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Department of Housing and Urban Development

24 CFR Part 941

**Streamlined Application Process in
Public/Private Partnerships for the
Mixed-Finance Development of Public
Housing Units; Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 941

[Docket No. FR-4924-P-01]

RIN 2577-AC55

**Streamlined Application Process in
Public/Private Partnerships For the
Mixed-Finance Development of Public
Housing Units**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current application process for participation in mixed-finance public housing development programs, including HOPE VI, to simplify and streamline the application, review, and approval processes. Currently, a public housing agency (PHA) is required to submit a variety of closing documents to HUD, both before closing and after recordation. Under this proposed rule, this two-step process would be retained, but rather than submitting all documents related to the closing, a PHA would be required to complete and retain for inspection or audit all of the closing documents, and to submit to HUD only a portion of the closing documents, along with all necessary certifications of the fulfillment of the closing requirements. This change would significantly reduce the document submission burdens on PHAs while still enabling HUD to ensure that the PHAs meet the program requirements.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the

HUD Headquarters building, please schedule an appointment to review the comments by calling the Regulations Divisions at (202) 708-3055 (this is not a toll-free number). Copies of electronically submitted comments are also available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dominique Blom, Deputy Assistant Secretary, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410-5000; telephone (202) 401-8812, extension 4181 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 35 of the U.S. Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437z-7) made mixed-finance public housing projects eligible for funding under the 1937 Act. HUD's mixed-finance regulations permit PHAs to use public housing capital funds and other development funds to assist mixed-finance developments, including by permitting PHAs to provide those funds to a non-PHA entity to develop and own the resulting public housing units. HUD's original mixed-finance regulations, published prior to the addition of section 35 to the 1937 Act, interpreted the 1937 Act to permit PHAs to use public housing development funds and operating assistance to develop and assist units owned and/or operated by a non-PHA entity to develop and own the resulting public housing units (see the preamble explanation at 61 FR 19708 (May 2, 1996); see also 24 CFR 941.600(a)).

Section 35 of the 1937 Act codifies the Department's mixed-finance program that authorizes a PHA to fund a mixed-finance project from the operating fund, the capital fund, or both. Units receiving capital or operating funds must be developed and maintained as public housing for the period required under both the 1937 Act and the PHA's annual contributions contract (ACC). This period may be 10 years for the period operating funds are received, 20 years for modernization activities, or 40 years for development activities, as applicable, and are extended as additional operating or capital funds are provided in accordance with the 1937 Act. Mixed-

finance development of public housing is subject to regulations at 24 CFR part 941, subpart F. Under the regulations, the PHA must submit information about the project to HUD for review and approval. Otherwise, HUD will not release funds for the development activity. Currently, two HUD approvals are required: (i) One for the mixed-finance proposal prepared in accordance with 24 CFR 941.606, including all legal documents and other materials submitted for review prior to closing in accordance with 24 CFR 941.610; and (ii) one for release of funds after HUD has received and approved final binders for the project containing final, fully executed, and, where appropriate, recorded copies of all closing documents.

II. This Proposed Rule

This proposed rule would streamline the mixed-finance application process by reducing the number of closing documents that must be submitted to HUD to receive these approvals. This rule would revise the proposal submissions in 24 CFR 941.606 to include certifications of compliance with applicable public housing requirements. Under this rulemaking, PHAs would be required to submit their proposals along with certifications required by 24 CFR 941.606(l) (formerly § 941.606(n)). The certifications listed in this section would also act as guidance for PHAs submitting a proposal to ensure the PHA's comprehensive regulatory compliance.

