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November 9, 2015

Mr. Roger Miller
Deputy Assistant Secretary
Office of Healthcare Programs
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Mr. Geoffrey Papsco
Director, Office of Hospital Facilities
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

RE: Mortgagee Letter 2015-19
Minimum Responsibilities of Servicers of Section 242 Loans

Dear Mr. Miller and Mr. Papsco:

We are writing on behalf of the Committee on Healthcare Financing, to provide comments on the Department of Housing and Urban Development's ("HUD") Mortgagee Letter 2015-19, which was published September 3, 2015 ("ML 15-19"). We understand that HUD intended to publish what it felt were already existing duties of Section 242 loan servicers ("Servicers"), but we are greatly concerned that many provisions in ML 15-19 impose upon Servicers new, costly, and, in many cases, inappropriate obligations and omit to clearly define the scope and interplay of HUD's asset management team.

During the history of the Section 242 loan program, Servicers have provided loan servicing duties as more fully described in HUD's Handbooks ("HB") 4350.1 and 4350.4. As stated in HB 4350.1 Chp. 1-5, HUD and servicers should "form a team" with the objective of providing "well maintained, financially solvent" hospitals. In order to accomplish this goal, the HBs have provided specific guidance as to the "loan servicing" duties of Servicers and the "asset management" duties of HUD. We believe that ML 15-19 significantly departs from that framework by requiring servicers to undertake many new asset management duties in which servicers lack expertise and that have historically been done by HUD's hospital experts. Also, we believe that ML 15-19 imposes upon Servicers many new obligations that they are unable to satisfy because the HUD loan documents do not provide Servicers the rights/information needed. ML 15-19 pushes Servicers to more actively involve themselves in operational and managerial decisions of hospitals without providing guidelines or clarifying the proper role for HUD's Office of Hospital Facilities ("OHF"). Servicers are established and staffed with expertise in loan servicing rather than hospital management. The OHF has that expertise, and therefore many of the requirements included in ML 15-19 are currently and should remain tasks of OHF.

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We recommend that HUD rescind ML 15-19 immediately and form a task force with OHF and servicers to develop an addendum to HB 4350.1 and 4530.4 that will supplement the HUD asset management and servicer loan servicing responsibilities for hospitals. Also, for any implementation of ML 15-19, there needs to be a sufficient grandfathering period. As we point out below, there are many action items that servicers are unable to undertake because the existing loan documents do not provide servicers with the necessary rights. So, the new Section 242 loan documents will need to be adjusted to reflect the requirements in ML 15-19 and any modifications to ML 15-19.

With those thoughts in mind, we offer the following specific comments to ML 15-19 included in Exhibit A.

As always, we appreciate the hard work your staff has put in to making improvements to the program. We equally appreciate our opportunity to comment upon, and work with OHF to address our concerns with, ML 15-19. We look forward to further discussions with you and your staff. If you have any questions, please do not hesitate to call me.

Very truly yours,



Roderick D. Owens

Executive Director

EXHIBIT A
COHF Comments to ML 2015-19 (242 Servicing)

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
Initial Endorsement	
<i>Each time a commitment is issued</i>	<i>Provide the Trustee (for bond transactions) or Lender (for GNMA transactions) with an estimate of the funds required to fund the initial draw and all subsequent draws.</i>
COHF Comment: 1	The main source of expenses for funding the initial draw will be the borrower. Additionally, the draw requests are made by the FHA Lender, regardless of funding structure, so we do not believe a reference to the Trustee is needed. Additionally, the draw process is already described in HB 4615.1 REV-1 Appendix 8 and does not need to be restated here. If HUD does retain this statement, we recommend it be revised as follows: “Work with the borrower to obtain a list of costs and the corresponding invoices and submit to HUD the Form 92403, Application for Insurance of Advance of Mortgage Proceeds, for HUD’s approval of the initial disbursement of loan proceeds.”
Construction Phase	
<i>Loan for new construction or substantial rehabilitation</i>	<i>Confirm that capitalized interest is funded in time to meet bond/mortgage obligations.</i>
COHF Comment: 2	For a servicing matter, we believe the servicer’s responsibility is to monitor disbursements of capitalized interest. Therefore, we suggest the following revised language: “Monitor the disbursements of capitalized interest and advise HUD if failure to disburse capitalized interest will cause a default in a note payment.”

