

CHAPTER 14. EVALUATING NONPROFIT SPONSORS AND MORTGAGORS FOR
OTHER THAN SECTION 202 PROJECTS

14-1. GENERAL. Decide general eligibility of prospective nonprofit sponsor/mortgagor before issuing SAMA/Feasibility letter.

14-2. REQUIRED EXHIBITS FROM NONPROFIT SPONSOR AT SAMA/FEASIBILITY STAGE: Form HUD-3433, Request for Preliminary Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor, and supplemental documentation. Documentation must contain, but is not limited to:

A. Detailed explanation of motivation for sponsoring the project.

B. Copy of sponsor/mortgagor's charter and bylaws or constitution as currently amended.

C. Copy of a current effective ruling from the Internal Revenue Service on sponsor/mortgagor's tax exempt status.

1. Copy of any ruling denying tax exemption.

2. If a ruling is pending, explain the application's legal and factual basis and current status.

D. List of officers, directors or trustees of the sponsoring group/mortgagor including addresses and titles of positions and their social security numbers.

E. Resumes on all principals and staff who will actively take part in the development of the proposed project.

F. Current financial statement (balance sheet, profit and loss statement, and supporting schedules) as well as statements for the past 3 years. If available, audited statements should be submitted. (Refer to paragraphs 3-2 and 3-3.)

1. If the sponsoring group/mortgagor has existed less than 3 years, the financial statements must be submitted from the date the group was formed.

(14-2) 2. Statements must identify restricted and unrestricted assets along with the related liabilities.

3. Financial statements must be signed by an officer of the sponsoring group.

4. All statements must contain the certification of truth and accuracy and criminal certification identified in paragraph 3-2.B.1. above.

This certification must reference the name of the sponsor and the date of the financial statements.

G. Signed written resolution of its directors or trustees, acknowledging the responsibilities and obligations of sponsorship and continuing ownership, and that this position reflects the will of the membership.

H. Form HUD-92013 Supp listing current bank and trade references for the sponsor; mortgagor, if formed and their officers (President, Vice President, Secretary and Treasury). Refer to paragraph 2-1.B.2.c.

I. The information contained in paragraph 2-2.D if the sponsor, mortgagor or any officer which has a prior Federal default or claim.

J. Detailed statement of arrangements made or proposed for the following (listing the principals involved, their relationship with the sponsor/mortgagor, the terms of the arrangements and the circumstances surrounding each):

1. Land on which the project will be built.

2. Project construction, including selection of general contractor, subcontractors and architect.

3. Legal and consulting services.

4. Project financing, including any discounts.

NOTE: A national, State or regional organization acting as a cosponsor must submit a separate Form HUD-3433 and supplemental documentation.

14-3. RESPONSIBILITY FOR DETERMINING ELIGIBILITY. Upon receipt of the SAMA/Feasibility application, the Multifamily Housing Representative (MHR) should schedule a meeting with the membership and governing board of the nonprofit sponsor and representatives from Mortgage Credit and Housing Management. At the meeting the HUD representatives will:

A. Explain the obligations and responsibilities of sponsorship.

B. Elicit sponsor's motivation, interest and support for the project by the membership, and ability and financial strength of prospective sponsor.

C. Discourage nonprofits who:

1. Do not show ability to financially support and manage a project, or

2. In previous projects, experienced delays in submitting change orders and achieving final endorsement due to lack of funding or willingness to provide the funds.

D. Stress the following facts:

1. HUD's commitment to insure the project is based on a determination that:

a. There will be sufficient mortgage proceeds plus required escrows to build the project.

b. Net income will meet all operating expenses and mortgage payments during the full term of the mortgage.

2. Owning and operating a housing project involves difficult problems, including: land acquisition; interim and permanent financing; selection of architects and contractors; construction; rent-up; management; tenant-management relationships; and the possibility that unforeseen circumstances could cause a shortage of project funds.

(14-3) a. For example:

- (1) Discounts and extension fees may be charged by the interim lender.
- (2) Construction changes may become necessary.
- (3) Contractor may be granted extensions of construction time that may result in added financial expenses and overruns in carrying charges.

b. HUD expects the nonprofit entity to cope with problems by utilizing all means at its disposal, such as promotional help, contributive management or services, appeals to membership or affiliated organizations, outright cash contributions, and other financial support.

3. Relationship between HUD and nonprofit sponsor/mortgagor is a business one. HUD will not:

a. Serve as a protector of the nonprofit entity.

b. Provide the funds to cover the additional expenses in paragraph 2 above.

4. Under certain Sections of the Act, HUD may insure up to 100 percent of its estimate of the replacement cost for a nonprofit mortgagor.

a. This does not mean that HUD will insure 100 percent of the actual costs incurred.

b. The nonprofit entity is responsible for any expenses above HUD's maximum insurable mortgage.

14-4. MORTGAGE CREDIT REVIEW AT SAMA/FEASIBILITY STAGE

A. Review Form HUD-3433 to see if the nonprofit sponsor/mortgagor is qualified to start, complete and operate a project under one of HUD's insured loan programs. Determine that all of the following criteria are satisfied:

(14-4) 1. Sponsor/mortgagor 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 a profit or gain from the proposed project -- such as a landowner, real estate broker, contractor, architect, attorney or consultant.

