

## Required Document Submissions when a Mixed Finance Project’s Ownership Structure Changes

When a Mixed Finance project is recapitalized or restructured, the owner entity and the PHA must continue to abide by the contracts and agreements to which HUD is a party or a beneficiary. PHAs are obligated to inform HUD of changes and in many cases to receive HUD approval before making changes to the legal or physical structure of the project. The table below outlines the documents that must be submitted to HUD prior to making changes. Where a deal is undergoing more than one change, i.e. the project will be refinanced and the ownership is changing, the requirements for each must be met.

	Acquisition by PHA	New Owner Entity	New General Partner or Managing Member	New Limited Partner/Investor of Existing Ownership Entity
<b>Amendment to the Mixed Finance Amendment</b>	Attach Rider to mixed finance amendment permitting mixed finance amendment to remain. Update Exhibits A, B and E.	Update Exhibits A and E. Update Exhibit B as needed. <sup>ii</sup>	N/A	N/A
<b>Declaration of Restrictive Covenants (DORC)</b>	Update to reflect most recent version and change in ownership	Update if Owner, Controlling GP or MM is specifically named. No change to the term of the agreement <sup>iii</sup>	N/A	N/A
<b>Regulatory and Operating Agreement (R&amp;O)</b>	Terminate.	Update to bind new Owner <sup>iv</sup> or controlling party. Update if methodology for receiving operating subsidy is changing, or if other provisions are changing.	N/A	N/A
<b>Ground Lease and Memorandum of Ground Lease<sup>v</sup></b>	Terminate.	Update to bind new owner	N/A	N/A
<b>Letter to the Director of the Office of Urban Revitalization</b>	HUD’s written approval required before transfer. Provide HUD a description of the financial transaction and attach a recent audited financial statement for the Project.	HUD’s written approval required before transfer. <sup>vi</sup> Provide HUD a description of the financial transaction and attach a recent audited financial statement for the Project.	HUD’s written approval needed before transfer. <sup>vii</sup> Include a description of the financial transaction and attach a recent audited financial statement for the Project.	Owner must notify HUD and provide certification that the new entity remains obligated in accordance with the HUD-approved organizational documents of the owner. <sup>viii</sup>

## Required HUD Document Submissions for Major Refinance of a Mixed Finance Project<sup>ix</sup>

	Refinance w/No New Public Housing Funds <sup>x</sup>	Refinance Including New PH Funds <sup>xi</sup>	Additional PH Funds Only <sup>xii</sup>
<b>Development Proposal</b>	Required. See details below	Required. See details below	Required. See details below
<b>Amendment to the Mixed Finance Amendment</b>	Update Exhibits A, B <sup>xiii</sup> , E, F <sup>xiv</sup> and other exhibits as necessary.	Update Exhibits A, B, D, E, F, G & H, as necessary.	Update Exhibits A, B, D, E, F, G & H, as necessary.
<b>Declaration of Restrictive Covenants (DORC)</b>	N/A	Update the term if necessary to bind the owner for the next 20 years (necessary only if less than 20 years remain.) <sup>xv</sup>	Update the term if necessary to bind the owner for an additional 20 years (necessary only if project is more than 20 years into operations) <sup>xvi</sup>
<b>Regulatory and Operating Agreement (R&amp;O)</b>	Update if the methodology for receiving op sub is changing or other provisions are changing.	Update if the methodology for receiving op sub is changing or other provisions are changing	Update if the methodology for receiving op sub is changing or other provisions are changing
<b>Opinion of PHA Counsel</b>	Required	Required	Required

