



**U.S. Department of Housing and Urban Development**

# **Mixed-Finance Changes in Ownership and Refinancing Guidance**

**Office of Public and Indian Housing**

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# Chapter 1: Background and Introduction

## 1.1 Office of Urban Revitalization Guidance and Policies on Mixed-Finance Changes in Ownership and Refinancing

As stated in HUD's Declaration of Restrictive Covenants, all changes to the legal or financial structure of Mixed-Finance projects are subject to HUD approval. This document describes the processes, policies, and procedures that HUD staff follow in reviewing and approving changes in the ownership and/or financing of Mixed-Finance projects developed under Capital Fund Rule 24 CFR § 905.604. Each section describes the necessary documents and approval process for the specific action taking place.

In addition to the applicable statutes and regulations, when a Mixed-Finance project is recapitalized or restructured, the owner entity and the PHA are obligated to continue to abide by the contracts and agreements to which HUD is a party or a beneficiary. PHAs must inform HUD, via the processes described below, of the exit or substitution of a limited partner. For all other ownership changes and/or refinancings of a Mixed-Finance project, PHAs must receive HUD approval before making changes to the project's legal or financial structure. Additionally, public housing funds or reserves may not be used to pay any exit taxes associated with changes.

This guidance outlines the documents that must be submitted to HUD before any changes take place. When a deal is undergoing more than one change, all requirements for each individual change must be met. HUD reserves the right to request additional documents as needed to ensure compliance with HUD's Capital Fund Rule at 24 CFR part 905.

## 1.2 Types of Changes in Ownership

In this guide, a change in ownership refers to the transfer of any interest in the Owner Entity of a Mixed-Finance Project, regardless of whether the Owner Entity is a corporation, partnership, or other type of legal entity, or the replacement or dissolution of the Owner Entity. Changes in ownership that also include changes in the financial structure of the project, such as refinancing a loan or re-syndicating Low-Income Housing Tax Credits (LIHTCs), should follow guidelines in section [1.3.3 Restructuring a Project](#). Instructions and documents required for Restructuring a Project can be found in section [3.2 Mixed-Finance Project Refinancing Documents Required](#).

The review procedures and requirements differ based on the type of change in ownership taking place. The following define the types of changes in ownership that can take place in Mixed-Finance Projects.



### 1.2.1 Exit of Limited Partner

The exit or transfer of a limited or investment partner or a non-managing member from the Owner Entity is the most common type of change in ownership that Mixed-Finance Projects experience. Typically, this happens at the end or close to the end of the LIHTC compliance period.

The exit or transfer of a limited partner or non-managing member does not require HUD approval because the limited partner/non-managing member does not have a controlling interest in the Owner Entity. However, pursuant to paragraph 8(B) of the DOT/DORC, the PHA involved is required to notify HUD's Office of Urban Revitalization when a limited partner exits or transfers its interests in the Owner Entity of a Mixed-Finance Project through the process described in [2.1 Submission and Approval Process](#). The exit or transfer is subject to HUD regulations and requires PHAs to submit the documents outlined in [2.2 Mixed-Finance Changes in Ownership Documents Required](#).

### 1.2.2 New General Partner

The acquisition and transfer of ownership interests in the general partner or managing member is another common type of change in ownership transaction in Mixed-Finance Projects. As this constitutes a change in the controlling interest, the exit or acquisition of a general partner or managing member requires HUD review and approval before it can take place.

### 1.2.3 New Owner Entity

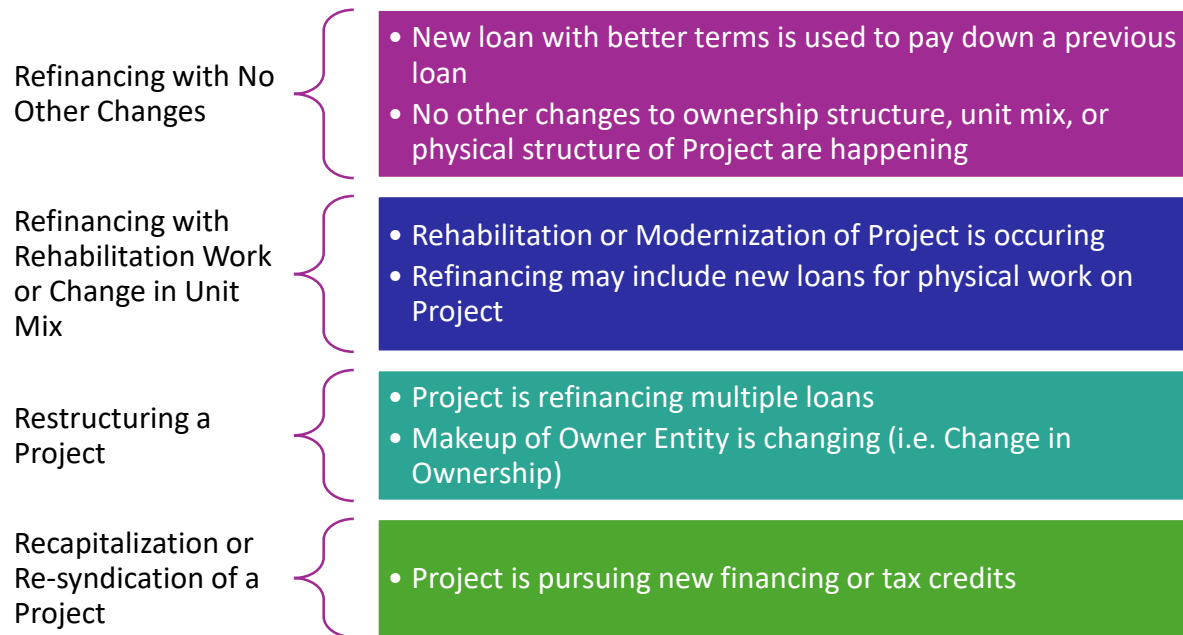
The establishment of a New Owner Entity typically occurs when another entity, including an instrumentality or affiliate of a PHA, acquires or purchases a Mixed-Finance Project. In these cases, the seller's Owner Entity will unwind and be replaced with the new Owner Entity. Evidentiary documents need to be updated to bind the new Owner Entity to the Project, and a HUD legal review is required.

### 1.2.4 PHA Acquisition of Project

If a PHA acquires and becomes the sole owner of the Project, it will no longer be identified in PIC as a Mixed-Finance Project. If a PHA's instrumentality or affiliate acquires the Project or its ownership interests, then the Project will continue to be identified as a Mixed-Finance project and the PHA should follow guidance for the Exit of a Limited Partner, New General Partner, or New Owner Entity.

## 1.3 Types of Refinancing

In this guide, refinancing refers to changes in the financial structure of a Mixed-Finance Project. The information below details specific financial situations that can arise in the refinancing of Mixed-Finance Projects.



### 1.3.1 Refinancing with No Other Changes

Refinancing refers to the process in which the Project leverages a newly obtained loan with better terms to pay off a previous loan. Projects that are seeking to refinance a loan on their current Mixed-Finance Project are subject to HUD review and approval.

It is important to note that the requirements listed in this category are for Mixed-Finance Projects that are seeking to refinance **only one loan with no other changes**. If your project is refinancing more than one loan, doing physical work on the property, or refinancing a loan with a change in ownership, OUR considers this restructuring a project or refinancing with rehabilitation work.

### 1.3.2 Refinancing with Rehabilitation Work or a Change in Unit Mix

Projects that are seeking to refinance a loan and complete physical work on the property must submit a revised developmental proposal describing the scope of work and proposed changes. These projects may also require new or updated environmental documentation. For information, refer to [3.2 Mixed-Finance Project Refinancing Documents Required](#).

### 1.3.3 Restructuring a Project

PIH defines restructuring as making significant changes to a Mixed-Finance Project's legal and financial structure to transform the project for the better. This might include debt restructuring, refinancing multiple loans, rehabilitation work, and changes in the ownership structure. Since there are many ways that Mixed-Finance Projects can be restructured, Projects that are **making changes to more than one loan or refinancing while also pursuing a change in ownership**, including the acquisition of a new general partner, should follow the requirements for restructuring a project. These projects may also require new or updated environmental documentation. For information, refer to [3.2 Mixed-Finance Project Refinancing Documents Required](#).

