

SECTION 4

MIXED-FINANCE HOPE VI GRANTS

MIXED-FINANCE PUBLIC HOUSING DEVELOPMENT

The mixed-finance approach to public housing development is the single most important development tool currently available to public housing authorities (PHAs) implementing HOPE VI revitalization projects. It emphasizes the formation of new public and private partnerships to ensure long-term sustainability of public housing developments and the leveraging of public and private resources to transform the isolated communities in which many public housing residents currently live into vibrant and sustainable "mixed-income" communities with a wide range of family incomes.

This chapter summarizes the key concepts and procedures used in the mixed-finance approach. For more in-depth information, HUD has published a separate **Mixed-Finance Guidebook** which provides an overview of the mixed-finance approach, describes various partnership opportunities, discusses how to select and negotiate with developers, addresses key HUD policy and regulatory concerns, and lays out HUD's approval process for mixed-finance projects. It also provides information on homeownership development policies and practices.

Every HOPE VI Grantee considering use of the mixed-finance approach to public housing development should obtain a copy of the Mixed-Finance Guidebook from HUD's Public and Indian Housing Information and Resource Center by calling (800) 955-2232. The Mixed-Finance Guidebook presents key program issues, highlights the costs and benefits of different approaches and, most importantly, uses actual mixed-finance projects to illustrate the wide variety of approaches to leveraging PHA resources and structuring partnerships.

There are many ways to proceed through the often complicated mixed-finance approach and the Mixed-Finance Guidebook is designed to guide PHAs through the many decisions they will have to make in order to develop mixed-finance projects appropriate to local needs and circumstances.

A. HOPE VI AUTHORITY

The HOPE VI Program was created by the FY 1993 HUD appropriation, and grants have been awarded in accordance with each year's Notice of Funding Availability (NOFA). Each Grantee signs a HOPE VI Grant Agreement, which requires that development take place in accordance with the Public Housing Development regulations at 24 CFR part 941. Subpart F of that rule, which provides the framework for mixed-finance public housing development, permits PHAs to use a combination of private financing and public housing development funds (including HOPE VI funds) to develop public housing units owned by an entity other than the PHA. The public housing development funds may be provided to a third party (non-PHA entity) so that it can develop and own the resulting public housing units.

The underlying goal of mixed-finance development is to leverage other funds, both public and private, into the public housing development process to create mixed-income communities. At the same time, HUD seeks to ensure that Federal funds are used for intended program purposes and are not subject to waste, mismanagement or abuse.

B. BENEFITS OF THE MIXED-FINANCE APPROACH

The mixed-finance approach involves financing from multiple sources. These may be both public and private sources. It also typically involves ownership of the public housing units by an entity other than the PHA. The following are only a few of the benefits that can accrue from the mixed-finance approach. More benefits will become increasingly evident as projects are successfully closed, developed, and occupied.

1. **Brings additional resources to the project**, which can be used for gap financing and to provide market level amenities. As federal funding dwindles, PHAs will be able to turn to private capital to develop quality housing that can compete with other housing options available to low income households.
2. **Increases opportunities for the physical, social, and economic integration of public housing.** Mixed-finance projects can leverage additional affordable and/or market rate housing units to create mixed-income communities. Where the market exists, mixed-finance developments include public housing units, tax credit units, and market rate units (not rent restricted). HUD encourages the "floating" of public housing units within the larger project, rather than "dedicating" specific units, to ensure that full integration and equal access to amenities is provided to public housing residents. "Floating" units is also a pragmatic issue as it provides flexibility to the property manager to rent available units to households with appropriate income levels, to ensure compliance with the Regulatory and Operating agreements.
3. **Stimulates neighborhood revitalization and economic development.** The re-development of distressed public housing sites in struggling neighborhoods is contributing to major reinvestment in inner city neighborhoods. Cities are targeting these neighborhoods for infrastructure improvements, affordable homeownership programs, owner rehab programs, and new public facilities (i.e., community centers, recreation centers, health clinics, public libraries, etc.). Public housing funds are leveraging many of these collateral improvements. To support these efforts at neighborhood revitalization, HUD's "site and neighborhood standards" now permit the demolition of existing public housing and reconstruction on the same site at reduced densities and in the immediate vicinity, even though it may be in an "impacted" (high poverty or racially segregated) neighborhood. The goal is not to abandon the distressed neighborhoods where public housing residents have lived for decades, but rather to create healthy new communities with access to jobs, services and other amenities.
4. **Increases PHA development expertise by attracting experienced partners.** Most PHAs have had little opportunity over the past decade to develop new housing; most efforts have been targeted at the modernization of existing stock. As a result, PHAs often lack in-house development experience, particularly as it relates to tax credit projects and/or development of homeownership units. Mixed-finance provides the vehicle for attracting experienced partners -- from both the non-profit and private sectors -- to guide these often complex development efforts, and to impart their development expertise to PHAs so they are more informed and skilled for future development activities.

5. **Provides opportunities for partnering with not-for-profits** who have been successfully working in inner city neighborhoods for years, on affordable housing, economic development, and service delivery.

C. HOW MIXED-FINANCE DEVELOPMENT WORKS

1. **Summary of the Mixed-Finance Concept**

HUD funds, generally from HOPE VI grants, development grants, and/or modernization funds approved for conversion to development use, may be loaned and/or granted by the PHA to a development partner to build public housing. HUD funds also serve to leverage other public and private funds for affordable and/or market rate housing. The use of such HUD funds is described in a Mixed-Finance Proposal, prepared in conformance with the requirements of 24 CFR part 941 subpart F.

The project will be subject to a Mixed-Finance Amendment to the ACC, signed by the PHA and HUD. This document provides for the delivery of HUD capital funds to the PHA and ensures that public housing units in the project are operated pursuant to the public housing regulations. It also allows HUD operating subsidy to flow to the public housing units within the mixed-finance development.

Exhibits to the Mixed-Finance Amendment to the ACC list the required legal documents ("evidentiary materials"), some of which are specified in 941.610. These materials may differ from project to project, but generally include a Development Agreement, Regulatory and Operating Agreement, Declaration of Restrictive Covenants, Partnership Agreement, Management Agreement, financing documents, Ground Lease, and Cooperation Agreement. Sample documents that PHAs may wish to review when developing their mixed-finance proposals are available from the website of the Housing Research Foundation, a HOPE VI technical assistance provider. That address is www.housingresearch.org.