## Guide to Preparing Mixed Finance Development Proposal for Project Restructuring or Recapitalization

Section 1: Project Information	Provide requested information
Section 2: Project Description	Describe proposed rehabilitation or capital improvement plan here and in Exhibit B to the amended Mixed Finance Amendment.
Section 3: Site Information	Not required
Section 4: Key Development Partners and Participating Parties	Provide requested information for the proposed transaction here and in Exhibit A to the amended Mixed Finance Amendment
Section 5: Project Schedule	Provide project schedule here and in Exhibit D to the amended Mixed Finance Amendment.
Section 6: Compliance with Design and Accessibility Requirements	Not required unless dwelling unit or common space configurations will be significantly altered.
Section 7: Project Costs	Provide construction and permanent project budgets here and in Exhibit F of the amended Mixed Finance Amendment. If the refinance includes public housing funds, provide the following: a calculation of TDC using the 90% TDC limit for rehabilitation; information sufficient for HUD to determine that public housing funds will only be used for the benefit of public housing units, as determined by a pro rata calculation; a construction cost estimate and a request for predevelopment costs, if applicable.

Section 8: Project Financing	Provide requested information here and as Exhibit B to the amended Mixed Finance Amendment
Section 9: Project Fees	Provide requested information. Provide requested information on developer and program fees paid to the PHA here and in Exhibit H of the amended Mixed Finance Amendment.
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	Provide requested information
Section 13: Market Analysis	Not required
Section 14: Other Requirements	Provided requested information, as applicable.
Section 15: Submission and Approval of Draft Evidentiary Documents for MF Projects	Submit required documents in draft form for HUD approval.
Section 16: Submission and Approval of Final Evidentiary Documents for MF Projects	Submit as required
Section 17: Cost Certification	Provide requested information to the field office.
Section 18: Attachments & Additional Submissions	Not required

<sup>i</sup> Exhibit A identifies and describes key partners. Exhibit E contains the evidentiary materials. The PHA must submit an amendment to the Mixed Finance Amendment with the changes to the ownership entity and attach the amended evidentiary documents.

<sup>ii</sup> Include Exhibit B only if there are changes to the project other than a change in the ownership entity or the financing for the project.

<sup>iii</sup> Must be attached as an evidentiary with the amendment to the Mixed Finance Amendment to the ACC.

<sup>iv</sup> Same as above.

<sup>v</sup> Model Ground Lease, p. 4 states “This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Landlord and Tenant, except that Tenant may not assign or sublet its interest in this Lease without the prior written consent of the Landlord and HUD.”

<sup>vi</sup> Declaration of Restrictive Covenants (DORC) Agreement 6(A) “No transfer, conveyance, or assignment shall be made without the prior written approval of HUD of: (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a “Controlling Interest”) of the Owner; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest in the Owner, or in any partner or member thereof.”

<sup>vii</sup> Same as above.

---

<sup>viii</sup> DORC Agreement 6(B) “Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner transfers a non-controlling and non-managing interest in the business organization provided that the Owner: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner.”

<sup>ix</sup> These requirements apply when there is a change in cost or financing by more than 10 percent, or as otherwise specified in HUD’s approval letter for the original Mixed Finance transaction. See 24 CFR Sec. 905.610€

<sup>x</sup> Applicable if the new funds will change the project cost by more than 10%. See 24 CFR Sec. 905.610(e).

<sup>xi</sup> Applicable if the new funds will change the project cost by more than 10%.

<sup>xii</sup> Applicable if the new funds will change the project cost by more than 10%.

<sup>xiii</sup> Describe the rehabilitation/modernization and the project refinancing.

<sup>xiv</sup> The PHA can provide the budget using either the Development Proposal Calculator or another format.

<sup>xv</sup> Receipt of an allocation of Capital Funds establishes a 20 year period of use restriction that begins on the latest date on which modernization is completed. The use restriction runs concurrently with the use restriction in the DORC. See 24 CFR sec. 905.304(a)(2).

<sup>xvi</sup> Receipt of an allocation of Capital Funds establishes a 20 year period of use restriction that begins on the latest date on which modernization is completed. The use restriction runs concurrently with the use restriction in the DORC. See 24 CFR sec. 905.304(a)(2).