

Instructions

Request for Determination of Eligibility as Nonprofit Sponsor and/or Mortgagee

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

OMB Approval No. 2502-0057
(exp. 12/31/2006)

General.

Section 221(d)(3), 231, 232, and 235 of the National Housing Act, as amended, Section 106(b) of the Housing and Urban Development Act of 1968, provided mortgage insurance of financing for nonprofit mortgagees. HUD regulations require that:

Nonprofit mortgagees and other nonprofit organizations participating in HUD programs shall be corporations or associations organized for purposes other than the making of a profit or gain for themselves or persons identified therewith and which the Commissioner finds are in no manner controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom.

The purpose of these instructions and form is to obtain the information necessary to enable HUD to make a determination, prior to issuance of a SAMA or Feasibility letter, that the sponsor of a mortgagee or the mortgagee itself, if the mortgagee has been created, is truly nonprofit in accordance with the definition above and demonstrates probable success in project development and continuing operation. This determination will prevent, insofar as possible, unnecessary outlay of funds for fees, plans, etc., by a sponsor or proposed mortgagee, who may be found ineligible. If found ineligible, the proposed sponsorship will not be eligible as a nonprofit mortgagee for project mortgage insurance. Determination of nonprofit eligibility requires a knowledge of the financial and credit capacity and the motivation of the sponsor and/or mortgagee, the relationship between the sponsor and mortgagee, and the relationship between the mortgagee or sponsor and the various parties or firms concerned with the project and mortgage transaction. There must be a full disclosure of all relationships and of all facts pertaining to each relationship.

Qualifications for Successful Sponsorship

Nonprofit sponsors must have demonstrated continuity, financial and credit capacity and a serious and long range desire to provide housing for elderly or low(er) income families and/or individuals. Churches, labor unions, and fraternal organizations are more likely to have well-established community and social service activity and experience than other types of sponsors. However, a nonprofit group could have been recently formed with a sufficiently broad base of community or neighborhood support so as to assure continuity and financial stability for successful operation of the proposed project.

Factors which suggest weakness include: (1) inadequate financial stability and resources, (2) improper attitude toward obligations, (3) no previous experience, (4) no established roots in the neighborhood in which the proposed project would be located, (5) evidence that a builder, landowner, consultant or other party expecting to directly and/or indirectly benefit financially has initiated the project and influences the sponsorship, (6) lack of assured continuity or support by the nonprofit group as a whole, (7) heavy commitments in other fields which would tax the financial capacity of the group and weaken its support of the proposed project, and (8) lack of professional expertise to develop, build and operate the project successfully. Some sponsors are clearly ineligible without considering factors of strength and weakness, such as a nonprofit foundation controlled by the builder or the builder's family, or by any other person or persons who would derive a profit or fee from the project.

A group with deep roots in the community or neighborhood will probably be stronger than a national or regional organization without established roots in the community. Moreover, such a locally-oriented sponsor is in a better position to have knowledge of the market for the project.

A nonprofit sponsor must be motivated not only by a desire to develop a good project, but also by a concern for the project's continuing successful operation and financial viability. The entire membership of the sponsoring organization, not just a few of its members, must be motivated.

Establishing Eligibility

In order to establish that a nonprofit sponsor is properly qualified to initiate, complete, and operate a housing project for elderly or low(er) income families or individuals HUD requires that:

1. The sponsor:
 - a. have the financial capacity not only to develop and build the project, but also have financial support which will remain with the project during the term of the mortgage;
 - b. is prepared by written resolution of its officers, directors or trustees to acknowledge the responsibilities and obligations of sponsorship and continuing ownership, and this position reflects the will of its members;
 - c. agrees that all pledges made for the investment requirement must be converted to cash prior to initial endorsement or initial closing;
 - d. has the necessary longevity to continue on through the full term of the mortgage.
2. The sponsor:
 - a. is reliable on the basis of its credit and community oriented reputation and performance or that of its principals. To determine reliability, consideration will be given to any previous experience the sponsor has had in providing housing or related social or community services;
 - b. fully understands the responsibilities and obligations, including financial, that attach to sponsorship of a project and its continuing successful operation;
 - c. either has within its own organization or has made arrangements to provide for the necessary management and other professional skills essential for the successful development, completion and long term operation of the proposed project. A knowledge of social services resources and principles of tenant participation is implicit in the effective management of such projects.
3. The principals and membership of the nonprofit sponsor organization must be prepared to explore in depth with the HUD Field Office Manager or his/her designee the financial arrangements for the project. HUD is concerned about the availability of funds to meet financial requirements such as discounts, both interim and permanent, any required operating deficits, change orders, problems connected with land acquisition, selection of architect and contractors, construction, rent-up and management.

