
CHAPTER 2. PROPERTY AND MORTGAGOR ELIGIBILITY

2-1ELIGIBLE SECTION 221(d) PROJECT. Projects must meet the following eligibility requirements:

A.[R] Projects must be either new construction or substantial rehabilitation.

1.New construction is when all projects and elements are installed as part of the work.

2.Substantial rehabilitation is defined in paragraph 2-3.

3.Construction may not start before initial endorsement for insurance of advances, except upon approval by the Field Office of an early start through execution of a Form FHA-2415. Construction may not start for an insurance upon completion project until issuance of the firm commitment.

4.Start of Construction/rehabilitation is when work begins on the project. Once work begins, it must be continuous without appreciable delays. The inspection fee is earned upon placement of any permanent construction (e.g., foundations, footings, etc.).

B.[S] Projects must consist of five or more dwelling units. They may be comprised of detached, semidetached, row walk-up and/or elevator structures, and must contain efficiency, one bedroom or multiple bedroom dwelling units with complete kitchens and baths.

C.[R] The project site may consist of two or more noncontiguous parcels of land when HUD finds that the parcels:

1.Physically comprise a readily marketable real estate entity;
and

2.Are within an area limited enough to allow convenient and efficient management.

D.The property of the project site, including improvements, must comply with all applicable zoning and deed restrictions and with all applicable building and other

E. Projects must be designed primarily for residential use. Any commercial activity must be compatible with the use of the project and primarily for the benefit of the residents. Commercial space should not exceed 10 percent of the gross floor area of the project nor should more than 15 percent of the total gross project income come from commercial sources.

2-2 INELIGIBLE PROJECT. [R] A project is not eligible when:

A. The project application is for mortgage insurance for the purpose of refinancing or purchase of an existing facility and substantial rehabilitation is not required.

B. The project is subject to State licensure, certification, or regulation as a board and care home (or similar residential care facility).

C. The project is designed for the elderly and has:

1. Mandatory nonshelter services (e.g., maid service, linens, as a condition of occupancy);

2. Institutional central kitchen facilities; or

3. Meal service provided on either a mandatory or an optional basis.

D. The project restricts occupancy to particular groups such as students or members of the sponsoring organization except as permitted by law for elderly or handicapped tenants.

2-3 SUBSTANTIAL REHABILITATION CRITERIA.

A. [R] Substantial rehabilitation proposals must meet one of the following criteria:

1. The cost of repairs, replacements, and improvements exceeds the greater of:

a. 15 percent of the total estimated replacement cost of the project, or

b. \$6,500 per dwelling unit (adjusted by the applicable

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high cost factor).

or

2. Two or more major building components are being substantially replaced. The term "major building component" includes: roof structures; ceiling, wall or floor structures; foundations; plumbing system; heating and air conditioning system; or electrical system.

a. "Major" refers to the importance of the component and the extent of replacement.

(1) The element must be significant to the building and its use, normally expected to last the useful life of the building, and not be minor or cosmetic.

Examples:

Major - roof sheathing, rafters, trusses.
Minor - shingles, built-up roofing.

(2) Total replacement is not required, but the greater part (at least 50 percent) must be replaced.

(3) The term "major" provides a great deal of latitude and, therefore, good judgment is necessary and expected.

b. The Field Office Director of Multifamily Housing Division (MHD) will make the determination.

B. Additions are permitted in substantial rehabilitation projects. However,

1. The existing facility must require substantial rehabilitation as defined above.

2. The construction costs of additions are not to be included when determining eligibility under A.1. above and additions may not be considered a major building component under A.2.

2-4 REAL ESTATE REQUIREMENTS. [R] Projects must be on real estate held or to be held:

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A. In fee simple;

B. Under a renewable lease for not less than 99 years; or

C. Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

2-5 LIENS AND MORTGAGE SECURITY. [R] The mortgagor must certify at endorsement (initial and final endorsement for insurance of advances) that:

A. The mortgage is a first lien and covers the entire project, including the equipment and fixtures financed with mortgage proceeds.

B. The property upon which the improvements have been made or constructed and the equipment and fixtures financed with mortgage proceeds are free and clear of all liens other than the HUD-insured mortgage and such other liens as may be approved by HUD.

C. Furniture purchased with proceeds of the working capital deposit (e.g., lobby furnishing) and equipment and fixtures included in replacement cost (e.g., unit kitchen equipment), even if paid for by the mortgagor, are included and covered by a security agreement or other instrument, creating a security interest made to the mortgagee; and, further, no leasing or lease purchase agreements were entered into for these items.

2-6 PROPERTY STANDARDS. Projects must comply with accepted local building codes and HUD Minimum Property Standards, MPS 4910.1.

2-7 DISPLACEMENT.

Applications under multifamily mortgage insurance programs do not trigger the requirements of the Uniform Relocation Act (URA), unless some other aspect of the proposal is covered by the URA. However, HUD's policy is to minimize displacement of tenants in its programs. Therefore, if the proposal will cause involuntary displacement of tenants, the sponsors must submit a relocation plan identifying the estimated cost of the relocation as well as the funding sources to carry out the plan.

2-8 AREA ELIGIBILITY.

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A. General. HUD must consider all aspects of general livability and rentability during analysis of the location (e.g., freedom from adverse environmental conditions, accessibility to community facilities). Project location must:

1. Be acceptable for the type of housing proposed and the market to be served.

2. [R] Meet the requirements of 24 CFR Part 50, Protection and Enhancement of Environmental Quality and Part 51, HUD

Environmental Criteria and Standards.