### 1.3.4 Recapitalization or Re-syndication of a Project

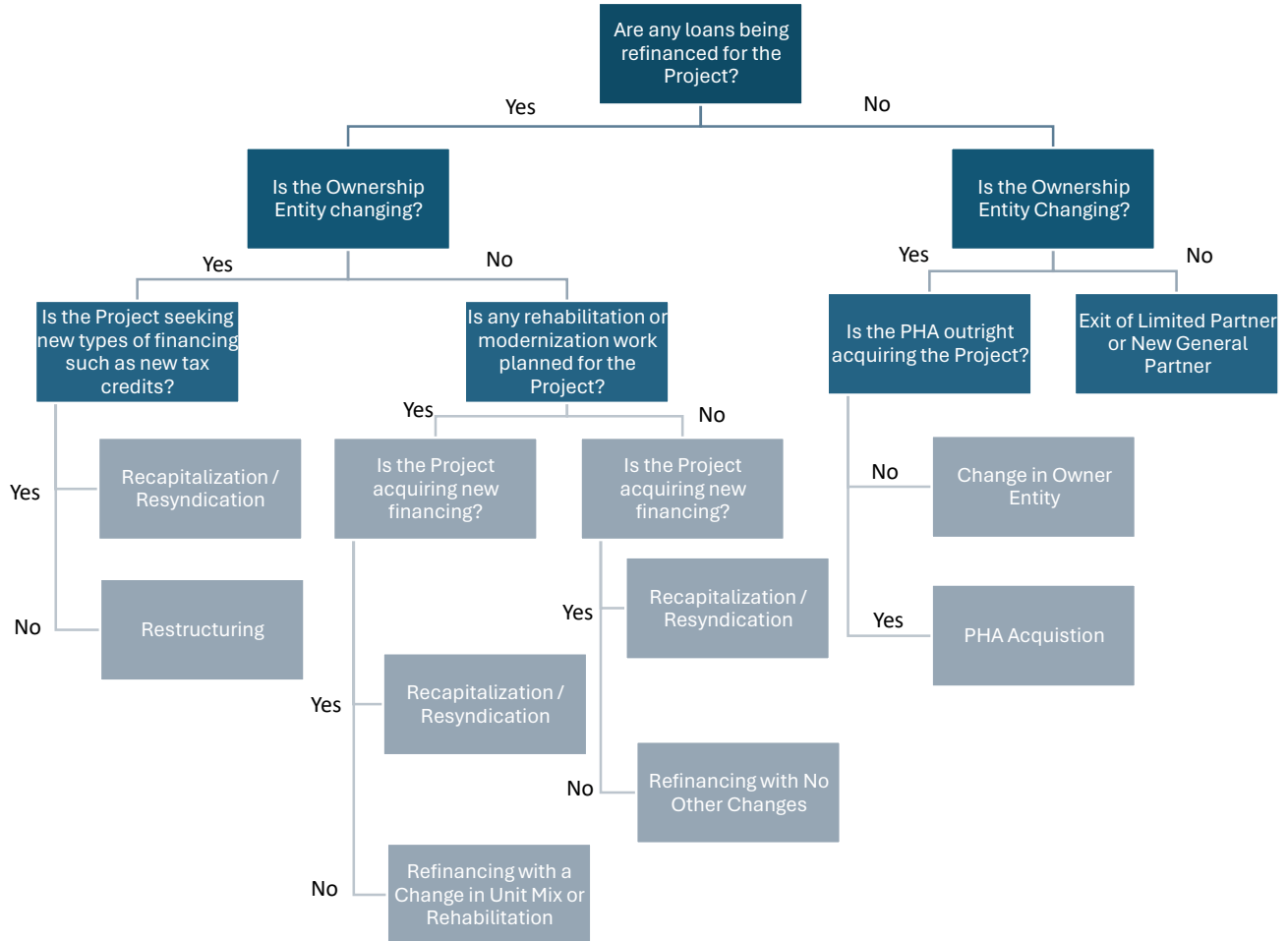
For the purposes of this guidance, recapitalization refers to Projects restructuring through seeking out new types of financing to preserve an existing property, rather than just refinancing existing debt. Re-syndication involves projects seeking a new allocation of tax credits, including low-income or historic credits, to preserve an existing property. Typically, these new credits or new sources of financing are used to rehabilitate, upgrade, or modernize a building to make the property more marketable and sustainable.

Since both recapitalization and re-syndication involve the use of new types of funding to make changes to a property, HUD's approval process and requirements are the same. For information, refer to [Chapter 3: Mixed-Finance Project Refinancings](#). These projects may also require new or updated environmental documentation. For information, refer to [3.2 Mixed-Finance Project Refinancing Documents Required](#).



## 1.4 How HUD Classifies a Project

For further clarification on the different categories Project changes fall under, refer to the following flow chart.



# Chapter 2: Mixed-Finance Project Changes in Ownership

## 2.1 Submission and Approval Process

The table below illustrates HUD’s approval process for Mixed-Finance changes in ownership. The approval timeline depends on the Project’s complexity and if a legal review is required. PHAs should expect the review to take at least 30 business days and 60 business days if legal review is required.

### PHA Submission

- The PHA initiates the approval process for a change in ownership request by submitting a letter signed by the PHA Executive Director to the Director of the Office of Urban Revitalization (OUR). Details on what to include in this letter can be found under Mixed-Finance Changes in Ownership Documents Required.

### HUD Review

- A HUD Grant Manager will be assigned to the Project. The Grant Manager will review all documents and work with the PHA to address any questions and concerns.
- If a legal review is required, HUD's Office of General Counsel (OGC) will conduct a review of any evidentiary documents in their purview.

### Approval

- If HUD approves, the Grant Manager will send the PHA an approval letter. The letter will be signed by the OUR Director or designee. The PHA can then execute any evidentiary documents and make the approved changes.

## 2.2 Mixed-Finance Changes in Ownership Documents Required

This table outlines the required documents the PHA must submit for each type of ownership structure change. Guidance on required documents and processes can be found in more detail below the table.

Note: An asterisk (\*) indicates documents for counsel review.

Documents Required <sup>1</sup> :	
Exit of Limited Partner / Investor	<ul style="list-style-type: none"> <li>• Letter to the Director of OUR</li> <li>• Certifications and Assurances</li> <li>• If withdrawal occurs before the end of the 15-year tax credit compliance period, Legal Opinion Regarding Effect of Withdrawal</li> </ul>
New General Partner or Managing Member	<ul style="list-style-type: none"> <li>• Letter to the Director of OUR</li> <li>• Three years of Audited Financial Statements</li> <li>• *Amendment to the Mixed-Finance ACC Amendment</li> <li>• Certifications and Assurances</li> <li>• If withdrawal occurs before the end of the 15-year tax credit compliance period, Legal Opinion Regarding Effect of Withdrawal</li> </ul>
New Owner Entity <sup>2</sup>	<ul style="list-style-type: none"> <li>• Letter to the Director of OUR</li> <li>• Three years of Audited Financial Statements</li> <li>• Amendment to the Mixed-Finance ACC Amendment*</li> <li>• Updated DORC*</li> <li>• Updated R&amp;O*</li> <li>• Updated Ground Lease or Memorandum of Ground Lease*</li> <li>• Subordination Agreement(s) – if required for DORC to remain superior to lien*</li> <li>• Title Policy*</li> <li>• Opinion of Counsel*</li> <li>• If withdrawal occurs before the end of the 15-year tax credit compliance period, Legal Opinion Regarding Effect of Withdrawal</li> </ul>

<sup>1</sup> Copies of the relevant executed documents should be submitted to HUD with the proposed Changes in Ownership documents.

<sup>2</sup> The new owner entity can also submit a global assignment and assumption document to HUD if that is sufficient to memorialize all changes to the project's evidentiary documents. PHA and/or Owner Entity counsel is responsible for determining whether the changes can be achieved through a global assignment and assumption document, which must be recorded to amend any existing recorded documents. Acceptance of a global assignment and assumption document is at HUD's sole discretion.

**Documents Required<sup>1</sup>:**

PHA Acquisition of Project

- Letter to Director of OUR
- Three years of Audited Financial Statements
- Termination of the Mixed-Finance ACC Amendment\*
- Termination of DORC and New DOT to be Recorded\*
- Termination of R&O\*
- Termination of Ground Lease, if applicable\*
- Deed, if applicable\*
- Title Policy\*
- Subordination Agreement(s) – if required for DOT to remain superior to liens\*
- If withdrawal occurs before the end of the 15-year tax credit compliance period, Legal Opinion Regarding Effect of Withdrawal

## 2.3 Document Description

This section expounds on the documents required for each type of change in ownership and details what PHAs should include in their document submission. To see what documents are required, refer to the table in [2.2 Mixed-Finance Changes in Ownership Documents Required](#).

