

Legal Opinion: **CDH-0001**

Index: 2.120

Subject: Submission Requirements for Mixed Finance Projects Receiving Only Operating Subsidies

May 13, 1999

Mr. Carl Greene
Executive Director
Philadelphia Housing Authority
12 South 23rd Street
Philadelphia, PA 19103-4497

Re: Submission Requirements for Mixed Finance Projects Receiving Only Operating Subsidies

Dear Mr. Greene:

I am writing in response to your letters of September 28, 1998, and February 12, 1999, regarding the transfer of public housing operating subsidies to units being developed by private developers without any use of public housing capital funds. Specifically, you propose awarding operating subsidies to two developments which have been awarded Low Income Housing Tax Credits and Community Development Block Grant funds from the City of Philadelphia. These projects include:

St. Anthony's Senior Residence: 38 one bedroom units for public housing eligible seniors to be acquired and rehabilitated by Ingerman Regis Corporation and South of South Street Neighborhood Association for a total project cost of \$4.7 million financed by tax credits and CDBG funds.

Mt. Sinai Apartments: 37 one bedroom units for public housing eligible seniors to be acquired and rehabilitated by Mt. Sinai-Michaels Development Company, a joint venture of The Michaels Development Company, Falcon Properties and Jefferson Square Community Development Corporation for a total project cost of \$3.6 million financed by tax credits and CDBG funds.

Please be advised that the proposed public housing units must be replacement units to be eligible for operating subsidy. In addition, the units must be developed in accordance with public housing requirements under 24 CFR Part 941 such as site and neighborhood standards, environmental review, Section 504 and other Federal accessibility requirements, Davis-Bacon wage rates, lead-based paint testing and abatement, and Uniform Relocation Act requirements. Since all of the construction funds are non-HUD funds, the PHA may submit an abridged mixed finance proposal along with certain evidentiary documents. The proposal, which should not exceed 10 pages in length, must contain the following information:

- An identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA.

- A description of the proposed development, including the number and type of public housing units (with bedroom count) and, if applicable, the number and type of non-public housing units (with bedroom count).
- The proposed methodology for the provision of operating subsidies on behalf of the public housing units in the project.
- A summary of the proposed management and occupancy policies to be implemented at the project, including any use of local preferences, restricting admissions to the elderly or physically disabled, site-based waiting list, income tiering, etc.

In addition, the following evidentiary documents must be submitted to HUD for review and approval:

- Declaration of restrictive covenants (or deed restriction or long-term recorded lease), which must be the first recorded encumbrance against the project, and which obligates the owner of the project to operate and maintain the public housing units in accordance with all applicable public housing requirements for the term of the low-income use restrictions, and which prohibits the owner from disposing or demolishing the project unless waived by HUD.
- Regulatory and operating agreement to govern the operation and maintenance of the public housing units in the project for the term of the low-income use restrictions. Unless waived by HUD, these restrictions will extend for 10 years from the date that operating subsidies are last provided by the PHA on behalf of the public housing units in the project;
- Management agreement and management plan;
- Request to use a site-based waiting list for the project, if appropriate, (submitted to the HUD Office of Fair Housing and Equal Opportunity);
- An elderly designated housing plan (submitted to the Chicago Special Applications Center);
- Any requested variations from the PHA's standard lease and grievance procedures under 24 CFR part 966, and the form of tenant lease if different from the PHA's standard lease;
- Cooperation Agreement between the housing authority and the locality in which the locality agrees to: (a) grant tax exemption for the public housing units and to accept the payment of PILOT; and (b) provide services for the public housing units in the project. The housing authority may satisfy this requirement by either entering into a new cooperation agreement with the

locality for the public housing units in the mixed-finance project, or it may submit a copy of the existing cooperation agreement, together with a letter from the city solicitor's office indicating that the public housing units to be developed in the mixed-finance project are covered under the existing cooperation agreement between the housing authority and the locality.

NOTE: section 35(f)(1)(A), as added by the 1998 Public Housing Reform Act, now permits the payment of real estate taxes with respect to public housing units in a mixed finance project. In addition, section 35(f)(1)(B) eliminates the need to submit a cooperation agreement between the housing authority and the locality with respect to public housing units in a mixed finance project, if the development of the units is not inconsistent with the jurisdiction's CHAS. HUD will accept a certification from the locality to satisfy this latter requirement.

- Title policy which reflects that the public housing declaration of restrictive covenants is the first recorded encumbrance against the project;
- Opinions of counsel in conformance with Attachment A.
- Certification by the housing authority that the units are being developed in compliance with public housing requirements including site and neighborhood standards, environmental review, Section 504 and other Federal accessibility requirements, Davis-Bacon wage rates, lead-based paint testing and abatement, and Uniform Relocation Act requirements.

Following HUD review and approval of the evidentiary materials, the HUD Office of Public Housing Investments will prepare an ACC amendment. Upon the execution of the ACC Amendment, the public housing units will be placed under ACC and will become eligible to receive operating subsidies provided that all public housing requirements have been met.

Please note that the proposal and all evidentiary materials must be submitted to HUD OPHI at least thirty (30) days prior to HUD approval. If you have any questions, do not hesitate to call Ms. Donna Poggi Keck, HOPE VI Grants Manager, at (202) 708-0614, ext. 4180.

Sincerely,

Elinor R. Bacon
Deputy Assistant Secretary

ATTACHMENT A

Opinions of counsel.

(i) The PHA Counsel must opine to the following for each document submitted as evidentiary material:

(a) An examination of the authority of all parties to the documents and all persons executing the documents on behalf of the parties has been made and that the parties and said persons were authorized to enter into and execute the documents; and

(b) Each document constitutes a valid and legally enforceable agreement or contract under the laws of the HA's State and the commitments and/or agreements evidenced thereby can be carried out in accordance with their terms under State and local law, and conform to the provisions of the Proposal approved by HUD and the requirements of the ACC Amendment.

(ii) The PHA's opinion of counsel must be in writing.

(iii) Counsel may rely upon the certification of other persons, or the written statements or opinions of other counsel, provided that a copy of each such certification, statement, or opinion must be attached to the opinion of that counsel.

(iv) If counsel predicates an opinion upon "information and belief," then in all such cases the counsel's opinion must contain, or have attached thereto, a statement or description of all of the information upon which the belief of counsel is predicated.