The proposed new § 941.606(l)(1)(iv) is intended to ensure that the PHA obtains all of the project documents relative to development and operation that are required to be kept on file and available for HUD review. This proposed new regulatory section also would provide HUD with assurances that the PHA has properly reviewed the closing documents to ensure that they are consistent with the public housing requirements. The proposed new § 941.606(l)(1)(v) would assure that operating funds provided under section 9 of the 1937 Act will only be used for eligible activities. The proposed new § 941.606(l)(1)(vi) would require PHAs to comply with the provisions of section 30 of the 1937 Act relating to mortgages and security interests. The proposed new § 941.606(l)(1)(viii) would require PHAs to keep records in accordance with 24 CFR 85.20. The proposed new § 941.606(l)(1)(ix) would ensure that none of the parties participating in a mixed-finance proposal and development under this rule are suspended, debarred, or subject to a limited denial of participation under 24

CFR part 24, subtitle A. The proposed new § 941.606(l)(1)(x) would ensure that any transformation remedies included in the project documents are consistent with section 35(h) of the 1937 Act, and that such remedies may not be implemented until such time as HUD establishes procedures or requirements developed by regulations.

This proposed rule would add a statement to 24 CFR 941.608(b) that HUD will perform a subsidy layering review. This new paragraph would not be a change in legal requirements, as section 102(d) of the Department of Housing and Urban Development Reform Act (HUD Reform Act) (42 U.S.C. 3545(d)), requires HUD to certify (after taking into account other government assistance) that any HUD assistance to any housing project shall not be more than is necessary to provide affordable housing. This paragraph would be included in order to make the requirement explicit for this program.

Currently, as part of its initial proposal, pre-closing submission, a PHA submits a complete evidentiary package required by 24 CFR 941.610 for HUD review prior to closing. This proposal submission includes all necessary programmatic, underwriting, and legal documents, including a formal mixed-finance proposal, partnership documents, management documents, ground leases, development agreements, title policies showing lien priority, land surveys, financing agreements, subordinate loan documentation, and other drafts of all project-specific documentation. After receiving HUD's approval for this submission, the PHA may go to closing and record all necessary documentation. Thereafter, prior to release of federal funds, the PHA must resubmit final, fully executed, and recorded copies of all closing documentation to HUD.

With the streamlined review, the project will continue to be subject to this two-stage review process prior to release of funds, including a proposal review and a post closing review. However, the documentation submission requirements will be substantially reduced at each stage. The proposal review will include a limited legal review and review by the program office prior to closing, to safeguard the interests of HUD. This limited review will ensure that the documents submitted are acceptable to HUD prior to the execution and recording of the documents. In addition to the mixed-finance proposal (the rental term sheet form (HUD-50031) and additional submissions), the proposal review submission will include the following: A draft Declaration of Restrictive

Covenants for review by the Office of General Counsel (OGC); a draft mixed-finance amendment to the PHA's ACC with HUD (Mixed-Finance ACC Amendment); and lastly, a certification to HUD that all closing documents, those submitted to HUD, and those retained by the PHA are in conformance with all laws, regulatory and statutory requirements, and executive orders that are applicable to the project. HUD has also made available sample provisions to assist PHAs in developing closing documentation that conform to the program requirements. These provisions are available on HUD's Web site, <http://www.hud.gov>.

The post-closing review follows execution and recording of documents, but is conducted prior to HUD approval of the release of public housing funds for development. This proposed rule would shorten the list of required post-closing submissions in 24 CFR 941.610(a). The PHA would be required to provide the following additional materials for HUD review: (1) An executed Mixed-Finance ACC Amendment, in the form approved by HUD prior to closing; (2) an executed Declaration of Restrictive Covenants date-stamped by the appropriate land records office; (3) a Final Title Policy evidencing the Declaration's recordation priority in the first lien position, unless another order or recording is approved by the Department; (4) a written opinion from legal counsel for the PHA stating that the entities that executed the closing documents have the legal authority to enter into them as required by 24 CFR 941.606(n)(1)(i) of the current rule (this section would be redesignated § 941.606(l)(1)(i) by this proposed rule), that the documents are legally binding instruments, and that the documents comply with all applicable public housing requirements; (5) the revised and updated mixed-finance proposal; and (6) evidence, which may be in the form of a certification stating that all necessary closing documents were executed and recorded, that all funds necessary for the development (as outlined in the mixed-finance proposal) have been committed to the project, and that all project documents will be retained by the PHA and made available for inspection upon request.

