

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 242**

[Docket No. FR-3914-P-01]

RIN 2502-AB53

Multifamily Mortgage Insurance—Risk-Sharing for Hospitals

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to expand the concept of risk-sharing to insuring mortgages to finance the new construction or rehabilitation of hospitals or improvement of hospitals. This program is structured under existing mortgage insurance authority. The program would provide a new form of credit enhancement for constructing and rehabilitating hospitals.

DATES: Comments must be submitted on or before February 3, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: John U. Sepulveda, Director, Hospital Mortgage Insurance Staff, Office of Housing, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0599. The above telephone number may be accessed through TTY by calling the Federal Relay Service at (202) 708-9300 or 1-800-877-8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**Background**

HUD is reviewing all its mortgage insurance programs in an effort to make them more accessible and responsive to end-users.

Risk-sharing has already been successfully implemented for multifamily mortgage insurance and has been recently proposed for single family mortgage insurance. Thus, the proposed rule for hospitals represents a continuation of the Department's efforts to "partner" effectively with State

finance agencies and others to improve the delivery of credit enhancement.

HUD recognizes the need for many of the market-driven, cost-saving reforms which are sweeping hospitals and the health care industry, such as: (1) The shift from inpatient hospital care to outpatient (ambulatory) care; (2) the shift from fee-for-service to managed care; and (3) the shift from independent stand-alone hospitals to vertically and horizontally integrated health care systems. HUD expects to seek statutory authority to give FHA greater flexibility to design and implement products which will be responsive to these changes. The proposed risk-sharing program represents what we can do NOW under existing statutory authority. Implementing risk-sharing now for the Section 242 program will enable the Department to build a partnering infrastructure involving State health care facility financing agencies, private mortgage and bond insurers and investment and mortgage bankers, which will ensure that hospitals and related health care facilities retain access to capital during this period of major structural changes in the industry.

The primary purpose of the Hospital Risk-Sharing program is to provide a new form of credit enhancement for constructing and rehabilitating hospitals, i.e., using insurance by HUD, pursuant to risk-sharing agreements with qualified public and private financing agencies, to develop and improve hospitals. Using a risk-shared credit enhancement program should leverage access to capital markets and thereby result in hospital facilities and services appropriate to local needs. By permitting State financing agencies and private sector financing firms to risk-share with HUD in the construction and rehabilitation of hospitals, HUD expects a more efficient financing process which should maximize the hospitals ability to get the lowest cost financing available in the market place.

HUD further expects that by allowing a risk-sharing finance partner to underwrite, process and service the loans and to manage and dispose of property that goes into unremediated default the hospital program will be run very effectively. HUD also expects that the Hospital Risk-Sharing program will increase the chances of the insured hospital's successful operation as the risk-sharing partners have a financial incentive to assure cost effective operations and will be in closer proximity to the hospital thereby having a better understanding of local market conditions. Finally, if a hospital encounters adverse economic conditions that force its failure, HUD's

risk-sharing partner should be in a better position to minimize HUD's losses as it would have a more complete understanding as to what disposition alternatives are available and which one would maximize HUD's financial position.

HUD is proposing to use the authority to insure mortgages under the Hospital Insurance Program under section 242 pursuant to the coinsurance authority under section 244 of the National Housing Act to design such a Hospital Risk-Sharing Mortgage Insurance Program. The program would be similar to the Multifamily Risk-Sharing Insurance Program set out at 24 CFR part 266. As with that program, HUD and the mortgagee would share the risk of loss as specified in the risk-sharing agreement. The risk-sharing agreement is a contract setting out the rights and obligations of HUD and the mortgagee. (See § 242.304 for a summary of its contents.) The Department would issue the insurance commitments and would endorse mortgage notes for insurance. Mortgages would have to meet HUD's normal underwriting requirements for the hospital full insurance program.

The Commissioner's endorsement of the mortgage note for insurance would specify whether the Department, upon a mortgage default, would pay a full initial claim or would pay an initial claim based upon the full initial claim amount multiplied by HUD's percentage of the risk. The latter formula is new to this program.