B.[R] Flood hazard areas. HUD may not insure in areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

1.The community in which the project is located is participating in the National Flood Insurance Program and its regulations (see 44 CFR Parts 59-79); or

2.It has been less than a year since FEMA's designation, and flood insurance on the structure can be obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234, 42 U.S.C. 4001 et seq.); and

3.HUD has complied with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

C.[R] Historic site. HUD must ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) during environmental review. To speed up this process, the sponsor may contact the State Historic Preservation Officer prior to application submission to see if a project is subject to historic requirements.

D.[R] Coastal barriers. HUD may not insure any project in the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501 et seq.).

E.Military impact areas. HUD is prohibited from providing mortgage insurance under Title II in military impact areas unless demand from nonmilitary households is sufficient to sustain occupancy in the insured projects and the market

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as a whole. Section 238(c) of the National Housing Act authorizes exceptions to this restriction when certain conditions are met. See HUD Handbook 4445.1 REV for details.

2-9 ELIGIBLE MORTGAGORS.

A.[R] The following types of mortgagors are eligible for participation in the Section 221(d) program. Section 221(d) (3) is used primarily by nonprofit, public and cooperative mortgagors in order to obtain the higher ratio loan available for those mortgagors under that Section. Profit-motivated mortgagors use Section 221(d) (4) .

1.Nonprofit.

a.An entity organized for reasons other than profit or gain and not controlled or directed by persons or firms seeking profit or gain from it. Its operation must be regulated under Federal or State law or by political subdivisions of States or their agencies, or by HUD. (Section 221(d) (3).)

b.Some nonprofits need consultants to develop a project. HUD will permit a reasonable fee for such services. See reference (26) of the Foreword for a complete discussion on the use of consultants.

2.Builder-seller. An entity organized to:

a.Build or rehabilitate a project and which, by written agreement with a private nonprofit mortgagor, will sell it (at final endorsement) to that mortgagor for no more than the HUD-approved certified cost;

b.Operate the project (subject to regulation by HUD) according to HUD requirements until sold to the nonprofit mortgagor; and

c.Operate the project as a limited distribution mortgagor if it is not sold within 2 years to a nonprofit mortgagor. (Section 221(d) (3).)

3.Limited distribution. An entity restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation. (Section 221(d) (3).)

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4.Cooperative. A nonprofit cooperative ownership housing corporation that restricts permanent occupancy to members of the corporation and requires membership eligibility and transfers of membership in a manner approved by the Commissioner. (Section 221(d) (3).)

5.Investor-Sponsor. An entity organized as a builder-seller mortgagor (paragraph 2, above) and which is subject to the same restrictions, except that the project will be sold to a cooperative rather than a nonprofit mortgagor. (Section 221(d) (3).)

6.Public mortgagors. A Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a

State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to the Commissioner.

a. Such a mortgagor shall be regulated or supervised as to rent, charges, and methods of operation in such manner as in the opinion of the Commissioner will effectuate the purposes of the Section 221(d) program.

b. Local housing authorities may qualify for 100 percent mortgages as public agency mortgagors under Section 221(d)(3) of the National Housing Act. Section 221(d)(3) unsubsidized insured mortgages are available to local housing authorities only in connection with Section 8 assisted housing. Interest paid on local housing authority obligations secured by a Section 221(d)(3) mortgage financing Section 8 housing is subject to Federal income taxation.

7. General. Any mortgagor approved by HUD that does not meet any of the definitions in paragraphs 1 through 6. Profit-motivated mortgagors are general mortgagors. (Section 221(d)(4).)

B. Supervision of Mortgagors:

1. All mortgagors must be approved by HUD and regulated through a Regulatory Agreement. This agreement establishes the mortgagor's obligations in project

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operations and the mortgagee's and HUD's rights if it is violated.

2. A mortgagor must possess the legal powers necessary to operate the project.

3. All mortgagors must be single asset mortgagors.

4. All mortgagors must be approved by HUD and are subject to HUD's regulation and restriction as long as HUD is the insurer, holder or reinsurer of the mortgage. This "regulation" may be the regulatory agreement, corporate charter, etc., as HUD approves.

2-10 CONSTRUCTION, HIRING AND WAGES.

A.[S] Prevailing wages. The Section 221(d) program requires:

1.Payment of no less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. Section 276a-276a-5), to all laborers and mechanics employed in the construction or rehabilitation of any project, and

2.Compliance with all other related rules and regulations under Davis-Bacon (see Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs) and the Copeland Act (40 U.S.C. Section 276c).

NOTE:Section 212(a) (1) of the National Housing Act contains a limited exception to payment of prevailing wages for certain volunteer labor in cooperative projects. Contact HUD Headquarters for case-by-case approval.

B.[S] Equal employment opportunity. HUD must comply with Executive Order 11246 and 41 CFR Part 60 regarding equal employment on Federally-assisted construction contracts.

They:

1.Prohibit discrimination because of race, color, religion, sex or national origin.

2.Require affirmative action to ensure fair treatment in: employment, upgrading, demotion or transfer; recruitment

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or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training and apprenticeship.

3.Require incorporation into any contract for construction work, as defined in Section 130.5 of HUD regulations, of the equal opportunity clause required by 24 CFR Part 130.15(b) of the HUD regulations.

2-11 OCCUPANCY.

Mortgagors must operate projects according to HUD standards.

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