

How to Lasso a 241(a) and Wrangle with LIHTC



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Eligibility

- Secondary/supplemental financing for improvements or additions with a HUD-insured first mortgage

ALLOWABLE

- Loan proceeds can be used for any level of repairs on existing units
- Financing the construction of additional units or expansion of the footprint of the existing building so long as the number of new units is less than or equal to the existing building.
- New units/expanded footprint can extend to adjacent/contiguous parcel of land outside of the existing HUD parcel. Non-contiguous would be reviewed on case-by-case basis.

NOT ALLOWED

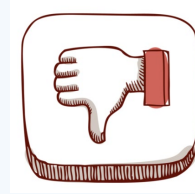
- 241(a) loan proceeds cannot be used to finance Deferred Developer Fee carried over from a previous LIHTC transaction.
- Cash out
- BSPRA/SPRA not allowed; Builder's Profit should be recognized regardless of IOI
- IOI acquisition costs are non-mortgageable for the LIHTC transaction



Pros and Cons



- Davis Bacon Requirements tie back to SoA of first mortgage
 - Example: if underlying first mortgage is a 223(f), then 241(a) trade costs would not be subject Davis Bacon regardless of scope of work
- First Mortgage + Supplemental 241(a) loan can be refinanced into a single 223(a)(7).
- Allows retention of interest rate on existing FHA loan while improving or expanding existing collateral.
- Additional flexibility for waivers of Working Capital and Operating Deficit Escrows



- Interest rates typically 0.25% - 0.50% higher than d4 rates.
- Market rate MIP is 0.95%
- HUD supplemental loan can't be utilized for cash out.
- Coordination with separate, first mortgage lender can be a headache.

Due Diligence – Third Party Reports (Env/Eng)

PCNA

- Needs assessment will be completed for entire property (including first mortgaged property)
- Critical and Non-Critical Repairs for first mortgage should be included in the scope of work

Arch & Cost Review

- Type of reporting depends on the level of repairs
- MAP Guide 5.11 details requirements for proposals that consider New Construction or Sub Rehab level of repairs
- Modified AEC review may be required for SOW that is less than 221(d)(4) threshold
 - Consistent with “Heavy F” requirements

Environmental

- Similar to that which is engaged on a 221(d)(4)

ACM/LBP

- May be required depending on nature of testing done for first mortgage.
- Likely required for “sub rehab” type proposals if 223(f) did not include renovations



Due Diligence – Third Party Reports

Appraisal

- Similar to 221(d)(4) program, a 241(a) appraisal will establish underwritten rents and expenses for proposed units + land value.
- Underwritten “value” is based on cost of improvements, not post construction value of asset.

Market Study

- MAP Guide doesn't explicitly require for 241(a)
- Underwriter should consider nature of transaction and if we are able to provide necessary support for demand in the absence of a separate market study. A separate market study may be appropriate for certain proposals (ie addition of significant number of units).



Due Diligence – Firm Application

- Application requirements are similar to the 221(d)(4) or 223(f) program depending on the level of repairs proposed in the 241(a).
- Mortgage Credit requirements should be consistent with standard applications
- Management Agent documentation not required unless a change is proposed or if the management agent's operations have materially changed in a negative manner since the first mortgage was approved.



Tiber Hudson

950+
Transactions Closed

\$19.5B+
Bonds Issued

125,000+
Affordable Units Financed

45
States

Includes D.C., National Issuer and Puerto Rico

#1 Underwriter's Counsel (Affordable Housing)
in the U.S. Based on Number of Multi-Family Issues
2018, 2019, 2020, 2021, 2022

#1 Bond Purchaser's Counsel (Affordable Housing)
in the U.S. Based on Number of Multi-Family Issues
2018, 2019, 2020, 2021, 2022

#2 Underwriter's Counsel (Overall)
in the U.S. Based on Number of Total Bond Issues
2022



FHA Programs & Short-Term Cash-Backed Execution



Short Term Cash-Backed Bonds with Taxable Perm Loan

Taxable construction and/or perm loans still available in the current market at competitive rates including:

- FHA/GNMA (221(d)(4) / 223(f))
- Rural Development (538 / 515)
- Fannie loans (mod/light in-place rehab)
- Other (taxable) State and/or Local loan programs



Short Term Cash-Backed Bonds with FHA Credit Enhancement

Favorable Underwriting Terms for FHA loans (223f/221d4) include:

- 35/40-year full term / amortization
- No resizing at conversion
- Non-recourse & integrated construction and perm
- Taxable mortgage loan is funded as needed for sub rehab / new construction deals
- FHA debt qualifies for 10-year hold exemption (for acquisition credits)
- Competitive rates still available
- Davis Bacon wages triggered for sub rehab / new construction deals

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Bond Executions with FHA Credit Enhancement

4% Low Income Housing Tax Credits: The 50% Test

- Project still need tax exempt bonds to qualify for 4% Low Income Housing Tax Credits
- At least 50% of aggregate basis (including building and land) must be financed with tax exempt bond proceeds
- Provides a significant (~30% or higher) additional source of funds for affordable housing transactions
- Can be used independently or with other “longer term” bond structures to meet 50% test

