

CHAPTER 2. ELIGIBILITY

2-1. PRIVATE NONPROFIT BORROWERS.

- a. Section 885.5 of the Regulations contains definitions applicable to this program. A Borrower is defined as "a private nonprofit corporation or a nonprofit consumer cooperative" which must be incorporated at the time it submits its application for a Section 202 Fund Reservation. The purposes of the Borrower must include the promotion of the welfare of elderly or handicapped families. The definition also provides that a Borrower "may not be a public body or the instrumentality of any public body." For purposes only of determining minority participation in the program, a minority Borrower is defined as a Borrower with more than half its board composed of minority group members.
- b. Only a Borrower as defined in Section 885.5 of the Regulations is eligible to submit an application for a Section 202 fund reservation and to receive a Section 202 direct loan. As the legal applicant, the Borrower, if selected, would receive the fund reservation and the loan and would be responsible for the construction, rehabilitation, ownership, and operation of the project.

- 2-2. THE SPONSOR. Among the groups which typically qualify as Section 202 sponsors are religious organizations, minority organizations, fraternal orders, labor unions, teachers' associations, and similar organizations, senior citizens' groups, associations representing the physically handicapped, and consumer cooperatives. In contrast to the Borrower the Sponsor is expected to have a history of interest and successful activity in housing generally, or housing for the elderly or the handicapped (chronic mental illness, physically handicapped, or developmentally disabled); or to have been involved in one or more other social or community activities or services which provide the background and skills which may be transferable to housing for the elderly or the handicapped. A Sponsor Will be evaluated primarily on the strength of its activities as an organization and not on the individual records of those who constitute the officers or members of the board of directors or general membership. For purposes of determining minority participation in the program, a minority Sponsor is defined as a Sponsor with more than half its board composed of minority group members.

- (2-2) a. The Sponsor is the organization which is expected to provide the funds required by the Borrower to carry out the project. The Sponsor also is expected to pledge its financial and

other support to the Borrower over the full 40-year term of the Section 202 loan. It is largely on the basis of the Sponsor's experience and its arrangements with and pledge of support to the Borrower that HUD selects a Borrower for a Section 202 fund reservation. Each application should contain specific information about the Sponsor's experience and its arrangements with the Borrower, rather than merely containing generalities with regard to these matters.

- b. While religious bodies may serve as Sponsors, the Borrower must be a separate legal entity. No religious purposes may be included in the Articles of Incorporation or by-laws, etc., of the Borrower corporation.
- c. No Sponsor should involve itself in this program unless it recognizes and agrees to assume its responsibilities to the Borrower, the project and its residents, to HUD and to the community throughout the 40-year term of the loan. Such an involvement will require the Sponsor's time, attention, and, at least potentially, its financial support on behalf of the Borrower and the project over the life of the loan.

2-3. COMPETITION FOR FUND RESERVATIONS. Competition for fund reservations under Section 202 has been extremely heavy and is expected to continue at a high level. Any group considering involvement in a Section 202 project as a Sponsor should be aware that demonstrated ability of the organization to perform reliably over a period of time and an extended record of financial dependability will weigh heavily in favor of the selection of its Borrower associate. With the competition likely to be keen, Field Offices probably will not be able to select all the highly qualified applicants simply because of the limitation on fund allocations available in a given fiscal year. Thus, an inexperienced Borrower dependent on an inexperienced Sponsor would be an unlikely candidate for selection for a fund reservation, and might wish to consider other financing to achieve its objectives.

2-4. ELIGIBILITY CONSIDERATIONS.

- a. In the past, a number of applications for fund reservations have been received from persons or groups not eligible for selection. Some applications also have contained proposals for projects conflicting with statutory requirements or program policy. It should be understood that only qualified Borrowers, as defined in Section 885.5 of the applicable HUD regulations, will be considered for selection. A Borrower must be a private, nonprofit corporation officially incorporated under appropriate State law at the time the application is submitted. In all cases, the Articles of the Incorporation submitted as part of the application must be true, signed copies.

