of an application but prior to the issuance of a commitment or denial by HUD, the hospital and lender may request for good cause the commencement of certain necessary early site work and limited construction activity in connection with the improvements, within legal guidelines and state law. This work must be requested by both the hospital and the lender to be approved. Such work may be eligible to be financed with insured mortgage proceeds if the application is approved and the work complies with all specified conditions of HUD as set forth in a written agreement between the hospital and HUD. It is understood that in some cases the application submitted in order for pre-commitment work to begin may not be complete in all respects. However, at a minimum, the application shall include the approved FHA application form, the application fee (based on the amount of the total proposed insured loan), the inspection fee (based on the cost of the pre-commitment work), a project description of the pre-commitment work and its relation to the total project, and plans and specifications for the proposed pre-commitment work in sufficient detail to allow HUD to conduct its architectural and engineering review and obtain the necessary previous participation information and evidence of compliance with federal and state environmental regulations. Such work can commence only after the review of the work and concurrence by the lender and HUD, including previous participation review. HUD will not approve such request until it has completed the environmental review under 24 CFR 242.79. The work must meet all requirements and guidelines as if it were approved for mortgage insurance and is to be accomplished at the sole risk of the hospital. A request shall be accompanied by documentation required by 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 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 exceed 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 and HUD. Any such deposit shall be held in a separate account for and on behalf of the mortgagor, and shall be the responsibility of that mortgagee or depository.

(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 of the letter of credit without the prior written consent of HUD.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8343, Feb. 5, 2013]

§ 242.50 Funds and finances: off-site utilities and streets.

The Commissioner shall require assurance of completion of off-site public utilities and streets in all cases, except where a municipality or other public body has by agreement acceptable to HUD agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be in the form of a cash escrow deposit, a letter of credit, the retention of a specified amount of mortgage proceeds by the mortgagee, or a combination thereof. In any case, the amount of deposit or retained cash (or both) must be sufficient to cover the cost of off-site utilities and streets. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by HUD, rather than disburse at the initial closing of the mortgage, a sufficient portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, HUD may also require a surety company bond or bonds.

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

§ 242.51 Funds and finances: Insured advances and assurance of completion.

(a) Where the estimated cost of construction or substantial rehabilitation is more than $500,000, the mortgagor shall furnish assurance of completion in the form of corporate surety bonds for payment and performance, each in the minimum amount of 100 percent of the construction contract (or Guaranteed Maximum Price, in the case of construction management) and each satisfactory to HUD.

(b) All types of assurance of completion shall be on forms approved by HUD. All surety companies executing a bond and all parties executing a personal indemnity agreement must be satisfactory to HUD.

(c) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements provided for in this section.

§ 242.52 Construction contracts.

(a) *Awarding of contract.* A contract for the construction or substantial rehabilitation of a hospital shall be entered into by a mortgagor, with a builder selected by a competitive bidding procedure acceptable to HUD.

(b) *Form of contract.* The construction contract shall be: A lump sum form providing for payment of a specified amount; a construction management contract with a guaranteed maximum price, the final costs of which are subject to a certification acceptable to HUD; a design-build contract with terms and certification requirements acceptable to HUD; or such other form of contract as may be acceptable to HUD.

(c) *Competitive bidding.* A competitive bidding procedure acceptable to HUD must be used in the selection of bidders to perform work or otherwise provide service to the project, the costs of which are included in any form of construction contract cited in paragraph (b) of this section. Fixed equipment not included in the construction contract, and movable equipment, may be purchased by securing quotations or by using competitive bidding procedures.

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

§ 242.53 Excluded contractors.

(a) Contracts relating to the construction of the project shall not be made with any person or entity that has been excluded from participation in federal programs, including but not limited to: A general contractor, a subcontractor, or construction manager (or any firm, corporation, partnership, or association in which such contractor, subcontractor, or construction manager has a substantial interest). Before entering into contracts with any such person or entity, owners must consult the government-wide list of excluded parties, and any list of excluded parties maintained by HUD.

