

OFFICE OF HOSPITAL FACILITIES
2011 LENDER TRAINING

**LEGAL
REQUIREMENTS**

Kelly Gil

Attorney-Advisor,
HUD Office of
General Counsel



OHF 2011 LENDER TRAINING

STATUTORY PROVISIONS

SECTION 242 OF THE NATIONAL HOUSING ACT

- Statute was enacted in 1968
- Statute cannot be waived
- Key provisions:
 - ❖ Definition of “hospital”
 - ❖ 50% patient day rule and CAH exemption
 - ❖ 90% loan-to-value requirement
 - ❖ First lien requirement for real property



SECTION 241 OF THE NATIONAL HOUSING ACT

- **Statutory authority to insure a secondary lien on an existing HUD-insured hospital to:**
 - ❖ **Construct additions**
 - ❖ **Modernize facility**
 - ❖ **Purchase equipment**



SECTION 223 OF THE NATIONAL HOUSING ACT

- **Section 223(a)(7): allows an existing insured hospital to refinance**
- **Section 223(e): insures a hospital in an older, declining urban area; Special Risk Insurance Fund**
- **Section 223(f): allows an existing hospital to refinance; regs are pending**

SECTION 242 VERSUS SECTION 232

- Section 232 insures:
 - ❖ **Nursing Homes**
 - ❖ **Assisted Living Facilities**
 - ❖ **Board and Care Homes**
 - ❖ **Intermediate Care Facilities**
- Processed under LEAN
- Allows owner-operator structure



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REGULATORY PROVISIONS

SECTION 242 REGULATIONS

- **24 CFR Part 242**
 - ❖ **Effective date of January 28, 2008**
 - ❖ **Mortgagor bound by regulations in effect on the date of endorsement**
 - ❖ **May be waived by FHA Commissioner only for good cause**

REGULATIONS (CONTINUED)

- **242.10 Eligible Mortgagors:**
 - ❖ **Public**
 - ❖ **Private nonprofit**
 - ❖ **Profit motivated**
- **242.13 Parents and Affiliates**
- **242.14 Mortgage Reserve Fund**
- **242.15 Limitation on Refinancing**
 - ❖ **20% hard costs**



REGULATIONS (CONTINUED)

- 242.16 Applications
- 242.27 Maturity: 25 years
- 242.35 Mortgage Lien Certifications
 - ❖ Mortgage is first lien and covers all property used in operation of hospital
 - ❖ First lien on all personalty not subject to prior lien
- 242.41 Certification of Cost Requirements

REGULATIONS (CONTINUED)

- **242.45 Early Commencement of Work**
 - ❖ **Limited site prep before application only**
 - After HUD environmental review
 - After 2530 clearance
 - ❖ **Hospital constructed more than 2 years prior to application is eligible for 242**
 - ❖ **Pre-Commitment work**
 - ❖ **Early Start (post commitment)**

REGULATIONS (CONTINUED)

- **242.55 Labor Standards**
 - ❖ **Section 212 of the National Housing Act**
 - ❖ **Davis-Bacon**
 - ❖ **Department of Labor regulations**
- **242.56 Form of Regulation**
 - ❖ **Mortgagor regulated by Regulatory Agreement and covenants**

REGULATIONS (CONTINUED)

- **242.58 Books, accounts, and financial statements**
 - ❖ **Annual audited financial statements**
 - ❖ **Quarterly unaudited financial reports**
 - ❖ **Upon HUD request, monthly financial reports**
 - ❖ **Board-certified annual financial results if annual audited statement not yet filed**

REGULATIONS (CONTINUED)

- 242.61 Management
- 242.64 Current and Future Property
- 242.65 Distribution of Assets
- 242.72 Leasing of Hospital: prohibited
 - ❖ Unless state law prohibits mortgage
 - ❖ Unless necessary to reduce risk of default
- 242.91 Eligibility of Refinancing

REGULATIONS (CONTINUED)

- **24 CFR subpart B of part 207: Contract of Mortgage Insurance between Lender and HUD**



HANDBOOK 4615.1

- **Currently being rewritten to reflect modern day health care practice and 2008 regulations**
- **HB requirements may be waived by Director of OHF**



