

## MIXED-FINANCE PUBLIC HOUSING DEVELOPMENT

The mixed-finance approach to replacement public housing development is the single most important development tool currently available to public housing authorities (PHAs) implementing HOPE VI revitalization projects. It emphasizes the formation of new public and private partnerships to ensure long-term sustainability of public housing developments and the leveraging of public and private resources to transform the isolated communities in which many public housing residents currently live into vibrant and sustainable "mixed-income" communities with a wide range of family incomes.

This chapter summarizes the key concepts and procedures used in the mixed-finance approach. For more in-depth information, HUD has published a separate **Mixed-Finance Guidebook** which provides an overview of the mixed-finance approach, describes various partnership opportunities, discusses how to select and negotiate with developers, addresses key HUD policy and regulatory concerns, and lays out HUD's approval process for mixed-finance projects.

Every HOPE VI Grantee considering use of the mixed-finance approach to public housing development should obtain a copy of the Mixed-Finance Guidebook from HUD's Public and Indian Housing Information and Resource Center by calling (800) 955-2232. The Mixed-Finance Guidebook presents key program issues, highlights the costs and benefits of different approaches and, most importantly, uses actual mixed-finance projects to illustrate the wide variety of approaches to leveraging PHA resources and structuring partnerships.

There are many ways to proceed in completing a mixed-finance project, and the Mixed-Finance Guidebook is designed to guide PHAs through the many decisions they will have to make in order to develop mixed-finance projects appropriate to local needs and circumstances.

### A. HOPE VI AUTHORITY

The HOPE VI Program was created by the FY 1993 HUD appropriation, and grants have been awarded in accordance with each year's Notice of Funding Availability (NOFA). Each Grantee signs a HOPE VI Grant Agreement, which requires that development take place in accordance with the Public Housing Development regulations at 24 CFR part 941. Subpart F of that rule, which provides the framework for mixed-finance public housing development, permits PHAs to use a combination of private financing and public housing development funds (including HOPE VI funds) to develop public housing units owned by an entity other than the PHA. The public housing development funds may be provided to a third party (non-PHA entity) so that it can develop and own the resulting public housing units.

The underlying goal of mixed-finance development is to maximize the leveraging of other funds, both public and private, into the public housing development process to create mixed-income communities. At the same time, HUD seeks to ensure that Federal funds are efficiently used for intended program purposes and are not subject to waste, mismanagement or abuse.

## B. **BENEFITS OF THE MIXED-FINANCE APPROACH**

The mixed-finance approach involves financing from multiple sources. These may be both public and private sources. It also involves ownership of the public housing units by an entity other than the PHA. The following are only a few of the benefits that can accrue from the mixed-finance approach. More benefits will become increasingly evident as projects are successfully closed, developed, and occupied.

1. **Brings additional resources to the project**, which can be used for gap financing and to provide market level amenities. As federal funding dwindles, PHAs will be able to turn to private capital to develop quality housing that can compete with other housing options available to low income households.
2. **Increases opportunities for the physical, social, and economic integration of public housing.** Mixed-finance projects can leverage additional affordable and/or market rate housing units to create mixed-income communities. Where the market exists, mixed-finance developments include public housing units, tax credit units, and market rate units (not rent restricted). HUD encourages the "floating" of public housing units within the larger project, rather than "dedicating" specific units, to ensure that full integration and equal access to amenities is provided to public housing residents. Having "floating" units is also a pragmatic policy, as it provides flexibility to the property manager to rent available units to households with appropriate income levels, ensuring compliance with the Regulatory and Operating agreements.
3. **Stimulates neighborhood revitalization and economic development.** The re-development of distressed public housing sites in struggling neighborhoods is contributing to major reinvestment in inner city neighborhoods. Cities are targeting these neighborhoods for infrastructure improvements, affordable homeownership programs, owner rehab programs, and new public facilities (i.e., community centers, recreation centers, health clinics, public libraries, etc.). Public housing funds are leveraging many of these collateral improvements. To support these efforts at neighborhood revitalization, HUD's "site and neighborhood standards" now permit the demolition of existing public housing and reconstruction on the same site at reduced densities and in the immediate vicinity for HOPE VI redevelopment efforts, even though it may be in an "impacted" (high poverty or racially segregated) neighborhood. The goal is not to abandon the distressed neighborhoods where public housing residents have lived for decades, but rather to create healthy new communities with access to jobs, services and other amenities.
4. **Increases PHA development expertise by attracting experienced partners.** Most PHAs have had little opportunity over the past decade to develop new housing; most efforts have been targeted at the modernization of existing stock. As a result, PHAs often lack in-house development experience, particularly as it relates to tax credit projects and/or development of homeownership units. Mixed-finance provides the vehicle for attracting experienced partners -- from both the non-profit and for-profit private sectors -- to guide these often complex development efforts, and to impart their development expertise to PHAs so they are more informed and skilled for future development activities.

