

PREPARATION OF THE MORTGAGE AND NOTE INSTRUMENTS

Since the Secretary has approved a different form of mortgage, deed of trust, security deed and note for use in multifamily programs in each state, it is not possible to prepare a single note or mortgage format for use as a Capital Improvement Note or Capital Improvement Mortgage in every state.

- A. For the Capital Improvement Note, the form of Note used in the Section 202 Program (HUD Form 93432 EH, dated 7-83) is recommended, with all references to the Section 202 program changed to the Capital Improvement Loan Program. Care should be taken not to omit the amortization offset provision or the prepayment prohibition contained in this form of Note. The maturity date of the Capital Improvement Note is the maturity date of the original note of the project. Other changes to be made include:
1. In the first paragraph of the Note, change, "The loan shall bear interest on the outstanding loan amount computed from the date of each advance to the undersigned at the rate of ___ percent per annum." to, "The loan shall bear interest on the outstanding loan amount computed from the date of the last advance to the undersigned at the rate of ___ percent per annum."
 2. In the second paragraph of the Note, delete, "Interest only payable monthly commencing on the first day of _____, 19__ and on the first day of each month thereafter to and including _____, 19__. (Such interest may be collected by HUD through offset against the undisbursed balance of the loan.) Thereafter," and continue the paragraph, "Commencing on the first day of ... "
- B. For the Capital Improvement Mortgage (or Deed of Trust), the Field Offices should modify and use the form of mortgage used in the Section 202 Program (HUD Form 2099 EH, dated 6-76). The existing, recorded Regulatory Agreement should be referenced and cited, rather than referencing a new Regulatory Agreement. All references to "Section 20211" should be changed to "Capital Improvement Loan Program," but since it might at some point in time (if the underlying first mortgage is prepaid) be necessary to collect and escrow funds for taxes, etc., these provisions of the Section 202 mortgage should remain intact.

In the mortgage add: "The following agreement(s) is (are) incorporated by reference herein and made a part hereof:

- "a. Financial Assistance Contract dated _____ between the Secretary of HUD and ____ (the mortgagor) _____; "
- "b. Deferred Recordation Agreement dated _____ between the Secretary of HUD and ____ the mortgagor _____. "
Use "b" only when the mortgage is not HUD-Held.
- "c. Use Agreement dated _____ between the Secretary of HUD and _____ (the mortgagor) _____.

PROCEDURES FOR PROJECTS WITH INSURED MORTGAGES: Field Offices are reminded that it is of the utmost importance in implementing this program that the Department does not trigger a premature mortgage assignment because of a Regulatory Agreement or mortgage prohibition against placing liens against a project without the approval of the mortgagee. When a mortgagor is an applicant for a Capital Improvement Loan, the Loan Management Branch Chief shall first obtain the agreement of the mortgagor to execute a Capital Improvement Note and Capital Improvement Mortgage for the loan amount. After the mortgagor agrees to sign these documents, the LM Branch Chief should seek the written permission of the first mortgagee, i.e., holding mortgagee, to record the mortgage. If this permission is not granted, the Loan Management Branch Chief should proceed with the mortgagor's execution of the Capital Improvement Note, Capital Improvement Mortgage, and Deferred Recordation Agreement.

The Loan Management Branch Chief is responsible for making the initial contact with mortgagees to request permission for recording the documents that collateralize the Capital Improvement Loan. The Capital Improvement Mortgage must not be recorded without the express written permission of the first mortgagee, i.e., holding mortgagee.

PROCEDURES FOR PROJECTS WITH HUD-HELD MORTGAGES: Projects with HUD-Held mortgages do not require the use of the Deferred Recordation Agreement since HUD is the mortgagee. Applicants for Capital Improvement Loans are to be asked to sign the Capital Improvement Note and Capital Improvement Mortgage as described in the procedures for insured mortgages.

ADMINISTRATIVE COSTS: Fees associated with recording the Capital Improvement Mortgage will be computed based upon data obtained from the Housing Development Division of the Field office. Costs for recording the Mortgage, costs of necessary title opinions, and any other costs required in this process will be added to the principal of the previously determined Capital Improvement Loan. These additions to the principal are not subject to the Capital Improvement Loan Program matching formula.