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Kelly Gil

Attorney-Advisor,
HUD Office of
General Counsel

**Nikki
Hoffpauir**

Partner, Krooth &
Altman

**COVENANTS
AND CLOSINGS**



COVENANTS

MORTGAGEE'S ROLE

- **Review covenants with the hospital early for fact-specific requests.**
- **Review draft commitment for collateral, loan terms, and identified issues.**
- **Engage HUD in discussions for changes requested with the hospital.**

PROVISIONS IN THE COVENANTS:

- **Part A: Special Conditions**
 - ❖ **Cost Savings**
 - ❖ **Cash Payment of Insurance Benefits**
 - ❖ **Non-Interference by Parent**
 - ❖ **Other special conditions for specific types of hospitals**

COVENANTS CONTINUED:

- **Part B: Collateral**
 - ❖ **First lien on all real property**
 - ❖ **First lien on all personalty**
 - ❖ **All receipts, revenues, income, etc.**
 - ❖ **All current and future properties**

COVENANTS CONTINUED:

- **Part C: Conditions before initial closing**
 - ❖ **Closing Documents**
 - ❖ **Articles of Incorporation**
- **Part D: Special conditions at initial closing**
 - ❖ **MRF**
 - ❖ **DACA**

COVENANTS CONTINUED:

- **Part E: Rider to the Regulatory Agreement**
 - ❖ **Current and Future Property**
 - ❖ **MRF**
 - ❖ **Affiliate Transactions**
 - ❖ **Distribution of Assets**
 - ❖ **Financial Reports**
 - ❖ **Additional Indebtedness and Leasing**

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CLOSINGS

242 CLOSING LOGISTICS

- **Package Submission to Closing Coordinator, Field Office Counsel, and OAE Representative needed to secure a closing date.**
- **Closing held in Field Office, usually over 2-3 day period.**
- **If Field Counsel is not experienced in 242 deals, or if deal is complex, plan more time for review, where possible.**
- **Address long lead items early.**

ISSUES THAT CAN DELAY A 242 CLOSING

- **Environmental Review**
 - ❖ **USTs and O2 tanks**
 - ❖ **Floodplains**
 - ❖ **Clearance on ALL properties to be pledged**

ISSUES THAT CAN DELAY A 242 CLOSING

- **Title & Survey issues**
 - ❖ **Reverter Clauses**
 - ❖ **Restrictions on Use**
 - ❖ **Outstanding liens that aren't being refinanced**
 - ❖ **Need to create proper legal parcel**
 - ❖ **Lien issues related to early work**
 - ❖ **Significant property encroachments or unusual matters on survey**

ISSUES THAT CAN DELAY A 242 CLOSING

- **Structural & Organizational**
 - ❖ **Does Mortgagor have an interest in everything they need to pledge?**
 - ❖ **Do covenants address any special interactions between hospital and affiliate/parents or obligations that are remaining outstanding with HUD permission?**

ISSUES THAT CAN DELAY A 242 CLOSING

- **Structural & Organizational**
 - ❖ **Organizational or ownership changes need to be in place**
 - Affiliation Agreements, Management Agreements, property being spun off or sold, etc.
 - ❖ **Filing of Articles Amendment**
 - ❖ **Board approval**

ISSUES THAT CAN DELAY A 242 CLOSING

- **Construction**
 - ❖ **OAE sign off on all construction documents**
 - ❖ **Building Permit in hand**
 - ❖ **Organizational or ownership changes need to be in place- Affiliation Agreements, Management Agreements, property being spun off or sold, etc.**

PREPARING FOR CLOSINGS- LENDER RESPONSIBILITY

- **First Draw to AE and OAE Rep well in advance of closing for approval**
- **Commitment Amendment & Final 2013 (if needed)**
- **Confirm that loan documents match pricing terms**
- **Insurance Certificate Review**

OFFICE OF HOSPITAL FACILITIES
2011 LENDER TRAINING

AFTER-THE-DEAL-IS-DONE:
**THE CONSTRUCTION
DRAW PROCESS**

Robert Deen,
FACHE

Senior Account
Executive, OHF



KEY TAKEAWAYS:

- **A basic understanding of the draw process.**
- **The ability to use the 2 page 11 step guide attached to your agenda package as a reference if needed.**
- **Understand who to call for additional information or with questions.**

DRAW BASICS

- **A simple user-friendly system that:**
 - ❖ **Was developed jointly by OHF, Bankers & Servicers from 2008-10**
 - ❖ **Uses email and PDF/CDs to decrease cost, storage & time**
 - ❖ **Pays in 5 to 10 business days in most cases**

