

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

45 the documents required to be submitted with such a request. If the Borrower is a non-profit  
46 entity, the Request must be accompanied by a resolution of the governing body of the entity  
47 authorizing the Request and confirming the certifications made by the Borrower therein.  
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49 3. Approval of Requests. The Underwriter shall consider such Request and shall approve such  
50 Request if (a) the Borrower shall have complied with applicable HUD requirements as set  
51 forth in the Request Form and this Appendix 10.1, and (b) if the approval is to be granted  
52 prior to issuance of a HUD firm commitment, (i) the environmental review (HEROS—~~Form~~  
53 ~~HUD-4128~~) shall have been signed by HUD, and (ii) the Borrower shall have shown Good  
54 Cause for commencing construction prior to Initial Closing.  
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56 4. Certification of Borrower. Approval of the Request will be subject to the Borrower  
57 certifying that:  
58

- 59 a. there is Good Cause for requesting permission to commence construction prior to  
60 Initial Closing (Such Good Cause shall have been described in detail and documented  
61 to the Underwriter's satisfaction);
- 62 b. the work to be performed pursuant to the Request shall be limited as set forth in this  
63 document;
- 64 c. the Borrower has arranged for independent financing of the work to be performed  
65 pursuant to the Request;
- 66 d. the Borrower acknowledges and agrees that approval of the Request by HUD (i) does  
67 not constitute a commitment by HUD to insure a mortgage on the project, nor create  
68 any obligation on HUD to issue such a commitment, nor create any obligation to  
69 approve a mortgage insurance application and (ii) does not in any way obligate HUD  
70 to insure a mortgage with respect to the project;
- 71 e. the Borrower acknowledges and agrees that concurrence in the Request by the Lender  
72 (i) does not constitute a commitment by the Lender to make a mortgage loan with  
73 respect to the project and (ii) does not constitute any representation, warranty or other  
74 assurance by the Lender that HUD will insure a mortgage with respect to the project;  
75 and
- 76 f. the Borrower waives and releases any and all claims that borrower may have against  
77 HUD and/or the Lender with respect to any losses, damages, costs and/or expenses  
78 incurred in connection with any construction undertaken prior to Initial Closing.  
79

80 5. Certain Requirements; Limitations on Performance of Work.  
81

- 82 a. The work may not begin until HUD approves the Request. The work must (i) meet  
83 all requirements and guidelines as if it were approved for mortgage insurance and (ii)  
84 comply with all state and local requirements, including a permit for the construction  
85 work requested for an early start approval.
- 86 b. The work may be eligible to be financed with insured mortgage proceeds if the  
87 mortgage insurance application is approved, a HUD firm commitment is issued, and  
88 the mortgage is initially endorsed for mortgage insurance by HUD.
- 89 c. For Early Start Projects only, the work performed prior to issuance of a HUD ~~firm~~  
90 ~~commitment~~Firm Commitment shall be limited to Site and Foundation Work. ORCF

91 may approve the performance of additional work prior to issuance of a HUD firm  
92 commitment upon a showing of urgent and compelling circumstances, subject to such  
93 conditions as ORCF may specify.  
94

- 95 6. Inspection Fee Payments. The Borrower shall make non-refundable inspection fee payments  
96 to HUD in accordance with the Request Form.  
97
- 98 7. No express or implied intent. Approval of any Request shall in no way be construed as  
99 indicating any intent, express or implied, on the part of HUD to approve, disapprove, or  
100 make any undertaking or promise whatsoever with respect to the application for mortgage  
101 insurance or with respect to any commitment for mortgage insurance. Any work performed  
102 prior to Initial Closing or prior to issuance of a Firm Commitment shall be undertaken at the  
103 sole risk and responsibility of the Borrower.  
104
- 105 8. The Lender shall obtain an FHA Project number prior to requesting Early Start of  
106 Construction.  
107
- 108 9. One paper copy of the Early Start documents (as detailed in the Early Start of Construction  
109 Checklist), an electronic version of the documents, and the inspection fee check will be  
110 submitted to ORCF.  
111
- 112 10. The Construction Contract may need to be revised via a rider to address the fact that  
113 construction is beginning prior to Initial Closing (particularly the portion related to liquidated  
114 damages). Moreover, the Contract may need to be revised prior to Initial Closing, if  
115 necessary.  
116
- 117 11. The Lender will be responsible for conducting a ~~Pre-construction~~PreConstruction Conference  
118 prior to start of construction. See Production, Chapter 10 and sample available on the  
119 Section 232 Program website.  
120
- 121 12. HUD will require only one ~~Pre-construction~~PreConstruction Conference. If plans and  
122 specifications are complete at the time of Early Start, they will be signed in accordance with  
123 Production, Chapter 10.3. If plans and specifications are not complete at the time of Early  
124 Start, they will be required to be signed prior to Initial Closing. In the latter situation, ~~HUD~~  
125 will notify the Lender ~~regarding the need for~~shall be responsible to ensure HUD receives  
126 approved plans and specifications prior to Initial Closing.  
127
- 128 13. At Initial Closing, a release of liens must be provided by the Contractor and each  
129 subcontractor who performs work on the project, prior to recording the insured mortgage.  
130 No additional exceptions are permitted in the mortgage title policy due to the early start.