Section 941.610(b) of this proposed rule would require a PHA to submit various certifications and assurances. These submissions would include assurances that the Mixed-Finance ACC Amendment and related materials are complete, remain in the form and with the content approved by HUD at closing, and are consistent with the mixed-finance proposal. In addition, the PHA

would be required to submit a certification that the Declaration of Restrictive Covenants required under § 941.610(a)(2) of this proposed rule is enforceable, has priority over all other liens, and is the first recorded document, unless otherwise approved by HUD. Prior to closing, the PHA may request a HUD review of the pro-forma title policy if there are certain circumstances that may prohibit recordation of the Declaration of Restrictive Covenants in first lien position. The terms of the Declaration of Restrictive Covenants must include that there must be no disposition of the public housing units or of the ownership entity's partnership or membership interests without HUD's approval during the entire operating subsidy period plus 10 years; and that for a 40-year period, which may be extended by an additional 10 years, the public housing units must be operated in accordance with all applicable public housing requirements.

The certifications and assurances required in § 941.610(b)(4) of this proposed rule would be generally similar to those required under § 941.610(a)(8) of the current regulations. These include certifications regarding the number or percentage of public housing units in the project; and an acknowledgment that the transfer of development funds from the PHA to the partner or other owner entity shall not be deemed an assignment. The certifications would also include an acknowledgment that the ACC, Mixed-Finance ACC Amendment, and other contracts involved shall not create any third-party rights or any partnership, joint venture, principal and agent relationship, or any other business relationship involving HUD. They would include: (1) An assurance that all agreements and contracts are legally binding on the owner entity or partner and contain an agreement by the PHA to take any necessary enforcement action; (2) a certification of compliance with Davis-Bacon wage rate requirements; (3) an assurance that the PHA will take all steps necessary to ensure, in the event of a foreclosure or other adverse action brought against the owner entity, that the operation of the public housing units in the project will not be adversely affected; and (4) any details or additional documentation HUD may require.

Additionally, this rule would update the legal authority for 24 CFR part 941 to include the requirements of section 35 of the 1937 Act (42 U.S.C. 1437z-7) and section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)) on subsidy layering, and would also update 24 CFR

941.606 to reflect statutory changes. Specifically, the requirement for a life-cycle analysis of heating and cooling systems reflects authority that was removed and replaced by section 515 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L 105-276). Accordingly, this rule removes 24 CFR 941.606(k).

The provision for the section 213 clearance of new public housing by local government officials in current 24 CFR 941.606(l) references a provision that was repealed by section 551 of QHWRA. Accordingly, this rule also removes 941.606(l).

Material on common area improvements currently under § 941.610(a)(8)(i)(B) would be removed from the rule as unnecessary, but not to change the basic requirement that common area improvements benefit all residents. Section 941.608(b)(4)(ii) (which is unaffected by this rulemaking) requires HUD, as part of its technical processing, to ensure that common area improvements will benefit all residents of the development. As a policy matter,

HUD applies a pro rata test to ensure that the amount spent on the project from public housing funds reflects the appropriate share of public housing units in the project.

The proposed rule would add § 941.610(c) to provide the Department access to the development documents. Although this regulatory change would remove the requirement to submit certain documents to the Department for review, the PHAs would be required to provide HUD with copies of any or all of the development documents immediately upon written request from HUD.

This proposed rule would make a technical revision to 24 CFR 941.612(b) on standard drawdown requirements. This change would be to remove the term "evidentiary materials" in the relevant paragraph and replace it with language that reflects the fact that HUD will accept certifications in lieu of many of these materials.

Lastly, 24 CFR 941.616, which addresses sanctions, would be revised to include certifications and assurances.

The resulting provision would state that if the public housing units are not developed in accordance with all applicable requirements, including all certifications and assurances, the PHA may be liable for sanctions.