### 2.3.1 Letter to the Director of OUR

For any project's ownership changes, the PHA must submit a letter to the Director of the Office of Urban Revitalization requesting approval of the change in ownership, even if the PHA is not part of the Project's Owner Entity. In its letter, the PHA must state that it supports the proposed change in ownership and that the new partner or member entering the ownership entity is obligated to perform in accordance with the HUD-approved organization documents of the owner.

In the letter to the Director of OUR, the PHA should describe the following:

- The makeup of the existing ownership structure and proposed changes.
  - The PHA should include an organizational chart or table including the names of all the members and/or partners in the ownership entity and their relative percentages of ownership.
- An explanation for the reason behind the change in ownership.
- A description of the financial terms of the change in ownership. Answer the following questions in the letter's narrative:
  - Is any cash changing hands to purchase the project or ownership stake? If so, how much and what is the source of funding being used?
  - What are the balances of the project's outstanding loans?
  - Is any debt being paid off or refinanced?
  - Is the project taking on any new financing?
  - If the limited partner is changing, has the exiting partner paid all equity they committed to the project? If not, who will be responsible for outstanding equity?
  - Are exit taxes being paid? If so, what is the source of funds that will be used to pay exit taxes? Please note that no public housing funds may be used to pay exit taxes.
- A description of the property manager, if it is changing.
- A description of the property, its unit mix, and any changes to the unit mix.
- A description of any plans to refinance or renovate the project, either now or in the near future.

A sample Letter to the Director of OUR can be found in [Appendix.2.1 Sample Letter to the Director of OUR](#).

### 2.3.2 Certifications and Assurances

When a Limited Partner or General Partner changes in the ownership entity, the Owner Entity must provide a Certification and Assurances document stating that there is no litigation or other claims pending or threatened against the Owner or the Project that would materially, adversely affect the Owner's or the PHA's ability to comply with the Project's Mixed-Finance Amendment to the Annual Contributions Contract. If any such litigation or claim – including any form of lien – is pending on the property, it must be discussed in an attachment to the Certifications and Assurances document. A sample Certifications and Assurances document can be found in [Appendix.3.2 Form Certification and Assurances](#) of this document.

#### ***Submission of Final Evidentiary Documents***

When PHAs submit evidentiary documents to HUD in conjunction with a Change in Ownership or a Refinancing, the PHA must subsequently submit executed and recorded, if applicable, copies of all evidentiary documents to HUD within 30 days of closing. Along with these documents, the PHA must include a signed statement stating that the documents provided conform to the drafts submitted to HUD for review and have not been substantially changed or modified in any manner. Substantial changes and modifications do not include (1) the insertion or correction of execution dates, typed names/addresses, formatting, typographical corrections, cross-reference information and similar non-substantive additions and corrections, or (2) attachment of approved exhibits or riders or making changes authorized by HUD. Substantial changes or modifications made to the documents that were not previously approved by HUD must be identified in blacklined pages attached as Exhibit A of the PHA's statement.

Should an error or omission be found in the Documents or recording order, the Owner must correct such error or omission and arrange for the re-execution and, if necessary, re-recording of such document at the expense of the Owner and PHA and without the use of Federal funds or federally restricted funds.

If a change is made to any document or the Project's financing without HUD's written approval, or if HUD's Approval Letter is not complied with, HUD reserves the right, in its sole discretion, to exercise its authority pursuant to its right under any applicable statute, regulation, agreement, and/or HUD evidentiary document.

A sample Certifications and Assurance is found in [Appendix.2.2 Form Certification and Assurances](#).

### 2.3.3 Legal Opinion Regarding Effect of Withdrawal on LIHTC Projects

In situations where a partner/member in the Owner Entity is seeking to withdraw from or exit the owner entity before year 15 of the tax-credit compliance period, the owner entity must provide a legal opinion from both the PHA and a state tax credit compliance expert attesting that the ownership change will not trigger a tax credit recapture or trigger the dissolution of the ownership entity.

### 2.3.4 Audited Financial Statements

For all changes in ownership involving a new General Partner, Managing Member, Owner Entity, or acquisition by a PHA, the PHA must submit three years of audited financial statements from an independent auditor for the Project. These should be the most recent audited financial statements available.

### 2.3.5 Amendment to the Mixed-Finance ACC Amendment

For Project ownership changes involving a new General Partner, Managing Member, or new Owner Entity, the PHA must amend certain exhibits of the Mixed-Finance ACC Amendment. This includes situations in which a PHA instrumentality or affiliate is acquiring either an interest in an Owner Entity or the entire Project. If the PHA itself is directly assuming 100% ownership of the Project, then it should terminate the Mixed-Finance ACC Amendment.

For project ownership changes involving a new General Partner, Managing Member, or new Owner Entity, Exhibits A, B, and E of the Mixed-Finance ACC Amendment need to be updated in the following ways:

- Exhibit A should be updated to reflect the new names and addresses of all parties involved in the ownership.
- Exhibit B should briefly describe the Project, how the ownership entity is changing, and the financial terms of the change in ownership.
- Exhibit E should list any new evidentiary documents for the deal.

### 2.3.6 Declaration of Restrictive Covenants (DORC)

For project ownership changes involving a new Owner Entity, the DORC must be updated to bind the new Owner Entity to the Project. If the PHA is acquiring the Project outright, the DORC must be replaced with a DOT/DORC.

The recorded DORC or DOT must always be superior to any liens on the property. OGC may require Subordination Agreements from existing financing sources to ensure the DORC/DOT remains superior to all liens.

### 2.3.7 Regulatory and Operating Agreement (R&O)

In the case of a new Owner Entity, the R&O should be updated to bind the new owner or controlling party. The text of the R&O must also be updated to reflect any pertinent changes to the project's management and operations, including any changes to how the Project's Public Housing Operating Subsidy will be calculated.

If the PHA acquires the Project outright, it should submit documentation terminating the R&O.

### 2.3.8 Ground Lease

In the case of a new Owner Entity, the ground lease and/or memorandum of ground lease should be updated to bind the new owner, as applicable.

If the PHA acquires the Project and the PHA will be the sole owner of the real property (i.e. the PHA is no longer leasing the Project to a separate owner entity), the PHA must release the ground lease from the record.

In cases where the existing Owner Entity (not the PHA) has fee title to the property, the proposed Deed from the existing Owner Entity to the new Owner Entity must be submitted.

### 2.3.9 Title Policy

In the case of a new Owner Entity or when the PHA acquires the Project outright, the PHA is required to provide a title policy to be issued in connection with the acquisition and the existing policy issued in connection with the initial mixed-finance closing. All title exceptions appearing on the title policy or to be recorded in connection with the acquisition must be provided for HUD review.

Please note that nothing can be added to the title of the property that adversely affects the DORC and Mixed-Finance ACC Amendment since HUD has reviewed the last version of the title report or proforma title policy. If a refinancing is taking place or if any changes have been made to the Project's title since HUD last approved it or if any new documents are being recorded, an order of recording must be provided.

### 2.3.10 Opinion of Counsel

In the case of a new Owner Entity, the PHA must provide an opinion from their counsel stating that the Project's changes to the ownership structure is consistent with the requirements of the Mixed-Finance Amendment to the ACC. A sample of this document with required HUD language can be found at Appendix 2.5 Sample Opinion of Counsel.

## 2.4 Reminders on Changes in Ownership

**Exit Taxes.** Public housing funds can never be used to pay exit taxes.

**Project Reserves.** Public housing funds contributed to any Project reserves must remain with the Project or be returned to the PHA.