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<i>Final Endorsement</i>	
<i>Each final endorsement</i>	<i>Request borrower to execute and deliver all required FHA mortgage loan documents and to fund all escrows and deposits required by FHA for final endorsement.</i>
COHF Comment: 3	We suggest changing “FHA mortgage loan documents” to “FHA documents” to include other documents that HUD may require in the cost certification and final endorsement process that may not be considered a “loan document.”
<i>Permanent Loan Servicing – Administrative Functions</i>	
<i>Ongoing</i>	<i>Invest borrower’s money held in reserve funds if requested.</i>
COHF Comment: 4	This language could be seen as an instruction by HUD to servicers to make investment decisions for borrowers. HB 4350.4 Chp. 2-27 states that the “mortgagor, not the mortgagee, is responsible for deciding the liquidity requirements of funds held in the Reserve Fund for Replacements and the Residual Receipts Account.” We believe this same policy has and should continue to apply to required reserves for Section 242 loans. Further, because Section 242 loans do not require a Reserve for Replacement escrow (or Residual Receipts Account) to be established, this requirement should be deleted in its entirety. If OHF desires to have specific investing guidelines for the Mortgage Reserve Fund, then such provisions should be incorporated into a Section 242 addendum to HB 4350.4.
	<i>Conduct ongoing escrow analysis, maintain escrows and pay taxes, insurance, etc.</i>
COHF Comment: 5	This requirement is already covered by HB 4350.4 Chps. 2-13 through 2-16; therefore this section should be deleted unless OHF requires additional or different requirements. Also, if OHF does implement separate escrow analysis requirements, please confirm that OHF’s expectation is for an <u>annual</u> escrow analysis to be conducted.

