

## APPENDIX 7

### INSURANCE REQUIREMENTS

#### 1. GENERAL INSURANCE REQUIREMENTS – APPLIES TO ALL POLICIES

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. As specified in the handbook guidance for Section 242.33, the fire and hazard insurance must be acceptable to the mortgagee, and the malpractice insurance must be acceptable to HUD.

The hospital shall maintain at all times liability, fire, hazard, boiler, and vehicle insurance of a type and amount customary in the health care industry and determined by an independent insurance consultant(s) to be adequate to protect the interests of the hospital, the mortgagee, and HUD. The fire and hazard insurance shall be for an amount that is no less than the amount of the outstanding loan and shall be acceptable to the mortgagee.

The hospital shall maintain at all times medical malpractice insurance of a type and amount that is: (1) customary in the health care industry; (2) determined by an independent insurance consultant to be adequate to protect the interests of the Hospital, the mortgagee, and HUD; and (3) acceptable to HUD.

The Hospital shall annually report and certify all of its insurance coverages, including but not limited to: liability, fire, hazard, boiler, vehicle, medical malpractice and D&O insurance. This report and certification shall be submitted to HUD in conjunction with the filing of the Hospital's annual audited financial statements. The mortgagee is responsible for monitoring the Hospital's insurance policies to ensure that coverage remains in force at all times (Mortgagee Letter 08-42, dated December 22, 2008).

All insurance policies are subject to review by HUD, the lender, independent insurance consultant (s), any of which may require higher limits or changes to terms and conditions based upon the specifics of the situation.

As part of the review process, HUD, lender or independent insurance consultants may request to see (in addition to certificates of insurance) any of the following documentation:

- Binder of insurance
- Copies of insurance policies
- Loss runs
- Statements of value
- Actuarial studies
- Financial statements
- 3<sup>rd</sup> party reports (i.e. Seismic Study, Environmental Study, Appraisal, O&M Plan, Flood Determination, etc.

**A. All policies must:**

1. Be written on a per occurrence basis except for earthquake and professional liability coverage, which may be written on a claims made basis;
2. Have a cancellation provision requiring the carrier to notify the Lender and HUD at least 30 days in advance of any policy reduction or cancellation for any reason except non-payment of premium (at least a 10 day notice);
3. The mortgagor must be the named Insured in each policy with the Department of Housing and Urban Development (HUD) and mortgagee as additional insureds on all policies, except for professional liability insurance policies; and
4. Contain a mortgagee clause and loss payable clause acceptable to HUD.

**B. Each policy must either:**

1. Have a term of at least one year at the time of closing the Mortgage Loan; or
2. Have a term with less than 12 months remaining at the time of closing the Mortgage Loan, so long as the policy contains the required coverage, is being added to an existing policy, and the Lender collects funds at the closing of the Mortgage Loan and during the months following closing of the Mortgage Loan to ensure that adequate funds will be on deposit with the Lender to pay the next premium by its scheduled due date.

**C. Financing of Premiums:**

1. All premiums for existing or new policies must be paid in full at Mortgage Loan closing and cannot be financed. The Mortgagor may not finance premiums for renewals of policies.

**D. Evidence of Insurance:**

1. The Mortgagor must provide to the Lender evidence of insurance for the Property on or before the closing of the Mortgage Loan or the policy's renewal date. Evidence of insurance coverage for the Property must be provided as follows:
  - a. **Temporary Evidence:** Either (i) an ACORD 28 (either the 2003 or 2010 version is acceptable), combined with ACORD 25, or (ii) ACORD 75, are acceptable forms of temporary evidence of insurance. If an ACORD certificate is not available, HUD will accept a letter signed by the Mortgagor and the licensed insurance broker certifying that the coverages, deductibles and exclusions meet HUD's requirements.  
Temporary coverage, such as an insurance binder, has an expiration date that must be monitored by the Lender and renewed on or before its expiration date. The Lender will be liable to HUD if a binder expires, the Mortgagor has not provided sufficient evidence of permanent coverage, and an uninsured loss occurs.

- b. **Permanent Evidence:** The originals or certified copies of current insurance policies must be received, reviewed and placed in the Lender’s Servicing File within 90 days after the delivery of the Mortgage Loan or the date of the insurance policy renewal. Except for a National Flood Insurance Program (NFIP) policy, only the complete insurance policy is sufficient evidence of coverage. Insurance policy declarations pages, single policy endorsements, insurance binders and certificates of insurance are not an acceptable form of permanent insurance coverage. The Policy Declaration page of a NFIP policy is acceptable evidence of flood insurance coverage.