(b) Contracts relating to the construction of the project shall not be made with a general contractor that has an identity of interest, as defined by HUD, with the mortgagor or mortgagee.

(c) If HUD determines that a contract has been made contrary to the requirements of paragraphs (a) or (b) of this section and so notifies the mortgagee, HUD will require the contractor or construction manager to cost-certify and may require other remedial action in addition to taking enforcement action, as HUD deems appropriate.

Subpart F—Nondiscrimination and Wage Rates

§ 242.54 Nondiscrimination.

Hospital facilities financed with mortgages insured under this part must be made available without discrimination as to race, color, religion, sex, age, disability, or national origin. Hospitals must be operated in compliance with all applicable civil rights laws and regulations, including 24 CFR part 200, subpart J (Equal Employment Opportunity), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Racially restrictive covenants are per se illegal and their use is prohibited. The aforesaid provisions regarding age and sex discrimination do not affect the eligibility of hospitals for women and children.

§ 242.55 Labor standards.

(a) Projects financed under this part (except under 24 CFR 242.91) must comply with the prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), and U.S. Department of Labor regulations in 29 CFR parts 1, 3, and 5 for compliance with labor standards laws, in accordance with section 212 of the Act, provided that supplemental loans under section 241 of the Act made in connection with loans insured under this part are subject to labor standards requirements in the same manner and to the same extent as mortgages insured under section 242 of the National Housing Act.

(b) The requirements stated in 24 CFR part 70 governing HUD waiver of Davis-Bacon prevailing wage rates for volunteers apply to hospitals with mortgages insured under this part.

(c) Each laborer or mechanic employed on any facility covered by a mortgage insured under this part (except under 24 CFR 242.91), but including a supplemental loan under section 241 of the Act made in connection with a loan insured under this part) shall receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek.

(d) Project commitments, contracts, and agreements, as determined by HUD, and construction contracts and subcontracts, shall include terms, conditions, and standards for compliance with applicable requirements set forth in 29 CFR parts 1, 3, and 5 and section 212 of the Act.

(e) No advance under a loan or mortgage that is subject to the requirements of section 212 shall be eligible for insurance unless there is filed with the application for the advance a certificate as required by HUD certifying that the laborers and mechanics employed in construction of the project have been paid not less than the wage rates required under section 212.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8344, Feb. 5, 2013]

Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements

§ 242.56 Form of regulation.

As long as HUD is the insurer or holder of the mortgage, all mortgagors shall be regulated by HUD through the use of a regulatory agreement in a published format determined by HUD and such additional covenants and restrictions as may be determined necessary by HUD on a case-by-case basis. In addition, all mortgagors shall be subject to the provisions of 24 CFR part 24 and such other enforcement provisions as may be applicable. The mortgagor shall be subject to monitoring by HUD and its agents and contractors, on an ongoing basis for the life of the insured mortgage to ensure against the risk of default, and the mortgagor must make its financial records available to HUD and its agents and contractors upon request. In those cases in which the hospital facility is leased as permitted by §242.72, the provisions of this section also shall apply to the lessee.

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

§ 242.57 Maintenance of hospital facility.

The mortgagor shall maintain the hospital's grounds, buildings, and the equipment financed with mortgage proceeds in good repair, and shall promptly complete such repairs and maintenance as HUD considers necessary.

§ 242.58 Books, accounts, and financial statements.

(a) *Books and accounts.* The mortgagor's books and accounts relating to the operation of the physical facilities of the hospital shall be established in a manner satisfactory to HUD, and shall be kept in accordance with the requirements of HUD as long as the mortgage is insured or held by HUD.