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<i>Monthly</i>	<i>Collect monthly mortgage payments and forward P&I to investors or bond trustee</i>
COHF Comment: 6	HB 4530.4 Chp. 2-12 already provides for HUD’s requirements with regard to servicing loan payments. Therefore, this provision is not necessary. Additionally, HUD should not direct servicers to forward P&I payments to “investors or bond trustees” because there may be other loan funding structures in place that may require otherwise, e.g., the monthly GNMA pass-through on the 15 th of each month, for loans that are GNMA securitized. HUD’s concern should be with the servicer collecting required payments and the payment of required fees.
<i>Annually</i>	<i>Make MIP payments</i>
COHF Comment: 7	We suggest changing “make” to “remit” to reflect that servicers collect MIP payments from the borrower and then remit them to HUD on the MIP payment due date. However, we believe this provision is unnecessary because it is already provided for in HB 4530.4 Chps. 2-12 and 2-13.
<i>Permanent Loan Servicing – Periodic Monitoring</i>	
<i>Quarterly (monthly for Priority Watch List hospitals)</i>	<p><i>Identify possible signs of financial weakening or increased risk, such as:</i></p> <ul style="list-style-type: none"> • <i>Declining utilization</i> • <i>Reductions in reimbursement rates</i> • <i>New lines of credit or letters of credit</i> <ul style="list-style-type: none"> ○ <i>Notify AE if this requires subordination of HUD collateral</i> • <i>Draws on lines or letters of credit</i> • <i>Claims over \$1MM</i> • <i>Mechanic’s liens</i> • <i>Loans or advances to/from affiliates</i> <ul style="list-style-type: none"> ○ <i>Notify AE</i> • <i>Transfers of assets</i> <ul style="list-style-type: none"> ○ <i>Notify AE</i>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p><i>Discuss with AE. Some items will require HUD consent.</i></p> <p><i>Identify changes in the hospital’s business plans and operations, such as:</i></p> <ul style="list-style-type: none"> • <i>Changes in senior management or Board</i> <ul style="list-style-type: none"> ○ <i>Remind hospital that Previous Participation Certification (HUD-2530) must be filed</i> • <i>Expansion or reduction in services</i> • <i>Plans to enter into affiliations with other providers</i> <ul style="list-style-type: none"> ○ <i>Notify AE – HUD consent may be required</i> • <i>Changes in capital expenses budget</i> • <i>Certificates of need applied for</i> • <i>Requests for, or receipt of, major grants or contributions</i> <p><i>Discuss important findings with AE.</i></p>
<p>COHF Comments:</p> <p style="text-align: center; color: red;">8</p>	<p>These new requirements significantly depart from the FHA servicer’s role as a servicer of the loan. In fact, because HB 4350.1 Chp 1-8 lays out many responsibilities of HUD’s staff with regard to asset management, having servicers perform these tasks is duplicative and potentially creates conflicting messages to the borrowers. The new requirements impose upon servicers the responsibility to gather and evaluate information and recommend actions about organizations that are complex, highly specialized, and highly regulated.</p> <p>Because the ML appears to apply to all loans in the Section 242 portfolio, servicers are not being given enough time to hire needed experts to perform these additional functions. Additionally, there is no mechanism available to servicers to adjust servicing fees to provide funds to pay for these increased servicing costs. Whereas, OHF has on staff personnel trained in hospital operations and financial matters. In fact, it is HUD’s responsibility to conduct management reviews and work with the owner to “assure well maintained and <u>financially solvent projects and to assure satisfactory project operations.</u>” See HB 4350.1 Chp. 1-8.C. HUD should be actively attempting to “preserve the financial soundness of project mortgagors where financial conditions relate to the project operations.” <i>Id. at Chp. 1-8.E.</i> And, HUD should “keep the mortgagee informed about the asset management actions taken by HUD.” <i>Id at Chp. 1-8.B.</i></p> <p>These requirements are for hospitals that HUD has placed on the Priority Watch List, often without notice to the servicer. Therefore, HUD has unilaterally indicated such hospital is in</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p>“trouble,” and as such we believe that prudent and responsible asset management on the part of HUD should be for HUD’s asset management team to review and identifying the listed items. See HB 4350.4 Chp. 1-16. Servicers will not have access to this information because the existing HUD loan documents do not obligation borrower to provide this information to servicers. And, as we’ve said before, the servicer’s role has always been focused on servicing the loan; therefore, servicers lack the expertise to undertake the review and analysis being required by the ML.