DRAW BASICS (CONTINUED)

- The following forms, when required, must be submitted in hard copy format with “wet” signatures.
 - ❖ **HUD Form 92403 – Always required.**
 - ❖ **HUD Form 2448 – Required when a requisition includes construction costs.**
 - ❖ **HUD Form 92403.1 – Required when a requisition includes architect design work.**

DRAW BASICS (CONTINUED)

***NOTE: OHF has submitted a new information collection package to OMB for approval of its forms. The form(s) included in this presentation are pending OMB approval. We are requesting your feedback to the information presented in this presentation. We will respond to comments during the Q&A session.**

- While HUD requires a few forms to be submitted in hard copy format with “wet” signatures, the bulk of the monthly requisition is submitted on CD.
- The hard copy format with “wet” signatures forms are:

DRAW BASICS (CONTINUED)

**HUD Form
92403 –
Summarizes
each draw.
Requests the
Funds &
Mortgage
Insurance**

Application for Insurance of Advance of Mortgage Proceeds		U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner	
<p>Public reporting burden for this collection of information is estimated to average 0.20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The form is used by mortgagees for funds expended or obligated for construction related items; by mortgagees to request mortgage insurance for funds so advanced. The information will be used by the Department to as its certificate of mortgage insurance for funds it approves for advance. This is a requirement under Section 207, 213, 220, 221, 231, 232, 234(c), 236, 241, 242, and 810 of the National Housing Act, P.L. 479 4B Stat. 1246 U.S.C. et. seq. Furnishing of this information is required to obtain benefits, and failure to provide it may result in your not receiving your benefits.</p> <p>Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et. seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.</p>			
Name of Project		Project Number	Advance Number
Request for Payment			
<p>Instructions to Mortgagee: This request is to be submitted to your mortgagee in triplicate. All items requested shall be clearly identified by description. No item shall be applied for until payment is due. A request covering construction cost shall show one entry for the total payment requested to meet the net amount due according to the Contractor's Requisition (form HUD-92448) attached hereto. The request for the first payment on account of the Architect's cash fee shall be accompanied by the Mortgagee's and Architect's Certificate (form HUD-92403.1) attached hereto.</p> <p>To Mortgagee: The undersigned Mortgagee hereby requests the mortgagee identified below advance for funds as provided for by the Building Loan Agreement heretofore executed on (mm/dd/yyyy) _____ as indicated by the total amount of the individual payments set forth in the schedule below.</p>			
Item Number and Description		(A) Amount Claimed	(B) HUD-Approved Amt.
1.	Construction cost per form HUD-92448	\$	\$
2.	Interest from (mm/dd/yyyy) () to (mm/dd/yyyy) ()	\$	\$
3.	Architect's Fee		
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
Total Due on This Requisition		\$	\$
<p>The undersigned hereby certifies that all of the above items have been paid or will be paid within five (5) days of receipt of the requisitioned funds. We hand you herewith full supporting invoices and/or receipts, as required, covering such items enumerated, to be forwarded with this request to HUD for review. With respect to any item of interest enumerated above, we herewith authorize you to advance same and charge our account therefor. The undersigned further certifies that all prior work, labor, and materials to be paid for under this request are satisfactory and are in accordance with the contract drawings.</p>			
Name of Mortgagee	By: Signature of Authorized Mortgagee Official	Date (mm/dd/yyyy)	
<p>Replaces FHA-2403 which is obsolete Previous versions of HUD-92403 are obsolete</p>			



DRAW BASICS (CONTINUED)

**FHA Form
92448 –
Contractors
certification of
completed work
items**

FHA FORM NO. 2448 (10/09)
Rev. 4/78
(Previous Edition Obsolete)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
NONPROFIT HOSPITAL - SECTION 242
CONTRACTOR'S REQUISITION
(To Be Submitted to Mortgagees in Quadruplicate)

To: _____ Mortgagee _____ Project No. _____
 _____ Requestion No. _____

Name of Hospital _____ Location _____

In accordance with the provision of the Construction Contract dated _____, this requisition is submitted for the amount of _____ due for work performed up to the _____ day of _____.

ENTER AMOUNTS TO THE NEAREST EVEN DOLLAR.

