



# Federal Office of Healthcare Programs Issues New Policies Affecting Section 232 Subsidized Loan Program for Nursing Homes and Assisted Living Facilities

Client Advisories

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The Federal Office of Healthcare Programs (the “OHP”) instituted two new policies impacting the Federal Housing Administration’s healthcare programs, including the Section 232 Mortgage Insurance for Residential Care Facilities program (the “Section 232 Program”), the first affecting project start approvals, and the other mandating full sprinkler coverage for nursing homes participating in the loan program. Section 232 is an FHA-insured type of loan that covers housing for the elderly in need of supportive services. Nursing homes, assisted living facilities, and board and care homes are all examples of this type of housing (a Section 232 qualified project may include more than one type). The Section 232 Program may be used to finance the purchase, refinance, new construction, or substantial rehabilitation of a facility. A combination of these uses can also qualify for Section 232 lending; for example, the new construction of an assisted living facility together with the refinance of a nursing home can qualify under the Section 232 Program.

The OHP’s Office of Residential Care Facilities (the “ORCF”) manages the Section 232 Program. This month, the OHP announced that it will no longer approve construction starts prior to the issuance of its “Firm Commitment,” i.e., the Commitment to Insure Upon Completion, in light of risks associated with allowing construction to start prior to a commitment. The new policy applies to applications submitted after February 29, 2012. The ORCF will, however, consider approving a post-commitment early start of construction under certain circumstances.

In addition, the ORCF announced that all nursing homes participating in the Medicaid or Medicare programs must be equipped with a supervised automatic sprinkler system by August 13, 2013, installed in accordance with the 1999 edition of the National Fire Protection Association’s (NFPA) “Standard for the Installation of Sprinkler Systems” (NFPA 13). This is consistent with standards enacted by Congress and implemented by the Centers for Medicare and Medicaid Services (CMS), which require retrofitting of all existing nursing homes by

2013 to incorporate sprinkler systems.

Since the global recession began in late 2007, Section 232 Program applications increased 180%, from 271 in 2009 to 757 in 2010, and commitments increased 140%, from 132 to 318. Under the Section 232 Program, private lenders who are qualified under HUD guidelines will make mortgage loans to eligible borrowers secured by first priority mortgages on eligible projects, and HUD will issue mortgage insurance to the lender. Depending upon the type of project (new construction, refinance, for-profit or nonprofit), the loans will be non-recourse, with fixed interest rates and terms of up to 40 years for new and rehabilitated properties and up to 35 years for existing properties without rehabilitation that can be financed with Government National Mortgage Association (GNMA) Mortgage Backed Securities. Interest rates are set by the lenders making the loans, but at present they range between 3.0% and 4.0%. The loan amounts will be the lower of: (1) between 75% and 90% of the appraised value (depending on type of project and borrower); and (2) total eligible costs.

If you have questions or if you would like to discuss these new policies, please contact Robert J. Fogg, Chair of Archer's Healthcare Law Practice Group, at (609) 580-3702 or [rfogg@archerlaw.com](mailto:rfogg@archerlaw.com); or Cynthia Brooks, a Partner with Archer's Real Estate Services Department, at (201) 498-8542 or [cbrooks@archerlaw.com](mailto:cbrooks@archerlaw.com).

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