2. **Mixed-Income**

Public housing units may be intermixed with non-public housing, low-income, and/or market rate housing units to create a mixed-income development. Non-public housing low-income units may be financed using a variety of public and private financing sources including Low Income Housing Tax Credits, taxable or tax-exempt bonds, Community Development Block Grant (CDBG) funds, private mortgages, and other means leveraged by the HOPE VI and/or development funds. Market rate units are funded with private debt and/or equity. All units should have the same amenities. All public housing units should "float" in a non-concentrated distribution between those of private low-income, and market rate.

3. Selection and Procurement of Development Partners

PHAs must procure development partners in compliance with the requirements of 24 CFR part 85 and part 941 subpart F. In all instances, selection must be by a publicly advertised and procedurally fair competition. Subsequent procurements of contractors by the developer or owner entity are not subject to part 85 unless the PHA is significantly involved in the development process. Subpart F allows for the procurement of development partners through the Request for Qualifications (RFQ) process, which allows the PHA to select a developer and negotiate price after selection.

4. Eligible Uses of Federal Funds

Mixed-finance projects may use HOPE VI funds, Public Housing Development funds, or Modernization funds approved for conversion to use as Development funds. These funds may be expended for predevelopment activities such as demolition, site preparation, relocation, etc., for the entire site. Federal public housing funds provided for development costs are only to be used to construct and/or rehabilitate the units that will function as public housing and a pro rata share of their common area costs. The public housing funds are intended to leverage other public and/or private funds available for the development. Therefore, at a minimum, the HOPE VI funds must construct at least as many public housing units as could be constructed without leveraged financing. In order to maximize the number of public housing units built with the public housing funds, it is expected that the public housing funds as a percentage of the total sources of funds will be equal to or less than the percentage of public housing units to all units constructed and/or rehabilitated in the development.

5. Operating Subsidy

Public housing operating subsidies, provided in accordance with Section 9 of the 1937 Act, may be made available for public housing units owned by private or public-private entities. Operating subsidy, calculated through the Performance Funding System (PFS), may flow through the PHA to the owner entity. The PHA must develop a methodology acceptable to HUD for the distribution of a portion of its operating subsidy for the privately-owned public housing assisted units. The methodology must consider:

- a. the projected needs of all other public housing projects of the PHA,
- b. the increased needs of all projects, including the privately-owned units, as a result of inflation and increased costs of operation over time,
- c. the equitable distribution of any future shortfalls in operating subsidy if the PHA does not receive 100 percent of PFS due to reduced levels of appropriations and other contingencies, and
- d. the levels of tenant income in the privately-owned public housing units and the effect that higher or lower income levels will have on the amount of operating subsidy received by the PHA from HUD.

To address the risk of PFA operating subsidy shortfall, most mixed-finance projects establish a specific operating reserve account to cover the operating costs of the public housing units in the event that the PHA does not provide the owner entity with the level of operating subsidy agreed to in the Regulatory and Operating Agreement, and/or in the event that the operating costs exceed net income generated by the units. Public housing capital funds and operating subsidy may not be used to create such a reserve but may be used to replenish a reserve that has been drawn down to pay operating deficits.

D. MIXED-FINANCE PUBLIC HOUSING POLICY

The following summarizes some key HUD policies with regard to mixed-finance development public housing.

1. Public Housing Not Owned By PHA

A PHA does not have to own the public housing unit in order for it to receive capital and/or operating assistance with funds provided under the 1937 Act. A PHA may provide such assistance to a privately-owned unit which is developed and operated in accordance with the 1937 Act. The project's legal documents transferring the public housing units to the non-PHA owner must ensure that units are available for use as public housing by low-income families for a minimum of 40 years, in accordance with the 1937 Act.

2. Homeownership

PHAs may propose to include homeownership opportunities for public housing residents within a mixed-finance/mixed-income development. A PHA that proposes homeownership activities must submit a Homeownership Proposal to HUD that describes all aspects of the proposed homeownership activities. A detailed discussion of homeownership requirements is included in the Mixed-Finance Guidebook.

3. Market Design Requirements

HUD funds should create dwellings which are attractive and marketable, improve or are harmonious with the surrounding neighborhood, meet the long-term needs of the occupants, and are sustainable over the long run. To that end, PHAs are permitted the maximum possible flexibility regarding amenities and design of public housing developments, as long as they are developed within the Total Development Cost limits. Consistent with the concept of creating "floating" units that can be rented to public housing or market rate residents, such architectural features such as balconies, counter space, floor area, and carpeting are allowable expenses. Amenities such as air conditioning, garbage disposals, dishwashers, washers and dryers, and trash compactors are also allowable expenses. However, utility allowances will not be raised as a result of these amenities.

4. Preferences for Admission

All Federal preferences for admission have been repealed. A PHA may adopt a local system of preferences as part of its Agency Plan developed in accordance with 24 CFR part 903, as described in the Interim Rule published in the Federal Register on February 18, 1999 (page 8182).

5. Sub-jurisdictional Waiting Lists

Using a separate, site-based (sub-jurisdictional) waiting list for mixed-finance units allows the PHA or property manager to maintain a list of families that are specifically interested in living in those units. A HOPE VI Grantee may request a waiver from HUD's Office of Fair Housing and Equal Opportunity to establish a site-based waiting list. Under the Public Housing Reform Act of 1998, a PHA may adopt and establish a site-based waiting list under certain conditions, as described in Section 525 of that Act. For guidance in establishing a site-based waiting list under this authority, see the Interim Rule published in the Federal Register on February 18, 1999 (page 8176). The proposed method of establishment and operation of a site-based waiting list must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964 and implementing regulations. The PHA must adopt, in writing, a strategy for affirmatively marketing the site, which includes specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

6. Site-Based Management Functions

A PHA may delegate to the owner entity and its selected manager virtually all management functions and the PHA's responsibilities with regard to the public housing units, e.g., applicant screening and selection, informal appeals for denial of admission, rent determinations, etc. The PHA, however, remains responsible to HUD for ensuring that statutory requirements are met.

MIXED-FINANCE PROPOSAL

A. Mixed-Finance Proposal Requirements

The following are the requirements of a mixed finance proposal, as specified by regulations at 24 CFR 941.606. A PHA should consult this regulation and HUD's Mixed-Finance Guidebook for guidance in preparing a mixed-finance proposal. A separate proposal must be submitted to HUD for each phase of a HOPE VI mixed-finance development project.