4. The sponsor:

a. is acting on its own behalf and is not, either knowingly or unwittingly, under the influence, control, or direction of any outside party seeking to derive profit or gain from the proposed project, such as a landowner, real estate broker, contractor, or consultant. A nonprofit sponsor may **not** borrow or accept funds from such parties.

b. has a currently effective ruling from the Internal Revenue Service of the United States, which established its status as a tax-exempt, nonprofit organization, or is entitled to such status without a specific ruling.

Capacity of Sponsor

The proposed project should not be beyond the financial and managerial capacity of the sponsor. One would not expect a small bank to underwrite a major industrial financing venture. Similarly, it is not reasonable to expect a small church or other group to assume financial, managerial and ownership responsibility for a large project. Project sponsorship and management must be in keeping with the financial and managerial capabilities of the sponsoring organization.

If a well-motivated and reliable sponsor proposes a project beyond its capabilities, a meeting should be scheduled with the sponsorship to discuss the need for co-sponsors which would permit the combining of capabilities to the extent necessary to satisfy the requirements of the proposal, or the size of the project should be reduced. Such a meeting should include the membership and governing board of the nonprofit sponsor as well as representatives from Mortgage Credit, Housing Management, and the Office of the Director, Housing Development Division.

Responsibilities of Sponsorship

Some nonprofit sponsors may assume that the responsibility for the project, particularly in time of stress, rests with HUD, the builder, or someone other than themselves, and that their role as sponsor is merely to lend their name to the project. If this attitude exists, it must be dispelled. Sponsors must understand that it is **their** project, and must evidence a serious intent to provide a continuing financial support and effective management. Sponsors must act in prudent business manner as would be expected of any project owner.

The FHA commitment and mortgage insurance are predicated upon HUD's evaluation: (1) that there will be sufficient financial support from the nonprofit mortgagor along with mortgage proceeds plus required escrows to develop and build the project and to provide funds for estimated operating deficits during the initial rent-up period, change orders, cost overruns and other unexpected cost associated with the development and construction, and (2) that the rental or project income will be sufficient to meet all operating expenses and mortgage payments during the full term. Nonprofit sponsors must understand, however, that owning and operating a project can involve difficult and trying problems, including the possibility that some unforeseen circumstances could cause project funds to run short. Nonprofit sponsors should understand that HUD would expect them to cope with these problems at the time of need by all means at their disposal, such as promotional help, contributive management or services, and appeals to membership or affiliated organizations.

HUD insists upon a financial as well as a moral and social commitment from nonprofit sponsors. There must be a full understanding of responsibility on the part of the nonprofit sponsor. Sponsors must, of course, also establish that they have the capabilities to meet expenses prior to the drawdown of mortgage funds, including expenses for architectural services, legal and other professional services, etc. Such expenses need not be covered by the sponsor's funds alone. They may be met through assured advances from such other parties as a bank, a Federal, State or municipal fund to advance seed money, a foundation, a church hierarchy, or another nonprofit organization in accordance with item number 4a, in the section of this form entitled "establishing eligibility."

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Public reporting burden for this collection of information is estimated to average 0.75 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. The Department of Housing & Urban Development (HUD) is authorized to collect all the information on this form by the U.S. Housing Act of 1937, as amended, and by the Housing & Community Development Act of 1987, 42 U.S.C 3543 which authorizes HUD to collect Social Security Numbers (SSN). The information you provide will enable HUD to make a determination that the sponsor and/or mortgagee is truly a nonprofit and demonstrates probable success in project development and continuing operation. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN or EIN. Failure to provide the information will result in disapproval of participation in this HUD program and/or delay action on the proposal.

Name of Proposed Project	Location	Program (Section of Act)
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The instructions relating to this request have been read and are fully understood. A HUD determination as to the eligibility of the proposed mortgagee as a nonprofit corporation or association is requested. To assist in the determination, the following information and that on the attached exhibits is supplied. The information provided in this form will be evaluated in conjunction with the documents submitted in accordance with Appendices 1, 2, and 3 of Handbook 4381.5, Management Documents, Agents and Fees, which will be submitted together with this form (or at such time as appropriate).

The (Name of Sponsoring Group) _____ received its Charter or, if unincorporated, was organized on (Date) _____ pursuant to (Local Statute) _____ laws of the State of _____. The sponsoring group was formed for the following purpose (as stated in its Charter or Constitution, if unincorporated):

1. A. What is your motivation for sponsoring the project? (Please explain in detail.)

B. What evidence of support for participation has been demonstrated by your organization?

C. Has your organization, Board of Directors or Trustees taken a vote on participating in such projects, in general, or in the proposed project, in particular? If the answer is "yes," indicate the results.