III. Findings and Certifications

Paperwork Reduction Act

This rule contains collection of information requirements, which have been submitted to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). These new collection of information requirements are not effective until such time that OMB grants its approval. The approval numbers will be published in the **Federal Register** through separate notice. Information on these requirements is provided as follows:

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

The burden of information collection in this final rule is estimated as follows:

Form/document	Number of respondents	Frequency	Total responses	Hours per response	Total hours
HUD-50030 Mixed-Finance Rental Term Sheet	70	1	70	40	2,800
Mixed-Finance Amendment to the Annual Contributions Contract	70	1	70	8	560
Mixed-Finance Certifications and Assurances	70	1	70	0.25	17.5
Mixed-Finance Declaration of Restrictive Covenants	70	1	70	0.25	17.5
Mixed-Finance Final Title Policy	70	1	70	0.25	17.5
Mixed-Finance Legal Opinion	70	1	70	1	70
Totals			420		3,483

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected;
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the

information collection requirements in this proposal. Comments must be received within 30 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4924-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947, and Aneita Waites, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4116, Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made with respect to this proposed rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of

No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Indeed, this rule reduces the administrative burden on all PHAs participating in a mixed-finance development program.

Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.850.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 941, subpart F, as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for part 941 is revised to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, 1437z–7, 3535(d), and 3545(d).

Subpart F—Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units

2. Amend § 941.606 as follows:
a. Remove paragraphs (k) and (l);

b. Redesignate paragraphs (m) and (n) as paragraphs (k) and (l), respectively; and

c. Amend newly designated paragraph (l) by adding paragraphs (l)(1)(iv) through (x) to read as follows:

§ 941.606 Proposal.

* * * * *

(l)(1) *Certifications and assurances.*

* * *

(iv) Has obtained or will obtain any documents needed to establish its rights and responsibilities associated with the development and operation of the project, and that such documents will be consistent with the applicable public housing requirements. Such documents shall include, but not be limited to:

(A) A regulatory and operating agreement between the PHA and owner entity that provides binding assurances that the operation of the public housing units will be in accordance with applicable public housing requirements;

(B) A partnership agreement, membership agreement, development agreement, or other agreement between any of the participating parties, including an agreement between the agency and the owner entity, its partner, or other participating parties, that establishes the rights and liabilities (financial and otherwise) of the parties;

(C) A management agreement for the public housing units if the units will be managed by an entity other than the agency;

(D) An opinion of counsel for the applicable jurisdiction that the existing cooperation agreement between the jurisdiction and the agency includes the project or development, or a certification from the jurisdiction that the project is consistent with the jurisdiction's Comprehensive Housing Affordability Strategy;

(E) All financing documents, including notes, mortgages, deeds of trust, loan agreements, bond documents, or such other documents that evidence the availability of the participating party(ies) financing, and the amount and source of financing committed to the development;

(F) The organizational documents of the owner entity;

(G) Evidence of control of the site by the agency, partner, or owner entity for such a period of time as may be required by HUD; and

(H) Evidence that all applicable permits and zoning requirements are in place or, if not in place, a certification that permits and zoning will be in place prior to start of construction, along with an explanation of the process and barriers to obtaining such permits and zoning, which may be in the form of a

certification from the owner entity or its counsel.

(v) Will ensure that operating funds provided under section 9 of the 1937 Act will be used only for the eligible activities identified in the agency's Mixed Finance ACC Amendment. It will also ensure that operating funds will not be used for exit taxes in connection with any low-income housing tax credit program or to initially fund any operating reserve account, and that operating funds must not be used for the payment of debt service without prior HUD approval;

(vi) Will not, without HUD's prior written approval, authorize any mortgages or otherwise grant a security interest in the development, including under section 30 of the 1937 Act;

(vii) Will ensure that the ownership entity will not make, without HUD's prior written approval, any transfer or grant any security interest in the ownership entity;

(viii) Will keep records in accordance with 24 CFR 85.20 and facilitate an audit to determine compliance with program requirements. All records must be available at all times for HUD inspection and review;

(ix) Will ensure that, to the greatest extent feasible, none of the parties participating in this mixed-finance proposal and development are suspended, debarred, or subject to a limited denial of participation under 24 CFR, part 24, subtitle A; and

(x) Will ensure that any transformation remedies made available to the owner-entity are consistent with section 35(h) of the 1937 Act.