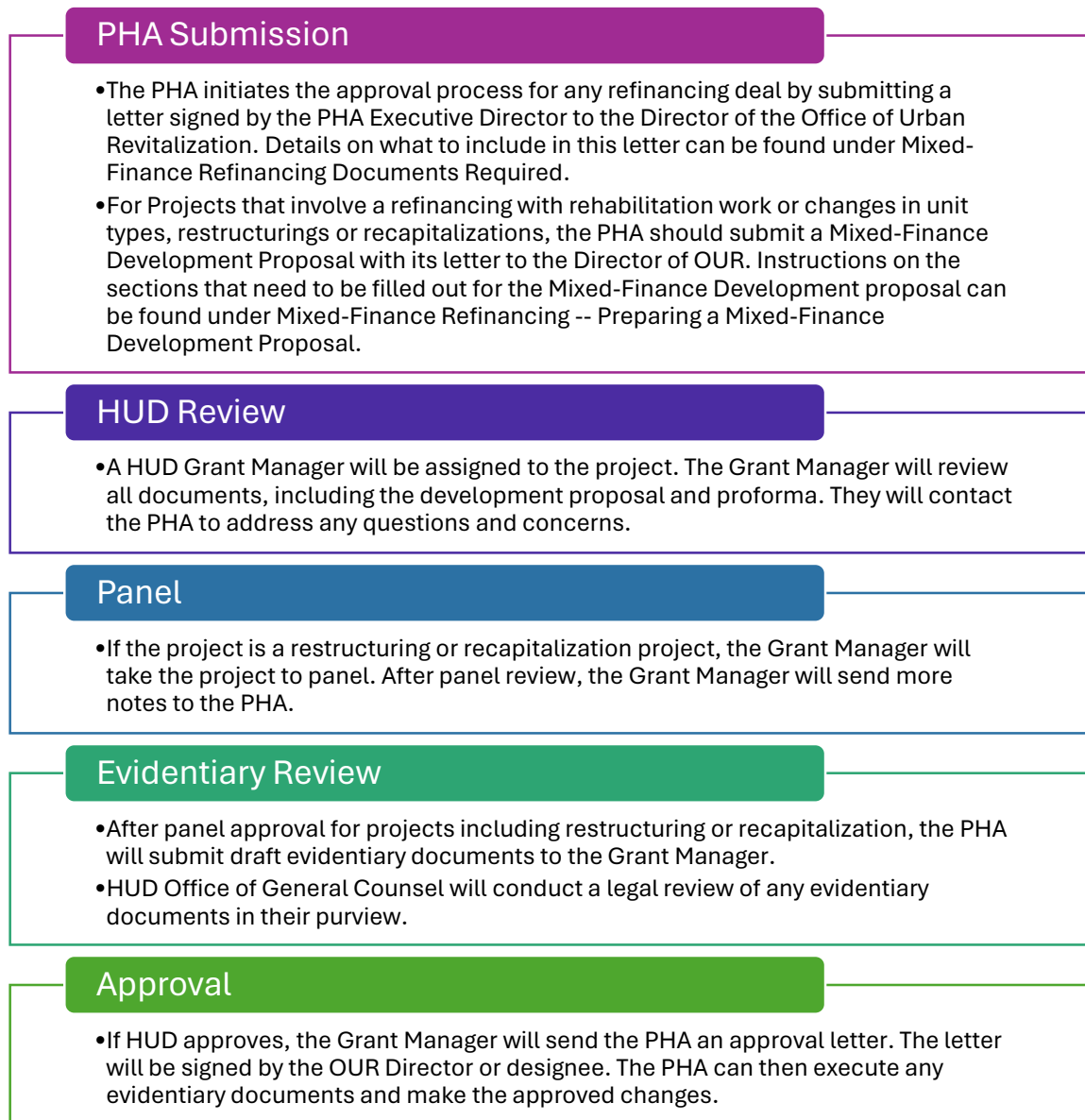
**Public Housing Requirements.** All Projects must continue to comply with all applicable Public Housing Requirements as articulated in HUD's Mixed-Finance Amendment to the Annual Contributions Contract (ACC).



# Chapter 3: Mixed-Finance Project Refinancings

## 3.1 Submissions and Procedures

The table below illustrates HUD’s approval process for Mixed-Finance projects seeking a refinancing. The approval timeline varies and depends on the Project’s complexity. PHAs should expect the review to take at least 45 business days and at least 90 business days if a legal review is required.



### 3.2 Mixed-Finance Project Refinancing Documents Required

Anytime a Project takes on new debt or refinances existing debt, the financial transaction must be approved by HUD. This table outlines the required documents the PHA must submit for different types of refinancing of a Mixed-Finance project. Guidance on required documents and processes can be found in further detail below the table.

Note: An asterisk (\*) indicates documents for counsel review.

<b>Documents Required<sup>34</sup>:</b>	
Refinancing with No Other Changes	<ul style="list-style-type: none"> <li>• Letter to the Director of OUR</li> <li>• Operating proforma showing future loan payments</li> <li>• Rent Schedule</li> <li>• Three years of Audited Financial Statements</li> <li>• Loan Documents</li> <li>• Amendment to the Mixed-Finance ACC Amendment*</li> <li>• Updated DORC (if applicable)*</li> <li>• Updated R&amp;O (if applicable)*</li> <li>• Title Policy*</li> <li>• Opinion of Counsel*</li> </ul>
Any Refinancing with Rehabilitation Work or a Change in Unit Mix	<ul style="list-style-type: none"> <li>• Letter to the Director of OUR</li> <li>• Mixed-Finance Development Proposal</li> <li>• Mixed-Finance Development Calculator</li> <li>• Loan Documents</li> <li>• Three years of Audited Financial Statements</li> <li>• Amendment to the Mixed-Finance ACC Amendment*</li> <li>• Updated DORC (if applicable)*</li> <li>• Updated R&amp;O (if applicable)*</li> <li>• Environmental Documentation (if applicable)</li> <li>• Title Policy*</li> <li>• Opinion of Counsel*</li> </ul>

<sup>3</sup> Copies of the relevant original executed documents should be submitted to HUD with the proposed Refinancing documents.

<sup>4</sup> The owner entity can also submit a global assignment and assumption document to HUD if that is sufficient to memorialize all changes to the Project’s evidentiary documents. PHA and/or Owner Entity counsel is responsible for determining whether the changes can be achieved through a global assignment and assumption document, which must be recorded to amend any existing recorded documents. Acceptance of a global assignment and assumption document is at HUD’s sole discretion.

Documents Required <sup>34</sup> :	
Project Restructuring	<ul style="list-style-type: none"> <li>• Letter to Director of OUR</li> <li>• Mixed-Finance Development Proposal</li> <li>• Mixed-Finance Development Calculator</li> <li>• Loan Documents</li> <li>• Three years of Audited Financial Statements</li> <li>• Submission and Approval of Draft Evidentiary Documents for Mixed-Finance Projects*</li> <li>• Submission and Approval of Final Evidentiary Documents for Mixed-Finance Projects*</li> <li>• Environmental Documentation (if applicable)</li> <li>• Title Policy*</li> <li>• Opinion of Counsel*</li> </ul>
Project Recapitalization/Re-syndication	<ul style="list-style-type: none"> <li>• Letter to Director of OUR</li> <li>• Mixed-Finance Development Proposal</li> <li>• Mixed-Finance Development Calculator</li> <li>• Loan Documents</li> <li>• Three years of Audited Financial Statements</li> <li>• Submission and Approval of Draft Evidentiary Documents for Mixed-Finance Projects*</li> <li>• Submission and Approval of Final Evidentiary Documents for Mixed-Finance Projects*</li> <li>• Environmental Documentation</li> <li>• Title Policy*</li> <li>• Opinion of Counsel*</li> </ul>

## 3.3 Document Submission

This section expounds on the documents required for each type of refinancing and details what PHAs should include in their document submission. To see what documents are required, refer to the table in [3.2 Mixed-Finance Project Refinancing Documents Required](#).

### 3.3.1 Letter to the Director of OUR

For any refinancing of a Mixed-Finance Project, the PHA must submit a letter to the Director of the Office of Urban Revitalization, signed by its Executive Director, requesting approval of the refinancing, even if the PHA is not part of the Project's owner entity. In its letter, the PHA must detail the Project's proposed refinancing.

In the letter to the Director of OUR, the PHA should describe the following:

- Details of the Project's refinancing. Answer the following questions in the letter narrative:
  - Is the current debt being paid off or is the property taking on new debt?
  - Will the Project's new debt encumber the property?
  - Will public housing funds be used to pay off debt? If so, the PHA must submit a request for HUD Section 30 approval.
- Details of the loan including its source, amount, interest rate, and term.
- An explanation for the reasoning behind the refinancing.
- Any plans to renovate or reposition the Project.
- A description of the property and unit mix and any changes to the unit mix.