(b) *Financial reports.* The mortgagor shall file with HUD:

(i) Annual audited financial statements in accordance with the guidance below;

(ii) Quarterly unaudited financial reports, within 40 days following the end of each quarter of the mortgagor's fiscal year;

(iii) If requested by HUD, monthly financial reports within 40 days following the end of each month;

(iv) Board-certified annual financial results within 120 days following the close of the fiscal year (if the annual audited financial statement has not yet been filed with HUD) and at such other times as HUD may designate on a case-by-case basis; and

(v) Such other financial and utilization reports as HUD may require.

(c) *Audits.* (1) Not-for-profit and state and local governments shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04) and2 CFR part 200, subpart F.

(2) For-profit organizations shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04).

(d) *Changes in accounting policies.* The annual audited financial statements shall identify any changes in accounting policies and their financial effect on the balance sheet and on the income statement.

(e) *Compliance reporting.* The mortgagor shall instruct the auditor of the annual financial statement to include in its report an evaluation of the mortgagor's compliance with the Regulatory Agreement.

(f) *Books of management agents.* The books and records of management agents, lessees, operators, managers, and affiliates, as they pertain to the operations of the hospital, shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or Governmental Accounting Standards and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the hospital or other mutually agreeable location. Every contract executed on behalf of the hospital with any of the aforesaid parties shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the hospital or other mutually agreeable location.

(g) *Medicare cost reports.* Upon request, the mortgagor shall provide to HUD a copy of the Medicare Cost Report most recently submitted to the Centers for Medicare and Medicaid Services (an agency of the Department of Health and Human Services), along with related financial documents.

(h) In those cases in which the hospital facility is leased as permitted by § 242.72, the requirements pertaining to the mortgagor in § 242.58 (a) through (g) also shall pertain to the lessee.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35923, June 25, 2008; 80 FR 75936, Dec. 7, 2015]

§ 242.59 Inspection of facilities by Commissioner.

The mortgaged property (including buildings and equipment) and the books, records, and documents relating to the operation of the physical facilities of the hospital shall be subject to inspection and examination by HUD or its authorized representative at all reasonable times.

§ 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 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 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.

§ 242.76 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to HUD a survey of the mortgage property, satisfactory to HUD, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons HUD considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as HUD may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to HUD. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to HUD. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, and their successors and assigns, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to HUD, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to HUD as to the quality of such title, signed by an attorney-at-law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

§ 242.77 Liens.

The hospital must be free and clear of all liens other than the insured mortgage, except that the property may be subject to a lien as provided by terms and conditions established by HUD, as follows:

(a) An inferior lien made or held by a federal, state, or local government instrumentality;

(b) An inferior lien required in connection with a supplemental loan insured pursuant to section 241 of the Act;

(c) An inferior or superior lien on equipment as may be approved in connection with an equipment leasing program approved by HUD;

(d) An inferior or superior lien on accounts receivable as approved by HUD as collateral for a line of credit or other borrowing by a hospital insured under this part that has extraordinary needs such as cash flow difficulties; or

(e) Similar liens otherwise approved by HUD.

§ 242.78 Zoning, deed, and building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental codes, ordinances, regulations, and requirements.

§ 242.79 Environmental quality determinations and standards.

Requirements set forth in 24 CFR part 50, ''Protection and Enhancement of Environmental Quality,'' 24 CFR part 51, ''Environmental Criteria and Standards,'' and 24 CFR part 55, ''Floodplain Management,'' governing environmental review responsibilities (as applicable) and any additional environmental standards, reviews, or determinations required by HUD apply to this program.

§ 242.81 Lead-based paint poisoning prevention.

Requirements set forth in 24 CFR part 35 apply to this program.

§ 242.82 Energy conservation.

Construction, mechanical equipment, and energy and metering selections shall provide cost-effective energy conservation in accordance with standards established by HUD.

§ 242.83 Debarment and suspension.

The requirements set forth in 24 CFR part 24 apply to this program.

§ 242.84 Previous participation and compliance requirements.

The requirements set forth in 24 CFR part 200, subpart H, apply to this program.

§ 242.86 Property and mortgage assessment.