1. **Activities**

- a. Identification of participating parties and the relationships between them.
- b. Description of activities to be undertaken by each participating party and the Grantee.
- c. Legal and business relationships between the Grantee and each of the participating parties, and the rights and liabilities (financial and otherwise) and respective commitments with respect to the development.

2. **Financing**

- a. Sources and uses. A detailed description of all financing (including Public Housing Development funds) necessary for the implementation of the proposal, and specifying the sources (with respect to each of the proposed categorical uses of all such financing).
- b. Ten year operating pro forma for the development.
- c. All documents relating to the financing of the proposal, and which HUD deems necessary, for review and approval. At the Proposal stage, commitment letters or other evidence of funding commitments are acceptable.

3. **Operating Subsidy Methodology**. The Grantee must submit a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to the public housing units, and demonstrating that the Grantee has duly considered the following factors. This methodology is reviewed by the HUD Field Office.

- a. The projected needs of all other public housing projects of the Grantee;
- b. The equitable distribution of any future shortfalls in operating subsidy; and
- c. The levels of tenant income in the public housing units and the effect that higher or lower income levels of such tenants would have on the amount of operating subsidy received by the Grantee and on the owner entity's ability to meet the needs of such public housing units.

4. **Development Description.** A description of the:
 - a. number and type of public housing units (detached and semi-detached, row dwelling, walk-up, and elevator) with bedroom count
 - b. number and type of non-public housing units (detached and semi-detached, row dwelling, walk-up and elevator) with bedroom count
 - c. schematic drawings
 - d. building designs
 - e. outline specifications
 - f. plans for non-dwelling space
5. **Site Information.** An identification of site, site plan, and neighborhood.
6. **Market Study.** For mixed-finance developments consisting of public housing and non-public housing units, an arm's length analysis that supports the economics and marketability of the proposed development. The market study is reviewed by the HUD Field Office.
7. **Development Construction Cost Estimate and Development Schedule**
8. **Adequate Facilities**
 - a. a statement addressing the adequacy of existing facilities and services for the prospective occupants of the development;
 - b. a description of public improvements needed to ensure the viability of the proposed project and a demonstration of the availability of resources to provide those improvements;
 - c. if applicable, a statement addressing the minority enrollment and capacity of the school system to absorb the number of school-aged children expected to reside in the development.
9. **Relocation.** The HUD Field Office will review the Relocation Plan, which must include:
 - a. an identification of site occupants that will be displaced,
 - b. a plan for distribution of notices, and
 - c. sources and uses of relocation benefits.

10. **Operating Feasibility of Development.** Ten year pro forma demonstrating the operating feasibility and sustainability of the development, accomplished by the Grantee's showing that the estimated operating expenses of the development will not exceed its estimated operating income. The pro forma must include all underlying rent assumptions, trending of income and expenses and adequate explanation of expenses. It must also show any debt service paid, remaining cash flow, and how it is split. The operating expenses of the public housing units should equal the income (from tenant rent and operating subsidy) for such units.
11. **Cost Comparison of New Construction.** Grantees that propose new construction of replacement housing must comply with the requirements of section 6(h) of the 1937 Act by submitting the information described in either paragraphs (a) or (b) of this section. The submission is reviewed by the HUD Field Office.
 - a. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or acquisition and rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement), or
 - b. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation.
12. **Certifications and Assurances.** The PHA must provide certification that:
 - a. the PHA has legal authority to develop public housing
 - b. procurement has been done in an open/competitive process with no conflict of interest
 - c. contractors will comply with procurement and conflict of interest requirements
 - d. if the PHA's partner or owner entity wants to award itself or an affiliate the project's construction contract, it will do so only after demonstrating that its bid is the lowest bid submitted in response to a public request for bids.
 - e. the public housing units will be operated in accordance with all applicable public housing requirements, including the ACC, by the PHA or other management entity
 - f. the public housing units will remain available for use by low-income families for the maximum period required by law

B. Mixed-Finance Proposal Timeline

1. PHA Submits Proposal to HUD
 - a. When:
 - (1) HOPE VI: after submission of the Revitalization Plan, as required by the HOPE VI Grant Agreement. The Proposal cannot be submitted until the project is sufficiently developed, so that all elements in 24 CFR 941.606 can be detailed.
 - (2) Development: at any point when the project is sufficiently developed.
 - b. Where:
 - (1) Original to Office of Public Housing Investments, HUD Headquarters
 - (2) Copy to Public Housing Division in local HUD Field Office
2. HUD Assigns Review
 - a. OPHI: The proposal is assigned to one of three teams, and the team leader assigns to a project manager. If part of a HOPE VI grant, it is assigned to the appropriate HOPE VI grant manager.
 - b. In the Field, the Director of Public Housing assigns to a staff member.
3. Review
 - a. HQ project manager will review proposal, ideally within 30 days.
 - b. Field Office staff reviews specific elements.
4. HQ project manager conducts conference call with PHA and participating parties to discuss and detail questions, problems, and insufficient information. The Field may or may not be included, depending on the results of their review.
5. The PHA and participating parties submit additional information as requested by HQ and the Field.
6. HQ sends PHA a conditional approval letter, which details any conditions that must be met for final approval.
7. An attorney from HUD's Office of General Counsel (OGC) is assigned to the project. The attorney may be from HQ or the Field.
8. The PHA and participating parties complete draft evidentiaries per 24 CFR 941.610(a)-(b) and submit to project manager and HUD attorney.

9. Evidentiaries are reviewed by project manager and HUD attorney. Conference calls are held as needed in order to finalize documents to the satisfaction of OGC and the project manager. Field Office staff reviews the management agreement.
10. When all draft evidentiaries and all conditions in the conditional approval letter are met, the Grant Manager sends the PHA the approval letter and ACC amendment (contract between the PHA and HUD to provide public housing for 40 years). This usually coincides with loan closings and the commencement of construction. The letter directs the PHA to proceed with closing the project (i.e., executing all the evidentiaries) and executing the ACC amendment. The letter also says that HUD funds will be released when copies of the executed documents are submitted and approved by OGC.
11. The PHA signs the ACC amendment and returns it to the Field Office for execution.
12. When the final evidentiaries are received and approved by OGC and the Grant Manager, the Grant Manager sends out a final approval letter telling the PHA that funds have been made available for drawdown in LOCCS.
13. The PHA draws down funds, through LOCCS, in accordance with the provisions of the ACC amendment. LOCCS requests for Development funds are administered by the HUD Field Offices. HOPE VI funds may be administered by HQ or in the Field.

