

(iv) The research result(s) has the potential to address the technical needs associated with a major societal challenge not currently being addressed; and

(v) The proposed research plan is scientifically sound with tasks, milestones, timeline, decision points and alternate strategies.

(2) Total weight of (a)(1)(i) through (v) is 50%.

(b)(1) The proposer(s) adequately establishes that the proposed research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base and to address areas of critical national need through transforming the Nation's capacity to deal with a major societal challenge(s) that is not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer including an explanation in the proposal:

(i) Of the potential magnitude of transformational results upon the Nation's capabilities in an area;

(ii) Of how and when the ensuing transformational results will be useful to the Nation; and

(iii) Of the capacity and commitment of each award participant to enable or advance the transformation to the proposed research results (technology).

(2) Total weight of (b)(1)(i) through (iii) is 50%.

#### **§ 296.22 Award criteria.**

NIST must determine that a proposal successfully meets all of the Award Criteria set forth in this section for the proposal to receive funding under the Program. The Award Criteria are:

(a) The proposal explains why TIP support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance from TIP;

(b) The proposal demonstrates that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal;

(c) The proposal explains the novelty of the research (technology) and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar research results (technologies);

(d) The proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner;

(e) The proposal establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base; and

(f) The proposal establishes that the proposed transformational research (technology) has strong potential to address areas of critical national need through transforming the Nation's capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer.

### **Subpart C—Dissemination of Program Results**

#### **§ 296.30 Monitoring and evaluation.**

The Program will provide monitoring and evaluation of areas of critical national need and its investments through periodic analyses. It will develop methods and metrics for assessing impact at all stages. These analyses will contribute to the establishment and adoption of best practices.

#### **§ 296.31 Dissemination of results.**

Results stemming from the analyses required by § 296.30 will be disseminated in periodic working papers, fact sheets, and meetings, which will address the progress that the Program has made from both a project and a portfolio perspective. Such disseminated results will serve to educate both external constituencies as well as internal audiences on research results, best practices, and recommended changes to existing operations based on solid analysis.

#### **§ 296.32 Technical and educational services.**

(a) Under the Federal Technology Transfer Act of 1986, NIST has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, NIST has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

(b) In no event will NIST enter into a cooperative research and development agreement with a recipient of an award under the Program which provides for the payment of Program funds from the award recipient to NIST.

(c) From time to time, TIP may conduct public workshops and undertake other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and diffusion of TIP-related technologies. In no event will TIP provide recommendations, endorsements, or approvals of any TIP funding Recipients to any outside party.

#### **§ 296.33 Annual report.**

The Director shall submit annually to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report describing the Technology Innovation Program's activities, including a description of the metrics upon which award funding decisions were made in the previous fiscal year, any proposed changes to those metrics, metrics for evaluating the success of ongoing and completed awards, and an evaluation of ongoing and completed awards. The first annual report shall include best practices for management of programs to stimulate high-risk, high-reward research.

[FR Doc. E8-14083 Filed 6-24-08; 8:45 am]

BILLING CODE 3510-13-P

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

### **24 CFR Part 242**

[Docket No. FR-4927-F-03]

RIN 2502-A122

### **Revisions to the Hospital Mortgage Insurance Program: Technical and Clarifying Amendments**

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** On November 28, 2007, HUD published a final rule revising HUD's regulations on mortgage insurance for hospitals. This publication corrects certain non-substantive errors and omissions that occurred in the final rule, as well as makes certain additional amendments designed to enhance clarity of certain of the rule's provisions.

**DATES:** *Effective Date:* July 25, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Roger E. Miller, Director, Office of Insured Health Care Facilities, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9224, Washington, DC 20410-8000; telephone (202) 708-0599 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at (800) 877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 28, 2007 (72 FR 67524), HUD published a final rule revising its regulations governing mortgage insurance for hospitals. This final rule followed a January 10, 2005 (70 FR 1750), proposed rule and took into consideration public comment submitted on the proposed rule. The November 2007 final rule made certain changes in response to public comment and became effective on January 28, 2008. HUD's regulations promulgated by the November 2007 final rule implement section 242 of the National Housing Act (12 U.S.C. 1715z-7), and are codified at 24 CFR part 242.

**II. Technical and Clarifying Amendments**

Following publication of the November 2007 final rule, it was brought to HUD's attention that certain provisions of the regulatory text contained technical errors. In addition, upon reviewing the final rule in response to notification of technical errors, HUD identified other provisions in the regulatory text that HUD determined should be revised to improve clarity. The correction of these errors and the clarifying amendments made to the November 2007 final rule by this rule are as follows:

- Authority. The main authority for hospital mortgage insurance, section 242 of the National Housing Act (12 U.S.C. 1715z-7) was inadvertently omitted. This technical correction makes the appropriate revision to the authority citation.