### 3.3.2 Mixed-Finance Development Proposal

When a Project is rehabilitating, restructuring, recapitalizing, or re-syndicating, the project must include a new Mixed-Finance Development Proposal. Details on preparing a Mixed-Finance Development Proposal can be found at [3.4 Preparing a Mixed-Finance Development Proposal](#).

### 3.3.3 Operating Proforma

The PHA must submit an operating proforma showing the Project's projected income, operating expenses, and debt payments. A sample of this document can be found at [Appendix 2.3 Sample Pro Forma](#).

### 3.3.4 Rent Schedule

The PHA must submit a rent schedule which shows the Project's current rents by unit and bedroom type. A sample of this document can be found at [Appendix 2.4 Sample Rent Schedule](#).

### 3.3.5 Audited Financial Statements

The PHA must submit three years of audited financial statements from an independent auditor for the Project. These should be the most recent audited financial statements available.

### 3.3.6 Loan Documents

The PHA must submit all relevant loan documents to the transaction. Specifically, the PHA should provide commitment letters detailing the loan terms including amount, amortization schedule, term, interest rate, and any other pertinent information.

### 3.3.7 Amendment to the Mixed-Finance ACC Amendment

Exhibits A, B, C, D, E, F, & H of the Mixed-Finance ACC Amendment need to be updated, as necessary, in the following ways:

- Exhibit A should be updated to reflect the new names and addresses of all parties involved.
- Exhibit B should describe proposed rehabilitation or capital improvement plans and information on project refinancing.
- Exhibit C should be updated if the Project's unit mix is changing.
- Exhibit D should list the project schedule, if rehabilitation work is occurring.
- Exhibit E should list any new evidentiary documents for the deal.
- Exhibit F should provide construction and permanent project budgets, if applicable.
- Exhibit H should provide information on program income paid to the PHA, if applicable.

### 3.3.8 Regulatory and Operating Agreement (R&O)

The R&O should be updated if any terms are changing, including the methodology for receiving operating subsidies.

### 3.3.9 Declaration of Restrictive Covenants (DORC)

For project refinancings that involve new public housing funds, the DORC may need to be updated to bind the owner for an additional 20-40 years, depending on the use of funds (modernization or development), the property to be covered and any proposed change in ownership.

### 3.3.10 Title Policy

All projects undergoing refinancing are required to provide a title policy in connection with the refinancing and the existing policy issued in connection with the initial mixed-finance closing. If the Project's new debt is encumbering the property, the title policy must be updated to show that the new encumbrance is subordinate to the HUD DORC. All title exceptions appearing on the title policy since the initial mixed-finance closing or to be recorded in connection with the refinancing must be provided for HUD review.

### 3.3.11 Opinion of Counsel

The PHA should provide an opinion from their counsel stating that the Project's refinancing is consistent with the requirements of the Mixed-Finance Amendment to the ACC.

Projects including rehabilitation work or the addition of new units should also submit an opinion from the owner's counsel and address any bad debt recorded on the title and manner it was resolved in.

A sample of this document with required HUD language can be found at [Appendix 2.5 Sample Opinion of Counsel](#).

### 3.3.12 Environmental Documentation

If a project involves physical rehabilitation work that will be paid for with federal funds or the addition of new HUD-assisted units, documentation should be submitted showing that the project has received environmental approval for the project.

### 3.3.13 Evidentiary Documents for Mixed-Finance Projects

For project's requiring draft and final evidentiary documents for Mixed-Finance documents, refer to the [Mixed-Finance Development Proposal, HUD-50157](#) to see a list of documents required.

### 3.4 Preparing a Mixed-Finance Development Proposal

For any refinancing with rehabilitation work or the addition of new units, the project must include a new Mixed-Finance development proposal. All sections of the Mixed-Finance development proposal do not need to be completed. The following table identifies the Sections that need to be updated.

Section 1: Project Information	Provide requested information.
Section 2: Project Description	Describe proposed rehabilitation or capital improvement plan here.
Section 3: Site Information	Not required.
Section 4: Key Development Partners & Participating Parties	Provide requested information for the proposed transaction here.
Section 5: Project Schedule	Provide project schedule here.
Section 6: Compliance with Design and Accessibility Requirements	Required, unless project does not involve substantial rehabilitation of common areas or units.
Section 7: Project Costs	Provide construction and permanent budgets here. If the refinancing involves public housing funds, provide a calculation of TDC using the 90% TDC limit for rehabilitation; a pro rata calculation; a construction cost estimate; and a request for predevelopment costs if applicable.
Section 8: Project Financing	Provide requested information here.
Section 9: Project Fees	Provide requested information on developer and program fees paid to the PHA here.
Section 10: Operating Pro Forma	Provide requested information using the pro forma included in the Development Proposal Calculator.

Section 11: Local Cooperation Agreement	Not required.
Section 12: Environmental Review Process and Documentation	If the property is being rehabilitated with public housing funds or adding PBV units, an environmental review is required. Provide requested information here.
Section 13: Market Analysis	Not required.
Section 14: Other Requirements	Provide requested information, as applicable.
Section 15: Submission & Approval of Draft Evidentiary Documents for Mixed-Finance Projects	Submit required documents in draft form for HUD review and approval.
Section 16: Submission & Approval of Final Evidentiary Documents for Mixed-Finance Projects	Submit as required.
Section 17: Cost Certification	Provide requested information to the field office.
Section 18: Attachments & Additional Submissions	Not required.



## 3.5 Reminders on Mixed-Finance Refinancing Projects

**Exit Taxes.** Public housing funds can never be used to pay exit taxes.

**Project Reserves.** Public housing funds contributed to any Project reserves must remain with the Project or be returned to the PHA.

**Public Housing Requirements.** All Projects must continue to comply with all applicable Public Housing Requirements as articulated in HUD's Mixed-Finance Amendment to the Annual Contributions Contract (ACC)

# Appendix 1: Frequently Asked Questions

**Q: How long is the approval timeline?**

A: It depends on the type of project and the complexity of the deal. Typically, Projects with changes in ownership take around 30-60 business days for approval. Projects with refinancing or renovations take around 60-90 business days to be reviewed and approved.

The expediency of your response to follow-up questions and requests also affects how long our review will take.

**Q: Do I need OGC review of the Project’s evidentiary documents before HUD will issue an approval letter?**

A: If your project requires legal review, yes. Before our Office of Urban Revitalization will issue an approval letter, OGC must concur on any evidentiary documents in their purview.

**Q: What documents do I need to supply for projects undergoing both refinancing and changes in ownership?**

A: If your Project is changing in ownership and refinancing current loans you should follow instructions for Projects that are restructuring. You can find out more about which guidelines you should follow for your specific Project in [1.4 How HUD Classifies a Project](#).

**Q: Who can I contact if I have questions while putting together a proposal?**

A: You can email any questions to [OUR@hud.gov](mailto:OUR@hud.gov).

## Appendix 2: Definitions and Acronyms

The following definitions and acronyms apply to this guidebook.

1937 Act	The term “1937 Act” means the United States Housing Act of 1937 (42 USC 1437 et seq.).
ACC	The Annual Contributions Contract means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program. [24 CFR 5.403]
Acquisition Development	The development method that involves an acquisition of existing property that requires substantial, moderate, or no repair. Any repair work is done by PHA staff or contracted out by the PHA. The PHA must certify that the property was not constructed with the intent of selling it to the PHA or, alternatively, the PHA must certify that HUD requirements were followed in the development of the property. [24 CFR §905.600(b)(3)]
Capital Fund (CFP)	The fund established under Section 9(d) of the 1937 Act (42 U.S.C. §1437g(d)).
Declaration of Restrictive Covenants (DORC)	A legal instrument that requires a PHA and the Owner Entity to develop a Mixed-Finance Project in compliance with Public Housing Requirements and restricts disposition of the property, including transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering the property.
Declaration of Trust (DOT)	A legal instrument that grants HUD an interest in a Public Housing Project owned by a PHA that is not a Mixed-Finance Project. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.
Development	Activities and related costs to add units to a PHA’s public housing inventory, including, but not limited to, construction and acquisition with or without rehabilitation; any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment, including development of public housing units, and buildings, facilities, and/or related appurtenances (i.e., non-dwelling facilities/spaces). [24 CFR 905.200(b)(2)]
Eligible Activities	As described in 24 CFR 905.200(b), the development, financing, and modernization of Public Housing Projects, including the redesign, reconstruction, and Reconfiguration of public housing sites and buildings (including compliance with the accessible design and construction requirements contained in 24 CFR §8.32, 24 CFR part 40, 24 CFR part 100, 28 CFR §35.151, and 28 CFR part 36, as applicable) and the development of Mixed-Finance Projects.

