

APPENDIX 6

SECTION 223(A)(7) REFINANCING

An application for Section 223(a)(7) refinancing for a hospital is similar in many respects to a Section 242 application. (See regulations at 242.16, guidance in this handbook pertaining to those regulations, and Appendices 1, 2, and 3 (Applicant’s Guides.) However, there are differences, which are discussed here.

1. CONSTRUCTION COMPONENT

*The proceeds of a loan insured under Section 223(a)(7) may include “costs, as determined by HUD, of improvements, upgrading, or additions required to be made to the property” (*see 24 CFR 242.91(a)(1)(ii)*). HUD expects that Section 223(a)(7) authority will be used primarily for refinancing the existing Section 242-insured loan in order to lower the hospital’s debt service expense. Further, HUD expects that any construction activities financed via Section 223(a)(7) will relate to urgently needed modifications to the property, discussed below.

- a. HUD’s Office of Architecture and Engineering shall review any proposed improvements, upgrading, or additions to be made to the hospital structure. HUD will approve for inclusion in the insured mortgage only those construction activities that are necessary to correct defects that pose a risk of imminent disruption to hospital operations; threaten the life and safety of building occupants; cause the hospital to be in violation of state or local codes; or threaten to cause serious financial harm to the hospital if not corrected in the short term. Construction activities that could be prioritized for completion at a later time are not eligible for financing by the insured mortgage.
- b. If the proposed construction component (or total hard costs) would equal 20 percent or more of the mortgage amount, HUD cannot consider the use of Section 223(a)(7) for refinancing and construction combined. The refinancing and the construction project may be accomplished in one of two ways: (1) A new Section 242 loan may be used to refinance the existing loan and to finance the construction project, or (2) two loans may be used – a 223(a)(7) for the refinancing and a 241 for the construction project.
- c. If the proposed construction component (or total hard costs) would equal less than 20 percent of the mortgage amount, it may be included in a Section 223(a)(7) loan, provided the conditions in sub-paragraph 1a. above are met.
- d. If there is a construction component, the application must indicate if insurance of advances will be required or if the costs of the construction component will be borne by the mortgagor and included in the final mortgage loan (insurance upon completion). HUD expects that insurance of advances will be needed in rare cases, if at all.*

2. INSPECTION FEE

The inspection fee for a 223(a)(7) loan will range from at minimal 10 basis points when there is no construction activity or only minor repairs up to 40 basis points when there is significant construction activity. The following sliding scale will be used to determine the inspection fee:

| Hard Cost % of Mortgage Amount | Inspection Fee (Basis Points) |
|---------------------------------------|--------------------------------------|
| Less than 5% | 10 |
| 5% or greater but less than 10% | 20 |
| 10% or greater but less than 15% | 30 |
| 15% or greater but less than 20% | 40 |

3. **OAE AND ENVIRONMENTAL REVIEW REQUIREMENTS**

- An environmental review is not required if the 223(a)(7) does not include new construction, rehabilitation, or physical impacts or changes except for routine maintenance (see 24 CFR 50.19(b)(21)). Routine maintenance includes activities such as cleaning, replacing broken glass, caulking, fixing gutters, and replacement of non-fixture appliances. Physical impacts that are not routine includes activities such as replacing doors, windows, or fixtures. However, the Lender is still required to review the project for compliance with flood insurance requirements in accordance with 24 CFR 50.4(b)(1).
- If the transaction includes construction activity goes beyond routine maintenance, the requirements of Appendix 8, Part IV, Guide for Project Applicants: Environmental Review and Requirements apply. Therefore, the lender must submit a Phase I ESA (Environmental Site Assessment) and any applicable subsequent studies, a copy of the letter to the State Historic Preservation officer (SHPO) and any responses, and an Environmental Report, as described thereto. OAE will review the submissions and prepare the form HUD-4128.

4. **HUD-92013-OHP AND INSTRUCTIONS**

PREPARATION OF THE HUD-92013-OHP FOR A SECTION 223(a)(7) LOAN SHOULD FOLLOW THE INSTRUCTIONS FOR A SECTION 242 APPLICATION, EXCEPT AS NOTED.

Line

C1 through C5 – Not applicable if there is no construction component in the proposed loan.

C23 - Organization expense is not applicable.

5. DOCUMENTATION

Introduction

The following checklist is to be used as a guide for a mortgagee and a hospital to prepare an application for HUD Section 223(a)(7) mortgage insurance. For an application to be accepted by HUD, and for underwriting analysis and architectural/engineering review to begin (if needed), all elements of an application must be complete and submitted in good form. The requested information, comprised of programmatic, financial, and architectural/engineering data (if needed), will assist the application review team headed by the Account Executive to reach an informed conclusion.