- 24 CFR 242.1 (Definitions). The definition in the rule of "chronic convalescent and rest" refers to "rehabilitation services." This element is not required by statute. This technical correction removes this term from the definition. A comment submitted on the proposed rule requested that HUD remove from the definition of "chronic convalescent and rest" the following terms: "respite care services," "hospice services," and "rehabilitation services." HUD responded to the comment citing

the statutory definition of "chronic convalescent and rest" as the reason for not removing these terms. However, while the terms "respite care services" and "hospice services" are part of the definition of "chronic convalescent and rest," the term "rehabilitation services" is not part of the definition. (See 72 FR 67526-67527.) Accordingly, reference to "rehabilitation services" is removed from the definition of "chronic convalescent and rest."

This rule also amends the definition of "mortgagee or lender" because the rule used the term "mortgagee" to refer to the applicant as well as the original lender. Therefore, a definition of "mortgagee" will clarify any possible ambiguity regarding to whom "mortgagee" refers.

The definition of "construction" inadvertently omitted reference to "substantial rehabilitation". As is made clear in other parts of the rule, including in the definition of "project," substantial rehabilitation such as additions and renovations are supported by the program. However, to remove any possible ambiguity, the phrase "or the substantial rehabilitation of an existing facility" is being added to the definition of "construction".

With respect to the definition of "surplus cash," it was the intent of the final rule that "surplus cash" includes cash from prior periods. This statement was made in the preamble of the final rule in response to public comments. (See 72 FR 67529.) This technical correction adds language to make this explicit in the definition of "surplus cash".

- 24 CFR 242.10 (Eligible Mortgagees). This final rule amends the second sentence of this section because HUD discovered a possible unintended contradiction between § 242.10 and § 242.72. Section 242.10 provides that the mortgagor "shall possess the powers necessary and incidental to operating a hospital". Under normal circumstances, that is indeed a requirement. However, § 242.72 creates a contradiction by permitting leasing arrangements to comply with certain state laws that prohibit public hospitals from mortgaging their property. Under such arrangements, the mortgagor of record is an entity (which may be created solely for the purpose of enabling the financing to take place) that does not "possess the powers necessary and incidental to operating a hospital". The mortgagor simply serves as the owner, and it is the lessee-operator who possesses those powers. This amendment therefore removes any possible contradiction.

- 24 CFR 242.23 (Maximum Mortgage Amounts and Cash Equity Requirements). Where excess cash equity is needed, section 242(d)(6) of the National Housing Act (12 U.S.C. 1715z-7(d)(6)), entitles the mortgagor to fund the excess with a letter of credit at the option of the mortgagee. This is the mortgagee's option, not an option of HUD, but the November 28, 2007, final rule inadvertently presents this option as HUD's option. This rule corrects that error.

- 24 CFR 242.23, 242.35, 242.52, and 242.90 (Reference to "Rehabilitation"). The rule contains several references to the term "rehabilitation." The program insures "substantial rehabilitation" in addition to new construction and, therefore, references to the term "rehabilitation" are generally in the context of "substantial rehabilitation." Therefore, to avoid any possible ambiguity where the term "rehabilitation" is used alone, the term "substantial" has been added to precede this term wherever it appears.

- 24 CFR 242.33 (Covenant for Malpractice, Fire, and Other Hazard Insurance). Section 242.33 requires that the hospital have insurance coverage "acceptable to the mortgagee and HUD." The amendment removes the word "and" from this phrase and substitutes the word "or." The final rule did not intend to place the evaluation of acceptable insurance solely on the mortgagee. This amendment therefore provides the mortgagee with the option of assuming responsibility to determine the adequacy of insurance coverage, or leaving such determination to HUD.

- 24 CFR 50 (Funds and Finances: Off-Site Utilities and Streets). The November 2007 final rule inadvertently omitted "letter of credit" and use of a letter of credit has been a longstanding practice in this program. This rule corrects that omission.

- 24 CFR 242.56 (Form of Regulation). HUD amends this section to add a new sentence at the section's end which would restore a provision consistent with longstanding practice. This amendment relates to the issue of leasing, which is addressed in §§ 242.10 and 242.72. When leasing is permitted under § 242.72, it is the lessee that operates the hospital and whose financial results determine whether or not there is an insurance claim. HUD's established practice, prior to the final rule, has been to have the lessee, as well as the mortgagor of record, sign the Regulatory Agreement and be governed by its provisions. HUD did not intend for the revisions to §§ 242.10 and 242.72 to cause a departure from established practice.

• 24 CFR 242.58 (Books, Accounts, and Financial Statements). Paragraph (c) of this regulatory section describes the organizations that are subject to audit. While paragraph (c)(1) references not-for-profit organizations, this paragraph inadvertently omits reference to state and local governments, which have long been among those organizations that are audited in accordance with the Consolidated Audit Guide for Audits of HUD Programs and OMB Circular A-133, which authorities are referenced in paragraph (c)(1). This rule corrects that omission.