5. **Provides opportunities for partnering** with not-for-profit and for-profit organizations that have been successfully working in inner city neighborhoods for years, on affordable housing, economic development, and service delivery.

## C. **HOW MIXED-FINANCE DEVELOPMENT WORKS**

### 1. **Summary of the Mixed-Finance Concept**

Public Housing funds, including HOPE VI Revitalization grants, Capital Funds, and remaining Development and Modernization funds may be loaned and/or granted by the PHA to a development partner to build replacement public housing. Public Housing funds in a mixed-finance project also serve to leverage other public and private funds for the development of public housing, other affordable and/or market rate housing. The use of such Public Housing funds is described in a Mixed-Finance Proposal, prepared in conformance with the requirements of 24 CFR part 941 subpart F.

The project will be subject to a Mixed-Finance Amendment to the Consolidated Annual Contributions Contract (ACC), signed by the PHA and HUD. This document provides for the delivery of HUD capital dollars to the PHA and ensures that public housing units in the project are operated pursuant to the public housing regulations. It also allows HUD operating subsidy to flow to the public housing units within the mixed-finance development.

Exhibits to the Mixed-Finance Amendment to the ACC list the required legal documents ("evidentiary materials") specified in 24 CFR 941.610. These materials may differ from project to project, but generally include a Development Agreement, Regulatory and Operating Agreement, Declaration of Restrictive Covenants, Partnership Agreement, Management Agreement, financing documents, Ground Lease, and Cooperation Agreement.

### 2. **Mixed-Income**

Public housing units may be intermixed with non-public housing, low-income, and/or market rate housing units to create a mixed-income development. Public housing units are typically financed with Public Housing funds and other leveraged funds (e.g., tax credit equity). Non-public housing low-income units may be financed using a variety of public and private financing sources including Low-Income Housing Tax Credits, taxable or tax-exempt bonds, Community Development Block Grant (CDBG) funds, HOME Program funds, private mortgages, and other state, local or private funding. Market rate units may be funded with private debt and/or equity. All units should have the same amenities. All public housing units should "float" in a non-concentrated distribution between those of private low-income, and market rate.

### 3. **Selection and Procurement of Development Partners**

PHAs must procure development partners in compliance with the requirements of 24 CFR part 85 and part 941 subpart F. In all instances, selection must be by a publicly advertised and procedurally fair competition. Subsequent procurements of contractors by the developer or owner entity are not subject to part 85 unless the PHA is significantly involved in the development process. Subpart F allows for the procurement of development partners through the Request for Qualifications (RFQ) process, which allows the PHA to select a developer based on qualifications and negotiate price after selection.