C. **Additional Reviews (as appropriate)**

1. Environmental Review initiated or completed (FO)
2. Demolition/Disposition completed
3. Statement regarding Section 504 accessibility
4. Site-based waiting list request
5. Elderly housing designation
6. Proposal to use HUD funds as a bridge loan
7. Identity of interest issues
8. Procurement procedures
9. Information required to make TDC calculation
10. Site and Neighborhood Standards review (FO)
11. Review of adequate facilities (FO)
12. Management agreement/plan/lease (FO)



PHA NAME: _____

DEVELOPMENT NAME: _____

PROPOSAL CHECKLIST

DOCUMENTATION	YES	NO	NA
A. Activities			
Identification of participating parties			
Description of each party's activities			
Legal and business relationship between PHA and parties			
B. Financing			
PH Development funds			
Ten year pro forma for development			
Documents relating to financing			
C. Methodology for distribution of operating subsidy			
D. Development Description			
E. Identification of site, site plan, neighborhood			
F. Market Analysis			
G. Construction Cost Estimate			
H. Statement of Adequate Facilities			
I. Displacement and relocation			
J. Operating Feasibility			
K. New Construction Certification (6(h))			
L. Certifications and Assurances:			
Legal authority to develop public housing			
Open/Competitive process and non conflict of interest			
Compliance of other with procurement and conflict of interest requirements			
Lowest bid submission for self contracting			
Operation of units in accordance with PH requirements by PHA or other entity			
PH units remain available to low-income families for maximum period			



10/6/98

**MIXED-FINANCE AMENDMENT
TO CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT**

Section 1. This Mixed-Finance ACC Amendment covers the project identified below (herein referred to as "the Project" or "the Mixed-Finance Project"):

(A) Development Grant Project Number: _____; or

(B) Modernization Grant Project Number (for modernization funds approved for use for development purposes):

_____; or

(C) HOPE VI Grant Agreement No. _____.

Section 2. This Mixed-Finance ACC Amendment is an amendment to Consolidated Annual Contributions Contract (ACC) (Form HUD-53012A and Form HUD-53012B) Number: _____, dated _____.

Section 3. The ACC is amended to provide grant assistance for the Project identified in Section 1 and/or to add the Project Units (as defined in Section 4(I) of this Mixed-Finance ACC Amendment) to the ACC. This Mixed-Finance Amendment is part of the ACC and incorporates Exhibits A-G, which are attached hereto.

Section 4. The following provisions are applicable to the Project:

(A) Date of Project grant reservation:

_____.

(B) Number of Project Units to be developed: _____.

(C) Housing Type: _____.

(D)(1) For projects to be developed using development grant funds, or modernization funds approved for conversion to development purposes, the Maximum Total Development Cost (Development Grant Authority) of the Project is:_____.

(2) For projects to be developed using HOPE VI grant funds, the approved Total Development Cost of the Project is: _____.

(E) The Project Units will be (check one): [designated units _____]; [undesigned units _____] in the mixed-finance development.

(F) The Project Units are (check one): [eligible _____]; [ineligible _____] to receive operating subsidy under section 9 of the United States Housing Act of 1937 ("the Act"). If some or all of the units are eligible to receive operating assistance, specify the number of eligible units (including the number of bedrooms per unit) that will be eligible to receive such assistance: _____ units; containing _____ bedrooms.

(G) The Project Units shall be ineligible to receive modernization assistance unless the housing authority executes a project-specific ACC modernization amendment in connection with the Projects Units.

(H) The definitions set forth in 24 CFR part 941, subpart F, are applicable to this Mixed-Finance ACC Amendment.

(I) As used in this Mixed-Finance ACC Amendment, the term "Development" shall refer to the entire housing facility, containing _____ dwelling units, being developed using a mixed-finance strategy, and the term "Project," as used herein and as used in the ACC with respect to Grant Project Number _____, shall refer only to the _____ units of the Development (containing _____ bedrooms) which shall be developed and continuously set aside, operated, and maintained as public housing units (the "Project Units"). Nothing contained herein shall be construed as requiring that any dwelling units included in the Development shall at any time be maintained and operated in accordance with the ACC, or to constitute part of a "project" as defined in the ACC, other than the units contained therein constituting from time to time the Project Units.

Section 5 - HA certifications and assurances.

(A) By executing this Mixed-Finance ACC Amendment, the public housing agency (the "HA") certifies to HUD and, as applicable, agrees that:

(1) it has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under 24 CFR part 941, the HUD-approved proposal, and this Mixed-Finance ACC Amendment. The HA also warrants that it has the legal authority under State and local law to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(2)(i) it will ensure that the Development is developed in accordance with the mixed-finance proposal submitted by the HA (and approved by HUD; the "Proposal") and this Mixed-Finance ACC Amendment (including all exhibits), and that the Project Units are developed in accordance with the ACC (except that any requirement set forth in the ACC is superseded by a modified requirement set forth in this Mixed-Finance ACC Amendment), and all statutes, executive orders and regulations applicable to the development of mixed-finance public housing units, as such requirements now exist or as they may be enacted, promulgated, or amended from time to time.

(ii) if the Project Units are to be developed using HOPE VI funds, the HA agrees that, in addition to the requirements set forth in subparagraph (i), it also will comply with any applicable requirements set forth in the HOPE VI grant agreement, the approved Revitalization Plan, and any statutes, executive orders and regulations applicable to the HOPE VI program, as such requirements now exist or as they may be enacted, promulgated, or amended from time to time.

(3) it will ensure that the requirements for admission to, continued occupancy of, management, and modernization of the Project Units are in accordance with all requirements applicable to public housing, as set forth in the ACC (except that any requirement set forth in the ACC shall be superseded by a modified requirement set forth in this Mixed-Finance ACC Amendment or the HOPE VI grant agreement, if applicable), and all statutes, executive orders and regulations applicable to public housing units (except any such requirements as are expressly excluded from applicability to public housing units contained in mixed-finance developments), as such requirements now exist or as they may be enacted, promulgated, or amended from time to time; provided, however, that if HUD shall, by regulation alone, modify the eligibility standards for occupancy of public housing units, the criteria or methods for calculation of tenant income or rental payments, or any other factor bearing upon the charges for or occupancy or use of public housing units generally, which modification would be adverse to the Development, the HA (on behalf of the owner entity) may request a waiver from such regulation, which will not be unreasonably withheld so long as the owner entity has demonstrated good cause (as required by regulation) for such waiver.

