



## HUD Section 242 Hospital Mortgage Insurance Program Expanded to Include Section 223(f) Refinancings

The Department of Housing and Urban Development ("HUD") recently announced changes to its Section 242 hospital mortgage insurance program. Phelps Dunbar is experienced with these transactions, having recently closed the only HUD-related hospital mortgage financing in Mississippi in recent times, and is currently working on another substantial financing utilizing a HUD guarantee and Build America Bonds. Our experienced business and health-care attorneys would be happy to discuss financing opportunities with your hospital.

On July 1, 2009, HUD announced the expansion of its Section 242 hospital mortgage insurance program to include refinancings of hospital mortgage debt, including financing originally incurred for acquisitions. Administered by the Federal Housing Authority ("FHA"), the Section 242 program has historically been focused on new construction, renovation and equipment acquisition. Because of the current difficulties encountered by hospitals in accessing capital in the private credit markets, however, together with an increase in the need for health care services by the public, the Section 242 program is now being made available for Section 223(f) refinancings of existing hospital debt without, as in the past, a requirement for new construction or renovation.

Such loans are non-recourse to the hospital debtor, and are required to be secured by a first mortgage covering the entire hospital with a self-amortizing term of twenty-five (25) years. There is no maximum loan amount. In addition, there is now no requirement for the inclusion of "hard costs" (defined as construction and equipment costs, with related fees) in a refinancing loan, but if hard costs are to be financed, they must total less than twenty percent (20%) of the total mortgage amount.

To qualify, a hospital must have maintained over the last three years an aggregate operating margin of at least 0.33% (formerly 0.00%), an average debt service coverage ratio of at least 1.8 (formerly 1.25), and must have experienced an actual or imminent increase in its relevant interest rate of at least 1% since January 1, 2008 as a result of the credit crisis. The maximum loan amount cannot exceed the existing capital debt payoff, plus legal fees, title, recording, HUD-approved lender and inspection fees, and cost of repairs totaling less than 20% of the new mortgage amount.

Though the notices of the expanded Section 242 program and proposed regulations appear to deal in the main with refinancing transactions, the proposed regulations also provide for the use of Section 223(f) / 242 loan proceeds in hospital acquisitions. In such cases, in addition to the above requirements, the mortgage amount may be the lesser of the actual purchase price of the land and improvements, or HUD's estimate of the fair market value thereof. The existing ratio of loan amount to HUD-estimated hospital replacement cost value of ninety percent (90%) appears to remain, although this issue could be revisited in the final regulations.

Other rules apply as well. Proposed final regulations implementing the expanded program are being published by HUD, will be subject to the usual period provided for comment by interested parties and possible amendment, and, when finalized, will clarify the salient aspects of the program's expansion. One of the overriding goals of the expansion, according to the regulations, is "to lower the monthly debt service costs ... of ...[hospitals]." And that would be a very good thing indeed.

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## Upcoming Health Care Briefings

### Recovery Audit Contractor Audits: What you Need to Know

The Mississippi State Medical Association, Phelps Dunbar LLP, and the Mississippi Academy of Family Physicians will host a series of briefings to bring physicians up to date on recent developments relating to the Recovery Audit Contractor (RAC) Audits, including how physicians can prepare for the RAC Audits, as well as the process for appealing overpayment determinations. The Featured Speaker will be Jeff Moore – Phelps Dunbar Partner, Mississippi Health Care Practice. Join us to learn how the RAC Audits will affect your practice and how you can prepare for them.

#### AUGUST 19

**Biloxi, Mississippi** - Hancock Bank Community Room, 888 Howard Ave. 5:30-6:45 p.m.

#### AUGUST 21

**Kosciusko, Mississippi** - Attala Educational Center 7:30-8:45 a.m.  
254 Highway 12 W

#### AUGUST 20

**Hattiesburg, Mississippi** - Hattiesburg Clinic, 415 S. 28th Ave. 7:30-8:45 a.m.

**Meridian, Mississippi** - East MS Business Development Corp. 12:30-1:45 p.m.  
1901 Front Street, Suite A

**Jackson, Mississippi** - Old Capital Inn, 226 N. State St. 5:30-6:45 p.m.

**To Register:** Contact Becky Wells at [beckywells@MSMAonline.com](mailto:beckywells@MSMAonline.com) or 601-853-6733.



Phelps Dunbar's Health Care Industry Team represents hospitals, physicians, managed care organizations and other health care providers throughout the Southeast. Our attorneys serve health care clientele in a wide range of practice areas, including health care regulatory law, tax, business/transactions, labor and employment, employee benefits, antitrust, intellectual property, financing, securities and commercial litigation.

If you have any questions or desire additional information, please contact our Health Care Industry Practice Coordinator Jeff Moore.



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