In the event of a mortgage default, HUD would pay an insurance claim shortly after the default and would receive a debenture or note in like amount from the mortgagee (§ 242.428). The mortgagee would retain the mortgage. At the end of five years or upon sale of the hospital after foreclosure or acquisition by the mortgagee, HUD would determine the total loss and the parties would make the necessary payments for each to have its respective share of the loss.

HUD is also proposing a cap on its share of the loss equal to the unpaid principal balance of the mortgage note as of the date of default multiplied by HUD's percentage of the risk (§ 242.450). Operating deficits after default constitute a liability over which HUD would have no control. Since the mortgagee will retain the mortgage after default, the Department believes that a cap will provide a stronger economic incentive to service the mortgage in a manner that will minimize accrual of operating deficits than would a straight risk-sharing formula.

Section 242.430 contains a partial payment of claims procedure similar to

that provided in § 266.630 of the Multifamily Risk-Sharing Insurance Program rule. HUD has implemented this procedure under the authority provided in section 244(a) of the National Housing Act for HUD to determine the method of calculating insurance benefits. It is not based on section 541 of the National Housing Act, which authorizes partial payments of claim for certain full insurance programs.

This proposed rule follows the Multifamily Risk-Sharing Insurance Program rule on sharing of mortgage insurance premiums, namely, they are shared in direct proportion to share of risk (§ 242.404). The Department specifically invites public comment on this structure, particularly in view of the proposed sharing of the initial claim payment and of HUD's cap on liability. It should be noted that, under section 244(a) of the National Housing Act, the total premium charged may not exceed the premium applicable under the full insurance program, which is, in general, 0.5 percent of unpaid principal balance. (See 24 CFR 207.252 to 207.252c and 242.251.)

As part of its effort at streamlining its regulations, the Department has chosen to leave much of the detailed procedures to be established contractually through the risk-sharing agreement rather than in this rule. This proposed rule does contain, in detail, the claims payment requirements. This is consistent with the Department's historic practice in both its single family and multifamily mortgage insurance programs of having the contract of insurance evidenced by issuance of a mortgage insurance certificate or by endorsement of the note, with an incorporation by reference of the appropriate regulations. That method has proved highly efficient for those high-volume programs where the contract of insurance must follow readily-assignable mortgages. The Hospital Risk-Sharing Program should

be a much smaller volume program in terms of numbers of mortgages. The mortgages themselves would not be assignable (§ 242.416). The Department seeks comment on the feasibility and desirability of establishing these requirements contractually through the risk-sharing agreement or addenda to the risk-sharing agreement.

Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained at §§ 242.304, 242.426, 242.430, 242.430, 242.432, 242.440, and 242.442 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

- (1) Title of the information collection proposal: Risk-Sharing for Hospitals
- (2) Summary of the collection of information:

The information collection requirements identified in the proposed rule consist of: (i) the application for hospital mortgage insurance; and (ii) documents relating to the filing of a claim for mortgage insurance benefits pursuant to a risk-sharing agreement.

- (3) Description of the need for the information and its proposed use:

(A) The application for hospital mortgage insurance consists of a Form HUD-92013 (OMB No. 2502-0029) and series of supporting documents, including, for example: a Certificate of Need (in States that require a Certificate of Need) or a State-sponsored study demonstrating need (in States that do not require Certificates of Need); a project narrative; organizational documents; accreditation reports; audited financial statements and operating statistics for the last five years; a five-year business plan; a

detailed feasibility study; architectural/engineering documentation; and assurances of compliance with applicable Federal statutes and Executive Orders. This information is used to: (i) verify the hospital's eligibility for FHA mortgage insurance; (ii) ascertain the need for a proposed hospital construction project and define its scope, design and cost; (iii) assess the applicant hospital's financial strength and project feasibility; and (iv) provide a basis for thorough evaluation and underwriting of the proposed project.