</p> <p>Further, because the loan documents do not provide the servicer any rights to these items, servicers are not legally able to compel borrowers to produce this information. Therefore, HUD is imposing an obligation on the servicers that servicers may not be able to undertake. However, via the Regulatory Agreement, HUD can request its borrowers to provide this information to the extent not already submitted.</p> <p>In order to effectively implement these new oversights, HUD will need to advise servicers when and why a hospital has been placed on the Priority Watch List and provide training and further guidance to the FHA servicers on what type of "financial weakening or increased risk" and “declining utilization” warrants further scrutiny. HB 4350.4 Chp. 2 provides much detail to servicers for how and what to review for multi-family housing projects. That same guidance is needed so that servicers that are not trained in hospital operational overnight can assist HUD in HUD’s asset management of hospital projects.</p> <p>Finally, in order to begin collecting this information, servicers will need HUD to instruct each borrower to provide this information, in the format HUD desires, to the servicers. HUD should indicate upon which authority HUD is relying when requiring this information so that servicers will not have to address objections from their borrowers if they feel that HUD is requesting information HUD is not entitled to request.</p>
<i>Quarterly</i>	<i>Conduct quarterly rating review of banking institutions where more than the FDIC insurance limit is held in escrow by the mortgage servicer.</i>
<p>COHF Comment: 9</p>	<p>This requirement is already provided for in HB 4350.4 Chp. 1-18. Therefore, we recommend deleting it unless OHF desires different requirements applied to the Section 242 program.</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<i>Quarterly</i>	<i>Ask the borrower whether there is any significant litigation which is not covered by insurance. If so, report that to the AE.</i>
<p style="text-align: right;">COHF Comment:</p> <p style="text-align: center; color: red;">10</p>	<p>Under HUD’s current loan documents, borrowers do not have an ongoing requirement to disclose this information to servicers. Therefore, we recommend that HUD amend its Regulatory Agreement to require that the Borrower provide this information to HUD (with a copy to Servicer). Additionally, it should be clarified that this requirement does not apply to existing loans because the servicers cannot compel the borrowers to provide this information at this time.</p>
<i>Annually/Quarterly/Monthly Financial statements</i>	<i>Collect annual audited financials and quarterly interim reports. Review and compare to budget. Meet with the hospital’s senior finance person quarterly to review financial performance during the year and the quarter. For Watch List hospitals, meet monthly to discuss monthly results. For financially sound hospitals, some meetings may be telephonic but at least one per year should be on site. Troubled hospitals will require more time on site.</i>
<p style="text-align: right;">COHF Comment:</p> <p style="text-align: center; color: red;">11</p>	<p>While we understand HUD’s desire to have non-HUD personnel conduct quarterly oversight meetings with each hospital’s CFO, and review of quarterly reports, imposing that requirement as done in ML 15-19 is impractical and ineffective. First, this requirement ignores OHF’s asset management responsibilities to analyze annual and periodic statements, the project’s overall performance and potential, and its long term capital needs. <i>See</i> HB 4530.1 Chp. 1-13.D. Servicers’ responsibilities mainly focused on the servicing of the loan and the protection of the loan insurance, i.e., through payment of MIP, taxes, and property insurance, as reflected by the borrower’s obligations to the lender in the mortgage and security agreement. Oversight of the operations of the hospitals has been the responsibility of HUD, as reflected in the covenants of the Regulatory Agreement.</p> <p>Additionally, many of the documents listed above cannot be demanded by Servicers. It is important for OHF to understand that servicers are chiefly responsible for the obligations under the notes and mortgages because those are agreements between the lender and borrower. “With regard to the Regulatory Agreement, which is incorporated into the mortgage by reference, HUD</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p>encourages mortgagees to inform HUD when mortgagees become aware of Regulatory Agreement infractions and to work with HUD and mortgagors to correct these Regulatory Agreement violations. However, the Regulatory Agreement is an agreement between a mortgagor and HUD and HUD considers enforcement of its provisions to be a matter between mortgagors and HUD itself.” See HB 4350.1 Chp. 1-10. Therefore, this section should be drafted as a guide for HUD staff to use in determining what information to request from hospitals and what to do with that information once obtained.