

§ 242.58 Books, accounts, and financial statements.

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

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

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

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

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

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

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

(c) *Audits.* (1) Not-for-profit organizations 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).

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

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

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

(f) *Books of management agents.* The books and records of management agents, lessees, operators, managers, and affiliates, as they pertain to the operations of the hospital, shall be

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

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

§ 242.59 Inspection of facilities by Commissioner.

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

§ 242.61 Management.

The mortgagor shall provide for management of the hospital in a manner satisfactory to HUD.

(a) *Contract management.* The mortgagor shall not execute a management agreement or any other contract for management of the hospital without HUD's prior written approval. Any management agreement or contract shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by HUD addressed to the mortgagor and management agent.

(b) *Principals.* HUD shall have the authority to require that any principals of the mortgagor, including but not limited to board members of a corporate entity, be removed, substituted, or terminated for cause upon written request by HUD addressed to the mortgagor.

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(c) *Employees.* HUD shall have the authority to require that any key management employees of the mortgagor (as defined and determined solely by HUD) be terminated for cause upon written request by HUD addressed to the mortgagor.

(d) *Procedures upon receipt of request under paragraphs (a) through (c) of this section.* Upon receipt of such requests under paragraphs (a) through (c) of this section, the mortgagor shall immediately terminate said management agreement, principals, or employees within the shortest applicable period HUD determines appropriate and shall make arrangements satisfactory to HUD for ongoing proper management of the hospital.

§ 242.62 Releases of lien.

The mortgagor shall not sell, dispose of, transfer, or permit to be encumbered any security property without the prior approval of the lender and Commissioner, subject to thresholds or such other standards as HUD may establish for the approval requirement. Where there is a partial release of lien, the lender must make a determination, subject to prior review and approval by HUD, that the remaining or replacement property subject to the first lien provides adequate security for the remaining principal indebtedness.

§ 242.63 Additional indebtedness and leasing.

The mortgagor shall not enter into any long-term debt, short-term debt (including receivables or line of credit financing), equipment leases, or derivative-type transactions, except in conformance with policies and procedures established by HUD.

§ 242.64 Current and future property.

All current or future property (including personalty) of the mortgagor on or off mortgaged real estate (except that specifically restricted by donors or specifically excluded by HUD) will be considered as part of the HUD-insured hospital and subject to all provisions of the HUD regulatory agreement. All equipment acquired by the hospital following initial endorsement and at any time during the term of the loan shall become subject to the lien of

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the security agreement and any Uniform Commercial Code Financing Statements filed pursuant to the security agreement, unless the mortgagor specifically requests and HUD, for good cause, approves subordination of the lien of the insured mortgagee on specific personalty for specific periods of time. The first lien on the realty (as defined in the regulatory agreement and as identified in the security instrument) cannot be subordinated in whole or in part.

§ 242.65 Distribution of assets.

The Commissioner shall establish financial thresholds and procedures for the distribution of surplus cash and other assets. Surplus cash that meets the definition in 24 CFR 242.1, or cash that has been expressly approved for distribution by HUD, may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement. Other assets may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement, and in accordance with the release of lien conditions in 24 CFR 242.62, if applicable.

§ 242.66 Affiliate transactions.

Transactions with affiliates that are arms-length are permitted as specified in the Regulatory Agreement. Transactions with affiliates that are not arms-length are not permitted except with the prior written approval of HUD.

§ 242.67 New corporations, subsidiaries, affiliations, and mergers.

The mortgagor shall not establish, develop, organize, acquire, become the sole member of, or acquire an interest sufficient to require disclosure on the audited financial statements of the mortgagor, in any corporation, subsidiary, or affiliate organization other than those with which the mortgagor