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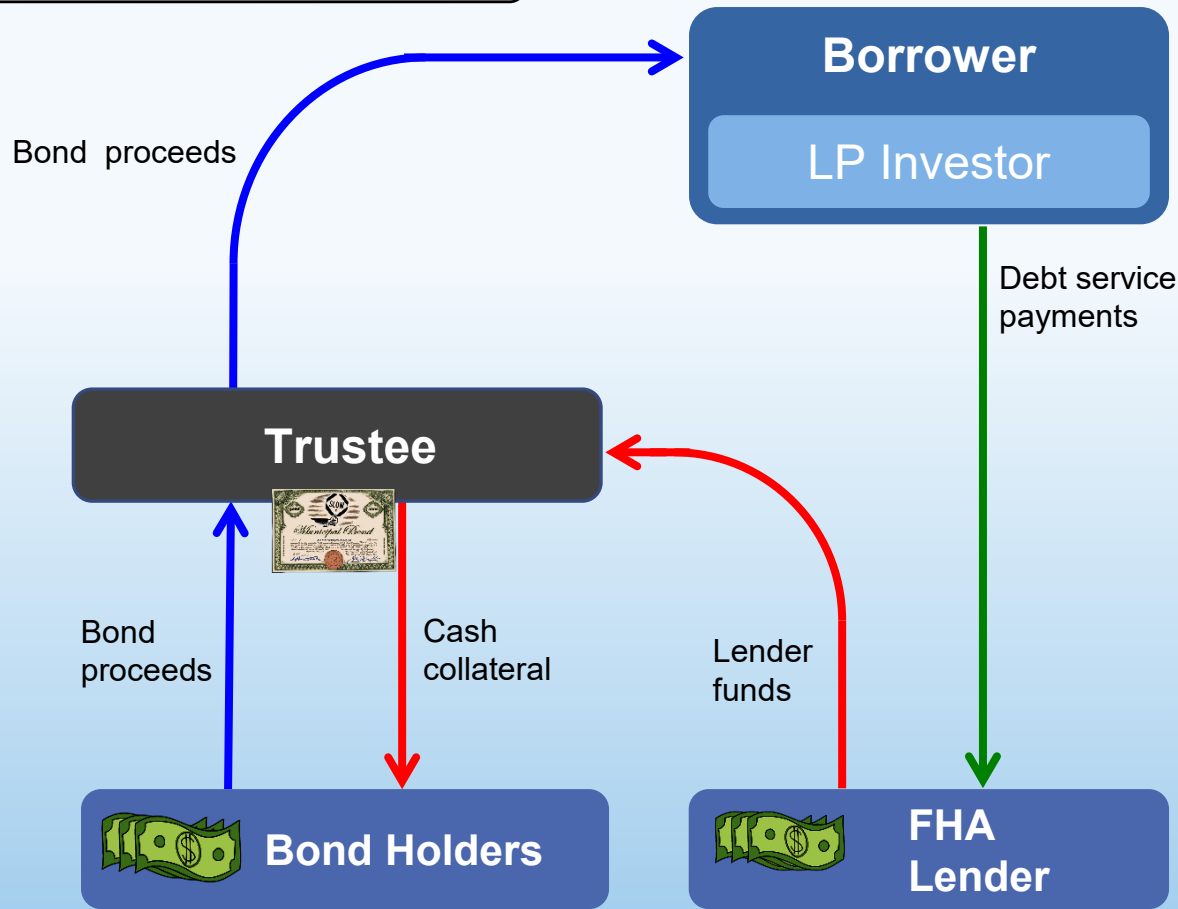
| 202-973-0107

| kent@tiberhudson.com



Short Term Cash Backed Bonds – 223(f)

Upon Placed In Service



Short Term Cash-Backed Bonds

Bond Amount to meet 50% test < Taxable Loan Amount

No additional collateral needed!

Bond Amount to meet 50% test > Taxable Loan Amount

Need other collateral sources of funds including:

- Subordinate Loan Proceeds
- Seller Note
- Tax Credit Equity Bridge



Other Cost Saving Features/Options

Methods to reduce transaction costs and generate more proceeds:

- Pooled financings – multiple projects w/ one aggregate bond issuance
- No long-term bond related fees
- Several investment strategies by Tiber Hudson have helped to mitigate negative arbitrage

