
CHAPTER 3. PROPERTY AND MORTGAGOR ELIGIBILITY

3-1. PROPERTY AND DEVELOPMENT REQUIREMENTS

A. Proposals must be for either of the following:

- 1) New construction. Construction may not start before initial endorsement for insurance of advances or firm commitment for insurance upon completion except as permitted in paragraph 12-7. The start of construction is defined in paragraph 7-31 A.
- 2) Substantial rehabilitation. Property must require substantial rehabilitation as defined in this paragraph. It qualifies under 221(d) coinsurance if:
 - a) The cost of repairs, replacements and improvements exceeds the greater of:
 1. 15 percent of the property's value after completion of all repairs, replacements and improvements, or
 2. \$6,500 per dwelling unit (adjusted by the applicable high-cost factor),OR
 - b) More than one major building component is being replaced. These include: roof structures; ceiling, wall or floor structures; foundations; plumbing systems; heating and air conditioning systems or electrical systems.

Start of rehabilitation is the first time a worker appears on the job and starts rehabilitation work, if the work is continuous and without appreciable delays.

- B. Project size. Projects must consist of five or more dwelling units, which may be detached, semi-detached, row houses or multifamily structures.
 - C. Project site. The project must be on one site. However, the site may consist of two or more noncontiguous parcels of land when the lender finds that the parcels:
 - 1) Physically comprise a readily rentable real estate entity; and
 - 2) Are within an area small enough to allow convenient and efficient management.
 - D. Real estate requirements. Projects must be on real estate held or to be held:
 - 1) In fee simple;
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(Property requirements - con't.)

- (3-1) 2) Under a renewable lease for not less than 99 years;
- 3) Under a lease running at least 75 years from the date the mortgage is executed; or
- 4) Under lease executed by a government agency, or other lessor approved by HUD, for up to the maximum term the agency or lessor may enter into, but not less than 50 years from the date the mortgage is executed.

E. Liens

- 1) The property must be free and clear of all liens other than the coinsured mortgage, except as noted in paragraph 2, below.
- 2) The lender, with written HUD Headquarters approval, may permit an inferior lien made or held by a Federal, State or local government agency or instrumentality. (See Chapter 10.)

F. Property standards

- 1) New construction projects must comply with local requirements and HUD Minimum Property Standards (MPS).
- 2) Rehabilitation projects must comply with local requirements if they are comparable to one of the three nationally recognized model codes.
- 3) Contact the HUD field office with jurisdiction for what requirements apply.

G. Zoning. Projects, including improvements, must comply with all applicable zoning or deed restrictions.

H. Projects for the elderly or physically handicapped. May have central dining and other congregate facilities (e.g., community dining rooms, workshops), but each dwelling unit must have a full bath and minimum kitchen facilities. (See paragraph 17-6 C.)

I. Retirement Service Centers (ReSCs). ReSCs are a variation on housing for the elderly that permits added amenities and services that may also be coinsured under Section 221(d)(4). (See Chapter 17 for special procedures and requirements for ReSCs.)

(Property requirements - con't.)

(3-1) J. Commercial areas. Projects must be designed primarily for residential use but may include commercial and community facilities to serve the occupants. In general, the net rentable commercial area may not exceed 5 percent of the total net rentable area.

- 1) If the commercial tenants meet financial standards in paragraph 9-6, the net rentable commercial area may be up to 20 percent of the total net rentable area.
- 2) HUD Headquarters (office of Insured Multifamily Development) must review any project with more than ten percent net rentable commercial area. See paragraph 9-6 for what to submit.

K. Portfolio cases. Mortgages already held by an approved lender or related entity may be coinsured only if:

- 1) The project requires substantial rehabilitation;
- 2) The loan is current and has not been in default, modification, or forbearance at any time during the two years before the submission of the application to the lender;
- 3) The entire loan transaction is reviewed and approved by HUD before any commitment is issued; and
- 4) Refinancing of portfolio loans makes up no more than 1/4 of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period. Mortgages insured by HUD under its full insurance programs and those in which the lender's sole involvement is servicing are not subject to this limit.

NOTE: Where a Housing Finance Agency is the lender, loans held in the portfolio of another public agency under the same State jurisdiction are considered portfolio loans.

L. Displacement. HUD's policy is to minimize displacement of tenants in its programs. In the 221(d) coinsurance program, the lender is responsible for this policy. Therefore, if substantial rehabilitation will cause involuntary displacement of tenants, the lender must:

- 1) Require the mortgagor to provide, with its application, a plan to minimize the effects of displacement.
- 2) Determine that the plan is adequate and the mortgagor can carry it out financially and physically.

3-2. AREA ELIGIBILITY

A. General. Lenders 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) Meet the requirements of 24 CFR Part 51, HUD Environmental Criteria and Standards, for noise abatement, explosive and flammable standards, clear zones and accident potential zones.

B. Flood hazard areas. The lender cannot coinsure 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, Wetlands Protection.