#### E. **Blanket Policies**

Use of a blanket or package policy (or policies) of insurance covering the properties and liabilities of the Mortgagor is acceptable, provided that:

1. The policy provides the same or better insurance coverage as a single property insurance policy;
2. The property is listed and identifiable in the policy or associated schedules; and
3. The policy complies with all other applicable requirements contained in this Chapter.

#### F. **Property/Casualty/Professional and Malpractice Insurance Carriers Requirements**

A property/casualty/professional/malpractice insurance carrier must meet the following requirements:

1. Property/Casualty: A.M. Best Company general policyholder's rating of "A-" or better and a financial performance index rating of VI or better in Best's Insurance Reports or Best's Key Rating Guide.
2. Professional/Malpractice: A.M. Best rating of "B++" or better or a Demotech "A" rating or better.
3. Captive or Contractor insurance programs are permissible if approved by an independent insurance consultant(s) and are acceptable to the mortgagee and HUD.
4. Various state wind pools (if it is the only coverage that can be obtained) or flood companies approved under the National Flood Insurance Program (NFIP).
5. Carrier must be licensed to do business in the U.S. and meet all state requirements.

## 2. **INSURANCE/COVERAGE REQUIREMENTS**

### A. **Commercial Property**

- "All Risk" or similar broad policy form
- Blanket coverage basis or description of individual structures
- 100% replacement cost
- \$100,000 maximum deductible or amount acceptable to Lender/HUD and/or an independent insurance consultant.
- Must cover the buildings, contents, machinery and equipment pledged to secure the loan.
- May include Boiler coverage

**B. Business Income / Extra Expense**

- Actual loss sustained or an amount supported by a completed Business Income & Extra Expense Worksheet and approved by an independent insurance consultant
- Deductible same as Commercial Property or a time element of not greater than 48 hours
- This coverage is required for all property perils including windstorm, flood, earthquake, and terrorism, even if written on a stand-alone basis

**C. Boiler & Machinery (If purchased separately from property policy)**

- Coverage amount equal to the replacement cost of the property
- Required if excluded from “All risks” property policy
- Coverage and deductible same as Commercial Property

**D. Windstorm**

- Required if excluded from “All risks” property policy
- Coverage and deductible same as Commercial Property
- Deductible of 5%
- Hurricane endorsement, if appropriate
- State Wind Pool acceptable if it is the only coverage that can be obtained

**E. Flood**

- Required for projects in a Special Flood Hazard Area, or FEMA mapped floodplain zones "A", "V", "M", and "E" (up to the 100 year zone)
- Replacement cost of the property
- Limits may be satisfied by a combination of a National Flood Insurance Program primary policy plus an excess policy
- 5% deductible per building
- Flood carriers approved under NFIP

**F. Earthquake**

- Required for all properties located in Seismic Zone 3 or 4
- Coverage and deductible same as Commercial Property

**G. Terrorism**

- Terrorism coverage may be required if recommended by the independent insurance consultant.

**H. Mold**

- Mold coverage may be required if recommended by the independent insurance consultant.

**I. Commercial General Liability**

- Minimum coverage of \$1,000,000(per occurrence)/\$3,000,000(aggregate)
- Coverage is on an occurrence basis
- \$100,000 maximum deductible

**J. Professional Liability/Medical Malpractice**

- Minimum coverage of \$1,000,000(per occurrence)/\$3,000,000(aggregate)
- \$100,000 maximum deductible
- Professional liability may be on a claims made basis (may require “tail coverage” as determined by an independent insurance consultant)
- Self insurance, or self insurance hospital pools will require annual actuarial studies and independent insurance consultant review, analysis, recommendations, and opinion as to type of investments, liquidity, solvency, funding levels, and profitability

**K. Medical Malpractice (If separate policy)**

- Type and amount customary in the healthcare industry as determined by an independent insurance consultant to be adequate to protect the Mortgagor, Lender and HUD
- Same requirements as J. above

**L. Umbrella/Excess Liability**

- Minimum Limits - \$5,000,000 per occurrence and aggregate
- Coverage to be excess of Automobile Liability and Employer’s Liability
- Umbrella/Excess policies may be used to meet the total limits required for General Liability and Professional Liability

**M. Fidelity Bond**

- Minimum coverage of \$1,000,000 per occurrence:
- \$50,000 maximum deductible
- Coverage for all principals of the ownership entity and/or management entity and all persons who participate directly or indirectly in the management or maintenance of the project or its assets, accounts and records
- Coverage may be through one or more bonds and may cover more than one project

**N. Directors And Officers Liability**

- Minimum coverage of \$1,000,000
- \$50,000 maximum deductible
- Must not provide coverage for directors and officers from sanctions imposed by the Federal Government