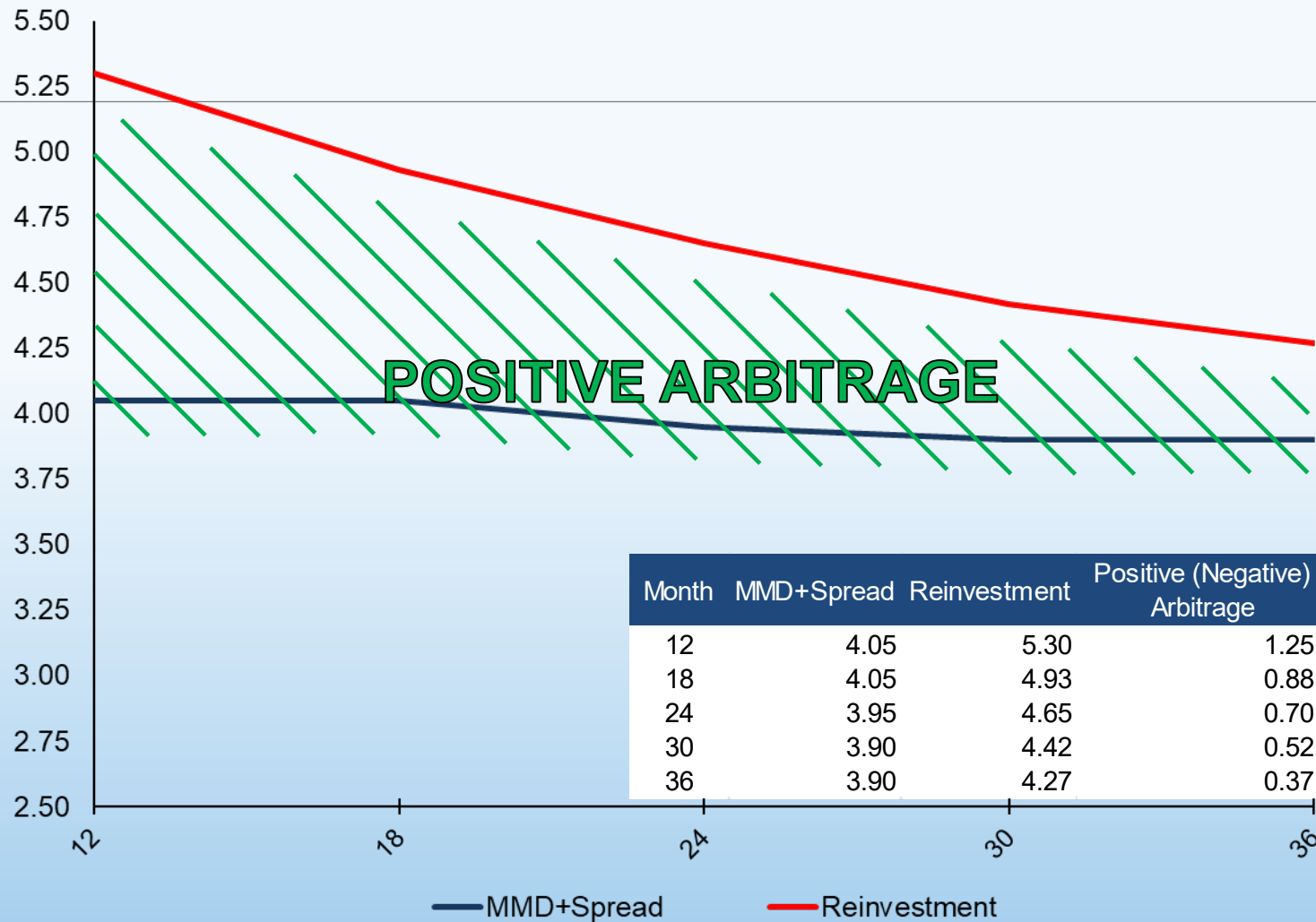


Potential Structure Benefits

- Subject to approval by the developer's accounting firm, bond interest can often be included in basis in addition to construction loan interest.
- Subject to bond counsel approval, a portion of tax-exempt debt can be recharacterized as a long-term tax-exempt seller note, which can often allow for the retention of excess earnings



Short-Term Rates vs. Reinvestment Rates – 12 to 36 Months



Source: Bloomberg, Thomson Reuters
 Reflects market conditions as of July 14, 2023
 Thomson Reuters Municipal Market Data (MMD) AAA curve is a proprietary yield curve that provides the offer-side of AAA rated state general obligation bonds



FHA Refinancing to Re-syndication (R2R)



FHA Refinancing to Re-syndication (R2R)

Goals:

- 1) Lock in today's rates for future tax credit deals and/or
- 2) Qualify for exemption for 10-year hold rule (for acquisition credits)

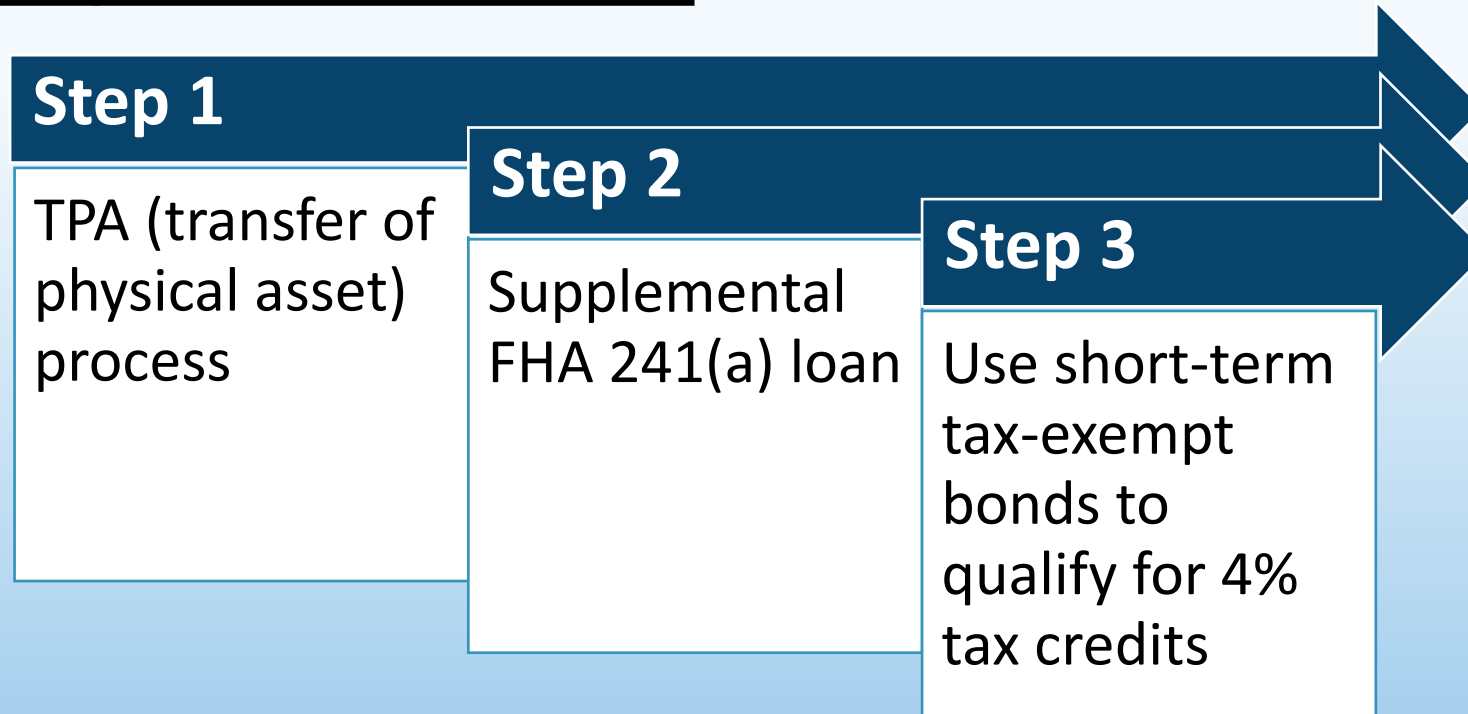


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FHA Refinancing to Re-syndication (R2R)

- **NEW LOAN:** FHA 223(f) loan to refinance existing debt or purchase project. Keep rehab to a minimum. (We can structure the note for future prepayment flexibility)

When ready for Bonds/4% Credits:



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FHA Refinancing to Re-syndication (R2R)

Step 1: TPA (Transfer of Physical Asset) Process

- Highlights of TPA
 - Take 90-120 days
 - Remaining term of FHA loan would be 30+ years
 - No prepayment fees or substantial transfer fees
 - Cost is 5bps to HUD and any charge the lender wants to impose for any help they give

FHA Refinancing to Re-syndication (R2R)

Step 2: Supplemental FHA 241(a) Loan

- Highlights of 241(a):
 - Second position FHA loan sized to the lower of:
 - (a) 90% of rehabilitation and related construction costs, or
 - (b) 1.11 DSCR for total FHA debt
 - Is a construction loan program (similar to 221(d)(4)) and not limited to 223(f) pilot rehab limits
 - Loan term/amortization can be up to 40 years although default is for it to match the remaining term on the senior FHA loan
 - Possible exemption of Davis-Bacon wage requirements

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FHA Refinancing to Re-syndication (R2R)

Step 3: Use tax exempt bonds to qualify for 4% tax credits.