For an application to be reviewed in an efficient timeframe, it is important that the applicant provide the information in a true, clear and correct fashion. HUD encourages applicants to stay in close contact with the Account Executive and the review team as an application package is prepared.

Each application should be composed of three sections consisting of the following:

Section I – Programmatic Documentation

Section II – Financial Documentation

Section III – Architectural and Engineering Documentation (if needed)

This checklist lists the “standard” information that is to be included in each volume of the application package. The information should be organized in tabs for easy referencing by the review team and should follow the organizational structure outlined in this document. From time to time, additional data will be requested based on unique aspects of the application. One electronic copy is required.

DOCUMENTATION SHOULD FOLLOW THE ORGANIZATION AND CONTENT OF THAT FOR A SECTION 242 APPLICATION, EXCEPT AS NOTED.

DOCUMENTATION CHECKLIST – 223(a)(7)

PROJECT NAME _____
MORTGAGOR _____
MORTGAGEE _____

SECTION I – PROGRAMMATIC DOCUMENTATION

Introduce Section I with a **Lender Narrative** including the following:

1. Description of the hospital.
2. What the proceeds of the original loan were used for.
3. If there is a construction component, what is it and why is it necessary.
4. A statement that the proposed financing meets the requirements of Section 242.91, with supporting data.
5. A table showing the following information:

| Current Insured Loan | | Proposed Loan Terms | |
|--|--|---|--|
| | | | |
| Original Section of the Act: | | Section of the Act: | |
| Original Loan Amount: | | | |
| Current UPB: | | Proposed Loan Amount: | |
| Current Interest Rate: | | Proposed Interest Rate: | |
| Maturity Date: | | Proposed Maturity Date: | |
| Original Term: | | New Term: | |
| Principal & Interest (monthly): | | Principal & Interest (monthly): | |
| Debt Service Coverage Ratio (prior year audit): | | Projected Debt Service Coverage Ratio: | |
| | | Projected Annual Savings: | |
| | | Projected Total NPV Savings: | |
| | | Annual Savings (% of current debt service): | |
| | | Pre-Payment Penalty: | |
| | | Total Increase in UPB: | |
| | | Payback Period: | |

Provide backup data or worksheets to support the calculations.

Include also relevant documents specified in the application checklist in Appendix 2, Applicant’s Guide:

| TAB | DOCUMENTS | CHECK |
|-----|---|-------|
| 1 | Project Team Form | |
| 2 | Official Application Forms, including: HUD Form 92013-OHP, Application for Hospital Mortgage Insurance. Summary of Cost Savings – Detail the total interest savings over the life of the loan with Section 223(a)(7) insurance; the Net Present Value of savings; and the assumed interest rate with and without Section 223(a)(7) insurance. | |
| 3 | Addendum to Mortgage Insurance Application – Concerning Delinquency on Federal Debt | |
| 4 | Certification by an Authorized Hospital Official | |
| 5 | For projects located in a Certificate of Need (CON) state, HUD Form 2576HF-Certificate of Need, a copy of the CON approval (including contingencies, if any). For projects located in a state that does not require a CON, include a statement that the state does not require a CON. <u>(IF NEEDED FOR CONSTRUCTION)</u> | |
| 6 | HUD Previous Participation Certification. Attach a listing of the names of the principals that must be submitted. The actual Previous Participation Certificates are submitted electronically <u>(IF NEEDED FOR NEW BOARD MEMBERS OR HOSPITAL OFFICERS ADDED SINCE LAST ENDORSEMENT)</u> | |
| 7 | Incorporation <input type="checkbox"/> Certificate of Incorporation <input type="checkbox"/> By-laws <input type="checkbox"/> Certificate of Good Standing | |
| 8 | List of trustees including title, class year, professional affiliation, and years associated with the hospital. As applicable, for the: <input type="checkbox"/> Hospital <input type="checkbox"/> Parent <input type="checkbox"/> Member <input type="checkbox"/> List of shareholders for investor owned companies (for companies with a large number of shareholders, consult the Account Executive). | |
| 9 | Corporate resolution authorizing: <input type="checkbox"/> The proposed refinancing and (if applicable) the proposed construction <input type="checkbox"/> The new proposed loan amount <input type="checkbox"/> Individual(s) to act on behalf of the hospital Include a statement that the Board of Trustees has reviewed and agrees with the findings of the Study of Market Need and Financial Feasibility <u>(IF STUDY IS NEEDED)</u> | |
| 10 | Non-profit Status (include IRS letter of non-profit status, if applicable) | |