(4) there is no action, proceeding, or investigation now pending, nor any basis therefor, known or believed to exist by the HA, which: (i) questions the validity of this Mixed-Finance ACC Amendment, or any action taken, or to be taken, under it, or; (ii) is likely to result in any materially adverse change in the authorities, properties, liabilities, or condition (financial or otherwise) of the HA or the Proposal, or of any participating party, that would materially or substantially impair the HA's or such participating party's ability to perform any of the obligations imposed upon it under the Proposal and this Mixed-Finance ACC Amendment;

(5) it has obtained all Federal, State, and local government approvals and reviews required by law, or reasonably required by HUD, to be obtained by the HA to develop and implement the Proposal, and all participating parties have obtained all such approvals and reviews required to be obtained by the participating parties to develop and implement the Proposal.

(6) it will immediately notify HUD of (i) any material change in any representations, statements, certifications or other matters contained in the HA's Proposal, this Mixed-Finance ACC Amendment, and/or the HOPE VI Revitalization Plan (if applicable), and (ii) any default of which it has notice under any agreement submitted to HUD as part of the evidentiary materials hereunder.

(7) it will use its best efforts to assure the performance of all HA, owner entity, and participating party(ies) obligations under this Mixed-Finance ACC Amendment in accordance with the timeframes established in the development schedule attached hereto as Exhibit D.

(8)(i) The HA hereby acknowledges that HUD has approved the Proposal in reliance upon the HA's representations that the HA, the partner(s), the owner entity(ies), and other participating parties will, and the HA hereby further agrees that it will, or will cause the participating parties to:

(a) carry out the activities ascribed to them in accordance with the Proposal and approved implementing documents (as summarized in Exhibit B hereto);

(b) complete those activities in accordance with the schedule set forth in Exhibit D, including the development of the Project Units;

(c) have (or will have when necessary to implement their activities in accordance with the Proposal), the financial capacity to assure carrying out the activities to their completion;

(d) invest or cause to be invested in the activities described in the Proposal a specific amount of funds in addition to the public housing funds (or the HOPE VI funds, if applicable), in accordance with Exhibit F. HUD has also relied upon the HA's, the owner entity's, and the partner(s)'s representations that they and other participating parties, prior to the use of the public housing funds (or HOPE VI funds, if applicable) for the Proposal, will enter into legally binding agreements, as approved by HUD as part of the evidentiary material identified in Exhibit E to this Mixed-Finance ACC Amendment, evidencing the commitments of all parties necessary for completion of the Proposal, in compliance with the requirements of this Mixed-Finance ACC Amendment; and

(ii) the representations, statements, certifications and other matters contained in the Proposal were, to the best of the HA's information and belief, true and complete in all material respects as of the dates of submission of the Proposal to HUD (including the dates of any separate submissions for a specific phase), and upon the execution of this Mixed-Finance ACC Amendment and will continue to be true and complete in all material respects as of the date of any amendment to this Mixed-Finance ACC Amendment, except as modified by such amendment (and any corollary modification to the Proposal that the HA deems necessary);

(9) this Mixed-Finance ACC Amendment has been executed and delivered by the HA in such a manner and form as to comply with all applicable laws so as to make this Mixed-Finance ACC Amendment the valid and legally binding act and agreement of the HA; and

(10) it will use, or ensure the use of, program income during the grant period, in accordance with 24 CFR § 85.25, only for eligible program costs or other low-income housing purposes. The HA agrees that after the end of the award period, any gross income received by the HA or a subgrantee that was directly generated by a grant-supported activity (or earned only as the result of funding provided under Section 3 of this Mixed-Finance ACC Amendment), including, without limitation, principal and interest on loans made with grant funds, will be utilized solely for eligible program costs or other low-income housing purposes. This covenant will survive any termination of the grant and, at HUD's direction, may be incorporated into any documentation related to the closeout of the grant.

(B) The HA warrants that it will include, or cause to be included:

(1) in all its agreements or contracts with the partner, the owner entity, and/or other participating parties receiving public housing or HOPE VI grant funds an acknowledgement that a transfer of public housing or HOPE VI grant funds by the HA to the partner, the owner entity, or other participating party will not be (and shall not be deemed to be) an assignment of public housing or HOPE VI grant funds, and the partner, owner entity, or other participating party will not succeed to any rights or benefits of the HA under the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable, or attain any privileges, authorities, interests, or rights in or under the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable.

(2) in all its agreements or contracts with the partner, the owner entity, or other participating parties, and in all contracts with any party involving the use of public housing or HOPE VI grant funds, a provision that nothing contained in the ACC or this Mixed-Finance ACC Amendment, or the HOPE VI Grant Agreement, if applicable, nor in any agreement or contract between the parties, nor any act of HUD, the HA, or any of the parties, will be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD; provided, however, that the mortgagee under the first mortgage or deed to secure debt and note secured thereby, as said documents are more specifically identified in Exhibit E hereto (respectively, referred to herein as the "First Mortgage" and "Note") shall be entitled to rely upon Section 11(C) and (D) of this Mixed-Finance ACC Amendment.

Section 6 - Evidentiary Materials.

(A) **Content.** The HA shall submit to HUD for review and approval the evidentiary materials specified in Exhibit E to this Mixed-Finance ACC Amendment. Such evidentiary materials must be submitted in the form of legally binding and enforceable commitments of the parties to the Proposal to undertake and complete specified activities connected with the Proposal, as set forth below:

(1) **Evidence of Contracts**

Evidence of contractual commitments submitted to HUD must include all documents evidencing the contractual commitments, with an opinion of counsel attached (see paragraph (B)(2) of this section regarding the proper form for opinions of counsel).

(2) **Evidence of Loans, Closings, Bond Sales.**

(i) Evidence of a loan must be submitted in the form of copies of fully executed notes, deeds, bonds, indentures, loan agreements, and other documents, which must contain sufficient evidence (satisfactory to HUD) to enable HUD to determine: that the loan has been closed and the funds are irrevocably committed and immediately available to the borrower; the principal amount of the loan; its purposes (interim or permanent); and the authorized use of loan funds; the identity of the security for the loan; the term of the loan; the interest rate (and/or any other form of participation) under the loan; the repayment provisions; the default provisions; the identity of all parties to the loan; with an opinion of the owner entity's (and/or any other borrower's) counsel addressed to HUD in accordance with the requirements of paragraph (B)(2) of this section.