Additionally, a new paragraph (h) is added for the same reasons provided in the amendment to § 242.56.

• 24 CFR 242.61 (Management). Section 242.61(a) requires HUD's written approval before a mortgagor can execute a contract for management of the hospital. This technical correction makes explicit that this approval requirement refers to the management of the hospital, not to management of specific components of the hospital such as the pharmacy, cafeteria, etc.

#### Findings and Certifications

##### *Justification for Final Rulemaking*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In this case, public comment is unnecessary because HUD is making only technical corrections and clarifying amendments to a previously published final rule.

##### *Regulatory Flexibility Act*

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule only makes technical corrections and clarifying amendments to a previously published final rule.

##### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in connection with this rulemaking in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable, and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-5000.

##### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 242 to read as follows:

#### **PART 242—MORTGAGE INSURANCE FOR HOSPITALS**

■ 1. The authority citation is revised to read:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715u, and 1715z-7; 42 U.S.C. 3535d.

#### **Subpart A—General Eligibility Requirements**

■ 2. Amend § 242.1 by revising the definitions of "chronic convalescent and rest," "construction," "mortgagee or lender" and first sentence of the definition of "surplus cash," to read as follows:

#### **§ 242.1 Definitions.**

\* \* \* \* \*

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

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

\* \* \*

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

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

\* \* \* \* \*

■ 3. Revise the second sentence of § 242.10 as follows:

#### **§ 242.10 Eligible mortgagors.**

\* \* \* The mortgagor shall be approved by HUD and, except in those cases where the hospital is leased as permitted in § 242.72, shall possess the powers necessary and incidental to operating a hospital. \* \* \*

#### **Subpart B—Application Procedures and Commitments**

■ 4. Revise § 242.23(a) and the last sentence of paragraph (c) to read as follows:

#### **§ 242.23 Maximum mortgage amounts and cash equity requirements.**

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

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

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

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

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

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

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

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

(c) *Cash equity.* \* \* \*. A private nonprofit or public mortgagor, but not a proprietary mortgagor, at the mortgagee's option and subject to 24 CFR 242.49, may provide any such required equity in the form of a letter of credit.

### Subpart C—Mortgage Requirements

■ 5. Revise § 242.33 to read as follows:

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

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

■ 6. Revise § 242.35(d) to read as follows:

#### § 242.35 Mortgage lien certifications.

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

### Subpart E—Construction

■ 7. Revise the second sentence of § 242.50 to read as follows:

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

\* \* \* Where such assurance is required, it shall be in the form of a cash escrow deposit, a letter of credit, the retention of a specified amount of mortgage proceeds by the mortgagee, or a combination thereof.

■ 8. Revise § 242.52(a) to read as follows:

#### § 242.52 Construction contracts.

(a) *Awarding of contract.* A contract for the construction or substantial

rehabilitation of a hospital shall be entered into by a mortgagor, with a builder selected by a competitive bidding procedure acceptable to HUD.

\* \* \* \* \*

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

■ 9. Amend § 242.56 by adding a new sentence at the end of the section to read as follows:

#### § 242.56 Form of regulation.

\* \* \* In those cases in which the hospital facility is leased as permitted by § 242.72, the provisions of this section also shall apply to the lessee.

■ 10. Revise § 242.58(c)(1) and add a new paragraph (h) to read as follows:

#### § 242.58 Books, accounts, and financial statements.

\* \* \* \* \*

(c) \* \* \* (1) Not-for-profit and state and local governments shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04) and OMB Circular A-133 (Audits of states, local governments, and nonprofit organizations). \* \* \*

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

■ 11. Revise § 242.61(a) to read as follows:

#### § 242.61 Management.

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

\* \* \* \* \*

### Subpart H—Miscellaneous Requirements

■ 12. Revise § 242.90(a) to read as follows:

#### § 242.90 Eligibility of mortgages covering hospitals in certain neighborhoods.

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

\* \* \* \* \*

Dated: June 16, 2008.

**Brian D. Montgomery,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. E8-14131 Filed 6-24-08; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2008-0163]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Marine Events in San Diego Harbor

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 during the Coronado 4th of July Fireworks Display, to be held 8:30 p.m. to 10 p.m. on July 4, 2008, on the waters of San Diego Bay, San Diego, California. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** 33 CFR 100.1101 will be enforced on July 4, 2008 from 8:30 p.m. until 10 p.m.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Kristen Beer, USCG, c/o U.S. Coast Guard Captain of the Port, at (619) 278-7277.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations (SLR) on the navigable waters of Glorietta Bay in support of the Coronado July 4th Fireworks Show on July 4, 2008, from 8:30 p.m. until 10 p.m. These SLR will encompass a 100-foot radius around and under each fireworks barge while the fireworks