| TAB | DOCUMENTS | CHECK |
|-----|---|-------|
| 11 | Evidence of JCAHO certification (or its equivalent) and management's response to any conditions | |
| 12 | Provide the following organizational information: <ul style="list-style-type: none"> ❑ Organizational Chart (include names and titles of the CEO, COO, CFO, CMO, and CNO) ❑ List all Board Officers/Members and Executives ❑ Short written description of the background and experience of each Board Officer ❑ Resumes of the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Nursing Officer and Chief Medical Officer | |
| 13 | List all affiliate entities and all Board Officers/Members and Executives of affiliate organizations. | |
| 14 | Assurances – Construction Programs, SF-424D (<u>IF NEEDED FOR CONSTRUCTION</u>) | |
| 15 | Equipment List (<u>IF NEEDED FOR CONSTRUCTION</u>) - Applicants must submit an itemized list of major medical equipment broken out by broad categories. This list must be classified as follows: <ul style="list-style-type: none"> ❑ Equipment to be purchased from mortgage proceeds ❑ Equipment to be purchased with other funds ❑ Leased equipment ❑ For each category provide total cost by department ❑ For the Application, consolidate the equipment list to broad categories and pieces of major equipment with costs in excess of \$700,000. A complete listing will still be required for closing and cost certification. <p>Note that the total cost of equipment to be purchased from mortgage proceeds shall equal the amount on HUD Form 92013, and a complete listing of all equipment must be submitted to the account executive no later than two weeks prior to the closing of the loan.</p> | |
| 16 | Anti-kickback or Appraisal documentation, if needed | |

SECTION II – FINANCIAL DOCUMENTATION

| TAB | DOCUMENTS | CHECK |
|------------|---|--------------|
| 1 | Last 3 years audited financial statements Last 3 years management letters with responses thereto | |
| 2 | Last 3 years operating statistics | |
| 3 | Current year's operating budget and narrative | |
| 4 | Study of Market Need and Financial Feasibility (if required by HUD) Including Financial and Statistical (FAST) Worksheets for the last five years, through the construction period (if any) and two full fiscal years past project completion | |
| 5 | Description of Fund Raising Program and Other Sources of Funds (<u>AS APPLICABLE FOR CONSTRUCTION</u>) <ul style="list-style-type: none"> <input type="checkbox"/> Source of contributions <input type="checkbox"/> Amount collected to date and outstanding <input type="checkbox"/> Schedule for collection | |
| 6 | Malpractice Insurance Program <ul style="list-style-type: none"> <input type="checkbox"/> Describe coverage <input type="checkbox"/> Statement of adequacy of policy on asserted and unasserted claims for the last completed fiscal year <input type="checkbox"/> If self insured, list the name of the trustee and provide a copy of the most recent actuarial study <input type="checkbox"/> If insured through a related entity/affiliate/subsidiary, list the name of the trustee and provide a copy of the most recent actuarial study, the actual and required fund balance, and the most recent audited financial statements of the related entity/affiliate/subsidiary | |
| 7 | Contracts <ul style="list-style-type: none"> <input type="checkbox"/> Description of contracts with medical and financial consultants. Include copy of management contract (if applicable) | |
| 8 | Mortgage Reserve Fund <ul style="list-style-type: none"> <input type="checkbox"/> Draft Mortgage Reserve Fund schedule for the proposed project based on your present best estimates. Please note that this schedule shall reflect the amount used in the Study of Market Need and Financial Feasibility (if done). | |
| 9 | Monthly Financial and Statistical Reports <ul style="list-style-type: none"> <input type="checkbox"/> After submission of the application, monthly copies of the hospital's financial and statistical reports are to be submitted to the account executive. | |

SECTION III – ARCHITECTURAL & ENGINEERING DOCUMENTATION (IF NEEDED FOR A CONSTRUCTION PROJECT)

| TAB | DOCUMENTS | CHECK |
|------------|--|--------------|
| 1 | Survey plan showing buildings to be mortgaged | |
| 2 | Legal description of site | |
| 3 | Legal opinion of site owned in fee simple | |
| 4 | Site and soil investigation <u>(IF NECESSARY)</u> | |
| 5 | Architectural narrative with schematics | |
| 6 | Space tabulation | |
| 7 | Evidence of zoning compliance <u>(IF NECESSARY)</u> | |
| 8 | Owner architect agreement | |
| 9 | Current construction cost breakdown by trade | |
| 10 | If the proposed 223(a)(7) transaction includes construction activity goes beyond routine maintenance, a Phase I ESA (and any applicable subsequent studies), a copy of its letter to the SHPO and any responses, and an Environmental Report must be submitted, according to the guidance in Appendix 8, Part IV, Environmental Review and Requirements of the Section 242 Construction Guide. If not, the project must still comply with any applicable flood insurance requirements. | |
| 11 | Flood insurance documentation (if applicable). | |
| 12 | Adequacy of water supply, sewers, utilities <u>(IF NECESSARY)</u> | |
| 13 | Method of contracting | |
| 14 | Phasing of project units | |

All Sections: Electronic copy of the application (Sections I – III)