(B) Documents relating to the claim for mortgage insurance benefits include the following standard HUD forms: Notice of Default, Form HUD-92426 (OMB No. 2502-0041); Application for Initial Claim Payment, Form HUD-92747 (OMB No. 2502-0419); and Form HUD-92742, Application for Final Claim Payment and Fiscal Data in Support of Claim for Insurance Benefits (OMB No. 2502-0415); and non-standard forms including an appraisal of the defaulted hospital and annual certified statement of amounts due. This information is used to compute the amount of the insurance benefits which the risk-sharing lender is entitled to receive in the event of a claim.

- (4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

The application for hospital mortgage insurance is prepared jointly by the applicant hospital and its investment banker (mortgagee). Documents relating to claims for mortgage insurance benefits are prepared by the mortgagee. The estimated number of respondents and proposed frequency of responses are included in paragraph (5), immediately below.

- (5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Description of annual information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden
§ 242.304 HUD 92013, Hospital—Section 242, Application for Project Mortgage Insurance, OMB No. 2502-0029 ¹	3	1	3	750	2,250
§ 242.426(c) HUD 92426, Notice of Default Status on Multifamily Housing Projects OMB No. 2502-0041 ¹	1	1	1	1	1
§ 242.426(d) Application for Initial Claim Payment: HUD 92747, Application for Insurance Benefits, OMB No. 2502-0419 ¹	1	1	1	0.08	0.08
§ 242.426(d) Application for Partial Claim Payment	1	1	1	1	1
§ 242.430(b) Partial Claim Payment Mortgagee Submission	1	1	1	20	20
§ 242.430(d)(5) Annual Certified Statement of Amounts Due	1	1	1	5	5
§ 242.432 Withdrawal of Claim: HUD 92426, Notice of Default Status on Multifamily Housing Projects, OMB No. 2502-0041 ¹	1	1	1	1	1
§ 242.440 Appraisal	1	1	1	100	100

Description of annual information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden
§ 242.442 HUD 92742, Application For Final Claim Fiscal Data in Support of Claim for Insurance Benefits, OMB No. 2502-0415 ¹	1	1	1	0.5	0.5

¹ These items involve existing information collection requirements for which HUD is adjusting burden hour estimates or is seeking reinstatement of an OMB control number.

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-3447) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No

Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Specifically, the requirements of this proposed rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this proposed rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this

proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would provide a risk-sharing alternative to full mortgage insurance and should be beneficial to both small and large entities.

The Catalog of Federal Domestic Assistance program number is 14.128.

List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, part 242 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

1. The authority citation for part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(t), and 1715z-7; 42 U.S.C. 3535(d). Subparts C and D are also issued under 12 U.S.C. 1715z-9.

2. The heading for subpart A is revised to read as follows:

Subpart A—Eligibility Requirements—Full Insurance Program

3. The heading for subpart B is revised to read as follows:

Subpart B—Contract Rights and Obligations—Full Insurance Program

4. New subparts C and D are added, to read as follows:

Subpart C—Eligibility Requirements—Risk-Shared Insurance Program

- 242.301 Purpose and scope.
- 242.302 Definitions.
- 242.303 Eligibility to enter into risk-sharing agreement.
- 242.304 Risk-sharing agreement.
- 242.305 Cross-cutting regulations.

Subpart D—Contract Rights and Obligations—Risk-Shared Insurance Program

- Mortgage Insurance Premiums
- 242.400 Mortgage insurance premium: Insurance upon completion.
- 242.402 Mortgage insurance premium: Insured advances.
- 242.404 Mortgage insurance premium: Other requirements.
- 242.406 Mortgage insurance premium: Duration and method of paying.

- 242.408 Mortgage insurance premium: Pro rata refund.
- Insurance Endorsement
- 242.412 Insurance endorsement.
- Assignments
- 242.416 Transfer of partial interest under participation agreement.
- Termination
- 242.420 Termination of contract of insurance.
- 242.422 Notice and date of termination by the Commissioner.
- Claim Procedures
- 242.426 Notice of default and filing an insurance claim.
- 242.428 Initial claim payments.
- 242.430 Partial payment of claims.
- 242.432 Withdrawal of claim.
- 242.434 Reinstatement of the contract of insurance.
- 242.436 Issuance of mortgagee Debenture.
- 242.438 Foreclosure and acquisition.
- 242.440 Appraisals.
- 242.442 Application for final claim settlement.
- 242.444 Determining the amount of loss.
- 242.446 Items included in total loss.
- 242.448 Items deducted from total loss.
- 242.450 Determining share of loss.
- 242.452 Final claim settlement and mortgagee Debenture redemption.
- 242.454 Recovery of costs after final claim settlement.
- 242.456 Program monitoring and compliance.