ITEMS	AMOUNTS REQUESTED	FOR FHA USE ONLY AMOUNTS APPROVED
1. Total Work Completed (Original Construction Contract)	\$ -	
2. Inventory of Materials Stored On Site	\$ -	
3. Sum of Work Completed Plus Inventories of Materials	\$ -	
4. Less Net Decrease in Cost as a Result of Approved Changes	\$ -	
5. Total After Adjusting for Net Decrease in Cost as a Result of Approved Changes	\$ -	
6. Less Program Share (0%) to be Paid from Hill Burton or Other Grant, etc.	\$ -	
7. Balance (Item 5 Minus Item 6, If Any)	\$ -	
8. Less Retained (10% of Item 7) (After Completion of at Least 50% of Construction, and upon written Approval of DEW and the surety, further holdbacks will not be required. In such cases, listed amount above not for previous holdbacks)	\$ -	
9. Balance - Total Amount Due to Date on Account of Construction Contract	\$ -	
10. Less Previous Payments from Mortgage Proceeds and/or Mortgagee's Escrow	\$ -	
11. Net Amount Due on this Requisition	\$ -	

CONTRACTOR'S CERTIFICATE
 I/We hereby CERTIFY that I/We have received payment, in cash, of \$ _____ up to the date hereof on the construction contract appertaining to this project.
 Date _____ Name of Contractor _____
 By: _____ Title _____

ARCHITECT'S CERTIFICATE
 I CERTIFY that I (or any authorized representative) have visited the project, within _____ days prior to the date of this Certificate, to determine the true basis of cost upon which I hereby certify the payment. I further certify that all prior work and the work, labor, and materials, to be paid for under this Request for Payment are satisfactory and in accordance with the Contract Drawings.
 _____ Name of Architect
 Date _____ By: _____

FOR USE OF FEDERAL HOUSING ADMINISTRATION
 Net Amount Approved For Payment From Mortgage Proceeds and/or Cash Escrow - - - \$ _____
 Completed by: _____ Mortgage Credit Examiner
 Reviewed By: _____ Chief Mortgage Credit Examiner
 Approved _____ Chief Underwriter/Director, RPMC Division
 530661-P Rev. 4/78 FHA FORM NO. 2448 (10/09)

DRAW BASICS (CONTINUED)

HUD Form 92403.1 and AIA Forms G-702 & G-703

Mortgagor's and Architect's Certificate of Payment		U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner
Date:	Project Number:	Project Name:
To: the Secretary of Housing and Urban Development:		
To induce the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner, to initially endorse the instrument in the above-captioned case for mortgage insurance, or initially close a capital advance under Section 202 or Section 811, and with the intent that said Commissioner may rely on the statements contained herein as a basis for so doing, the Mortgagor and Architect hereby certify as follows:		
As of the date hereof, the Mortgagor has paid to the Architect, in cash, or will pay upon this disbursement of funds, as a payment on account of the Architect's fee, the sum of \$ _____		
The Architect has received from the mortgagor, in cash, or will receive upon this disbursement of funds, as a payment on account of the Architect's fee, the sum of \$ _____		
We certify that no portion of the architect's fee has been or will be returned in any form, either directly or indirectly, to the sponsor, mortgagor, contractor, any officer, director, stockholder, or partner thereof, or any party(s) to this transaction.		
I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.		
<small>Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)</small>		
Name of Mortgagor:	Name of Architect:	
By: (Signature & Date):	By: (Signature & Date):	
X _____	X _____	
NAME: _____	NAME: _____	
DATE: _____	DATE: _____	

HUD FORM 92403 BECOMES "TABLE OF CONTENTS" FOR CD

Application for Insurance of Advance of Mortgage Proceeds

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Public reporting burden for this collection of information is estimated to average 0.20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The form is used by mortgagees for funds expended or obligated for construction related items; by mortgagees to request mortgage insurance for funds so advanced. The information will be used by the Department to set its certificate of mortgage insurance for funds it approves for advance. This is a requirement under Section 207, 213, 220, 221, 231, 232, 234(d), 236, 241, 242 and 810 of the National Housing Act, P.L. 479 48 Stat. 1246 U.S.C. et. seq. Furnishing of this information is required to obtain benefits, and failure to provide it may result in your not receiving your benefits.