Evidentiary Documents or Evidentiaries	The package of legal documents, opinions, certifications, and due diligence documents that are submitted after a proposal has been reviewed and, at least preliminarily, approved.
Expenditure	Capital Funds disbursed by the PHA to pay for obligations incurred in connection with work included in a CFP 5-Year Action Plan that has been approved by the PHA's Board of Commissioners and HUD. Total funds expended means cash actually disbursed and does not include retainage.
Federal Fiscal Year (FY)	The Federal Fiscal Year begins each year on October 1 and ends on September 30 of the following year.
Field Office	A local office of HUD; each Field Office is managed by one of ten regional offices of HUD.
HUD	The U.S. Department of Housing and Urban Development.
Mixed-Finance ACC Amendment	An Amendment to the Mixed-Finance ACC to reflect specific changes made to a PHA's public housing inventory or funding.
Mixed-Finance Development	The development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing, using public housing, nonpublic housing, or a combination of public housing and nonpublic housing funds, where the public housing units are owned in whole or in part by an entity other than a PHA. A mixed-finance development may include 100 percent public housing (if there is an Owner Entity other than the PHA) or a mixture of public housing and nonpublic housing units. See 24 CFR §905.604.
Mixed-Finance Modernization	Use of the Mixed-Finance Development method to make capital improvements to modernize Public Housing Projects.
Mixed-Finance Project	A Public Housing Project developed by Mixed-Finance Development.
Modernization	Modernization means the activities and items defined in § 905.200(b)(4-18) funded with Section 9 Capital Funds for public housing units.
Operating Fund	Assistance provided under 24 CFR part 990 pursuant to Section 9€ of the 1937 Act (42 U.S.C. §1437g(e)) for the purpose of the operation and management of public housing.
Operating Reserve	Operating reserve means those funds remaining from the operation of public housing for any fiscal year after eligible Operating Fund expenses are deducted from Operating Funds, tenant rents, and other "operating receipts" as such term is defined in Section 2 of the ACC.
OUR	PIH's Office of Urban Revitalization.
Owner Entity	An entity that owns public housing units. In Mixed-Finance Development, the Owner Entity may be the PHA, or may be an entity in which the PHA owns a partial interest, or may be an entity in which the PHA has no ownership interest. The Owner Entity is subject to the requirements of 24 CFR 905, subpart F. [24 CFR 905.108]
Partner	A third-party entity with which the PHA has entered into a partnership or other contractual arrangement to provide for the Mixed-Finance Development of public housing units. The Partner has primary responsibility with the PHA for the development and/or operation of the public housing units. [24 CFR 905.108]
PHA Affiliate	An entity, other than an instrumentality, formed by a PHA and in which a PHA has a financial or ownership interest or participates in its governance.

	The PHA has some measure of control over the assets, operations, or management of the affiliated entity, but such control does not rise to the level of control to qualify the entity as a PHA Instrumentality. For the purposes of development, ownership of a public housing units would be considered mixed-finance development. [42 U.S.C. §905.604(b)(4)]
PHA Instrumentality	An entity related to the PHA whose assets, operations, and management are legally and effectively controlled by the PHA, and through which PHA functions or policies are implemented, and which utilizes public housing funds or public housing assets for the purpose of carrying out public housing development functions of the PHA. A PHA Instrumentality assumes the role of the PHA and is the PHA under the Public Housing Requirements, for purposes of implementing public housing development activities and programs, and must abide by the Public Housing Requirements. PHA Instrumentalities must be authorized to act for and to assume such responsibilities. For purposes of development, ownership of public housing units by a PHA Instrumentality would be considered Mixed-Finance Development. [42 U.S.C. §905.604(b)(3)]
PIH	HUD's Office of Public and Indian Housing.
Public Housing or Public Housing Unit	Low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than under 42 USC 1437 f (Section 8). The term "public housing" includes dwelling units in a Mixed-Finance Project that are assisted by a PHA with capital or operating assistance. [42 U.S.C. 1437a(b)(1)]
Public Housing Agency (PHA)	Any state, county, municipality, or other government entity or public body or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of public housing. [24 CFR 905.108]
Public Housing Capital Assistance	Any funds provided through the Capital Fund or Other Public Housing Development Sources, such as HOPE VI, Choice Neighborhoods, Development Funds, disposition proceeds that a PHA may realize under section 18 of the 1937 Act (42 USC 1437p), or any other funds appropriated by Congress for public housing. [24 CFR 905.108]
Public Housing Funds	Any funds provided through the Capital Fund or other public housing development sources, such as HOPE VI, CNI, public housing development funds, Public Housing Operating Funds under Section 9(e) of the 1937 Act, Disposition Proceeds that a PHA may realize under Section 18 (but subject to and to the extent consistent with Section 18 and the regulations at 24 CFR Part 970), or any other funds appropriated by Congress specifically for public housing.
Public Housing Project or Project	When used in reference to public housing, the term "Project" means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing. [42 USC 1437a(b)(1)]
Public Housing Property	Any public housing assets and income, including among other things, any Public Housing Project (as the term "Project" is defined in the ACC between the PHA and HUD), any Operating Receipts (as the term "Operating receipts and Operating expenditures" is defined in the ACC), Public Housing Capital Funds or Operating Funds, HOPE VI or other

	development grants and other grants to the PHA from HUD under the 1937 Act.
Public Housing Requirements	All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the ACC; including amendments; HUD notices; and all applicable federal statues, executive orders, and regulatory requirements, as these requirements may be amended from time to time. [24 CFR 905.108]
Total Development Cost (TDC)	Section 6(b) of the 1937 Act requires HUD to establish TDC limits, which represent the per-unit construction cost guidelines for a Project. The TDC limit applies to the costs of developing public housing that may be paid from Public Housing Capital Assistance. Specifics are found in 24 CRF 905.314(b) - (g).
Uniform Federal Accessibility Standards (UFAS)	As defined in 24 CFR §8.32; see also 24 CFR Part 40.

# Appendix 3: Sample Documents

## Appendix.3.1 Sample Letter to the Director of OUR

John Smith  
Director, Office of Urban Revitalization  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street S.W.  
Washington, DC 20410  
Re: Lakeside Home's Request for Exit of General Partner

Dear Mr. Smith,

The Paris Housing Authority ("PHA") constructed Lakeside Homes ("the Project") in 2006. The construction was done with PHA's development partner, ABC Properties, LLC ("ABC"). Currently, the tax credit compliance period has expired and PHA is requesting HUD's approval to replace the General and Limited Partners in the Project.

Lakeside Homes is owned and operated by Paris Housing LLC ("Owner Entity"). The Project consists of a total of 60 units: 42 are public housing units and the remaining 18 are PBV units. All units are low-income housing tax credit ("LIHTC") units operating at or below 60% of the area median income.

The tax credit compliance period is ending this year and the General and Limited Partners involved in the Owner Entity desire to exit the Project. Currently the Owner Entity is made up of the following: ABC Properties G.P. LLC ("General Partner") is the General Partner with 0.01% stake in the Owner Entity and Affordable Housing, Inc. ("Limited Partner") is the Limited Partner with a 99.99% stake in the Owner Entity. The General and Limited Partners are seeking to exit the Project and transfer their ownership interests to a PHA. The PHA will acquire the General's Partner's interests in the project through its instrumentality, PHA Asset and Management, Inc., and form "PHAMI GP, LLC". The Limited Partner will transfer its ownership interests to the PHA, which will be the new Limited Partner.

Financially, the Exiting General Partner has an outstanding first mortgage loan through Plains Capital Bank. The loan including interest has an outstanding balance of \$1,500,000. At the Exiting General Partner's exit, PHA will assume the remaining debt on the loan but there will be no other refinancing at this time. There are no current plans to refinance or renovate the Project and the property manager will not change. Additionally, all exit taxes will be paid by the Exiting General and Limited Partners and will be paid out of non-federal funds.

Please let us know if you require any additional information.