- Highlights of Bonds/4% Credits
 - Need to pass 50% test to qualify for 4% low-income housing tax credits
 - 95% Bonds need to be spent on “good” costs of project
 - Flexibility structured into original 223(f) loan to account for potential sizing issues

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FHA Refinancing to Resyndication (R2R)

- Compare:

241(a) Supplement	Amount	Rate	Amort Term	Annual Pmt	Tax Credit Year
Existing 223(f)	\$7,000,000	4.86%	30 years	\$445,000	10
New 241(a)	\$3,000,000	5.50%	30 years	\$205,000	15
Net Proceeds:	\$10,000,000			\$650,000	

vs.

223(f) Refinance	Amount	Rate	Amort Term	Annual Pmt	Tax Credit Year
New 223(f)	\$10,500,000	5.50%	40 years	\$650,000	15
Prepay Costs:	(\$500,000)				
Net Proceeds:	\$10,000,000				

- If existing 223(f) rate is **above** 4.86%, higher Net Proceeds under 223(f) Refinance.
- If existing 223(f) rate is **below** 4.86%, higher Net Proceeds under 241(a) Supplemental

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Section
207/223(f) TPA
With Section
241(a)
Construction
Loan

Renovation with
Re-Syndication of
Existing Multifamily
Project

2023 WMAC -
September 19,
2023



Key Points:

- TPA and 241(a) are SEPARATE transactions – IG Audit
- Document overlap between TPA and 241(a) Firm App:
 - Purchaser Financial Statements/Credit Reports
 - Purchaser/Management Agent (APPS/2530s)
 - PCNA
 - MIO Plan
 - Management Agent Docs (9832; 9839)
 - Purchaser/Borrower Org Docs
 - Title / Deed
 - Rental Schedule (92458)
 - Borrower's Oath; Byrd Certification



Key Points, cont:

- 241(a) is basically same as 221(d)(4), with few differences:
 - “Supplemental” Loan Documents – definitions; subordinate to “Senior/First” loan documents
 - Maturity – generally set to same date as underlying Senior/First loan (but see MAP Guide Section 3.6.2)
 - Cross-Default – default under Senior/First loan is default under Supplemental loan
 - Davis-Bacon – only applies if Senior/First loan required Davis-Bacon (i.e., no prevailing wages required by HUD if Senior/First is 207/223(f))
 - Modifications to First Loan Documents – reference new Supplemental loan, address priorities, etc.

Key Points, cont:

- Lender consent to subordinate financing
- CANNOT use proceeds to fund acquisition UNLESS new land is being added to the project
- 10% Borrower Equity must be available at initial closing
- Applicable HUD Guidance –
 - TPA – HUD Handbook 4350.1 REV-1, Chapter 13; HUD Mortgagee Letter 99-13
 - Section 241
 - 18 USC § 1715z(6)
 - MAP Guide (Rev. March 19, 2021), Sections 3.6, 5.11, and 19.6.3



Full TPA Checklist (HUD Handbook 4350.1 REV-I, Chapter 13; modified by Housing Notice 99-13)

1. TPA Application (HUD-92266)
2. Consent of Mortgagee
3. TPA Fee
4. Purchaser Letter
5. Previous Participation (2530/APPS)
6. Purchaser Resume
- 7. Purchaser Financial Statement**
- 8. Credit Reports**
9. Sources and Uses
10. Purchase Contract
11. Seller Affidavit
12. Project Interim Financial Statements
13. Pro Forma Balance Sheet
14. Mortgagee Statement of Principal, Escrow, Reserve Balances
- 15. PCNA**



Full TPA Checklist cont. (HUD Handbook 4350.1 REV-I, Chapter 13; modified by Housing Notice 99-13)

16. MIO Plan
17. **Management Agent Docs (9839, 9832,2530/APPS)**
18. Release Assumption and Modification
19. Regulatory Agreement
20. Subordinate Financing Documents
21. **Vesting Deed**
22. Bill of Sale / Assignment
23. **Title Policy / Title Endorsement**
24. **Borrower's Oath**
25. **Rental Schedule (92458, if applicable)**
26. **Purchase Organizational Documents**
27. Attorney Certification
28. **Byrd Amendment Certification**
29. Allonge (if applicable)



Section 241(a) Closing Checklist

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Initial Closing Checklist – Sections 207, 220, and 221

(for use with 2020 MAP Guide) Modified with Section 241(a) Requirements

16. **Supplemental** Note – Revise form to change definitions to reference “Supplemental” Note and Security Instrument; insert cross-default with Senior/First Loan Documents (provided that default under Supplemental Loan Documents will not trigger default under Senior/First Loan Documents)
17. **Supplemental** Security Instrument – Revise form to change definitions to reference “Supplemental” and “Senior/First” Note and Security Instrument; insert cross-default with Senior/First Loan Documents (provided that default under Supplemental Loan Documents will not trigger default under Senior/First Loan Documents); provide for priority of Borrower obligations and Lender rights under Senior/First Loan Documents (Impounds, Insurance, Default, Remedies, etc.)
19. **Supplemental** Regulatory Agreement – Revise form to change definitions to reference “Supplemental” Note and Security Instrument; provide for priority of Borrower obligations and Lender rights under Senior/First Loan Documents (R4R, Default, Remedies, etc.)
22. Building Loan Agreement - Revise form to change definitions to reference “Supplemental” Note and Security Instrument; if applicable, delete provisions requiring compliance with Davis-Bacon prevailing wages
34. Construction Contract, Supplementary Conditions – if applicable, delete provisions requiring compliance with Davis-Bacon prevailing wages