**O. Employment Practices Liability**

- Minimum coverage of \$1,000,000 per occurrence and aggregate

**P. Worker’s Compensation**

- Required for all employees of the mortgagor if required to be covered by the laws of the State in which the property is located
- Minimum of \$1,000,000 Employer’s Liability, or per state statute
- State statutory limits for compensation
- \$100,000 maximum deductible per occurrence

**Q. Automobile Liability**

- Coverage to include all owned vehicles, as well as non-owned and/or hired vehicles
- \$300,000 for one person and \$500,000 for more than one person
- \$100,000 against claims for damage to property
- Or \$1,000,000 combined single limit

**R. Aviation/Helipad**

- If owner operates aircraft or permits helicopters to land and take off from the hospital, then insurance is required in an amount satisfactory to the independent insurance consultant

**S. Construction Endorsements**

- Required for projects having construction such as roof replacement or reconstruction after an insured loss
- Coverage and deductible same as Commercial Property

**T. Contract Services Providers**

- Mortgagor must use its own judgment in determining whether the activities of a provider of contract services are sufficiently hazardous to warrant an insurance requirement
- Affected contractors should provide mortgagor with insurance certificates naming the mortgagor, the mortgagee, and HUD as additional insureds
- Unusual perils inherent in the nature of the work or service to be performed must be covered
- Insurance should include generally accepted coverage such as commercial liability, performance bond, workers compensation, vehicle liability, blanket fidelity bond, and builder's risk

**3. INSURANCE/COVERAGE REQUIREMENTS FOR NEW CONSTRUCTION/REHABILITATION PROJECTS****A. Builder's Risk - Owner**

- Owner should procure the policy
- 100% replacement cost
- Maximum deductible equal to 1% of hard costs of construction subject to approval by independent insurance consultant
- "All Risk" of physical loss including earthquake and flood if applicable
- Sublimits for Transit and Off Site Storage equal to maximum value of building materials, subject to these exposures
- Coverage for soft costs and business income in an amount acceptable to Lender, HUD, and/or an independent insurance consultant
- To be replaced by Commercial Property insurance as buildings are completed
- Coverage includes loss resulting from faulty workmanship or faulty materials or error in design

**B. Worker’s Compensation – General Contractor**

- Required for all employees of the general contractor and sub-contractors as required to be covered by the laws of the State in which the property is located
- Minimum of \$1,000,000 Employer’s Liability
- State statutory limits for compensation

**C. Commercial General Liability – General Contractor**

- Minimum limits: \$1,000,000 per occurrence  
\$3,000,000 general aggregate with dedicated limits on a per project basis  
\$3,000,000 products and completed operations aggregate
- HUD, Lender or independent insurance consultant may require higher amounts of coverage based on further review
- Coverage should include Broad Form Property Damage

**D. Automobile Liability – General Contractor**

- \$1,000,000 combined single limit, or \$300,000 for one person and \$500,000 for more than one person for all owned, hired and non-owned vehicles
- \$100,000 against claims for damage to property

**E. Umbrella/Excess Liability – General Contractor**

- Minimum Limit – As determined by an independent insurance consultant in consultation with HUD (Office of Architects and Engineers)
- Coverage to be excess of Automobile Liability and Employer’s Liability

**F. Pollution Liability - General Contractor**

- Type and amount customary in the healthcare industry as determined by an independent insurance consultant to be adequate to protect the Mortgagor, Lender and HUD

**G. Aircraft Liability – General Contractor**

- The contractor will purchase aircraft liability coverage (including owned and non-owned) when aircraft are used in the performance of the work with the following minimum limits:
- Bodily Injury: \$1,000,000 each occurrence / \$1,000,000 each person
- Property Damage: \$1,000,000 each occurrence

**H. Watercraft Liability – General Contractor**

- The contractor will purchase watercraft liability coverage (including owned and non-owned) when watercraft are used in the performance of the work with the following minimum limits:
- Bodily Injury: \$1,000,000 each occurrence / \$1,000,000 each person
- Property Damage: \$1,000,000 each occurrence

**I. Design and Inspecting Architect Liability**

- Minimum Limits: \$1,000,000 per occurrence and \$2,000,000 aggregate
- If policy is written on a per occurrence basis, coverage must be maintained for the duration of the project
- If policy is written on a claims made basis, coverage must be maintained for the duration of the project plus 5 years post construction. Evidence must be provided to Lender and HUD (Office of Architects and Engineers) annually.
- If design and inspecting architect cannot provide adequate limits, the owner may purchase an Owners Protective Professional Indemnity policy for the balance of the limit. Policy to be in force for the duration of the project, plus a 5 year extended reporting period.