</p> <p>We also point to HB 4350.4, which details many of the loan servicing responsibilities of servicers and HUD. That HB also provides guidance to servicers on which issues to focus upon, whereas ML 15-19 provides no specific guidance to servicers on what to look for in interim financial statements and the actions to take based on the information in those financial statements. For example, if patient volumes drop, what actions do should servicers take pursuant to their rights under the loan documents.</p> <p>Finally, with respect to meetings, HUD already holds these meetings with the Borrower, so it is suggested that HUD add the servicer to the HUD meeting rather than require a separate meeting. It is also suggested that these meetings be held telephonically due to the frequency of meeting. And, at the conclusion of the meeting, HUD should use its expertise to guide all parties in follow up actions, if needed.</p>
<i>Annually</i>	<i>At least annually, review title reports to identify liens or new encumbrances. If found, share information with AE.</i>
12 COHF Comment:	Please provide authorization for servicers to bill borrowers for this additional cost.
<i>Annually</i>	<i>Confirm that Deposit Account Control agreements (DACA)s are in place for all depository accounts that control the borrower’s operating revenues and expenditures. If not, inform hospital management and AE that DACAs are needed.</i>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<p>COHF Comment:</p> <p>13</p>	<p>In addition to control agreements already in place, any account into which government receivables are deposited directly from the payers needs to have a mechanism in place that sweeps the account into an account covered by a control agreement. All deposit accounts should be monitored to make sure that control agreements are not on those government receivables accounts and that the sweep mechanism remains in place for all government receivables accounts. Therefore, we recommend the requirement be revised as follows:</p> <p>“Confirm that Deposit Account Control Agreements (DACAs) are in place for all depository accounts that receive or hold the borrower’s operating revenues and which do not contain government receivables, and confirm that deposit accounts in to which government receivables are deposited have an agreement that requires the funds is said deposit accounts to be swept into a deposit account covered by a DACA. If not, inform hospital management and AE that DACAs or changes to sweep arrangements are needed. HUD will provide confirmation of any deposit accounts that do not require to be controlled by mortgagee.”</p>
<i>Annually</i>	<i>Confirm that UCC filings are up to date and that all collateral for the HUD-insured loan is securitized for the life of the mortgage.</i>
<p>COHF Comment:</p> <p>14</p>	<p>Because the UCC’s have a term of 5 years, servicers typically develop a monitoring system to file a continuation statement within the 6 months prior to the end of each five-year term. Additionally, the mortgage encumbers the property during the entire term of the loan. So, servicers are not reviewing the filings/recordings on an annual basis. Therefore, we request that HUD provide more clarity as to what it is expects for the annual monitoring of the UCC filings and the mortgage.</p>
<i>Annually</i>	<i>Conduct annual physical inspection and provide a written report of results to borrower with copy to AE and OAE.</i>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<p>COHF Comment:</p> <p>15</p>	<p>HB 4350.1 Chp. 6-1.a. provides that recurring on-site reviews are not necessary for hospitals that are being monitored by a health or regulatory agency. By adding this new requirement, it appears OHF is now changing that HB provision. Therefore, please provide further instructions as to (i) the inspection requirements, (ii) the inspector credentials, and (iii) how servicers may reimburse expenses associated with obtaining these inspections. In other words, OHF should develop a specific set of on-site review guidelines for hospitals similar to HB 4350.1 Chp. 6 in order to provide both HUD staff and Servicers sufficient guidance so that there will be consistent project monitoring across the Section 242 portfolio. Additionally, OHF should look to HB 4350.4 Chps. 2-19 and 2-20 as a model for developing hospital specific physical inspection requirements.</p> <p>For loans currently in the portfolio, these newly required inspections were not reflected in the servicing fees established at closing and thus the increased costs of monitoring will need to be addressed to enable servicers to perform these functions.</p>
<p><i>Any material lack of repair, deterioration, or waste</i></p>	<p><i>Notify borrower, AE and OAE.</i></p>
<p>16 COHF Comment:</p>	<p>This requirement seems more appropriate in the requirement above as an element to be noted in the inspections report (i.e. is waste present at project)?</p>