(ii) If bonds or limited partnership interests are sold to finance the Proposal, the evidence must include a copy of the offering statement or syndication prospectus for the sale of the bonds or limited partnership interests and a statement from the trustee or depository of the proceeds certifying that the bonds or limited partnership interests have been sold and the amount of the proceeds that are available immediately for the implementation of the Proposal, and must have an opinion of the owner entity's (and/or any other borrower's) counsel addressed to HUD in accordance with paragraph (B)(2) of this section. In the event that any portion of the proceeds of the sale of the bonds or limited partnership interests are to be made available over an extended period, or for any other reason are not immediately available in accordance with the Proposal, evidence of "bridge financing" loan(s) in such amount (secured by pledges from the limited partners or in another manner which does not encumber the Project), or other evidence satisfactory to HUD, must be submitted as part of the evidentiary materials, in accordance with paragraph (1) of this section. Notwithstanding the foregoing, the requirement for bridge loan financing will be waived to the extent that such proceeds are necessary only to cover the payment of developer fees (provided that the receipt of such proceeds are timed to coincide with deferred payments to the developer for its fees).

(3) Evidence of Other Financing and Funding Sources (including other Federal, State and Local Commitments).

(i) Whenever evidence is required in the form of a statement and opinion of counsel (or other party designated by HUD) that a participating party has irrevocably committed a specific amount of finances to carry out the commitment of that participating party under the Proposal, such evidence must be in the form of an opinion of counsel or such other party designated by HUD, made in accordance with paragraph (B)(2) of this section.

(ii) The opinion of counsel (or other party designated by HUD) must certify that: such party has examined the availability of the participating party's financing, or other funding source; state the amount and the source of such financing or other funding committed by the participating party to the Proposal; and state that such financing or other funding has been irrevocably committed by the participating party for use in the Proposal and such commitment is in the amount required under the terms of the Proposal.

(4) Evidence of Title.

Evidence of fee simple or leasehold title to real property must be in the form of an original ALTA (or other form acceptable to HUD) policy of owner's or mortgagee's title insurance, which must identify the real property and the ownership interests of the HA, owner entity, and other participating parties (as appropriate) as the owners or lessees of record of such property. The title policy must also reflect that any instruments securing any private or public financing, including any loan of public housing funds (or HOPE VI funds, if applicable) have been recorded against the title, and that deed restrictions or covenants running with the land relating to the restrictions and requirements applicable to public housing units under this Mixed-Finance ACC Amendment have been recorded in full to assure that the restrictions and requirements will remain in effect for the period required by law and under this Mixed-Finance ACC Amendment and will survive all other interests.

(B) **Form of evidentiaries.**

(1) **Submissions.** All documentary evidence submitted to HUD must be in the form of either duplicate original(s) of the fully executed document(s), or photographic copies of the fully executed original of the document(s), unless otherwise specified, with a certification attached that the document is a true and complete copy of the original.

(2) **Opinions of counsel.**

(i) Counsel must opine to the following for each document submitted as evidentiary material under Exhibit E to this Mixed-Finance ACC Amendment:

(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 this Mixed-Finance ACC Amendment, and that there is nothing in such document that conflicts with, or is inconsistent with, the requirements of this Mixed-Finance ACC Amendment.

(ii) Each opinion of counsel must be in writing and include the separate opinions of the HA's counsel and the owner entity's counsel, unless otherwise specified.

(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.

(C) **Amendment of approved evidentiaries.** After HUD has approved an evidentiary submitted in accordance with this Mixed Finance ACC Amendment, the evidentiary may not be amended in any material respect without the prior written approval of HUD.

(D) **Implementation in phases.** If Exhibit D contemplates implementation of the Proposal in phases, all of the evidentiary material for each phase must be delivered to HUD, in accordance with the provisions of this Mixed-Finance ACC Amendment, no later than the date specified in Exhibit D.

Section 7 - Draw down of Funds.

(A) The HA shall ensure that grant funds are expended only in accordance with the requirements set forth in this Mixed-Finance ACC Amendment and the approved budget set forth in Exhibit F to this Mixed-Finance ACC Amendment.

(B) In the event that funds in addition to those set forth in the budget(s) at Exhibit F are received from any source in connection with the Development, such excess funds may only be used, as approved by HUD in writing, for: (1) cost overruns; (2) additional betterments; or (3) other purposes for the benefit of the residents and/or the Development.

(C) Notwithstanding any contrary requirement set forth in 24 CFR §85.21, the HA shall request all draw downs of grant funds under the Line of Credit Control System - Voice Response System (LOCCS-VRS), unless and until another payment system is designated by HUD. The HA shall comply with all rules, guidelines and notices established for the public housing development program under the LOCCS-VRS system, or any substitute system, in connection with the draw down of public housing development funds (or HOPE VI funds, if applicable). If HUD designates an alternative payment system, it shall be based on 24 CFR §85.21.

(D) HUD may withhold payments under this Mixed-Finance ACC Amendment in accordance with 24 CFR §85.21(g), except that indebtedness of the HA to the United States which is not related to a Project under this Mixed-Finance ACC Amendment shall not be the basis for withholding payments under this Mixed-Finance ACC Amendment pursuant to § 85.21(g)(1)(ii).

(E) After HUD provides the HA with written notification that the evidentiaries have been reviewed and approved, the HA may request a draw down of grant funds pursuant to the approved budget in Exhibit F.

(F) The HA may utilize grant funds, in accordance with the budget under Exhibit F, for publication costs of reports or other media relating to Project accomplishments or results, which are allowable costs pursuant to OMB Circular A-87, Schedule B, paragraph 23).

(G) No grant funds may be drawn down under this Mixed-Finance ACC Amendment during any period in which the HA has failed to file with HUD any overdue financial report(s).

Section 8 - Covenant Against Disposition and Encumbrances.

With respect only to the Project under this Mixed-Finance ACC Amendment, Section 7 of the ACC is modified in its entirety to read as follows:

(A) Neither the Project Units nor any part thereof shall be demolished or disposed of, other than in accordance with the terms of this ACC and applicable statutory or regulatory requirements (subject to any waivers granted pursuant thereto), so long as this Mixed-Finance ACC Amendment remains in force with respect to the Project. With the exception of (i) the First Mortgage and any mortgage(s) held by the Authority which have been approved by HUD, (ii) dwelling leases with eligible families for the Project Units (iii) subordinate liens approved by the HA in connection with purchase or financing of replacements or repairs necessary for the normal use and operation of the Development, and (iv) normal uses associated with the operation of the Project, neither the Project nor any portion thereof shall be encumbered in any way, nor the assets of the Project pledged as collateral for a loan, without the prior approval of HUD.