Disbury Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et. seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Name of Project ABC Hospital	Project Number 011-10011	Advance Number 24
--	------------------------------------	-----------------------------

Request for Payment

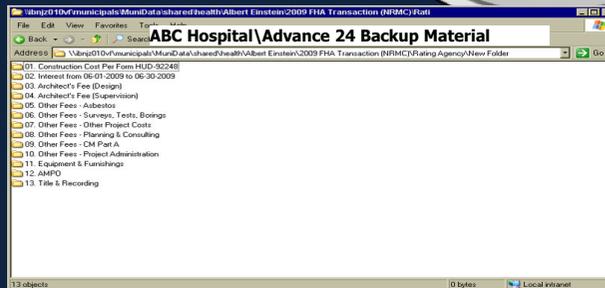
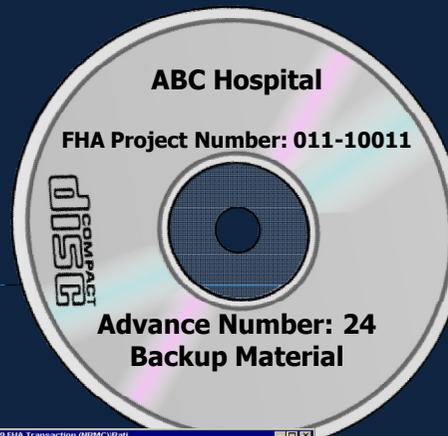
Instructions to Mortgagee: This request is to be submitted to your mortgagee in triplicate. All items requested shall be clearly identified by description. No item shall be applicable until payment is due. A request covering construction cost shall show one entry for the total payment requested to meet the net amount due according to the Contractor's Requestion (form HUD-92448) attached hereto. The request for the first payment on account of the Architect's cash fee shall be accompanied by the Mortgagee's and Architect's Certificate (form HUD-92403.1) attached hereto.

To Mortgagee: The undersigned mortgagee hereby requests the mortgagee identified below to advance funds as provided for by the Building Loan Agreement heretofore executed on (mm/dd/yyyy) **01/01/2009** as indicated by the total amount of the individual payments set forth in the schedule below.

Item Number and Description	(A) Amount Claimed	(B) HUD-Approved Amt.
1. Construction cost per form HUD-92448	\$ 6,114,693.00	\$
2. Interest from (mm/dd/yyyy) (06/01/2009) to (mm/dd/yyyy) (06/30/2009)	\$ 94,146.00	
3. Architect's Fee	\$ 9.00	
4. Architect's Fee (Supervision)	\$ 273,623.00	
5. Other Fees - Asbestos	\$ 3,750.00	
6. Other Fees - Surveys/Tests/Borings	\$ 177,801.00	
7. Other Fees - Other Project Costs	\$ 47,945.00	
8. Other Fees - Planning & Consulting	\$ 16,325.00	
9. Other Fees - CM Part A	\$ 12,021.00	
10. Other Fees - Project Administration	\$ 240,213.00	
11. Equipment & Furnishings	\$ 1,559,771.00	
12. AMPO	\$ 535,295.00	
13. Title & Recording	\$ 62,283.00	
14.		
15.		
Total Due on This Requestion	\$ 8,396,860.00	\$

The undersigned hereby certifies that all of the above items have been paid or will be paid within five (5) days of receipt of the requested funds. We hand you herewith full supporting invoices and/or receipts, as required, covering such items enumerated, to be forwarded with this request to HUD for review. With respect to any item of interest enumerated above, we herewith authorize you to advance same and charge our account therewith. The undersigned further certifies that all prior work, labor, and materials to be paid for under this request are satisfactory and are in accordance with the contract drawings.

Name of Mortgagee: **ABC Hospital**
By: Signature of Authorized Mortgagee Office: _____ Date (mm/dd/yyyy): **06/30/2009**



THE FIRST ITEM IN EACH FOLDER SHOULD BE A LIST OF EACH INVOICE THAT WILL FOLLOW THAT SUMS THE AMOUNTS TO THE TOTAL REQUESTED IN THE LINE IN THE 92403 FORM.