<p><i>Definition of Waste in footnote</i></p> <p>removed</p>	<p><i>“Waste” is defined in the Security Instrument/ Mortgage/ Deed of Trust. It means a failure to keep the Project in decent, safe and sanitary condition and in good repair. Waste also means the failure to meet certain financial obligations regarding the payment of Taxes and the relinquishment of the possession of Revenues. During any period in which HUD insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender’s and HUD’s express written consent, Borrower: (1) physically changes, or permits changes to, the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value; (2) fails to maintain the Mortgaged Property in decent, safe, and sanitary condition and in good repair; (3) fails to pay, or cause to be paid, before delinquency any Taxes secured by a lien having priority over this Security Instrument; (4) materially fails to comply with covenants in the Note, this Security Instrument, Borrower’s Regulatory</i></p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<i>Agreement, or any Loan Document, respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or (5) retains possession of Revenues to which Lender or its assigns have the right of possession under the terms of the Loan Documents.</i>
<p>COHF Comment: 17</p>	<p>The current forms of FHA 242 loan documents do not define waste; this definition is from the new form of the Section 232 Security Instrument. Therefore, please remove “is defined in the Security Instrument/ Mortgage/ Deed of Trust.”</p>
	Event-Driven Risk Management
<p><i>Request from Borrower</i></p>	<p><i>Process request from borrower to:</i></p> <ul style="list-style-type: none"> - <i>Modify the note and mortgage</i> - <i>Hold a mortgage under a workout arrangement</i> - <i>Approve transfers of physical assets *</i> - <i>Approve partial releases of lien *</i> - <i>Permit secondary financing</i> <p><i>Independently review and approve/disapprove. Obtain GNMA review and decision if necessary. Submit to AE.</i></p> <p><i>*Determine if remaining collateral is sufficient to cover UPB.</i></p>
<p>COHF Comment: 18</p>	<p>We believe that many of these items are incorporated in HB 4350.1 already. For example, HB 4350.1 Chp. 13 describes the mechanics for a transfer of physical assets and Chp. 16 details the process for obtaining a partial release of security. Therefore, in order to not confuse servicers with new HUD requirements, we suggest that OHF prepare a supplement to HB 4350.1 that details hospital specific items not already addressed therein.</p> <p>We note there is an asterisk after “Approve transfers of physical assets.” Transfers of Physical Assets are not actually releases of real property; therefore, loan-to-value considerations should be irrelevant to their approvals. To the extent this language is retained, please delete the asterisk.</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p>Additionally, HUD approval of TPAs is also required, so we suggest changing “Approve transfers of physical assets” to “Process requests for transfers of physical assets.”</p> <p>Servicers cannot be expected to determine whether the collateral remaining after a TPA or a partial release of mortgage lien is adequate to cover the unpaid principal balance of the mortgage loan. That assurance could only be given if an appraisal on which the lender was authorized to rely were provided. If HUD prefers to have that assurance, they should request an appraisal of the retained property as part of their review of the TPA or partial release. That being said, the value of hospitals is largely in their ability to generate operating revenues, not in their real estate, so we think this provision may be of no value to HUD. Additionally, HUD will have the borrower’s financial statements and can look directly at the net book value on those statements to undertake any valuation analysis HUD deems dispositive to its decisions.</p>
<p><i>Missed lease payment from hospital's operator/lessor (for those hospitals for which leasing has been approved)</i></p>	<p><i>Work with AE, borrower, and operator to find out why the payment was not made on time and to develop a plan to avoid missed payments in the future.</i></p>
<p>COHF Comment:</p> <p>19</p>	<p>As drafted, this provision does not clearly identify HUD’s role in this situation. First, we think that HUD should work with servicers to develop guidelines on and modifications to the Regulatory Agreement that will allow for monitoring of lease payments and courses of action that can be taken similar to the provisions in HB 4530.4 Chp. 2-32 regarding servicing delinquent accounts.</p> <p>More importantly, we stress that it cannot be the servicer’s job to "develop a plan to avoid missed payments." Development of business plans or other operational plans are the responsibility of the borrower. In situations where there are missed payments or other shortfalls, HUD cannot passively wait for servicers to develop action plans because servicers lack the information or expertise to develop such plans. HUD staff should “seize the initiative” and work with the borrower “to provide whatever assistance it can,” including “technical advice,” so that the borrower provides HUD will any desired plans. <i>See</i> HB 4350.1 Chp. 1-16 and HB 4350.4 Chp. 4-6.a.</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	To the extent not already addressed, we recommend that HUD address this concern in a hospital supplement to HB 4350.4 Chp. 5.