Additional Docs - Modification to Existing HUD First Loan Documents

- a. First Lender Consent to Subordinate Loan Documents (MAP Guide Section 19.6.3.2A)
- b. Release Assumption Modification (TPA)
- c. UCC-3 Amendments / New UCC-1s (TPA)
- d. Second Modification Agreement – Amend Senior/First Loan Documents to acknowledge Supplemental Loan Documents, address priorities, etc.
- e. Title Endorsements / Replacement Title Policy
- f. HUD Preliminary TPA Approval



Application for Insurance of Advance of Mortgage Proceeds

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0097
(exp. 2/29/2020)

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The form is used by mortgagors for funds expended or obligated for construction related items; by mortgagees to request mortgage insurance for funds so advanced. The information will be used by the Department to as its certificate of mortgage insurance for funds it approves for advance. This is a requirement under Section 207, 213, 220, 221, 231, 232, 234(d), 236, 241, 242 and 810 of the National Housing Act, P.L. 479 48 Stat. 1246 U.S.C. et. seq. Furnishing of this information is required to obtain benefits, and failure to provide it may result in your not receiving your benefits.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et. seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Name of Project [REDACTED]	Project Number [REDACTED]	Advance Number Initial
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Request for Payment

Instructions to Mortgagor: This request is to be submitted to your mortgagee in triplicate. All items requested shall be clearly identified by description. No item shall be applied for until payment is due. A request covering construction cost shall show one entry for the total payment requested to meet the net amount due according to the Contractor's Requisition (form HUD-92448) attached hereto. The request for the first payment on account of the Architect's cash fee shall be accompanied by the Mortgagor's and Architect's Certificate (form HUD-92403.1) attached hereto.

To Mortgagee: The undersigned mortgagor hereby requests the mortgagee identified below to advance funds as provided for by the Building Loan Agreement heretofore executed on (mm/dd/yyyy) __, [REDACTED], as indicated by the total amount of the individual payments set forth in the schedule below.

Item Number and Description	(A) Amount Claimed	(B) HUD-Approved Amt.
1. Construction cost per form HUD-92448	\$	\$
2. Interest from (mm/dd/yyyy) () to (mm/dd/yyyy) ()		
3. Architect's Fee	124,960.00	\$124,960.00 (RS)
4. Bond Premium	88,090.00	\$88,090.00 (RS)
5. Mortgagor's Other Fees	96,649.42	\$96,649.42 (RS)
6. FHA Mortgage Insurance Premium	11,175.50	\$11,175.50 (RS)
7. FHA Exam Fee	13,410.60	\$13,410.60 (RS)
8. FHA Inspection Fee	57,474.53	\$57,474.53 (RS)
9. Lender Financing Fees	44,702.00	\$44,702.00 (RS)
10. Lender Placement Fees	191,040.00	\$191,040.00 (RS)
11. Title and Recording	472,715.50	\$472,715.50 (RS)
12. Legal Fees	320,959.50	\$320,959.50 (RS)
13. Organizational Fees	62,303.80	\$62,303.80 (RS)
14. LIRTC Developer Fee	630,757.00	\$630,757.00 (RS)
15.		
Total Due on This Requisition	\$ 2,114,237.85	\$2,114,237.85 (RS)

The undersigned hereby certifies that all of the above items have been paid or will be paid within five (5) days of receipt of the requisitioned funds. We hand you herewith full supporting invoices and/or receipts, as required, covering such items enumerated, to be forwarded with this request to HUD for review. With respect to any item of interest enumerated above, we herewith authorize you to advance same and charge our account therewith. The undersigned further certifies that all prior work, labor, and materials to be paid for under this request are satisfactory and are in accordance with the contract drawings.

Name of Mortgagor [REDACTED]	By: Signature of Authorized Mortgagor Official [REDACTED]	Date (mm/dd/yyyy) [REDACTED]
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For Use by Mortgagee

Instructions: This request is to be submitted to HUD in triplicate (original and all copies must be signed).

To HUD: To the best of our knowledge, information and belief, the sum requested above is now payable. We intend to disburse said sum within five (5) days following the date of your approval. \$ 2,114,237.85 will be advanced from mortgage proceeds; and the undersigned, therefore, requests that you issue a certificate approving the amount of such advance for mortgage insurance. The undersigned certifies that hazard insurance as required by the Department of Housing and Urban Development is in full force and effect upon whatever improvements are now upon the mortgage premises including, but not limited to, materials stored on the site for which an advance is being requested. You are further advised that after the payment herein first mentioned is made, a total sum of \$ 2,114,237.85 will have been disbursed from mortgage proceeds and that the total sum of \$ 0.00 will have been disbursed from the mortgagor's cash escrow funds required, if any, over mortgage proceeds to complete the project.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name and Address of Mortgagee [REDACTED]	By: Signature of Authorized Mortgage Official [REDACTED]	Date (mm/dd/yyyy) [REDACTED]
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Certificate of Mortgage Insurance

For Use by HUD

To Above Mortgagee: You are hereby notified that the amounts shown in Column (B) above have been approved for advance in accordance with the provisions of the Building Loan Agreement applicable to the project. Of the above total, \$ 2,114,237.85 is hereby approved for mortgage insurance if advanced by you from mortgage proceeds in accordance with the above request, and this amount, when advanced, will thereupon constitute principal of that certain mortgage dated (mm/dd/yyyy) _____; signed by the above named mortgagor and covering the subject project, which mortgage has been endorsed by the undersigned for insurance to the extent of advances approved by the Federal Housing Commissioner and this certificate does hereby constitute the approval of the Federal Housing Commissioner for mortgage insurance under Section 241(a) of the National Housing Act and Regulations thereunder for the amount set forth herein, within the meaning of the aforesaid contract of insurance evidenced by such endorsement; provided, that if the above advance constitutes the final advance to be made under the terms of said Building Loan Agreement, this advance shall not be considered insured nor shall the original credit instrument be finally endorsed for insurance unless said instrument is first presented to HUD together with an original and two (2) conformed copies of a Request for Final Endorsement of Credit Instrument (form HUD-92023) completed and executed by both Mortgagor and Mortgagee, and if there are any items of construction still incomplete, as per attached list, the sum of \$ 0.00 shall have been placed in escrow under the provisions of an Escrow Deposit Agreement (form HUD-2456).