- b. The Sponsor, on the other hand, does not have to be incorporated, but does need to be a private, nonprofit organization. However, its acceptability as a Sponsor is subject to approval by the Area Manager, based on a determination that the group's administrative and financial capacity are satisfactory, and that it has demonstrated its ability to carry out its responsibilities. Financial statements and documentation of its record and achievements in housing or other community service activities are among the items required in submitting the application for a Fund Reservation. Whether participating as Sponsor/Borrower or as a Sponsor of a separate Borrower corporation, the Sponsor must have an IRS exemption currently in effect by the deadline date for filing the Fund Reservation application.
  
- c. As indicated above in paragraph 2-4b, a Sponsor must meet all of the requirements included in the definition of a nonprofit organization. If the Sponsor meets all of these requirements, the Borrower also qualifies as a nonprofit organization at the fund reservation stage if it has at least submitted its application to the Internal Revenue Service for nonprofit status and already meets all of the other requirements for a private, nonprofit corporation. Therefore, it would be eligible to submit an application for a Section 202 Fund Reservation and be eligible for selection. Approval of the Borrower as a non-nonprofit corporation by the Internal Revenue Service is required prior to initial closing.

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2-5. PUBLIC BODIES AND INSTRUMENTALITIES OF PUBLIC BODIES.

- a. Section 885.5 of the Regulations specifies in the definition of a Sponsor that the term does not mean a public body or the instrumentality of a public body. Accordingly, public bodies such as local Public Housing Authorities (PHA's) and local Public Agencies (LPA's) and other instrumentalities are not eligible as Sponsors and also do not meet the criteria for acceptability as a Borrower.
  
- b. Public bodies also may not participate indirectly through the formation of an agent or instrumentality corporation. Accordingly, some private, nonprofit corporations will not be eligible as Borrowers because they are agents or instrumentalities of public bodies. An instrumentality relationship would exist if the group's articles of incorporation or by-laws provide for control of the corporation by a public body. Evidence of such control might include a provision whereby 50 percent or more of the board of directors are appointed by or elected from a public agency or agencies; or where a public body may supervise the operations of the

corporation or regulate its planning, development, and management, or the disposition of the corporation's property or other interests. Such groups should not submit applications, nor would such applications be eligible for selection.

- c. It should be noted, however, that public bodies may provide management services to a Section 202 project pursuant to a contract between the public agency and the Borrower.

2-6. INELIGIBLE PROPOSALS.

- a. Nursing homes, intermediate care facilities (ICF's), and transitional care facilities, including "half-way houses" are not eligible for financing under Section 202. Waivers may be granted on a case-by-case basis for Intermediate Care Facilities for the Mentally Retarded (ICF/MRs) for 15 or fewer residents. Prospective Borrowers also should understand that neither infirmaries nor nursing wings will be permitted in Section 202 projects. It is anticipated, however, that such facilities as a nursing home, hospital, clinic, or other medical facilities or services will be available in the community within a reasonable distance from the projects financed under this program.

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- (2-6) b. Facilities intended to serve single persons under the age of 18, or families whose head of the household or spouses are not at least 62 years of age or chronically mentally ill, physically handicapped, or developmentally disabled, are not eligible for financing under Section 202.
  - c. Other types of facilities which are not eligible under Section 202 include but are not limited to: mobile home projects; senior centers; community centers, with or without special components for senior citizen use; sheltered workshops; centers for the handicapped, with a variety of facilities, medical facilities for various medical professions; headquarters for one or another organization, whether or not involved in institutions; refinancing, with or without minor rehabilitation; and nonhousekeeping facilities (central dining, but without private kitchens and/or bathrooms), except in group homes.
- 2-7. UNACCEPTABLE PROPOSALS. Applications proposing loans to groups acting as "fronts" for profit-motivated developers or builders, and proposals based on syndications for profit-motivated investors, as well as proposals to finance the construction or rehabilitation of a project, but without any provisions for occupancy under the Section 8 Housing Assistance Payments program, all would be unacceptable under Section 202.