Subpart C—Eligibility Requirements—Risk-Shared Insurance Program

§ 242.301 Purpose and scope.

This subpart C and subpart D of this part provide for the sharing of the risk of loss, by the Commissioner and mortgagees that enter into risk-sharing agreements, through insurance under section 242 of the National Housing Act pursuant to section 244 of the National Housing Act of mortgages securing loans to hospitals.

§ 242.302 Definitions.

(a) For purposes of this subpart C and subpart D of this part, the term:

Contract of insurance means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and subpart D of this part and the applicable provisions of the National Housing Act. The endorsement shall indicate whether the initial claim amount under § 242.428 will be based on the Commissioner's percentage of the risk.

(b) See § 200.3 of this chapter for other applicable definitions.

§ 242.303 Eligibility to enter into risk-sharing agreement.

To be eligible to enter into a risk-sharing agreement, a mortgagee must be approved for participation under the National Housing Act in accordance with §§ 202.11 through 202.14 and §§ 202.17 through 202.19, of this chapter. The mortgagee must also meet such additional net worth and capital requirements as the Commissioner may prescribe and must have experience in originating and servicing mortgages in connection with hospitals, health care facilities, or both, that is acceptable to the Commissioner.

§ 242.304 Risk-sharing agreement.

The risk-sharing agreement shall include provisions relating, but not necessarily limited, to the following:

(a) The risk sharing level or levels at which the mortgagee shall participate in the program, subject to the Commissioner's maximum liability. The mortgagee's share of the loss may not be less than 10 percent of the loss;

(b) Capital, loss reserves, and escrow requirements for the mortgagee;

(c) The particular functions to be performed by each party with respect to mortgage origination, underwriting, mortgage servicing and claims settlement. The risk-sharing agreement shall provide for the Commissioner to issue mortgage insurance commitments and to endorse mortgage notes for insurance;

(d) Fees;

(e) Required certifications;

(f) Reports; and

(g) Audits.

§ 242.305 Cross-cutting regulations.

(a) *General.* Sections 200.31 (debarment and suspension), 200.32 (participation and compliance requirements), and 200.33 (labor standards) of this chapter and part 200, subpart J, of this chapter (equal employment opportunity) apply to this program.

(b) *Environmental review requirements.* To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related laws and authorities, HUD will ensure that each hospital site proposed for insurance under this subpart is visited and will prepare the applicable environmental reviews as set forth in part 50 of this title and for the related environmental criteria and standards in part 51 of this title and other applicable regulations. These requirements must be completed before HUD may issue a mortgage insurance commitment.

Subpart D—Contract Rights and Obligations—Risk-Shared Insurance Program

Mortgage Insurance Premiums

§ 242.400 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For mortgages insured upon completion, on the date of the final closing, the mortgagee shall pay to the Commissioner an initial premium equal to the prescribed percentage, as indicated in § 242.404(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the mortgagee shall pay a second premium (calculated on a per annum basis) equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 242.406(a), the mortgagee on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 242.430, or prepayments, for the year following the date on which the premium becomes payable.

§ 242.402 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For mortgages involving insured advances, on the date of the initial closing, the mortgagee shall pay to the Commissioner an initial premium equal to the prescribed percentage, as indicated in § 242.404(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the mortgagee shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The mortgagee shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the mortgagee shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The mortgagee shall adjust this payment by deducting an amount equal to the

portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The mortgagee shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (overpayment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 242.406(a), the mortgagee on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 242.430, for the year following the date on which the premium becomes payable.