2. Sponsor/mortgagor has continuity and a serious long-range desire to supply housing for the intended client group.

3. Sponsor/mortgagor has:

a. Strong roots in the neighborhood and community.

b. Good reputation for reliability, service and commitment to the people for whom the housing is to be built.

4. Sponsor/mortgagor fully understands the responsibilities and obligations in developing a housing project and continuing its successful operation. This is evidenced partly by:

a. General knowledge of the factors that contribute to project success or failure.

b. Familiarity with the housing programs.

c. Clear, specific objectives.

5. Sponsor/mortgagor acknowledges, by majority resolution of its directors or trustees, the responsibilities and obligations of sponsorship to develop and manage the project. This position reflects the will of its membership.

6. Sponsor/mortgagor and its principals are reliable based on:

a. Reputation and past performance.

b. Success and extent of previous experience, including the type of service furnished (financial, volunteer work, management, etc.), in providing housing or related social services.

(14-4) 7. Sponsor/mortgagor is providing or has arranged for the professional and management skills essential to the successful start, development, completion, and operation of the proposed project.

B. Credit investigation.

1. Order data and/or commercial credit reports on the sponsor, mortgagor, if formed, and the officers of the mortgagor entity and make inquiries of bank and trade references identified on Form HUD-92013 Supp to determine basic acceptability of credit reputation and previous experience.

2. Check for the existence of any delinquent Federal debt. Refer to paragraph 2-2.C. and D.

3. Check with Housing Management Division and other HUD Field Offices in whose jurisdiction the nonprofit has done or now does business.

C. Analysis of financial data.

1. Determine:

a. Amount of cash and liquid assets available for investment in the project.

b. Whether the nonprofit entity has used prudent judgment in its past and present business affairs.

c. Overall financial condition of the sponsoring group, particularly whether the financial statements indicate that income will be sufficient to meet the expenses incurred by the group.

2. Financial statements of many large nonprofit organizations show various fund accounts, such as general and building fund, etc.

a. Look out for interfund receivables and payables that cancel each other.

b. Do not consider restricted-use funds in the analysis.

(14-4) c. Review Public Records section of credit report to eliminate assets which have been used as collateral in secured borrowing.

3. Project size should be in keeping with the abilities of the sponsoring organization.

4. All financial statements are subject to the conditions in Chapter 3 of this handbook.

14-5. MEMORANDUM OF FINDINGS AND RECOMMENDATIONS. After completing the analysis of Form HUD-3433, supplemental documentation and the credit investigation, the MCE shall prepare a memorandum to the Director of Housing Development, Attention: MHR, summarizing the findings and recommendations. A finding of ineligibility of the nonprofit sponsor constitutes rejection of the project by Mortgage Credit. In such cases, the SAMA/Feasibility application is returned as unaccepted and fees refunded. The memorandum must consider:

A. Administrative abilities within the organization.

B. Cohesiveness of the group.

C. Representation from State and national groups that will cosponsor the project or supply financial help to the nonprofit group if needed.

D. Strong and weak points of the organization.

E. Continuance or permanency of the group.

14-6. DETERMINATION OF THE MAXIMUM INSURABLE MORTGAGE AND TOTAL ESTIMATED REQUIREMENTS FOR CLOSING are made at the conditional and/or firm stage of processing.

14-7. SUBMITTING FORMS HUD-3434, CERTIFICATE OF RELATIONSHIPS AND NONPROFIT MOTIVES, AND -3435, CERTIFICATION OF CONTRACTUAL RELATIONSHIPS. Before initial endorsement (beginning of construction in the case of insurance upon completion), the sponsor and mortgagor must certify on Form HUD-3434, their relationships with parties or firms furnishing land and services.

A. Such parties or firms certify on Form HUD-3435 their relationship with the sponsor and mortgagor.

(14-7) B. If there is a change in the certified relationship, the sponsor, mortgagor, and other parties must furnish additional certifications with respect to each change.

C. All relationships are subject to HUD approval. HUD reserves the right to refuse endorsement of the note for insurance and to cancel the commitment if such relationships aren't approvable.

14-8. NONPROFIT SPONSOR AND A PROFIT-MOTIVATED MORTGAGOR ENTITY. A nonprofit sponsor may request to establish a profit-motivated mortgagor entity for the purpose of obtaining BSPRA and distributions from surplus cash. Such a request may be approved provided:

A. The Legal Division determines that there is no legal impediment which would prohibit approval of the request.

B. The nonprofit agrees to be regulated by the terms and conditions of the regulatory agreement applicable to a profit-motivated entity.

C. The nonprofit is subject to the mortgage limitations applicable to a profit-motivated entity.

D. AMPO is excluded from processing and a working capital deposit is required.

E. A consultant fee may not be included in the mortgage.

F. If the nonprofit provides evidence that it has obtained exemption from real estate taxes, refer to the instructions in paragraph 3-6.E.

G. The potential tax consequences as well as the possible effect on the nonprofit's Section 501 (c)(3) status with the Internal Revenue Service (IRS) is between the nonprofit and the IRS.

H. Form HUD-3433 is not required for such cases.