(B) If the Project Units are owned by an entity other than the HA, no transfer, conveyance, or assignment shall be made, without the 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") in the owner entity, or (ii) a Controlling Interest in any entity which has a Controlling Interest in the owner entity, or (iii) prior to payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the owner entity, or in any partner or member thereof. HUD agrees that it will not unreasonably withhold, delay, or condition a request by the owner entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the owner entity or any of the partners, members or stockholders of the owner entity.

Section 9 - Declaration of Restrictive Covenant.

With respect only to the Project under this Mixed-Finance ACC Amendment, Section 8 of the ACC is modified in its entirety to read as follows:

If fee title to the Development is owned by an entity other than the HA, the HA shall require the owner entity to execute and file for record, prior to the recordation of any other encumbrance agreed to by the owner entity, a Declaration of Restrictive Covenant, in form approved by HUD, confirming and evidencing that the owner entity, during the term of the regulatory and operating agreement covering the Project Units and during such further period when such approval may be required by law as then in effect, shall maintain and operate the Project Units in compliance with the requirements of the ACC as modified by this Mixed-Finance ACC Amendment, the Act, and all regulations thereunder, including, without limitation, the restrictions against demolition or disposition of the Project Units, and of the interests in the owner entity, set forth in section 7 of the ACC, as modified by this Mixed-Finance ACC Amendment. Such Declaration of Restrictive Covenants shall provide further that it may not be modified, amended or released without the written approval of HUD.

Section 10 - Restoration.

Section 13(B) of the ACC is modified in its entirety to read as follows:

The HA, to the extent that insurance proceeds or condemnation award proceeds ("Proceeds") permit, shall promptly cause the restoration, reconstruction, and/or repair ("Restoration") of any damaged or destroyed property of the Development. If the Project Units are owned by an entity other than the HA, the obligation for Restoration, to the extent Proceeds and other funds (if any are made available by an owner entity or the HA) permit, is a requirement with which the owner entity must comply to the extent Restoration is feasible. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt).

If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement between the HA and the owner entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Development shall be consistent, shall apply:

(1) if the Proceeds are less than or equal to the sum of the existing outstanding mortgage debt secured by the Development, excluding any such debt held by the HA to secure a loan of public housing funds or HOPE VI grant funds for the Project ("Existing Mortgages"), and such Proceeds are applied to reduction of Existing Mortgages, the **number** of Project Units in the Development shall remain the number required immediately prior to the occurrence of the casualty or condemnation;

(2) if the Proceeds are less than or equal to the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof **and** the HA, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project Units to all dwelling units in the Development, and then by payment to the HA of the balance of the Proceeds; then the **percentage** of units in the Development (and the percentage of bedrooms contained therein) which shall be Project Units shall remain the same as required immediately prior to the casualty or condemnation;

(3) if the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority, (i) to reduce any outstanding indebtedness to the HA for a loan of public housing funds or HOPE VI grant funds, (ii) to reimburse the HA for any public housing funds or HOPE VI grant funds disbursed to the owner entity for development of the Development other than by loan, (iii) to the HA an amount equal to the total "cost of construction" attributable to the Project Units, less the sum of (i) and (ii) above, and (iv) to the owner entity. (For the purposes of this paragraph, the term "cost of construction" shall mean the total cost of developing the Development, less land acquisition costs, if any, and non-capitalized "soft" costs.) Following application of Proceeds in accordance with the foregoing, the **percentage** of dwelling units in the Development which shall be Project Units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; **provided**, however, that to the extent that the payment to the HA pursuant to clauses (i), (ii), and (iii) shall be less than the "cost of construction" attributable to the Project Units, the number of remaining units in the Development which shall be Project Units shall be increased by a number of units (rounded down) equal to (A) the amount by which such payments to the HA shall be less than the cost of construction, divided by (B) the quotient of (x) cost of construction, divided by (y) the number of Project Units immediately prior to the occurrence of the casualty or condemnation.

Section 11 - Default.

(A) Each of the following shall constitute an event of substantial default under the ACC:

(1) The draw down of public housing funds (or HOPE VI grant funds, if applicable) under the Proposal in amounts greater than authorized, or in amounts greater than allowed by the pro rata drawdown requirements in Exhibit G of this Mixed-Finance ACC Amendment;

(2) Breach of any approved performance schedule; or

(3) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i) the HA, as set forth in this Mixed-Finance ACC Amendment;

(ii) the HA, as set forth in any agreement submitted to HUD as part of the evidentiary materials and entered into between the HA and the owner entity, partner, or other participating party relating to the Proposal which, in the opinion of HUD, adversely affects the performance obligations of the HA, the owner entity, or other participating parties, as set forth in this Mixed-Finance ACC Amendment; and

(iii) the owner entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the owner entity, partner, or other participating party as set forth in this Mixed-Finance ACC Amendment.

(B) HUD shall permit an owner entity, partner, or lender to participate, and may, in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to Section 17 (C) of the ACC with respect to the Project.

(C) During the term of the Regulatory and Operating Agreement between the HA and the owner entity and so long as the owner entity shall not be in default of its obligations thereunder, HUD agrees that in the event of a substantial default by the HA under the ACC, HUD shall exercise any remedies or sanctions authorized under the ACC, including taking possession of the HA's interest in the Project, in such manner as not to disturb the owner entity's rights under the Regulatory and Operating Agreement.

(D) The rights of the mortgagee under the Note and First Mortgage (including the right to exercise all remedies specified therein) shall not be subordinate to any other obligations imposed upon the Development, except as such obligations (i) shall be reflected in a declaration of restrictive covenants as required by Section 9 of this Mixed-Finance ACC Amendment, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (ii) shall be the subject of a subordination agreement with such mortgagee.

In consideration of the foregoing covenants, the parties do hereby set forth their seals:

(SEAL)

HOUSING AUTHORITY

ATTEST:

By _____

Executive Director

UNITED STATES OF AMERICA
Secretary of Housing and Urban
Development

By _____

Director of Public Housing
State Office

EXHIBIT A

[Exhibit A must include an identification and description of each participating party (including its role under the Proposal, the type of entity, its composition, and any relationships among parties) involved in the implementation of the full Proposal, with an address and a contact person for each such party. If the Proposal is being implemented in phases, list in Exhibit A-1 (through the applicable number of phases) the participating parties for each of the respective phases. If the identities of all participating parties are not known at the time this Mixed-Finance ACC Amendment is executed, this Mixed-Finance ACC Amendment shall be further amended to include the name, address and contact person for each such participating party.]