§ 242.404 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the mortgagee for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

Percentage share of risk		Prescribed percentage for calculating mortgagee's annual MIP
HUD	Mortgagee	
90	10	.45
75	25	.375
50	50	.25
40	60	.2
30	70	.15
20	80	.1
10	90	.05

(c) *Closing information.* The mortgagee shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the mortgagee shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 242.400(c) or § 242.402(d). If the mortgage is modified, the mortgagee shall submit to the Commissioner a

copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 242.400(c) or § 242.402(d).

(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date, shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

§ 242.406 Mortgage insurance premium: Duration and method of paying.

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

- (1) The mortgage is paid in full;
- (2) A deed to mortgagee is filed for record;
- (3) An application for initial claim payment is received by the Commissioner; or
- (4) The contract of insurance is otherwise terminated.

(b) *Method of payment.* The mortgagee shall pay any mortgage insurance premium required by this part in cash.

§ 242.408 Mortgage insurance premium: Pro rata refund.

If the contract of insurance is terminated by payment in full or is terminated by the mortgagee on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the mortgagee for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs before the date of the first payment to principal.

Insurance Endorsement

§ 242.412 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Assignments

§ 242.416 Transfer of partial interest under participation agreement.

The mortgagee may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(a) Legal title to the insured mortgage or mortgages shall be held by the mortgagee; and

(b) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(1) The mortgagee shall remain mortgagee of record under the contract of insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the mortgagee with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the mortgagee or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

Termination

§ 242.420 Termination of contract of insurance.

The contract of insurance shall terminate if any of the following occurs:

(a) The mortgage is paid in full;
 (b) The mortgagee acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;

(c) A party other than the mortgagee acquires the property at a foreclosure sale;

(d) The mortgagee notifies the Commissioner of termination of insurance (voluntary termination);

(e) The mortgagee or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information furnished in connection with the contract of insurance on the mortgage or while the contract of insurance is in existence;

(f) The receipt by the Commissioner of an Application for Final Claims Settlement; or

(g) If the mortgagee acquires the mortgaged property and fails to make an initial claim.

§ 242.422 Notice and date of termination by the Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 242.420 occurs.

Claim Procedures

§ 242.426 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. A mortgagee becomes eligible for insurance benefits on the basis of a covenant default only after the mortgagee has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the mortgagee must notify the

Commissioner within 10 days thereafter. Unless waived by the Commissioner, the mortgagee must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the mortgagee has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default to HUD and the mortgagor.

(d) *Timing of claim filing.* Unless a written extension is granted by the Commissioner, the mortgagee must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default, but not earlier than the first day of the month following the month for which a payment was missed. Upon request of the mortgagee, the Commissioner may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the mortgagee certifies that the hospital owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, the Commissioner may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

§ 242.428 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section. The resulting amount is the initial claim amount, unless the Commissioner's endorsement of the note for insurance provided that the initial claim amount shall be based on the Commissioner's percentage of risk. If the endorsement so provided, the resulting amount is multiplied by the Commissioner's percentage of the risk to obtain the initial claim amount.

(2) The Commissioner shall make an initial claim payment to the mortgagee that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 242.404(d).

(3) The mortgagee must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall

be returned to the Commissioner within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the mortgagee fails to meet any of the requirements of this section within the specified time (including any granted extension of time), the Commissioner shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* The Commissioner shall pay the claim in cash, unless the mortgagee requests payment in debentures.

§ 242.430 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 242.426(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the mortgagee has not previously received a partial claim payment, the mortgagee may file a claim for a partial claim payment under § 242.430. Otherwise, the mortgagee must file for an initial claim payment under § 242.428.

(b) *Mortgage submission.* In addition to any other requirements set forth in administration instructions, the mortgagee must provide the following information with its application for a partial claim payment:

(1) The amount by which the mortgagee will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the mortgagee will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the hospital are sufficient to restore the financial viability of the hospital;

(iii) The hospital is or can (at reasonable cost) be made structurally sound;

(iv) The management of the hospital is satisfactory; and

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing.*—(1) *Acceptable application.* If the mortgagee's application is acceptable, the Commissioner shall notify the mortgagee to process the partial payment, which will include the modification of the existing mortgage

and the execution by the mortgagor of a second mortgage payable to the mortgagee. When the second mortgage is closed, the mortgagee shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the mortgagee, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the mortgagee of the information needed to make the application acceptable or return the application for further action. The mortgagee is granted an extension of 30 days from the date of any notification for further action. If the Commissioner determines that a partial payment of claim is not feasible, the application will be processed as an application for an initial claim payment.