3. Add § 941.608(b)(7) to read as follows:

§ 941.608 Technical processing and approval.

* * * * *

(b) * * *

(7) *Subsidy layering analysis.* After the PHA submits the proposal, HUD (or its designee) shall carry out a subsidy layering analysis pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (See 24 CFR part 4) to determine whether the aggregate amount of assistance being provided for the development is more than necessary to make the assisted activity feasible.

* * * * *

4. Revise § 941.610 to read as follows:

§ 941.610 Post-Closing materials and other documents.

(a) *Submission requirements.* After the closing but prior to the disbursement of grant funds under 24 CFR 941.612, the PHA must submit the

materials listed in this section to HUD for approval. The materials must be in the form as approved by HUD at the time of the approval of the proposal under 24 CFR 941.606, or in a form approved by HUD prior to release of funds. These required materials include, but shall not be limited to:

(1) The PHA-executed Mixed-Finance ACC Amendment to the PHA's ACC, along with any required exhibits, as applicable;

(2) A Declaration of Restrictive Covenants in the form and recorded in the order approved by HUD. The restriction must assure that the public housing units will be available for use by eligible low-income families in accordance with all applicable public housing requirements for the maximum period required by law;

(3) A Final Title Policy showing HUD's Declaration in a first lien priority position against the fee estate of the Project, or other order of recording approved by HUD;

(4) A legal opinion prepared by PHA counsel after due diligence and based on information that is, to the knowledge of counsel, true and correct, warranting that the PHA has the legal authority under federal, state, and local law to take all actions and enter into all agreements referenced or required under, or executed pursuant to, § 941.606(l)(1)(i) of this subpart and that all such agreements are in accordance with federal, state, and local law, including the 1937 Act and all HUD regulations;

(5) A revised and updated proposal consistent with the Mixed-Finance ACC Amendment; and

(6) The certifications and assurances required by HUD, including, but not limited to, those described in paragraph (b) of this section.

(b) *Certifications and assurances.* The PHA's certification must include the following statements, as well as any others that HUD may deem necessary to the proper operation of the program. The PHA must certify that:

(1) The PHA is responsible for ensuring that the public housing units are developed, operated, and maintained in accordance with all applicable public housing requirements, including the 1937 Act, the ACC (as amended by the Mixed Finance Amendment) and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time;

(2) These certifications are made under penalty of perjury and subject to HUD's authority to prosecute false claims or statements;

(3) The submissions under paragraph (a)(1) of this section are consistent with the mixed-finance proposal and any other legal documents or representations related to the project;

(4) HUD's declaration of restrictive covenants is legally enforceable and recorded in the order approved by HUD. The terms of the restriction must include the following:

(i) There shall be no disposition of the public housing units without the prior written approval of HUD during, and for 10 years after the end of, the period in which the public housing units receive operating subsidy from the PHA; and

(ii) During a 40-year period (which may be extended for 10 years after the end of the period in which the public housing units receive operating subsidy from the PHA, or as may be otherwise required by law), the public housing units shall be maintained and operated in accordance with all applicable public housing requirements (including the ACC), as those requirements may be amended from time to time;

(5) The PHA shall develop at least the same number of public housing units as were approved by HUD as part of the PHA's proposal, and will do so within the total development cost (TDC) and housing construction cost (HCC) limits;

(6) If the PHA's proposal provides that public housing units within a development will not be specifically designated as public housing units (i.e., floating units), but shall instead constitute a fixed percentage of the housing units and number of bedrooms developed under the proposal, the PHA shall assure that, at a minimum, the percentage of public housing units, as approved by HUD, will be maintained as public housing by the owner entity, and that all of the requirements of this subpart will be satisfied with respect to those units;

(7) The PHA shall include, or cause to be included, in all agreements or contracts with the partner, owner entity, or any other participating parties receiving funds under this subpart:

(i) An acknowledgement that a transfer of the development funds by the PHA to the partner, the owner entity, or other participating party, shall not be deemed to be an assignment of development grant funds and that, accordingly, the partner, the owner entity, or other participating party shall not succeed to any rights or benefits of the PHA under the ACC, or ACC amendment, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC or ACC amendment;

(ii) A provision stating that nothing in the ACC or ACC amendment providing

such funds, nor any agreement or contract between the parties, shall be deemed to create a relationship of third-party beneficiary, principal, and agent; limited or general partnership; joint venture; or any association or relationship involving HUD;

(iii) A provision to ensure that the requirements of this subpart are binding upon the owner entity and any partner of the PHA and upon any other participating party. In addition, in the event of any noncompliance with the requirements of this subpart by any participating party, the PHA agrees to take all necessary enforcement action to ensure such compliance or, alternatively, to pursue any legal or equitable remedies that HUD deems appropriate;

(8) The PHA shall ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and that wherever HUD financial assistance is expended for housing or community development, economic opportunities will be made available, to the greatest extent feasible, to low- and very low-income persons and businesses pursuant to section 3 of the Housing and Urban Development Act of 1968. If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units;

(9) The PHA shall take all steps necessary to ensure that, in the event of a foreclosure or other adverse action brought against the owner entity with respect to the housing units (including, but not limited to, the public housing units), the operation of the public housing units developed under this subpart shall not be adversely affected;

(10) The PHA shall certify that it has ensured and shall ensure the availability of the participating party or parties' financing, the amount and source of financing committed to the proposal by the participating party or parties, and the irrevocability of those funds. Irrevocability of funds means that binding legal documents, such as loan agreements, mortgages/deeds of trust, partnership agreements, operating agreements, or similar documents committing funds have been executed by the applicable parties, though disbursement of such funds may be subject to meeting progress milestones, avoiding default, and meeting other

commercially reasonable conditions precedent under such documents. For projects involving revolving loan funds, the irrevocability of funds means that funds in an amount identified to HUD as the maximum revolving loan have been committed pursuant to legally binding documents, though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and meeting other commercially reasonable conditions precedent under such documents. The PHA has ensured the commitment of funds by the participating parties through reviewing the legal documents described above, confirming the terms of the documents committing the funds as described above, and confirming that such documents are duly executed by the participating parties. The PHA is not required to ensure the availability of funds by enforcing documents to which it is not a party. The PHA may certify as to the irrevocability of funds through the submission of an opinion of the PHA's counsel attesting that counsel has examined the availability of the participating party or parties' financing, has examined the amount and source of financing committed to the proposal by the participating party or parties, has

determined that such financing has been irrevocably committed by the participating party or parties for use in carrying out the proposal, and has determined that such commitment is in the amount required under the terms of the proposal;

(11) The PHA shall provide such additional certifications as may be required by HUD.

(c) *Recordkeeping.* The PHA must retain for inspection, upon request by HUD, all documentation of the mixed-finance closing including, but not limited to: all development agreements, related management agreements, surveys, title policies, zoning assurances, environmental reports and approvals, partnership agreements, ground leases, regulatory agreements, project financing documents, and any recorded documents encumbering the use of the land. The documentation should be retained in one comprehensive binder for the period required by law.

5. Revise § 941.612(b) introductory text to read as follows:

§ 941.612 Disbursement of grant funds.

* * * * *

(b) *Standard drawdown requirements.* HUD will review the documents and

certifications submitted pursuant to § 941.610, and, upon determining that such documents and certifications are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

* * * * *

6. Revise § 941.616 to read as follows:

§ 941.616 Sanctions.

In the event the public housing units that are proposed to be developed under this part are not developed in accordance with the projected development schedule, with the approved proposal, with all certifications and assurances, and with all applicable federal requirements, or if the units are not operated in accordance with applicable certifications, assurances, and requirements, HUD may impose sanctions on the PHA or seek other legal or equitable relief, or both, in accordance with the requirements prescribed by HUD in the Mixed-Finance ACC Amendment.

Dated: November 27, 2006.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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