### 4. **Eligible Uses of Federal Funds**

Mixed-finance projects may use HOPE VI funds, Capital Funds, and any remaining Development grant or Modernization funds. These funds may be expended for predevelopment activities such as demolition, site preparation, relocation, etc., for the entire site. Public Housing funds provided for construction may only be used to construct and/or rehabilitate units that will function as public housing and a pro rata share of their common area costs. The public housing funds are intended to leverage other public and/or private funds available for the development. Therefore, at a minimum, the Public Housing funds must construct at least as many public housing units as could be constructed without leveraged financing. It is expected that the public housing funds as a percentage of the total sources of funds will be equal to or less than the percentage of public housing units to all units constructed and/or rehabilitated in the development.

### 5. **Operating Subsidy**

Public housing operating subsidies, provided in accordance with Section 9 of the 1937 Act, may be made available for public housing units owned by private or public-private entities. Operating subsidy, calculated through the Performance Funding System (PFS), may flow through the PHA to the owner entity. The PHA must develop a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to the privately-owned public housing assisted units.

To address the risk of operating subsidy shortfall, most mixed-finance projects establish a specific operating reserve account from non-public housing funds to cover the operating costs of the public housing units in the event that the PHA does not provide the owner entity with the level of operating subsidy agreed to in the Regulatory and Operating Agreement, and/or in the event that the operating costs exceed net income generated by the units. Public housing Capital Funds, HOPE VI funds, and operating subsidy may not be used to create such a reserve, but operating subsidy and Public Housing rents may be used to replenish a reserve that has been drawn down to pay operating deficits.

**D. MIXED-FINANCE PUBLIC HOUSING POLICY**

The following summarizes some key HUD policies with regard to the mixed-finance development of public housing.

**1. Public Housing Not Owned By PHA**

A PHA may provide capital and/or operating assistance to a privately-owned unit which is developed and operated in accordance with the 1937 Act. Such privately-owned units must be available for use as public housing by low-income families for a minimum of 40 years, in accordance with the 1937 Act.

**2. Homeownership**

PHAs may propose to include homeownership opportunities for public housing residents and others within a mixed-finance/mixed-income development. A PHA that proposes homeownership activities must submit a Homeownership Proposal to HUD that describes all aspects of the proposed homeownership activities. Detailed guidance on homeownership will be provided in a separate HOPE VI guidance document.

**3. Market Design Requirements**

HUD funds should create dwellings which are attractive and marketable, improve or are harmonious with the surrounding neighborhood, meet the long-term needs of the occupants, and are sustainable over the long run. To that end, PHAs are permitted the maximum possible flexibility regarding amenities and design of public housing developments, as long as they are developed within the Total Development Cost (TDC) and Housing Cost Cap (HCC) limits. Notice PIH 99-17 describes HUD's requirements regarding TDC. Consistent with the concept of creating "floating" units that can be rented to public housing or market rate residents, such architectural features such as balconies, counter space, floor area, and carpeting are allowable expenses. Amenities such as air conditioning, garbage disposals, dishwashers, washers and dryers, and trash compactors are also allowable expenses. However, utility allowances will not be raised as a result of these amenities.

**4. Preferences for Admission**

All Federal preferences for admission have been repealed. A PHA may adopt a local system of preferences as part of its Agency Plan developed in accordance with 24 CFR 960.206, as described in the Final Rule published in the Federal Register on March 29, 2000 (page 16726).

**5. Site-Based Waiting Lists**

Using a separate, site-based (sub-jurisdictional) waiting list for mixed-finance units allows the PHA or property manager to maintain a list of families that are specifically interested in living in those units. Under the Public Housing Reform Act of 1998, a PHA may adopt and establish a site-based waiting list under certain conditions, as described in Section 525 of that Act. A PHA must describe its intent to use a site-based waiting list in its Agency Plan.

**6. Site-Based Management Functions**

A PHA may delegate to the owner entity and its selected manager virtually all management functions and the PHA's responsibilities with regard to applicant screening and selection, informal appeals for denial of admission, rent determinations, etc. The PHA, however, remains responsible to HUD for ensuring that statutory requirements are met.