Best,

Paris Housing Authority  
Executive Director

## Appendix.3.2 Form Certification and Assurances

### SCHEDULE A-1

#### SUGGESTED CERTIFICATION ON LITIGATION OR OTHER CLAIMS PENDING OR THREATENED

##### **CERTIFICATION OF PROJECT OWNER**

This Certification of Project Owner (“Certification”) is made the \_\_\_ day of \_\_\_\_\_, 202\_, by the [Owner or PHA] for reliance upon by [**LAW FIRM PROVIDING OPINION**] (“Counsel”) in connection with the approval of \_[Insert the type of transaction] by the Department of Housing and Urban Development (“HUD”). In connection with the opinion letter, [Owner or PHA] hereby certifies to the best of its knowledge to HUD for its reliance, the truth, accuracy and completeness of the following matter:

There is no litigation or other claims pending or threatened against [Owner or PHA] or the Project, the resolution of which would have a materially adverse effect on the [Owner’s or PHA] ability to comply with the requirements of the Mixed-Finance ACC Amendment, except for: [**LIST on ATTACHED SCHEDULE A-1 OR IF NONE, STATE “NONE” HERE**]

The [Owner or PHA] and its authorized representative who executes this Certification, each certifies that the statements and representations contained in this Certification and all supporting documentation hereto are true, accurate, and complete. This Certification has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of the facts contained therein.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802).

[INSERT SIGNATURE BLOCK], SUCH AS:

[NAME OF OWNER], a [STATE AND LEGAL STRUCTURE OF ENTITY]

By: \_\_\_\_\_  
[NAME OF ITS GENERAL PARTNER]

Its: General Partner

By: \_\_\_\_\_  
[NAME OF ITS MANAGING MEMBER]

Its: Managing Member]

By: \_\_\_\_\_  
Name: [NAME OF ITS PRESIDENT]  
Title: [PRESIDENT]  
Date: \_\_\_\_\_



## Appendix 3.3 Sample Pro Forma

### Model Pro Forma

Project Name - Phase I	2008	2009	2010	2011	2012
	1	2	3	4	5
Market Rate Units (140 units)	2,291,172	2,359,907	2,430,704	2,503,626	2,578,734
Section 8 Units (12 units)	82,416	84,888	87,435	90,058	92,760
LIHTC -Only Units (24 units)	79,200	81,576	84,023	86,544	89,140
Public Housing Units /LIHTC (24 units)					
Tenant Rents (\$25 PUM)	7,200	7,416	7,638	7,868	8,104
Operating Subsidy (\$226 PUM)	65,088	67040.64	69051.8592	71123.41498	73257.11743
Total Public Housing Rent	72,288	74,457	76,690	78,991	81,361
Gross Rental Income @ 3% increase	2,525,076	2,600,828	2,678,853	2,759,219	2,841,995
Other Income @ 3% increase	35,200	36,256	37,344	38,464	39,618
Less Vacancy rate @ 7%	-172,371	-182,058	-187,520	-193,145	-198,940
<b>Total Effective Gross Income</b>	<b>2,387,905</b>	<b>2,455,026</b>	<b>2,528,677</b>	<b>2,604,537</b>	<b>2,682,673</b>
<b>Operating Expense @ 4% increase</b>					
Salaries	131,195	136,443	141,901	147,577	153,480
Property Mgmt. Fee (\$43.72 PUM)	92,348	96,042	99,884	103,879	108,034
Utilities Expenses	57,200	59,488	61,868	64,342	66,916
Maintenance	210,950	219,388	228,164	237,290	246,782
Snow Removal	3,224	3,353	3,487	3,627	3,772
Insurance	110,232	114,641	119,227	123,996	128,956
Real Estate Taxes/PILOT	154,875	161,070	167,513	174,213	181,182
Supportive Services	0	0	0	0	0
Advertising	2,500	2,575	2,652	2,732	2,814
Telephone/office expenses	6,000	6,180	6,366	6,556	6,753
Accounting	6,760	7,030	7,312	7,604	7,908
Security	10,000	10,300	10,609	10,927	11,255

Replacement Reserves	50,000	52,000	54,080	56,243	58,493
<b>Total Operating Exp.</b>	<b>835,284</b>	<b>868,510</b>	<b>903,061</b>	<b>938,986</b>	<b>976,344</b>
<b>Net Operating Income</b>	<b>1,552,621</b>	<b>1,586,516</b>	<b>1,625,616</b>	<b>1,665,551</b>	<b>1,706,329</b>
<b>Debt Service:</b>					
1st Mortg. - BOND	1,244,585	1,244,585	1,244,585	1,244,585	1,244,585
2nd Mortg. - HTF	11,000	11,000	11,000	11,000	11,000
3rd Mortg. Hope VI	37,364	37,938	37,938	37,938	37,938
Total Debt Service	<b>1,292,949</b>	<b>1,293,523</b>	<b>1,293,523</b>	<b>1,293,523</b>	<b>1,293,523</b>
<b>Net Cash Flow</b>	<b>259,672</b>	<b>292,993</b>	<b>332,093</b>	<b>372,028</b>	<b>412,806</b>

### Assumptions

- 1) rental income @ 3% increase
- 2) Other income @ 3% increase
- 3) Replacement Reserve @ 4% increase

## Appendix 3.4 Sample Rent Schedule

Rents						
Type	Bd. Rms.	# Units	Min.PH Rent	Rent Per Month	Monthly Rent	Annual Rent
Market	1	2		\$900	\$1,800	\$21,600
Market	1	6		\$1,018	\$6,108	\$73,296
Market	1	48		\$1,059	\$50,832	\$609,984
Market	2	46		\$1,450	\$66,700	\$800,400
Market	2	14		\$1,475	\$20,650	\$247,800
Market	2	6		\$1,662	\$9,972	\$119,664
Market	2	8		\$1,977	\$15,816	\$189,792
Market	3	3		\$1,956	\$5,868	\$70,416
Market	3	3		\$1,947	\$5,841	\$70,092
Market	3	4		\$1,836	\$7,344	\$88,128
S8/Tax Cr*	1	4		\$507	\$2,028	\$24,336
S8/Tax Cr*	2	8		\$605	\$4,840	\$58,080
PH**	2	24	\$25	\$226	\$6,024	\$72,288
LIHTC-ONLY	2	24		\$275	\$6,600	\$79,200
	Total Units	200		Total Gross Rent	\$203,823	\$2,525,076
*Section 8 /Tax Credit rents are set by rule as the lower of the S8 or TC allowable rent, for this project TC rents are Lower						
** Public Housing residents will pay 30% of there income or a minimum rent of \$25 toward rent and \$226 is the estimated subsidy.						

## Appendix 3.5 Sample Opinion of Counsel

***This is a model form, but noa required HUD form. Within this model form is HUD-required language (in bold-face type) which must be included in any Opinion of Counsel in a Mixed-Finance transaction. HUD-required language may not be changed except with prior written approval of HUD.***

**MODEL FORM  
OPINION OF COUNSEL**

\_\_\_\_\_ [1] \_\_\_\_\_

\_\_\_\_\_ [2] \_\_\_\_\_

U.S. Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

RE: \_\_\_\_\_ [3] \_\_\_\_\_

Ladies and Gentlemen:

We represent \_\_\_\_\_ [4] \_\_\_\_\_ a \_\_\_\_\_ [5A, 5B] \_\_\_\_\_

in its capacity as \_\_\_\_\_ [6] \_\_\_\_\_ (hereafter referred to as “[7A]”) in connection with the development of a [8] unit complex to be located at \_\_\_\_\_ [9] \_\_\_\_\_ and known as \_\_\_\_\_ [10] \_\_\_\_\_ (the “Development”).

We have been requested by the \_\_\_\_\_ [7A] \_\_\_\_\_ to deliver this opinion in accordance with and pursuant to the Mixed-Finance ACC Amendment entered into by and between the United States Department of Housing and Urban Development (“HUD”) and the \_\_\_\_\_ [11] \_\_\_\_\_ (the “Authority”) (said document is hereafter referred to as the “ACC Amendment”).

A. Instruments and Loan Documents Examined

In preparing this opinion, we have prepared or reviewed executed originals or true and complete copies of the instruments and documents, all of which are dated the date hereof (unless otherwise indicated), as set forth in Schedule 1 attached hereto and incorporated herein by this reference. Items under Heading A of Schedule 1 are collectively referred to as the “[7A] Documents” and all of the items listed on Schedule 1 are collectively referred to as the “Documents.”