(d) *Requirements.*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the mortgagee in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of the Commissioner's percentage of the risk of loss or 50 percent.

(3) *Second mortgage.* Repayment of the relief provided by the mortgagee must be secured by a second mortgage to the mortgagee. This second mortgage may provide for postponed amortization and may not be assigned by the mortgagee. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by mortgagee.* The mortgagee must remit to the Commissioner a percentage of all amounts collected on the mortgagee's second mortgage within 15 days of receipt by the mortgagee. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the mortgagee must submit to the Commissioner an annual certified statement of the amounts collected by the mortgagee. The mortgagee must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 242.432 Withdrawal of claim.

In case of a default and subsequent filing of claim, the mortgagee shall determine the form of workout or modification and will inform the Commissioner of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by the Commissioner, the mortgagee may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 242.434 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, the Commissioner may reinstate the contract of insurance on the following conditions:

(1) The mortgagee has not acquired the hospital;

(2) The mortgagor has cured the default; and

(3) The mortgagee requests that the Commissioner reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to the Commissioner, the Commissioner shall notify the mortgagee of the date the contract of insurance will be reinstated and shall advise the mortgagee of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the mortgagee shall pay the Commissioner an amount equal to the initial claim amount, as determined under § 242.428(a)(1), plus an amount equal to the accrued and unpaid interest on the mortgagee Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the mortgagee of the amount specified in paragraph (c) of this section, the Commissioner shall return the mortgagee debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 242.436 Issuance of mortgagee Debenture.

(a) *Condition to initial claim payment.* The mortgagee must issue an instrument in the form of a debenture to the Commissioner within 30 days of

receiving the initial claim payment. The mortgagee Debenture shall meet the following requirements and shall be in a form that has been approved by the Commissioner as part of the application approval process.

(b) *Term of mortgagee Debenture.* The mortgagee Debenture shall be dated the same date that the initial claim payment is issued. The mortgagee Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the mortgagee time to foreclose and/or resell the hospital. The Commissioner may provide a written extension of the five year term if the mortgagee certifies and provides documentation that the hospital owner has filed bankruptcy and the mortgagee is taking action to have the hospital discharged from the bankruptcy. The mortgagee Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the mortgagee Debenture through the term of the mortgagee Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *Mortgagee Debenture amount.* (1) The mortgagee Debenture shall be for the full initial claim amount as determined under § 242.428(a)(1) (minus any excess funds returned to HUD under § 242.428(a)(3)).

(2) The full amount of the mortgagee Debenture shall be payable to HUD upon maturity, unless the mortgagee Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 242.434; or

(ii) Final claim settlement under § 242.452.

(d) *Mortgagee Debenture interest rate.* The mortgagee Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the mortgagee Debenture through the term of the mortgagee Debenture.

(e) *Form of mortgagee Debenture.* The mortgagee Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the mortgagee. For

mortgagees that operate as departments or divisions of States or units of local government and where such mortgagees cannot pledge the full faith and credit of the mortgagee, such mortgagees may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, the Commissioner will not require the mortgagee Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement that is supported by the full faith and credit of the mortgagee and is not a public offering.

§ 242.438 Foreclosure and acquisition.

The mortgagee is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 242.440 Appraisals.

Where actions taken or caused to be taken by the mortgagee have the effect of the recovery of less than the face amount of the mortgagee Debenture held by the Commissioner, an appraisal should be made to determine the value of the hospital. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45 day period immediately preceding the date when the mortgagee files an application for final claim settlement. If at the time of final claim settlement the mortgagee has not sold the hospital, an appraisal should be made to determine the value of the hospital at its highest and best use.

§ 242.442 Application for final claim settlement.