Contact the HUD field office to see whether a proposed site is in a flood hazard area.

C. Historic site. HUD must ensure compliance with Section 106 of National Historic Preservation Act during environmental review. (See paragraph 6-8 for details on environmental review.) To speed up this process, contact the State Historic Preservation Officer to see if a project is subject to historic requirements.

D. Coastal barriers. The lender cannot coinsure any project in the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501). Contact the HUD field office to make sure that the project is not within the Coastal Barriers Resources System. HUD will review this during the environmental review. (See paragraph 6-8.)

E. Military impacted areas. If the HUD field office review of housing need pursuant to paragraph 6-12 finds that the project is in a military impacted area (where military, atomic energy or space installations substantially affect the housing market), the

- (3-2) Section 238(c) procedures apply. Contact HUD Headquarters, Office of Insured Multifamily Housing Development, for how to proceed with case-by-case approval of these projects.

3-3. ELIGIBLE MORTGAGORS

A. General

- 1) All coinsured loans with an identity of interest between lender and mortgagor (i.e., where the lender, its subsidiary, parent, or principals have or will have an ownership interest) require HUD review before issuance of a commitment.
- 2) All mortgagors must be regulated by the lender through a regulatory agreement. This agreement establishes the mortgagor's obligations in project operations and the lender's and HUD's rights if it is violated. (See Appendix 36.)

B. Eligible Types

- 1) Nonprofit. An entity organized for reasons other than financial gain and which the lender finds is not controlled or directed by persons or firms seeking financial gain from it. Its operation must be regulated under Federal or State law.
- 2) Builder-seller. An entity organized to:
 - a) Build or rehabilitate a project and which, by written agreement with a nonprofit mortgagor, will sell it (at final endorsement) to that mortgagor for no more than the lender-approved certified cost;
 - b) Operate the project (subject to regulation by the lender) according to HUD requirements until sold to the nonprofit mortgagor; and
 - c) Operate the project, if it is not sold within two years to a nonprofit mortgagor, as a limited distribution mortgagor. (See paragraph C, below.)
- 3) Limited distribution. An entity restricted by Federal or State law as to rate of return and other aspects of its operation.
- 4) Cooperative. A nonprofit cooperative ownership housing corporation that restricts permanent occupancy to members of the corporation and requires membership eligibility and transfer of membership in a manner approved by HUD.

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- (3-3) 5) Investor-sponsor. An entity organized the same way as a builder-seller mortgagor (paragraph B, above) and subject to the same restrictions, except that the project will be sold to a cooperative rather than a nonprofit mortgagor.
- 6) General. Any mortgagor approved by the lender that does not meet any of the definitions in paragraphs A through E. Profit-motivated mortgagors are general mortgagors.
- 7) Public mortgagors. Not eligible under 221(d) coinsurance.

3-4. CONSTRUCTION, HIRING AND WAGES

A. Prevailing wages. The 221(d) coinsurance 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 development of any project, and
- 2) Compliance with all other related rules and regulations under Davis-Bacon (See paragraphs 6-13, 12-2, and 13-7 and 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. Equal employment opportunity. You must comply with Executive Order 11246 and 41 CFR Part 60 regarding equal employment on Federally-assisted construction contract. They:

- 1) Prohibit discrimination because of race, color, religion, sex or national origin.
- 2) Require affirmative action to ensure fair treatment on: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training and apprenticeship.

3-5. OCCUPANCY

- A. Lender's responsibility: Must ensure that mortgagors operate projects according to HUD standards. See Handbook 4566.2 for servicing requirements for 221(d) coinsured projects.

(3-5) B. Selection of occupants. All families and individuals are eligible for occupancy subject to normal tenant selection (except in cooperatives, which restrict occupancy to corporation members and sublessees approved by the cooperative). There are no income restrictions unless the project is subsidized by HUD or the mortgage is financed through tax-exempt bonds, The mortgagor must:

- 1) Not discriminate against any family because of the sex of the household head or because there are children in the family, unless the project was designed specifically for occupancy by elderly people.
- 2) Comply with Title VIII of the Civil Rights Act of 1968, as amended, and its regulations prohibiting discrimination because of race, color, religion, sex, or national origin. The mortgagor must administer the program to affirmatively further fair housing and comply with similar State and local fair housing laws and regulations.
- 3) Comply with Executive Order 11063 and associated regulations preventing discrimination because of race, color, religion (creed), sex or national origin in housing and related facilities assisted by Federal funds.
- 4) Not execute any leases for less than 30 days or for transient rentals, or provide occupants with customary hotel services such as room service, bellhops, or daily maid service.
- 5) Give tenant selection priority to families or single persons displaced by urban renewal, other government action, or by a major disaster. The owner must require displacees to have a signed Form FHA-3476, Certificate of Eligibility (Appendix 64), as evidence of displacee status. An owner is not required to hold units vacant waiting for an application from a displacee.