6. MORTGAGOR CERTIFICATIONS

Certifications in Section 242 applications are found in various places. To simplify the 223(a)(7) process, those certifications have been consolidated as follows:

MORTGAGOR CONSOLIDATED CERTIFICATIONS
FOR SECTION 242/223(A)(7)

MORTGAGOR: Mortgagor Name

LENDER: Lender Name

PROJECT: Project Name

PROJECT LOCATION: Project City, State

Part I. HUD-92013

The undersigned Mortgagor certifies that it is familiar with the provisions of the Regulations of the Secretary of Housing and Urban Development ("HUD") under **Section 242 pursuant to Section 223(a)(7)** of the National Housing Act and that, to the best of its knowledge and belief, the Mortgagor has complied, or will be able to comply, with all of the requirements thereof which are a prerequisite to insurance of the mortgage under such Section.

The Mortgagor further certifies that to the best of its knowledge and belief no information, data, exhibits, or attachments provided to the Lender or HUD, are in any way false or incorrect and that they are truly descriptive of the project or property which is intended as the security for the proposed mortgage and that any proposed repairs will not violate zoning ordinances or restrictions of record.

Part II. CERTIFICATIONS RELATED TO REGULATORY COMPLIANCE

1. Do physicians or other professionals practicing in the HUD-insured hospital have any financial interest in the Mortgagor?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

2. Is the Mortgagor under any unresolved investigation by any state or federal agency for statutory or regulatory violations?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

3. Has the Mortgagor claimed bankruptcy, become insolvent, or made compromised settlements with creditors since the date of the closing on the 242 loan?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

4. Does the Mortgagor facility currently hold operating licenses from all governing authorities, which licenses are unencumbered other than as collateral for a HUD-insured loan?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

5. Have all current board members, officers, and other principals submitted Certifications of Previous Participation (2530s)?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

6. Is or has the Mortgagor been delinquent on any Federal debt?

| | |
|--------------------------|--------------------------|
| <u>YES</u> | <u>NO</u> |
| <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to any of the above questions is YES, attach the details on a separate sheet. If the answer is YES for question 6, refer to the attached instructions on Page 14. Mortgagor certifies that its answer to each of the questions in this Part II and the information in any such attached sheets is true and correct.

Part III. BYRD AMENDMENT

The Mortgagor states, to the best of its knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the Mortgagor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Part IV. PARTIES TO THE TRANSACTION

Does the Mortgagor know of any changes in the ownership structure of any of the following parties that have not been previously approved by HUD?

| | NOT APPLICABLE | YES | NO |
|------------------|--------------------------|--------------------------|--------------------------|
| MORTGAGOR: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| PARENT: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to any of the questions in this Part IV is Yes, attach a separate sheet setting forth the ownership of each party that has not been previously approved by HUD and setting forth the nature of any applicable identity of interest. The Mortgagor certifies that, to the best of its knowledge, its answer to each of the questions in this Part IV, and the information in any such attached sheets is true and correct.

Part V. THIS PART INTENTIONALLY LEFT BLANK

Part VI. THIS PART INTENTIONALLY LEFT BLANK

Part VII. EQUAL EMPLOYMENT OPPORTUNITY (EXCERPT FROM 41 CFR § 60-1.4(B))

(Needed only if there is a construction component)

(a) The Mortgagor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that

applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (b) The Mortgagor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Mortgagor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in, work on or under the contract.
- (c) The Mortgagor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

(d) The Mortgagor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Mortgagor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Mortgagor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Mortgagor; and refer the case to the Department of Justice for appropriate legal proceedings.

Further guidance regarding the applicability and implementation of the requirements of this Part VII may be found in *HUD Regulations 24 CFR §§200.410, 200.420 and 200.425.*

Part VIII. THIS PART INTENTIONALLY LEFT BLANK

Part IX. THIS PART INTENTIONALLY LEFT BLANK

Part X. SIGNATURE

The Mortgagor has read and agrees to comply with the provisions of the above certifications for the purpose of obtaining mortgage insurance under the National Housing Act.

The individual signing below on behalf of the Mortgagor certifies that he/she is an authorized representative of the Mortgagor and has sufficient knowledge to make these certifications on behalf of the Mortgagor.

Executed this _____ day of _____, 20____.

Mortgagor Name

BY: _____
SIGNATURE

(PRINTED NAME & TITLE)

INSTRUCTIONS FOR ANSWERING CERTIFICATIONS IN PART II, QUESTION 6

A. Delinquent Federal Debt – Provide all of the following:

1. A detailed written explanation from any applicant or principal with a prior Federal default or claim or whose credit report and financial statements contain conflicting or adverse information.
2. A letter from the affected agency, or agency letterhead and signed by an officer, stating the delinquent Federal debt is current or satisfactory arrangements for repayments have been made.
3. The Lender's reason(s) for recommendation of the applicant.