B. Assumptions

The Opinions expressed herein are subject to the following assumptions, in addition to the assumptions and qualifications set forth elsewhere herein:

1. All copies of the Documents, and all records and letters examined by us are accurate, true, complete and correct copies of the originals thereof and all factual warranties, representations and statements made by the parties in the Documents are accurate, true and correct.
2. Each of the individuals executing the [7A] Documents has the requisite legal capacity and all the signatures (other than those of the [7A] on the [7A] Documents) are genuine.
3. The [7A] Documents have been duly authorized, executed and delivered by all parties other than the [7A] and constitute legal, valid and binding obligations of each such other party enforceable in accordance with their terms.
4. Each party to any of the [7A] Documents, other than the [7A], is a duly organized corporation, general partnership, limited partnership, limited liability company, national banking association, authority, agent, public body, branch of the government of the United States of America, or other duly organized entity, as the case may be, under and pursuant to the laws of each such party's organizational jurisdiction and, to the extent necessary for the delivery of the opinions set forth herein, is in good standing under the laws of, and authorized to transact business in, the [12].
5. Each party to any of the [7A] Documents, other than the [7A], has all requisite certifications of authority, licenses, permits, consents, qualifications and documentation, and all requisite organizational power and authority, to execute such of the [7A] Documents to which it is a party, to perform its obligations under such of the [7A] Documents to which it is a party, and to enforce such of the [7A] Documents to which it is a party.

We have made no investigation of the facts or law underlying the foregoing assumptions but nothing has come to our attention that would provide us with knowledge that we are not justified in making such assumptions. We have made no investigation regarding the accuracy or completeness of any documents, records, instruments, letters or other writings examined by us, or the accuracy of any warranties, representations and statements of fact contained therein, and we express no opinion regarding the same. No opinion is expressed regarding the existence or nonexistence of, or the effect of, any form of fraud, misrepresentation, mistake, duress or criminal activity upon the legality, validity, binding effect or enforceability of any of the [7A] Documents, and we have made no investigation of the facts or law pertaining to such conduct, but nothing has come to our attention which would provide us with actual knowledge of the existence of any such conduct.

#### C. Opinions

Based upon, and subject to, the assumptions set forth above and subject to the assumptions, qualifications, exceptions and limitations set forth in this opinion, we are of the opinion that:

1. The  [7A]  is a  [5A, 5B]  and is authorized to transact business in the  [12]  as a  [5A] . The  [7A]  has adequate power and authority to execute and deliver the  [7A]  Documents to which it is a party and to perform its obligations thereunder.
  
2.  [13]
  
3. The  [7A]  Documents have been duly executed and delivered by the  [7A] . In addition, those parties executing the  [7A]  Documents on behalf of the  [7A] , and the consummation by the  [7A]  of the transactions contemplated thereby, have been duly authorized by all necessary partnership, corporate, or other actions, as applicable.
  
4. The Guarantor  [7A]  is a principal of the  [7B] .
  
5. The respective  [7A]  Documents constitute valid and legally enforceable agreements and/or contracts of the  [7A] , enforceable in accordance with their respective terms under the laws of  [12]  and local law, subject to the qualifications that the enforceability of any  [7A]  Document may be limited or affected by customary principles governing equitable relief generally and by bankruptcy, insolvency, reorganization, rearrangement, moratorium, liquidation, fraudulent conveyance, receivership, conservatorship and other laws affecting the rights of creditors or the collection of debtors' obligations generally and a court may refuse to grant an order for specific performance or any other principles of equity which may limit the availability of certain equitable remedies.
  
6. Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our opinion that each of the  [7A]  Documents conforms to the HUD-approved exhibits to the Mixed Finance ACC Amendment, and that there is nothing in any of such  [7A]  Documents that conflicts with, or is inconsistent with, the requirements of the HUD-approved exhibits to the Mixed Finance ACC Amendment.
  
7. To the extent that we have relied upon the certifications of other persons in preparing this opinion, or the written statements or opinions of other counsel, we have attached to this opinion a copy of each such certification, statement, or opinion.
  
8. To the extent that we have predicated all, or any portion of, our opinion upon "information and belief," then we have attached to this opinion a statement or description of all of the information upon which such belief is predicated.

D. Qualifications.

The foregoing opinion is subject to the following qualifications:

1. We express no opinion as to the truth or accuracy of any warranties, representations or statements of fact contained in any documents examined by us, including, but not limited to, the \_\_\_[7A]\_\_\_ Documents listed in Heading A of Schedule 1.
2. No opinion is given herein as to any laws regulating the business of any of the parties other than the \_\_\_[7A]\_\_\_, including without limitation: (a) the types of investments that can be made by any of the parties other than the \_\_\_[7A]\_\_\_; or (b) the legal lending limit of any of the parties other than the \_\_\_[7A]\_\_\_.
3. Whenever our opinion herein is qualified by the phrases “to our knowledge”; “known to us”; “our attention”; or words of similar import, it is intended to indicate that the current actual knowledge of the attorneys within this firm engaged in the representations of the \_\_\_[7A]\_\_\_ (and not to the knowledge of the firm generally) is not inconsistent with that portion of the opinion which such phrase qualifies. We have made no independent investigation with respect to such matters.
4. The opinions set forth above are based solely upon the laws and regulations of the [12] and Federal law, and the state of facts in effect on the date hereof. Nothing herein shall be construed to be an opinion as to the applicability or effect of the laws of any other jurisdiction.
5. This opinion speaks only as of the date of its delivery. We have no obligation to advise the recipients of this opinion, or anyone else, of any matter of fact or law thereafter occurring, whether or not brought to our attention, even though that matter affects any analysis or conclusion of this opinion.
6. This opinion is limited to the matters expressly set forth herein, and no opinion is to be inferred or may be implied beyond the matters expressly so stated.

This opinion letter has been provided solely for the benefit of the addressee, at its request, and no other person or entity shall be entitled to rely hereon without the express written consent of \_\_\_[14]\_\_\_. This opinion letter shall not be quoted in whole or in part, used, published or otherwise referred to or relied upon in any manner, including, without limitation, in any financial statement or other document.

Sincerely,

\_\_\_\_\_  
[15]

By: \_\_\_\_\_ [15]

Name: \_\_\_\_\_ [15]

Title: \_\_\_\_\_ [15]

Schedule 1

A. "[7A]" Documents:

1. \_\_\_\_\_ [16]

B. Other Documents:

1. \_\_\_\_\_ [17]

INSTRUCTIONS FOR COMPLETING MODEL FORM

OPINION OF COUNSEL

This is a model form, but not required HUD form. Within this model form is HUD-required language (in bold-face type) which must be included in any Opinion of Counsel in a mixed-finance transaction. HUD-required language may not be changed except with prior written approval of HUD. Enter the following information, as described below, for each of the corresponding blank spaces on the Model Form of Opinion of Counsel (Opinion):

1. Prepare the Opinion on law firm letterhead.
2. Date of execution of the Opinion.
3. Name of the Development in which the public housing units are located, and that is the subject of the Opinion, with the identifying project number (from the Mixed Finance ACC Amendment).



4. Full name of the party represented by the law firm that is providing this Opinion (the “Represented Party”).
5. (A) Describe the legal structure of the Represented Party (e.g., limited partnership, limited liability company, etc.);

(B) The State or Commonwealth in which the Represented Party is organized and existing.

6. The role of the Represented Party in connection with this Development (e.g., the public housing agency, developer, owner, etc.)

7. (A) An acronym identifying the Represented Party (e.g., “the Authority,” “the Owner,” etc.)

(B) The full legal name of the Guarantor.

(C) The full legal name of the Development Company.

8. Total number of units in the Development.

9. Address of the Development.

10. Name of the Development (same as in item 3).

11. Name of the housing authority that has executed a Mixed Finance ACC Amendment with HUD to add the public housing units in the Development to the ACC.

12. The State or Commonwealth in which the Authority is located.

13. If this Opinion covers more than one entity, provide the same information in this space as that set forth in subparagraph (C)(1) of the Opinion for each separate entity and renumber the remaining paragraphs accordingly.

14. Name of the law firm providing this Opinion.

15. Name of the law firm providing this Opinion, and signature, name and title of the duly authorized representative of the law firm.
16. List each of the Represented Party's Documents that are covered by the Opinion.
17. List other documents used to support the Opinion with respect to the Represented Party Documents (e.g., bylaws, articles of incorporation, certificates of good standing, etc.).