THE DETAILED 11 STEP PROCESS IS
INCLUDED IN YOUR BINDER

YOUR OAE TEAM MEMBER WILL HELP
ALL PARTIES THROUGH THE PROCESS

OFFICE OF HOSPITAL FACILITIES
2011 LENDER TRAINING

AFTER-THE-DEAL-IS-DONE:
RESPONSIBILITIES

Barry Flynn
Asset Management
Division Director,
OHF



SERVICER RESPONSIBILITIES DURING CONSTRUCTION PHASE

- **Participates in monthly requisition meeting with Hospital with architect, construction manager and OAE inspector to review work completed by the Construction Manager, as needed.**

SERVICER RESPONSIBILITIES DURING CONSTRUCTION PHASE

- **Review Construction Manager's requisition (form FHA-2448) and attachments:**
 - ❖ **Form AIA-G702 and AIA-G703 for CM and each subcontractor**
 - ❖ **Lien waivers for CM and each subcontractor**
 - ❖ **Invoices for all general condition items claimed by CM**

SERVICER RESPONSIBILITIES DURING CONSTRUCTION PHASE

- ****Important Note: Unlike HUD's nursing home program, monthly construction requisitions are NOT based on the percentage of construction completion, but on actual costs of work completed during the month. Subcontractor's invoices must be included in each monthly requisition package.**

SERVICER RESPONSIBILITIES DURING CONSTRUCTION PHASE

- **Monitoring Capitalized Interest:**
 - ❖ **Look for savings, get approval for use far enough in advance to fit in with contractor's schedule.**
 - ❖ **Look for shortfalls and be sure Hospital knows they will have to make payments in excess of what's available in the mortgage.**

OTHER SERVICER RESPONSIBILITIES

- **Determine that change orders are acceptable to Hospital, Architect and OAE.**
- **Determine that there is a source of payment for all change orders.**
- **Ask HUD for approval for Line Item Transfers.**
- **Check the TEFRA notice before moving forward. The TEFRA Notice is the public notice issued on tax-exempt deals that discloses how the tax-exempt funds will be used.**

OHF RESPONSIBILITIES

- **Maintains Project Expenditure Records**
- **Certifies Advances/Draw Requests**
- **Coordinates Line Item Transfers**
- **Reconciles Cost Certifications**
- **Prepares Final Endorsement Recommendations**

LINE ITEM TRANSFER REQUESTS

- **Changes Project Budget Due to Unforeseen Problems and/or Desires of the Hospital**
- **Changes to Project Budget Between Commitment and Initial Closing are not Line Item Transfers.**
- **Mortgagee, OAE (if construction related line items are involved), and AE Concurrence are required.**
- **Transfers can be accomplished only if known surpluses are available.**

LINE ITEM TRANSFERS – TIMING

- **If BEFORE Substantial Completion:**
 - ❖ **Can be processed by OAE/AE and Asset Manager.**
- **If AFTER Substantial Completion:**
 - ❖ **Unused monies are subject to the Project Savings Covenant in the Regulatory Agreement.**
 - ❖ **Unless deemed minimal, DOHF approval is required.**

LINE ITEM TRANSFER - FLOW

- Hospital forwards request with proof of availability of funds and justification for transfer to Servicer.
- Servicer forwards request with statement that mortgagee concurs with request to AE (and OAE if applicable).
- AE and OAE (if applicable) concur or reject the request.
- OHF confirms availability of monies and DOHF approves.

FINAL ENDORSEMENT

- **The conversion of the construction loan to a permanent loan. Final advance of mortgage funds.**
- **Does NOT correspond to commencement of amortization.**

DOCUMENTS NEEDED FOR FINAL CLOSING

- **AIA Form G704 - Executed Copy of Certificate of Substantial Completion**
- **AIA Form G706A - Certificate of Release of Liens**
- **AIA Form G707 - Consent of Surety Company for Final Payment (Release of Liens)**
- **AIA Form G702 - Architect's & Contractor's Final Certificate of Payment**
- **Architect's Letter Asserting Compliance with State DOH or Authority Having Jurisdiction**

DOCUMENTS NEEDED FOR FINAL CLOSING

- **CPA Final Cost Certification with Opinion Relating to Overall Costs**
- **Certification that all change orders have been included in CPA final cost certification**
- **HUD Form 92330 - Mortgagor's Certificate of Final Costs**
- **HUD Form 92330A - CM or Contractor's Certificate of Final Costs**
- **Certificate of Occupancy**
- **OAE Form 2-14**

SERVICER RESPONSIBILITIES DURING PERMANENT LOAN SERVICING

- 1. Collect monthly principal and interest due under the mortgage**
- 2. Collect escrows for Mortgage Insurance Premiums (MIP), Hazard Insurance, and municipal charges (water/sewer/real estate taxes)**
- 3. Make Annual MIP Payments**
- 4. Monitor Hazard Insurance**