<i>Legal Judgments, penalties, fines</i>	<i>Talk to hospital management to learn reasons, impact on financial status. If impact is significant, notify AE and get action plan from management for dealing with it.</i>
<p style="text-align: right;">COHF Comment:</p> <p style="text-align: center; color: red;">20</p>	<p>Servicers are unlikely be aware of legal judgments, penalties, and fines; therefore, the notification requirement should be limited to “notify the AE if and to the extent servicer is made aware of a judgment or fine.” Additionally, in order to make this requirement enforceable, HUD must make the above requirement a provision in the Section 242 Regulatory Agreement. The borrower is the only party with actual knowledge of judgments, penalties, or fines and analyzing the impact on the hospital’s finances-- not a servicer. It would be an overly burdensome expense for servicers to constantly monitor the lis pendens and judgment filings, plus countless other indexes where fines could be noticed, for each borrower.</p>
<i>Notification of termination of any insurance</i>	<i>Work with management to develop action plan, report to AE.</i>
<p style="text-align: right;">COHF Comment:</p> <p style="text-align: center; color: red;">21</p>	<p>If the borrowers do not maintain the insurance required by HUD, servicers can notify HUD, but they cannot and should not be working with hospital management to develop an action plan to obtain insurance. Mortgagee’s already have requirements to maintain property insurance and servicers can inform borrowers of the HUD insurance requirements.</p> <p>Except for property insurance, servicers are not equipped to develop plans to direct hospital resources toward obtaining other types of insurance, or to pay any other specific operating costs. Servicer’s responsibilities are to service the loans, not operate/manage a hospital. If HUD wishes to take action for the failure to maintain insurance, then HUD should exercise its rights under the Regulatory Agreement to declare the loan in default for failure to maintain proper insurance. On all HUD multifamily and Section 232 HUD loans, servicers are authorized by HUD to immediately “force place” property insurance in the event of receipt of an insurance termination notice, with the assurance that such lender advance, if not recovered from borrower, will be reimbursed by HUD to lender in the event of a mortgage insurance claim.</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<i>Default on AR loan</i>	<i>Determine why default occurred, review cash flows and ability to cover failing loan, notify AE. Work with management to develop action plan, involving AE if necessary</i>
<p style="text-align: center;">COHF Comment:</p> <p style="text-align: center;">22</p>	<p>Servicers will not have access to all the information, and lack the operational expertise, to perform this level of financial analysis. HUD, however, has a full staff that has significant hospital accounting and operational experience. Additionally, HUD will have access to the financial statements of the hospital needed to undertake this analysis. Therefore, we suggest that HUD use its expertise to provide the asset management HUD has historically provided, and then work with the servicer to the extent that action is required by the servicer. Such team work should be developed in a hospital supplement to HB 4350.4 Chp 5 – Preventing Defaults.</p> <p>Again, servicers do not and should not be asked to develop action plans involving hospital operations. Servicers main purpose should be to service the loan and not operate/manage a hospital.</p>
<i>Unauthorized distribution</i>	<i>Help management develop action plan to deal with this event and to strengthen controls.</i>
<p style="text-align: center;">COHF Comment:</p> <p style="text-align: center;">23</p>	<p>Servicers would not know about an unauthorized distribution unless affirmatively disclosed by Borrower, or the unauthorized distribution resulted in a default- but even then it will be dependent upon the information provided by the borrower. HUD, however, has both the expertise and the financial documentation to make this analysis. HUD should be undertaking this as part of its asset management and not shift those duties to servicers.</p> <p>We repeat our prior objection to servicers developing any action plans.</p>
<i>Borrower, Operator, or management agent files for bankruptcy.</i>	<i>Provide complete information to AE.</i>
	<i>If requested, provide status updates to AE and assist OGC, DEC, and DOJ as needed.</i>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