The mortgagee shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

- (a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or
- (b) Expiration of the term of the mortgagee debenture.

§ 242.444 Determining the amount of loss.

The amount of the total loss to be shared by the Commissioner and the mortgagee is equal to:

- (a) The amount of the initial claim payment;
- (b) Plus all items set forth in § 242.446; and
- (c) Less all items set forth in § 242.448.

§ 242.446 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 242.444(a):

(a) The amount of all payments that the mortgagee made from its own funds and not from hospital income for:

- (1) Taxes, special assessments, and water bills that are liens before the Mortgage; and
- (2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the mortgagee. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the mortgagee made from its own funds and not from hospital income for:

- (1) Preservation, operation and maintenance of the property;
- (2) Repairs necessary to meet the requirements of local laws;
- (3) Expenses in connection with the sale of property; and
- (4) Bankruptcy expenses approved by the Office of General Counsel.

(d) The amount of mortgagee Debenture interest paid by the mortgagee to the Commissioner.

§ 242.448 Items deducted from total loss.

In computing insurance benefits, the following items are deducted from the amounts described in § 242.446(a) and (b):

(a) All amounts received by the mortgagee on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the mortgagee holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the mortgagee accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/hospital that the mortgagee received after the date of default;

(e) The proceeds from the sale of the hospital or the appraised value of the hospital as provided in § 242.442 as follows:

(1) If the mortgagee disposes of the hospital through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the mortgagee disposes of the hospital through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the mortgagee has not disposed of the hospital within 5 years from the date of issuance of the mortgagee Debentures (unless an extension has been granted pursuant to § 242.436), the amount deducted shall be the appraised value;

(f) Any and all claims that the mortgagee has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership; and

(g) The amount of daily mortgagee Debenture interest accrued but not paid from the anniversary date of the last mortgagee Debenture interest payment to the date an application for final claim payment is received by the Commissioner.

§ 242.450 Determining share of loss.

The total loss computed in § 242.444 shall be shared by the Commissioner and the mortgagee in accordance with their respective percentage of risk subject to the maximum cap on the Commissioner's liability, as specified in the note and the addendum to the risk-sharing agreement between the Commissioner and the mortgagee. The Commissioner's maximum loss on any risk-shared insurance claim shall not exceed the unpaid principal balance of the mortgage note as of the date of default.

§ 242.452 Final claim settlement and mortgagee Debenture redemption.

(a) *Final claim payment.* If the initial claim amount, as determined under § 242.428(a)(1), is less than the Commissioner's share of the loss, the Commissioner shall make a final claim payment to the mortgagee that is equal to the difference between the Commissioner's share of the loss and the initial claim amount and shall return the mortgagee Debenture to the mortgagee for cancellation.

(b) *Mortgagee reimbursement payment.* If the initial claim amount, as determined under § 242.428(a)(1), is more than the Commissioner's share of the loss, the mortgagee shall, within 30 days of notification by the Commissioner of the amount due, remit to the Commissioner an amount that is equal to the difference between the initial claim amount and the Commissioner's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The

mortgagee Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period. If a mortgagee is in default under an existing debenture and files a claim on another hospital under this part, the Commissioner will charge the mortgagee's Dedicated Account for the amount owed the Department if such an account was required by the risk-sharing agreement. The Commissioner may inform the rating agencies of the mortgagee's failure to pay on their debt obligation and of its violation of the risk-sharing agreement.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of a mortgagee (e.g., failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the mortgagee, notwithstanding the risk apportionment otherwise agreed to by the Commissioner and the mortgagee.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

§ 242.454 Recovery of costs after final claim settlement.

If, after final claim settlement, the mortgagee recovers additional sums as the result of the sale of the hospital or

otherwise, the total amount of such recovery shall be shared by The Commissioner and the mortgagee in accordance with the prescribed percentage of shared risk.

§ 242.456 Program monitoring and compliance.

The Commissioner will monitor the performance of the mortgagee for compliance with the provisions of this subpart.

Dated: September 3, 1996.

Nicolas P. Retsinas,
*Assistant Secretary for Housing-Federal
Housing Commissioner.*

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