Explanation of Disallowed Amounts: (Attach additional sheets if required.)

Mortgage Credit Examiner [REDACTED]	By: Signature of Authorized HUD Official [REDACTED]	Date (mm/dd/yyyy)
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Section 241(a) – 12 U.S.C. § 1715z(6)(a)

- Supplemental Loans for Multifamily Projects

(a) Authorization to insure; “supplemental loan” defined

With respect to a multifamily project, hospital, or group practice facility covered by a mortgage insured under any section or subchapter of this chapter or covered by a mortgage held by the Secretary, the Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure, and to insure, supplemental loans (including advances during construction or improvement) made by financial institutions approved by the Secretary. As used in this section, “supplemental loan” means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made **for the purpose of financing improvements or additions to such project**, hospital, or facility: Provided, That a loan involving a nursing home, hospital, or a group practice facility may also be made for the purpose of financing equipment to be used in the operation of such nursing home, hospital, or facility.



Section 241(a) – 12 U.S.C. § 1715z(6)(b)

(b) Eligibility for insurance

To be eligible for insurance under this section, a supplemental loan shall—

(1) be limited to 90 per centum of the amount which the Secretary estimates will be the value of such improvements, additions, and equipment, except that such amount when added to the outstanding balance of the mortgage covering the project or facility, shall not exceed the maximum mortgage amount insurable under the section or subchapter pursuant to which the mortgage covering such project or facility is insured or an amount acceptable to the Secretary;

(2) have a maturity satisfactory to the Secretary;

(3) bear interest at such rate as may be agreed upon by the borrower and the financial institution;

(4) be secured in such manner as the Secretary may require;

(5) be governed by the labor standards provisions of section 1715c of this title that are applicable to the section or subchapter pursuant to which the mortgage covering the project or facility is insured or pursuant to which the original mortgage covering the project or facility was insured;
and

(6) contain such other terms, conditions, and restrictions as the Secretary may prescribe.



MAP Guide (Rev. March 19, 2021) – Section 3.6

3.6 Section 241(a) Mortgage Insurance for Supplemental Loans

3.6.1 Eligibility

A. Section 241(a) is now a MAP-eligible program. It provides secondary financing for improvements or additions to properties with a HUD-insured first mortgage that need repairs, substantial rehabilitation, or additional units. Deferred Developer fees carried over from a LIHTC transaction are considered ineligible costs under the 241(a) loan program.

1. Projects with HUD-held debt (as opposed to FHA-insured), or Risk Share financing are not eligible to apply for Section 241(a) loans.
2. Improvements consisting of repairs, alterations, or additions to, or substantial rehabilitation of existing structures may be financed with a Supplemental Loan.
3. Construction of additional units, or expansion of the footprint of the existing building, is allowed, so long as the number of units in the new addition is equal to or less than the existing building. Such work may be completed on the existing parcel secured by the first mortgage, or a contiguous or nearby parcel acquired and included in an amendment to the existing first mortgage security documents.
4. A cross-default provision should be placed in the Section 241(a) mortgage loan documents such that a default under a “prior recorded insured mortgage” will trigger a default under the Section 241(a) mortgage. However, a default under the Section 241(a) loan should not trigger a default under the first mortgage.



MAP Guide (Rev. March 19, 2021) – Section 3.6 cont.

3.6.2 Term

A. The Section 241(a) loan generally should be coterminous with the underlying FHA-insured first mortgage if that loan has more than 25 years remaining on its term. If less than 25 years remain on the term of the first mortgage, HUD will consider an amortization period of up to 40 years regardless of the underlying first mortgage's amortization period so long as the term is no greater than 75% of the project's remaining economic life. Notwithstanding the above, the Regional office has discretion to grant a waiver to permit the second mortgage term to exceed the term of the first mortgage loan in the event that the increase in term will reduce overall risk to the transaction and will otherwise meet program obligations.

3.6.3 Equity Requirement and Controlling Mortgage Criteria

A. The owner is required to contribute at least 10% of the total development cost of the transaction. Existing RfR deposits in excess of the Initial Deposit requirement concluded in the CNA and underwriting may be used to meet the equity requirement. Similarly, land equity from adjacent or nearby parcels added and incorporated into the existing first mortgage security and additional cash contributions can be used to meet the 10% equity contribution requirement. Residual Receipt account funds (e.g., from surplus Section 8 funding) cannot be used to meet equity requirements. Imputed equity representing the difference between the "as is" value of the project and the existing indebtedness is not available to meet the equity requirements. HUD forms HUD-92264 and HUD-92264-A should recognize only the cost of the addition or improvements but, should include all (i.e. the existing and proposed) NOI in Criterion 5 of form HUD-92264-A. A supplemental analysis comparing the historical and proposed NOI should be included as an attachment to the form HUD-92264.



MAP Guide (Rev. March 19, 2021) – Section 3.6 cont.

3.6.3.1 Criterion 3–Loan to Value/Cost

A. A Section 241(a) supplemental loan is limited by statute to 90% of the HUD-estimated value of the improvements, additions, or equipment, regardless of the Section of the Act insuring the underlying first mortgage. The cost of the repairs and transaction costs (including the acquisition price of an adjacent or nearby land parcel) will be recognized as the value, as long as any additional land purchased or contributed is no more than the fair market value. Regardless of the Section of the Act of the underlying first mortgage, neither BSPRA nor SPRA may be recognized. The cost of the transaction can and should include builder's profit (regardless of whether there is an Identity of interest.)

3.6.3.2 Criterion 4–Statutory Limits

A. The Supplemental Loan, when added to the outstanding balance of the mortgage covering the project or facility, may not exceed the maximum statutory limitation applicable to the building and unit type for the Section of the Act under which the existing first mortgage is insured.

