

Memorandum

To: PHA Executive Directors

From: Susan A. Wilson, Director, Office of Urban Revitalization,
Office of Public Housing Investments

Date: October 30, 2013

Re: Due Dates for Closing Mixed-Finance Transactions and
Implementation of the New Mixed-Finance Regulation at 24 CFR 905
Subpart F

This is to inform you of the Office of Public Housing Investments' (OPHI) schedule for processing mixed-finance projects intending to close by the end of the 2013 calendar year. If you intend to close your mixed-finance project by December 31, 2013, you must adhere to the following submission schedule. Please inform your partners of these dates.

- Submit a complete Rental Term Sheet (RTS) and Mixed-Finance Proposal by November 8, 2013. The RTS and Proposal must be in accordance with 24 CFR 941, Subpart F, and must be complete. If you have already submitted an RTS and Proposal but have been asked to revise it, the revised RTS and Proposal must be submitted by November 8, 2013. If, after HUD review, the RTS and Proposal are determined to need substantial revision, the Proposal will be deemed incomplete and there will be no assurance that HUD will approve the project by December 31, 2013.
- Submit final, unexecuted evidentiary materials by November 19, 2013. These evidentiary materials must conform to the RTS and Proposal, as revised. No changes to the evidentiary materials are permitted after this date unless requested by HUD. If other parties make changes to the documents after submission, HUD gives no assurance that it will approve the documents before December 31, 2013.

We encourage you to submit the RTS, Proposal and evidentiary materials to your Grant Manager before these due dates. We will be reviewing Rental Term Sheets, Proposals and evidentiary materials in order of receipt and will make every effort to accommodate your closing date. It is to your advantage to submit the documents prior to the above deadlines.

Implementation of New Mixed-Finance Regulation

As you may know, the final Public Housing Capital Fund Program rule was published in the Federal Register on October 24, 2013 and will be effective on November 24, 2013. The new regulations at 24 CFR 905 Subpart F replace the mixed-finance regulations previously found at 24 CFR 941 Subpart F. As a result of the new rule, projects closing after the effective date of November 24, 2013 may submit a shortened list of evidentiary documents as follows:

- Mixed-Finance Amendment to the Consolidated ACC
- Declaration of Restrictive Covenant
- Partial Release of the Existing Declaration of Trust
- Ground Lease (if applicable) and Memorandum of Lease
- Survey and Title Policy
- Regulatory and Operating Agreement
- Certifications and Assurances (standard form)
- Attorney Opinion Letter
- Management documents

PHAs and their partners will no longer be required to submit loan agreements, notes, and security agreement connected with financing, or partnership agreements and other related agreements. However, OPHI may still ask that you submit these documents if it determines they are necessary in order to approve your project.

The mixed-finance review process will remain the same. You will continue to submit a Rental Term Sheet and the other proposal submissions outlined at 24 CFR 905.606(a) to OPHI for review. OPHI and the Office of General Counsel will continue to review your draft evidentiary documents and then OPHI will issue a Proposal and evidentiary letter prior to closing. You will still be required to submit a CD of the final executed and recorded documents post-closing. OPHI will continue to review these documents and then issue a final evidentiary approval letter.

Change in Identity of Interest Approval Process

As a result of the new rule, projects with an identity of interest (IOI) relationship between the developer and general contractor will no longer be required to obtain a waiver signed by the Assistant Secretary. However, as discussed at 24 CFR 905.604(h)(2)(i)(2), a PHA must continue to submit a written justification and an independent third party cost estimate demonstrating that the IOI contractor's costs are less than or equal to the cost estimate. The IOI approval will now become part of the Proposal and evidentiary approval letter.

If you have questions about how the new rule will affect your project(s), please discuss this with your Grant Manager. The rule can be found at <https://www.federalregister.gov/articles/2013/10/24/2013-23230/public-housing-capital-fund-program>. We are also posting this link on the HOPE VI website at www.hud.gov/hopevi.

If you have other concerns regarding the new rule or if our office is unaware of your intent to close a project by the end of the calendar year, please call Susan Wilson, Director, Office of Urban Revitalization, at 202-402-4500 or Donna Poggi Keck, Team Leader, at 202-402-4180. Thank you for your continued cooperation as we all work to implement this new rule.