

PUBLICATION

Hud Issues New Guidance Addressing Accounts Receivable Financing For Health Care Facilities

December 5, 2008

The U.S. Department of Housing and Urban Development (HUD) recently issued a notice providing new guidance that may facilitate accounts receivable (AR) financing for operators of health care facilities with standard FHA-insured mortgages. Issued November 17, 2008, Notice H 08-09 provides instructions to the staff of HUD's Office of Multifamily Housing and its Office of Insured Healthcare Facilities on how to evaluate and implement AR financing for long term care facilities.

Under Section 232 of the National Housing Act, HUD may provide certain qualified lenders with insurance against loss on defaults under loans to nursing homes and assisted living facilities. This program gives owners of these facilities access to low-interest, fixed-rate loans backed by the full faith and credit of the United States Government. A large number of nursing homes and assisted living facilities have taken advantage of HUD's Section 232 program over the past decade for construction, substantial rehabilitation or refinancing due to the fact that financing for long term care facilities on such beneficial terms is unavailable from any other source.

Operators of long term care facilities that receive significant Medicare and Medicaid reimbursement frequently have lines of credit secured by their AR in order to provide liquidity for day-to-day business operations. The facility's AR financing provides cash to fund business needs until the reimbursement funds are received. Typically, Medicare and Medicaid reimbursement does not occur for 30 to 90 days after the services are provided.

Until now there have been no formal rules authorizing long term care facilities to have both an FHA-insured loan secured by the facility's assets as well as financing secured by the AR of the facility. HUD Notice H 08-09 provides specific guidance allowing FHA-insured financing and third-party AR financing to co-exist if HUD finds that certain conditions are met.

In considering whether to permit AR financing for a health care facility with an FHA-insured loan, HUD's primary consideration will be the effect of the AR financing on the financial viability of the facility and whether the AR financing will facilitate, rather than jeopardize, the ability of the facility to meet its financial obligations. Generally, HUD will not permit AR to be financed at more than 85 percent of its value, and the AR should not be aged greater than 120 days. The financed AR may include governmental and non-governmental (i.e., private pay) receivables.

In addition, the facility must be able to maintain a debt service coverage ratio acceptable to HUD, and the parties must enter into an intercreditor agreement in a form approved by HUD. The form of intercreditor agreement would contain several restrictions on the use of funds advanced by the AR lender and its handling of the facility's receivables, which are typically held and controlled by the AR lender in a lockbox account. All parties, including the borrower, the HUD lender, the AR lender and HUD, along with designated legal counsel, are encouraged to meet with HUD's office of Insured Health Care Facilities prior to making a formal request to HUD for consent to an AR loan.