SERVICER RESPONSIBILITIES
DURING PERMANENT LOAN SERVICING

- 5. Obtain periodic title reports to be sure there are no liens or new encumbrances**
- 6. Monitor UCC filings –ensure the Mortgagee’s lien remains intact and will also disclose when the Hospital is leasing or borrowing – be sure they are within their rights under the Regulatory Agreement when they do so.**
- 7. Monitor Letters of Credit (if any)**

SERVICER RESPONSIBILITIES DURING PERMANENT LOAN SERVICING

8. **Monitor the MRF and report shortfalls to the Account Executive (the servicer is not a party to the MRF Agreement, but it is HUD's first line of defense in the event of a default)**
9. **Collect annual, audited financial statements (not filed directly by auditor through REAC system like they are for nursing homes).**

SERVICER RESPONSIBILITIES DURING PERMANENT LOAN SERVICING

- 10. Perform annual physical inspections (the Hospital program does not use HUD's Physical Assessment on-line system. That is not set up to take hospital information. The physical inspection is submitted in hard-copy to the AE).**

OFFICE OF HOSPITAL FACILITIES
2011 LENDER TRAINING

ASSET MANAGEMENT ISSUES

Barry Flynn
Asset Management
Division Director,
OHF



REGULATORY AGREEMENT AND COVENANTS

- **Non-Interference By Parent**
- **Maintenance of Integrity of Collateral and Project**
- **Reporting Requirements**
- **Affiliate Transactions**
- **Corporate Distribution of Assets**
- **New Corporations, Subsidiaries, and Affiliations, Mergers**
- **Financial Reports**
- **Business Plan/Consultant's Report**
- **Additional Indebtedness and Leasing**

MORTGAGE RESERVE FUND

- **Hospital must fund a Mortgage Reserve Fund, held in trust for HUD**
- **Must execute a MRF Agreement and Trust Agreement, which contain the most current standard provisions giving HUD control and direct access to the monies under specified conditions.**

MRF PURPOSES

- **Provide for the cost of engaging various consultants as required by the Regulatory Agreement**
- **Help hospitals through temporary financial crises and provide funds to prevent defaults**
- **Provide additional security to HUD. The funding schedule requires that one year of debt service be funded within the first five years of the mortgage and two years of debt service must be funded within the first ten years of the mortgage**

MORTGAGE RESERVE FUND

- 1. Monies should be invested in interest bearing securities insured by an agency of the United States Government, or in obligations of the U.S. government, or in obligations for which the principal and interest are guaranteed by the U.S. Government, or instruments of the U.S. Government agencies, and/or mutual funds that invest solely in the US Treasury obligations or short term securities that are fully insured or guaranteed by the US Government or its agencies**

MORTGAGE RESERVE FUND

- 2. The weighted average maturity of all securities held directly by the trustee or by a bond or money market fund must be ten years or less.**

MORTGAGE RESERVE FUND

- 3. All investments will be carried at market value. If the market value is less than the required amount at fiscal year end per audit, a client will have 60 days to bring the fund current by first not receiving investment income or, if needed, by making a supplemental contribution. If the market value is more than the required amount at fiscal year end per audit, the MRF is fully funded at two years of debt service coverage, and the financial threshold tests are met, a hospital may receive the excess amount.**

MORTGAGE RESERVE FUND

4. **Requests for releases or loans shall be presented to the Program Management Group (PMG) by the hospital's Account Executive after review with the OHF Asset Manager with appropriate recommendation. After evaluation by the PMG, the Account Executive will forward the request for approval and signature to the DOHF.**

PRIORITY WATCH LIST

- **Hospitals that present danger of default within the next 12 months.**
- **Failure to make a mortgage payment by the 15th day of the month in which the payment is due.**
- **Serious violations of the Regulatory Agreement that jeopardize the mortgage collateral or the hospital's future ability to service the HUD insured mortgage.**

PRIORITY WATCH LIST

- **Financial criteria requiring immediate assessment of the hospital:**
 - ❖ **DSC < 1.10**
 - ❖ **OM < 0 for more than 2 consecutive years**
 - ❖ **OM < - 4% in any single year**
 - ❖ **CR < 1.00 and DCOH < 5**
 - ❖ **A/P > 150**
 - ❖ **A/R > 90**
 - ❖ **DRF < 1.5 Yrs Debt Service and hospital failing to make required deposits**

HOSPITAL MORTGAGE SERVICER

- **Roles of the Servicer:**
 - ❖ **To represent the Mortgagee in carrying out the terms of the FHA Loan Documents. To act as a liaison between the Mortgagor (Hospital), Mortgagee and HUD.**

HOSPITAL MORTGAGE SERVICER

- **Servicer Requirements:**
 - ❖ **Servicer must be a HUD-approved Mortgagee and should have knowledge of the particulars of the deal and the hospital industry**

HOSPITAL MORTGAGE SERVICER

PREVENTING A DEFAULT AND CLAIM

1. What to Watch For

❖ Look for signs of problems early on:

- Are payments being made later each month?
- Are there mechanic liens on the title reports?
- Are there staff changes?
- Have they stopped investing in PP&E?