D. If a national, State or regional organization is involved as a co-sponsor, what support have they agreed to provide?

E. What evidence can your organization provide which will demonstrate that it will have the necessary longevity to continue as sponsor through the full term of the mortgage?

2. A. What is your understanding of the responsibilities and obligations of the sponsorship of a project?

B. What kind of activity has your organization undertaken which you feel qualifies it to carry out the development and management of your proposed project? Provide details, including information on the organization's record of production and management of projects insured by HUD or financed by direct Federal or conventional loans. Cite project location, type of project, number of units, periods involved, and current status. Attach supplementary sheets, if necessary.

3. A. What financial and other resources do you have to carry out a project of the size you are proposing? Cite the source and amounts of funds for the following expenses requiring cash outlay by the sponsor prior to receipt of loan advances (if borrowed, give terms of the loan):

(1) HUD application and commitment fees, as appropriate,

(2) Option or downpayment on project site,

(3) Advance legal, consultant, and architect fees.

B. What are your principal sources of income? Give details.

C. What cash or service resources are you prepared to provide if the project encounters difficulty during the construction period?

4. Furnish complete information for each of the items set forth below. Where arrangements have not been made, so state and supply information as to what is contemplated.

A. Submit copy of charter and bylaws, or constitution, as currently amended. Unless covered by charter and bylaws, or constitution, explain structure for normal management of organizational business.

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- B. (1) Does your organization have an effective 501(c)(3) exemption from income tax? If so, furnish copies of any ruling establishing such exemption.
- (2) If you have no such exemption, have you even been denied such an exemption? If so, furnish a copy of any ruling denying such exemption.
- (3) If application for any such exemption is pending, explain its legal and factual basis and its present status.
- C. Attach a list of the officers and directors or trustees of the sponsoring group including names, Social Security Numbers or Employer Identification Numbers, addresses, and titles of positions.
- D. Attach resumes on all principals and staff who will actively participate in the development of the proposed project.
- E. Explain the relationship between sponsoring group and mortgagor (existing connections or proposed, if mortgagor has not been formed).
5. A. Provide a detailed statement of the arrangements made or proposed for the following, listing the principals involved, the relationship between such principals and the sponsor and mortgagor, giving the terms of the arrangement and describing the circumstances surrounding each:
- (1) Land upon which the project is to be built,
- (2) Construction of the project, including the selection of the general contractor, subcontractors and architect,
- (3) Legal and consultant services,
- (4) Financing of the project including required discounts, if any,

- (5) Furnish current financial statement as well as financial statements for the past three years (audited financial statements should be submitted if available). If the sponsoring group has not been in existence for three years, the financial statement must be submitted from the date of the formation of the group. If any required funds are to be provided by anyone other than the sponsoring group, then the other contributor(s) must also submit a current financial statement as well as statements for the past two years. Each financial statement submitted must contain the original signature of an officer of the sponsoring group. All statements must be supported by adequate schedules. All statements not submitted on form HUD-92417 must contain the certification which appears on the reverse side of form HUD-92417.
- (6) A signed written resolution of its directors or trustees to acknowledge the responsibilities and obligations of sponsorship and continuing ownership, and this position reflects the will of its membership.
- (7) A current financial statement with adequate supporting schedules, as well as financial statements for the past three years on the general contractor (audited financial statements should be submitted if available). If the general contractor has not been in existence for three years, the financial statement must be submitted from the date of the formation of the firm. All statements not submitted on form HUD-92417 must contain the certification which appears on the reverse side of form HUD-92417.

B. Current bank and trade references. (Name, address, telephone number, and bank account number)

C. A current resume of the proposed general contractor's construction experience. In evaluating the current resume of the proposed general contractor's construction experience, particular attention will be paid to the following:

- (1) Type and size of buildings the contractor has constructed;
- (2) Geographic area of contractor's construction business involvement; and,
- (3) Length of time the general contractor has acted in that capacity.

To the best of my knowledge and belief, the foregoing information and that contained in the attached exhibits are true and correct.

	(Address)		
(Signature)			
(Title-Officer of Sponsoring Group)			
(Date)			
(Witness)	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%; text-align: center;">(Telephone Number)</td> <td style="width: 40%; text-align: center;">(EIN)</td> </tr> </table>	(Telephone Number)	(EIN)
(Telephone Number)	(EIN)		

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)