The requirements set forth in 24 CFR part 200, subpart E, regarding the mortgagor's responsibility for making those investigations, analysis, and inspections it deems necessary for protecting its interests in the property apply to these programs.

§ 242.87 Certifications.

Any agreement, undertaking, statement, or certification required by HUD shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of HUD, and may be relied upon by HUD as a true statement of the facts contained therein.

§ 242.89 Supplemental loans.

A loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions (including the refinancing of any indebtedness incurred in connection with the early commencement of work on such improvements or additions, subject to the requirements of §§ 242.15 and 242.45) to a hospital covered by a mortgage insured under this section of the Act or for a Commissioner-held mortgage, or equipment for a hospital, may be insured pursuant to the provisions of section 241 of the Act and under the provisions of this part as applicable and such additional terms and conditions as established by HUD. See subpart B of 24 CFR part 241 with respect to the contract of mortgage insurance for all loans insured under section 241 of the Act. See 24 CFR part 241, subpart C, for energy improvements.

§ 242.90 Eligibility of mortgages covering hospitals in certain neighborhoods.

(a) A mortgage financing the repair, substantial rehabilitation, or construction of a hospital located in an older declining urban area shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages or environmental review) as are judged to be not applicable on the basis of the following determinations to be made by HUD.

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for an adequate hospital to serve low and moderate income families.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

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

§ 242.91 Eligibility of refinancing transactions.

(a) *Refinancing an FHA-insured mortgage.* A mortgage given to refinance an existing insured mortgage under Section 241 or Section 242 of the Act covering a hospital may be insured under this subpart pursuant to Section 223(a)(7) of the Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(1) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of:

(i) The original principal amount of the existing insured mortgage; or

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by HUD, of improvements, upgrading, or additions required to be made to the property.

(2) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(3) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which HUD determines that the insurance of the mortgage for an additional term will inure to the benefit of the FHA Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

(4) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on

the loan secured by the existing mortgage.

(b) *Refinancing capital debt not insured by FHA.* A mortgage given to refinance the capital debt of an existing hospital that is not insured under section 241 or section 242 of the Act may be insured under this subpart pursuant to Section 223(f) of the National Housing Act. The mortgage may be executed in connection with the purchase or refinancing of an existing hospital without substantial rehabilitation. A mortgage insured pursuant to this subpart shall meet all other requirements of this part. The FHA Commissioner shall prescribe such terms and conditions as the FHA Commissioner deems necessary to assure that:

(1) The refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital;

(2) The proceeds of any refinancing will be employed only to retire the existing capital debt; pay for limited rehabilitation totaling less than 20 percent of the mortgage amount; and pay the necessary cost of refinancing on such existing hospital;

(3) Such existing hospital is economically viable; and

(4) The applicable requirements of Section 242 for certificates, studies, and statements have been met.

[78 FR 8344, Feb. 5, 2013]

§ 242.92 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

§ 242.93 Amendment of regulations.

The regulations in this subpart may be amended by HUD at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the insurance on any mortgage or loan already insured, and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which HUD has issued a commitment to insure.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

AUTHORITY: 12 U.S.C. 1715b, 1749aaa–5); 42 U.S.C. 3535(d).

SOURCE: 36 FR 24663, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

SOURCE: 61 FR 14407, Apr. 1, 1996, unless otherwise noted.

§ 244.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to group practice facilities (title XI) of the National Housing Act (12 U.S.C. 1749aaa), as amended.

§ 244.2 License.

The Commissioner shall not insure any mortgage under this part unless the appropriate licensing agency for the State, municipality or other political subdivision in which a project is or is to be located provides such assurances as the Commissioner considers necessary that the facility will comply with any applicable State or local standards and requirements for such facilities.

Subpart B—Contract Rights and Obligations

§ 244.251 Cross-reference.

(a) All of the provisions, except §207.258b, of part 207, subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act apply to a mortgage covering a group practice facility insured under title XI of the National Housing Act.