<p>COHF Comment:</p> <p style="text-align: center; color: red;">24</p>	<p>What does HUD consider to be “complete information”? The servicers can provide copies of the notices it receives of the bankruptcy proceedings, but any additional information that HUD wants should be detailed.</p> <p>If a hospital is in default, HUD’s asset management team (including OGC, DEC, and DOJ) should be heavily involved and not waiting for updates from the borrower or servicer. <i>See</i> HB 4350.1 Chp. 1-16. In fact, if a hospital declares bankruptcy, HUD’s asset management guidelines should be drafted to provide clear guidance on what servicers should do and state that HUD’s asset management team controls all decisions. Servicers will be hesitant to take any actions that HUD could use as a reason to deny an insurance claim; therefore, servicing guidelines should be developed cooperatively to ensure HUD and servicers working together as a team.</p>
	<p><i>Advise AE of any knowledge of actions or events that could jeopardize:</i></p> <ul style="list-style-type: none"> - <i>Hospital's license, CON, or provider agreements</i> - <i>CML Participation</i> - <i>Availability of AR as collateral</i> - <i>Compliance with Regulatory Agreement and Rider to the Regulatory Agreement</i> - <i>Enforceability of mortgage and security instruments</i>
<p>COHF Comment:</p> <p style="text-align: center; color: red;">25</p>	<p>Servicers are not qualified to opine as to licensure requirements, etc. However, Servicers could advise to the extent that they have been advised by the regulatory authority or provider that the borrower is at risk for licensure loss. We suggest the following revision to clarify responsibility:</p> <p style="padding-left: 40px;">"Provide AE with copies of any notice of default or non-compliance from any regulatory or licensing authority regarding Hospital's license, CON, or provider agreements, to the extent provided to Servicer."</p> <p><u>Availability of AR as collateral</u> – Please clarify what is actually meant. Under HUD’s Regulatory Agreement, there are provisions laid out as to when AR financing can be obtained. Is HUD looking for analysis of this threshold? Additionally, any AR financing must be approved by an AR Lender; therefore, HUD should be looking to the hospitals and the AR Lenders to determine</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p>what, if any, AR is available for collateral. Servicers should not be engaged in this level of management of a hospital.</p> <p><u>Compliance with Regulatory Agreement and Rider to the Regulatory Agreement</u> – Enforcement of the Regulatory Agreement is entirely within in the control of HUD, and not the servicer. Therefore, servicers are unlikely to have information needed to determine if there are defaults under the Regulatory Agreement. Also, the Regulatory Agreement is subject to HUD’s interpretation and servicers/mortgagees are not permitted to interpret Regulatory Agreement provisions. <i>See</i> HB 4350.1 Chp. 1-10. Therefore, servicers are not able, by practice and HUD requirements to make determinations as to whether or not the borrower is in default of the Regulatory Agreement.</p>
<i>Delinquent mortgage payment</i>	<i>Work with management to develop action plan to resolve delinquency. Provide plan to AE.</i>
<p>COHF Comment:</p> <p style="text-align: center;">26</p>	<p>To the extent this suggests that the servicer "develop action plan", it is not an appropriate role for the servicer, particularly acting without direct and active HUD involvement. HB 4350.4 Chp. 2-32 provides HUD’s instructions for servicing delinquent loans. We believe that HUD should be conducting “management reviews” and providing the hospitals “advice and guidance on the management and operations of projects.” <i>See</i> HB 4350.4 Chp. 1-9.c. ML 15-19 fails to provide any provisions with regard to those duties. We suggest that OHF review those provisions and provide detailed supplements for actions that HUD and servicers should take for Section 242 loans in payment default.</p>
Non-Performing Loan	
<i>Borrower stops making mortgage payments.</i>	<p><i>Assess quality of collateral and local market conditions.</i></p> <p><i>Help borrower develop, implement and track progress of business plans.</i></p> <p><i>Identify assets that might be able to be liquidated to avoid a claim.</i></p>
<p>COHF Comment:</p> <p style="text-align: center;">27</p>	<p>These are all inappropriate actions for a loan servicer. As we’ve repeated often, it should not be the job of the loan servicer to undertake hospital operational decisions, particularly with no</p>

<i>Event or Frequency</i>	<i>Servicer Responsibility</i>
	<p>specific guidance from HUD. Servicers are not experts in hospital operations and therefore not equipped to determine which assets can be sold without putting hospital operations at risk.</p> <p>Additionally, servicers are not appraisers and therefore not able to assess the quality of assets or the market conditions. Loan servicers “should have general understanding covering appraisals and have an appreciation for the principles that determine property values.” See HB 4350.1 Chp. 1-14.E. But they cannot be expected to make these determinations alone. Additionally, if HUD requires the services of an appraiser; HUD needs to provide servicers the ability to recoup those costs.</p>