HOSPITAL MORTGAGE SERVICER

PREVENTING A DEFAULT AND CLAIM

2. Steps to Take:

- ❖ **Review periodic financial statements, compare to budget**
- ❖ **TALK with the Hospital REGULARLY**
- ❖ **TALK with your Account Executive REGULARLY**

HOSPITAL MORTGAGE SERVICER

PREVENTING A DEFAULT AND CLAIM

3. When it looks like a default is imminent:
- ❖ **Look at the “Other Assets” Can they monetize something to stave-off a claim?**
 - ❖ **Property outside the mortgage? AR?**
 - ❖ **Can the Board solve the problem? Philanthropy?**
 - ❖ **Will MRF releases hold-off a claim until things improve?**
 - ❖ **As a LAST RESORT, consider the 223(a)(7) Program**

HOSPITAL MORTGAGE SERVICER

PREVENTING A DEFAULT AND CLAIM

- **Servicer's Responsibilities for Late Payments, Defaults, Claims**
 - ❖ **Report late payments through MDDR System AND call Account Executive**
 - ❖ **File notice of default, intent to assign on timely basis.**
 - ❖ **Take necessary actions on mortgagee side (bond notices, etc.)**

HOSPITAL MORTGAGE SERVICER

- ****OHF knows how to prevent claims. As a Servicer, you MUST work with OHF when a loan is taking a turn for the worse.****

COUNCIL OF EXPERTS

- To advise the Director and to assist in the management of troubled hospitals.
 - ❖ **CPA with extensive experience in the healthcare sector and private healthcare consulting.**
 - ❖ **Physician with extensive experience in the health care sector, including experience as CEO large hospitals system.**
 - ❖ **Healthcare executive with extensive experience as senior manager of large hospitals and hospital system.**

OFFICE OF HOSPITAL FACILITIES
2011 LENDER TRAINING

Roger Lukoff

Associate Deputy
Assistant Secretary
for Healthcare
Programs, OHP

IMPACTS OF
**HEALTH
REFORM**



HEALTH REFORM IMPLICATIONS

- Implications for FHA Stakeholders
 - ❖ **Payment, Access, and Quality**
- Patient Protection and Affordable Care Act
 - ❖ **Signed into Law on March 23, 2010**
 - ❖ **Implications of Expanding Access to Coverage**
 - ❖ **Individual Mandate**
 - ❖ **Employer Requirements**
 - ❖ **Expansion of Public Programs (Medicaid)**

NEW PROVISIONS

- **Health Insurance Provisions**
- **Changes to Private Insurance**
- **State Role**
- **Medicare Implications and Restructuring of Payments**
- **Waste, Fraud, and Abuse**



**Meadows Regional Memorial
Hospital**
Vidalia, GA
\$84.8 million insured mortgage

IMPROVING QUALITY

- **Comparative Effectiveness Research**
- **Medical Malpractice**
- **Medicare Pilot on Bundled Payments**
- **National Quality Strategy**



IMPACTS ON PROVIDERS

- **Expanded coverage and consumer protections will offer security**
- **Reduced paperwork and administrative simplification will reduce cost of care**
- **New consumer protections will hold health insurers more accountable**
- **New investments in prevention and public health efforts**

INVESTMENT IN WORKFORCE DEVELOPMENT

- Focus on strengthening and growing the health care workforce
 - ❖ **ACA supports training and development of 16,000 new primary care providers over the next five years**
- Investing in community health centers and new clinical settings
- Loan forgiveness and scholarships

PATIENT BENEFITS

- **Greater insurance security for families**
 - ❖ **Ensures patients will have choices among quality, affordable health care options**
- **Protecting patients when they get sick**
 - ❖ **Prohibiting insurance companies from dropping patients or denying coverage to children with pre-existing conditions**
- **Preventative care leads to better health**