

Section II Production

Appendix 10.1

Procedures for Requesting Approval for Start of Construction Prior to Initial Closing for Section 241(a)

The following is applicable to requesting approval for start of construction prior to Initial Closing for mortgages insured by the Department of Housing and Urban Development pursuant to Section 241(a) of the National Housing Act. Early Start, prior to Initial Closing, is not permitted for New Construction or Substantial Rehabilitation projects.

1. Certain Defined Terms. As used in this document, the following words and terms shall have the meanings set forth below:
 - a. "HUD" means the Department of Housing and Urban Development.
 - b. "ORCF" means the Office of Residential Care Facilities.
 - c. "Good Cause" means the existence of circumstances likely to increase costs, create additional risk, or otherwise impair HUD's interests and which may be partially or fully resolved by permitting the early start of construction. These circumstances may include, for example (i) compliance with a deadline imposed by state or local law or any applicable governmental approval or permit (e.g., certificate of need, special zoning permit or building permit); (ii) adverse weather conditions/time of year; or (iii) atypical spikes in the pricing of labor and materials.
 - d. "Site and Foundation Work" means, with respect to an Early Start Project, any and all work that is customarily performed in the construction of health care facilities up to and including the completion of foundations, including, but not limited to, clearing, grading, underground utilities, roads, parking areas, building pads, footers, and foundations.
 - e. "Underwriter" means the underwriter for a project designated by HUD to underwrite a mortgage loan for such project on behalf of HUD. The ORCF staff or contractor designated by HUD to evaluate the anticipated Section 232 loan and determine its conformity with the applicable program underwriting requirements.
2. Request for Permission to Commence Construction. At any time prior to Initial Closing of a mortgage for insurance, the Borrower, with the concurrence of the Lender, may submit a Request for Permission to Commence Construction Prior to Initial Closing for Mortgage Insurance (Form HUD-92415-ORCF) by completing and delivering to the Underwriter an executed Request form, together with the supporting documentation set forth therein. The

Early Start of Construction Checklist, located on the Section 232 Program website, contains the documents required to be submitted with such a request. If the Borrower is a non-profit entity, the Request must be accompanied by a resolution of the governing body of the entity authorizing the Request and confirming the certifications made by the Borrower therein.

3. Approval of Requests. The Underwriter shall consider such Request and shall approve such Request if (a) the Borrower shall have complied with applicable HUD requirements as set forth in the Request Form and this Appendix 10.1, and (b) if the approval is to be granted prior to issuance of a HUD firm commitment, (i) the environmental review (HEROS—~~Form HUD-4128~~) shall have been signed by HUD, and (ii) the Borrower shall have shown Good Cause for commencing construction prior to Initial Closing.
4. Certification of Borrower. Approval of the Request will be subject to the Borrower certifying that:
 - a. there is Good Cause for requesting permission to commence construction prior to Initial Closing (Such Good Cause shall have been described in detail and documented to the Underwriter's satisfaction);
 - b. the work to be performed pursuant to the Request shall be limited as set forth in this document;
 - c. the Borrower has arranged for independent financing of the work to be performed pursuant to the Request;
 - d. the Borrower acknowledges and agrees that approval of the Request by HUD (i) does not constitute a commitment by HUD to insure a mortgage on the project, nor create any obligation on HUD to issue such a commitment, nor create any obligation to approve a mortgage insurance application and (ii) does not in any way obligate HUD to insure a mortgage with respect to the project;
 - e. the Borrower acknowledges and agrees that concurrence in the Request by the Lender (i) does not constitute a commitment by the Lender to make a mortgage loan with respect to the project and (ii) does not constitute any representation, warranty or other assurance by the Lender that HUD will insure a mortgage with respect to the project; and
 - f. the Borrower waives and releases any and all claims that borrower may have against HUD and/or the Lender with respect to any losses, damages, costs and/or expenses incurred in connection with any construction undertaken prior to Initial Closing.
5. Certain Requirements; Limitations on Performance of Work.
 - a. The work may not begin until HUD approves the Request. The work must (i) meet all requirements and guidelines as if it were approved for mortgage insurance and (ii) comply with all state and local requirements, including a permit for the construction work requested for an early start approval.
 - b. The work may be eligible to be financed with insured mortgage proceeds if the mortgage insurance application is approved, a HUD firm commitment is issued, and the mortgage is initially endorsed for mortgage insurance by HUD.

- c. For Early Start Projects only, the work performed prior to issuance of a HUD ~~firm commitment~~Firm Commitment shall be limited to Site and Foundation Work. A Site/Foundation permit must be approved by the municipality. ORCF may approve the performance of additional work prior to issuance of a HUD firm commitment upon a showing of urgent and compelling circumstances, subject to such conditions as ORCF may specify.
6. Inspection Fee Payments. The Borrower shall make non-refundable inspection fee payments to HUD in accordance with the Request Form.
7. No express or implied intent. Approval of any Request shall in no way be construed as indicating any intent, express or implied, on the part of HUD to approve, disapprove, or make any undertaking or promise whatsoever with respect to the application for mortgage insurance or with respect to any commitment for mortgage insurance. Any work performed prior to Initial Closing or prior to issuance of a Firm Commitment shall be undertaken at the sole risk and responsibility of the Borrower.
8. The Lender shall obtain an FHA Project number for the 241(a) prior to requesting an Early Start of Construction.
9. One paper copy of the Early Start documents (as detailed in the Early Start of Construction Checklist), an electronic version of the documents, and the inspection fee check will be submitted to ORCF.
10. The Construction Contract may need to be revised via a rider to address the fact that construction is beginning prior to Initial Closing (particularly the portion related to liquidated damages). Moreover, the Contract may need to be revised prior to Initial Closing, if necessary.
11. The Lender will be responsible for conducting a ~~Pre-construction~~PreConstruction Conference prior to start of construction. See Production, Chapter 10 and sample available on the Section 232 Program website.
12. HUD will require only one ~~Pre-construction~~PreConstruction Conference. If plans and specifications are complete at the time of Early Start, they will be signed in accordance with Production, Chapter 10.3. If plans and specifications are not complete at the time of Early Start, they will be required to be completed and signed prior to Initial Closing. In the latter situation, ~~HUD will notify the Lender regarding the need for~~shall be responsible to ensure HUD receives approved plans and specifications prior to Initial Closing.
13. At Initial Closing, a release of liens must be provided by the Contractor and each subcontractor who performs work on the project, prior to recording the insured mortgage. No additional exceptions are permitted in the mortgage title policy due to the early start.