3.6.3.3 Criterion 5–Debt Service Coverage Ratio (DSCR)

A. The maximum loan amount under this criterion is limited by debt service (i.e., combined supplemental and first mortgage payments) supported by 90% of projected NOI, a combined DSCR of 111%.



MAP Guide (Rev. March 19, 2021) – Section 3.6 cont.

3.6.4 CNAs, Plans and Cost Estimates

- A. A CNA is required for the entire property, including both existing units and any proposed addition. The portion of the property already existing and not proposed for substantial rehabilitation should be evaluated in the same manner as for existing buildings in a refinance application to identify and define any existing critical or non-critical repair needs as well as future needs. These identified critical and non-critical repairs should be included in the loan amount and the approved construction scope of work. Such repairs should be documented with plans and specifications consistent with the applicable classification of work as described in Chapter 5. (See Chapter 5, Section 5.11 for architectural review of Section 241(a) loans.)
- B. If the proposed construction includes substantial rehabilitation of the existing property or a portion thereof, then for that portion of the property, the CNA will only identify future needs.
- C. Similarly, for any portion of the property that is an addition, the CNA will only identify future needs. Future needs for any substantial rehabilitation portion of the property and additions are based on proposed drawings and specifications, while future needs for other portions of the property are based on inspected conditions. The cost of all future capital needs is used to size the RfR escrow.
- D. Plans, Specifications, and Architecture and Cost Analysis reports for portions of the property that are substantial rehabilitation or additions must be completed consistent with requirements for Section 221(d)(4) or other new construction or substantial rehabilitation loan programs as described in Chapter 5, Section 5.11.
- E. The Section 241(a) loan combined with the original first mortgage shall be considered one project and the CNA must produce one RfR schedule and budget for future capital needs inclusive of the existing improvements as well as any proposed substantial rehabilitation or addition.



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3.6.5 Davis-Bacon Act Applicability

A. (See Section 3.2.6 for Davis-Bacon Wage applicability.) (See Chapter 19 for closing guidance.)

3.6.6 Insurance of Advances or Insurance upon Completion

A. For Section 241(a) mortgage insurance for Supplemental loans, either the insurance of advances or the Insurance upon completion approach is acceptable. Construction advances for any Supplemental Loan may be insured; the minimum amount of advance that may be insured is \$200,000. Mortgageable contingency and construction draw retainage are subject to the same requirements as other New Construction / Substantial Rehabilitation programs.

3.6.7 Environmental Review

A. A HEROS environmental review per the requirements of Chapter 9 is required for Section 241(a) loans. Chapter 9, Section 9.2 provides guidance in determining whether the correct level of review is Categorically Excluded, or Environmental Assessment is required.

3.6.8 Working Capital and Operating Deficit Reserves

A. The working capital and operating deficit reserves requirements are the same as those of the Section 221(d)(4) program. The Lender can recommend, and HUD may approve, waiving the requirements when appropriate on specific cases. A default under the first mortgage will constitute a default under the Section 241(a) loan.



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3.6.9 Management Exhibits

A. Management exhibits identified in Section 3 of the application exhibits are not required if the Management Agent's operations have not materially changed in a negative manner since approval of the HUD-insured first mortgage. If operations have materially, negatively changed, Management Agent documentation is required.

3.6.10 Multiple Lenders

A. A new Section 241(a) insured loan may be originated by the first FHA lienholder or a new Lender. The Lender processing the Section 241(a) FHA insured loan shall create one RfR Account incorporating both escrow account requirements into a single reserve account. If the holder of the first lien is not the same entity as the proposed secondary debt Lender (See Section 3.6.1.A.4), the two Lenders shall designate one as the depository holder of the CNA e-tool and the RfR accounts. This decision shall be determined before the Section 241(a) application is submitted to HUD. The designated Lender shall maintain the updated CNA e-tool report and RfR Account incorporating both loans. The processing 241(a) Lender must agree and certify to obtain an updated CNA e-tool report, funding for a new RfR Account, and other pertinent information required by the Section 241(a) insured loan. If different from the first lien holder, the Section 241(a) processing Lender shall submit the updated information to the first lien holder for review and approval based on HUD's program requirements. The designated Lender, if different than the Section 241(a) Lender, shall submit a written acceptance of the updated CNA report and RfR Account at the time of the insured Section 241(a) application submission. The designated Lender shall have the authority over all the RfR accounts and reimbursements and future requirements once Initial Endorsement has occurred and all other terms and conditions of the FHA Firm Commitment have been satisfied.



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- 3.6.11 MIP

A. Applicants for Section 241(a) mortgage insurance for Supplement loans may apply for reduced initial and annual MIP based on Green and Energy Efficient Housing qualifications. Both the existing improvements and the proposed improvements must be evaluated as one property for energy performance analysis and, as a whole, achieve the selected Green Certification. Upon qualification, the reduced initial and annual MIP will apply only to the secondary loan processed under Section 241(a) transaction. See Chapter 6 and particularly Chapter 6, Section 6.8.



MAP Guide (Rev. March 19, 2021) – Section 5.11

5.11 Processing Section 241(a) Supplemental Loans

5.11.1 Supplemental Loan for New Construction

A. Section 5.3.2 requirements and instructions apply to Section 241(a) applications involving new construction, except as modified below:

1. A CNA of the existing improvements at the property is required to identify deficiencies and repair needs as may exist in the existing improvements for which repairs and alterations must be included in the proposed scope of work. However, a single CNA e-Tool for the entire property must produce one RfR schedule of all the components, inclusive of future replacements at the existing improvements as well as for any proposed new structures and additions.

B. Processing requirements for new construction as described in Section 5.7 and Section 5.8 apply.

5.11.2 Supplemental Loan for Existing Structures

A. Section 241(a) applications involving substantial rehabilitation as defined in Section 5.1.2 are required to meet the following:

1. For the buildings and other structures undergoing substantial rehabilitation at the property, the requirements in Section 5.3.2 apply regarding required professional services, documentation, and oversight.

2. Processing requirements for substantial rehabilitation as described in Section 5.7, Section 5.8, and Section 5.9 apply.

3. When certain existing buildings and improvements are not included in the substantial rehabilitation scope of work, a CNA for those existing structures is required. Any identified deficiencies and immediate repair needs must be included in the plans and specs produced by the Project Architect for the substantial rehabilitation work.



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4. The structures to be built or substantially rehabilitated are included in the CNA based only on future needs planning, derived from plans and specs.

5. The Section 241(a) loan combined with the original first mortgage shall be considered one project and the CNA must produce one Reserve for Replacement (RfR) schedule and budget inclusive of the existing improvements, as well as the proposed improvements.

B. Section 241(a) applications involving repairs and alterations require the following:

1. Section 241(a) applications with a scope of work less than substantial rehabilitation must follow the requirements described in Section 5.3.3 and the following:

- a. The CNA should identify and categorize repair needs in the same manner as Section 223(f)
- b. applications.
- c. The identified repairs must be remedied in the proposed scope of work in the Section 241(a)
- d. application and the cost of such repairs may be included in the Section 241(a) loan amount.
- e. The Section 241(a) loan combined with the original first mortgage shall be considered one project
- f. and the CNA must produce one RfR schedule and budget inclusive of the existing improvements
- g. as well as the proposed improvements.
- h. Processing requirements for Section 223(f) as described in Section 5.10 apply.



MAP Guide (Rev. March 19, 2021) – Section 19.6.3

19.6.3 Section 241(a) Supplemental Loans

19.6.3.1 Introduction

- A. Section 241(a) of the NHA, 12 U.S.C. § 1715z-6(a), authorizes FHA-insurance of supplemental loans to finance project improvements, additions, and equipment. A Section 241(a) loan provides subordinate financing without altering the first-lien priority of the existing FHA-insured loan. See Chapter 3, Section 3.6 for additional details.
- B. Except as discussed in this Section, closing procedures are generally the same for loans insured pursuant to Section 241(a) as they are for Section 221(d)(4) closings. Some loan documents may not be applicable, depending upon the facts of the transaction. The RC Director will determine inapplicability of documents, if any, in consultation with the HUD Closing Attorney.



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19.6.3.2 Effect on Existing Financing

A. **First Lender’s Consent to Secondary Encumbrance.** The lender in any existing FHA-insured loan (First Lender) must provide written consent for the Borrower to obtain the supplemental loan, even when the First Lender is also the Lender of the supplemental loan. The consent must grant Borrower permission to further encumber the First Lender’s security with the subordinate loan (including the supplemental loan Security Instrument, UCC-1 Financing Statements, and HUD Regulatory Agreement) and any other new secondary financing (i.e., HOME funds, etc.).

B. **Consent of Existing Subordinate Lenders.** If any existing subordinate financing on the Project requires written consent from the subordinate Lender before Borrower may further encumber the Project, Lender’s Counsel must submit copies of such written consent evidencing the subordinate Lender’s authorization for the Borrower to obtain the 241(a) supplemental loan..

C. **Modification of Legal Description in Underlying First Loan Documents.** If the supplemental loan will finance construction on or acquisition of a separate parcel of land, the additional parcel(s) must be made part of the legal description for the land on the first loan. This addition of land requires modification of the first loan documents to expand the legal description wherever it appears, i.e., in the Security Instrument, Regulatory Agreement, UCC-1 Financing Statements (both county-recorded and state-filed), and Lender’s title policy (which itself must be modified both to reflect the modification of the existing loan and to revise the legal description). The same expanded legal description will be used for the supplemental loan.

Note: No change in the legal description is necessary if no new land is being added, e.g., adding floors to an existing building, expanding the existing building into an area already included under the first mortgage, or rehabilitation of existing units



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- 19.6.3.3 Additional Requirements for 241(a) Supplemental FHA Loans

A. GNMA Requirements. If the first loan was securitized through GNMA, Lender's Counsel must provide written assurance from the First Lender that it has complied with all GNMA requirements for the addition of the supplemental loan.

B. Davis-Bacon Requirements. Under NHA Section 241(b)(5), supplemental loans are subject to Davis-Bacon labor standards if: (a) the existing loan is FHA-insured and subject to Davis-Bacon labor standards (e.g., the first lien mortgage is currently insured as a 221(d)(4)), or (b) the existing loan is a HUD-held mortgage originally insured under a program that was subject to Davis-Bacon labor standards. Conversely, supplemental loans are not subject to Davis-Bacon labor standards if the existing loan is currently FHA-insured under a section of the act that is not subject to Davis-Bacon wage rates under Section 212 of the NHA (e.g., loans currently insured as 223(f)s or (a)(7)s).

C. Cross-Default Clause in Supplemental Loan Documents. The Firm Commitment will require a cross-default clause in the supplemental loan Note and Security Instrument providing that a default under the first lien mortgage is a default under the supplemental mortgage. See NHA 241(b)(6) and 24 CFR 241.555(a). Conversely, the supplemental loan is not cross-defaulted to the first lien mortgage.



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19.6.3.4 HUD Form Documents for 241(a) Supplemental Loans

A. Lender's Counsel is responsible for preparing the Section 241(a) closing documents to address the supplemental nature of the 241(a) Loan, including that the 241(a) Security Instrument will be subordinate to the lien of the existing FHA-insured loan. Modifications are necessary to remove certain references (i.e., the absence of other liens) to clarify that the supplemental loan does not violate the terms of HUD's form documents and to highlight that various rights of a subordinate Lender may be subject to the prior rights of a senior Lender (even when the two Lenders are the same), etc.

Note: The OGC Multifamily Mortgage Division will maintain a set of template documents for use in 241(a) transactions while HUD prepares the documents for OMB approval through the PRA process. Lender's Counsel may contact the MMD to obtain the current templates. Templates include the supplemental security instrument, Lender's certificate, note, building loan agreement, agreement and certification, and regulatory agreement. Once published with an OMB approval number, preparers should use the OMB-approved forms.