EXHIBIT A - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT B

[Exhibit B must include a description of the overall activities to be carried out under the Proposal, in addition to the activities ascribed to, and the financing to be provided by, each participating party. If the Proposal is to be implemented in phases, also describe the activities and financing by phase in Exhibits B - 1 through the applicable number of phases. This Exhibit must be amended if any of the foregoing information (for any phase subsequent to the first phase) is unavailable at the time this Mixed-Finance ACC Amendment is executed.]

Overall Description

EXHIBIT B - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT C

[Exhibit C must include an identification of the total number of public housing units to be developed under the Proposal, with a breakdown by bedroom count.

I. Proposed number of public housing units _____.

II. Breakdown of public housing units by bedroom count: _____

[If the Proposal is to be implemented in phases, provide the above information for each phase on Exhibits C - 1 through the applicable number of phases. If the number of public housing units, or the breakdown by bedroom count, in any particular phase subsequent to the first phase is unavailable at the time this Mixed-Finance ACC Amendment is executed, such information must be included by amendment to this Exhibit.]

EXHIBIT C - 1

PHASE 1

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT D

DEVELOPMENT SCHEDULE

I

I. The evidentiary materials described in Exhibit E of this Mixed-Finance ACC Amendment must be submitted to HUD by the HA no later than:

[SPECIFY THE DATE BY WHICH ALL EVIDENTIARY MATERIALS MUST BE SUBMITTED OR, IF THE PROPOSAL IS TO BE IMPLEMENTED IN PHASES, FOR PHASE 1.]

II. If the Proposal is to be implemented in phases, for each phase (subsequent to the first phase) the Proposal submission package and the evidentiary materials, as described in Exhibit E, must be delivered to HUD no later than the following dates:

	<u>Date for Proposal Submission Package</u>	<u>Date for Evidentiary Materials</u>
Phase 2		[six months after submission package date]
Phase 3		[six months after submission package date]

III. Upon HUD's notification to the HA of its approval of the evidentiary materials required to be submitted under paragraph (I) of this exhibit, the HA shall be authorized to draw down public housing development funds (or HOPE VI funds, if applicable) for the implementation of the Proposal, or the applicable phase of the Proposal, in accordance with all applicable requirements, including Section 7 of this Mixed-Finance ACC Amendment.

IV. The activities described in the HA's Proposal at Exhibit B of this Mixed-Finance ACC Amendment shall be commenced and completed in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
------------------------	---------------------------------	-------------------------------

[If the Proposal is to be implemented in phases, provide the above information for each phase in Exhibits D - 1 through the applicable number of phases. If the commencement and completion dates for any particular phase, subsequent to the first phase, are unavailable at the time this Mixed-Finance ACC Amendment is executed, such information must be included in the Proposal submission package and included in this Exhibit by amendment.]

EXHIBIT D - 1

PHASE 1

The activities described in the HA's Proposal at Exhibit B of this Mixed-Finance ACC Amendment shall be commenced and completed for Phase 1 in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
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[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT E

REQUIRED EVIDENTIARY MATERIALS

The evidentiary materials to be submitted by the HA to HUD must be in one complete package or binder(s) (or, if applicable, in one complete package or binder for each phase), together with a copy of this Mixed-Finance ACC Amendment and the HOPE VI Grant Agreement, if applicable, with an index describing the material submitted, under tabbed dividers. **All evidentiary materials must be submitted in accordance with the provisions of Section 6 of this Mixed-Finance ACC Amendment** and for each phase (if applicable) must consist of the following:

I. _____ All government approvals and permits necessary for the commencement of the activities in the Proposal have been obtained or provided. Evidence of this requirement may be a written original certification from the HA.

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

II. _____ Evidence that title to all land necessary to the implementation of the Proposal is held by the HA, the owner entity, or the appropriate participating party.

III. _____ All agreements required or permitted to be entered into between the HA, the owner entity, partner or participating parties under this Mixed-Finance ACC Amendment.

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____
- H. _____

IV. _____ Evidence of loans, notes, mortgages, deeds of trust, use restrictions, closings, bond sales, or other financing arrangements, whether private or public financing, necessary to the accomplishment of the Proposal (unless any such documents are specifically excluded from the evidentiary materials that must be submitted):

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

V. _____ Legally binding commitments, agreements, and all other documents as required to satisfy the requirements of this Mixed-Finance ACC Amendment, to be submitted to HUD for approval, must include (but is not limited to) the following for each phase, as applicable:

[Following is a sample listing of documents that may be required for each Mixed-Finance ACC Amendment]:

A. _____ Copy of a deed restriction, covenant running with the land, ground lease, or other arrangement, of public record, that will assure to the satisfaction of HUD that the public housing units will be subject to a covenant obligating the owner entity and the HA, and any successors in title (including any successor who acquires title to the owner entity's or HA's estate through foreclosure) to: (1) maintain and operate the public housing units for the period required by law in compliance with all applicable public housing requirements, including the ACC between the HA and HUD, and this Mixed-Finance ACC Amendment; and (2) not to encumber, demolish or sell the public housing units without HUD approval.

B. _____ A regulatory and operating agreement that provides, among other things, for: (a) a methodology acceptable to HUD for distribution of a portion of the HA's operating subsidy to the public housing units; and (b) binding assurances that the percentage of public housing units and number of bedrooms will be maintained, together with an Authority Reserve Escrow Agreement executed by the HA, the owner entity, and a financial institution acting as escrow agent thereunder.

C. _____ A cooperation agreement executed by and between the HA and the applicable local jurisdiction. If the cooperation agreement does not specifically cover the proposed mixed-finance units, the HA must also submit an opinion from counsel for the applicable locality affirming that the proposed mixed-finance units are covered under the existing cooperation agreement between the locality and the HA.

D. _____ A guarantee of completion from _____ to the HA.

E. _____ A partnership agreement and/or a development agreement executed by and between the HA, the partner, and the owner entity that establishes the relationships among the parties with respect to carrying out the Proposal, including all rights and liabilities (financial and otherwise) of the parties and the respective commitments of the parties with respect to carrying out the Proposal.

F. _____ A management plan for the proposed development, and a management agreement executed by the owner entity and the management agent.

G. _____ A loan agreement providing for the loan of public housing development funds (or HOPE VI funds, if applicable) to the owner entity, in accordance with the Proposal.

H. _____ A copy of the limited partnership agreement of the owner entity, executed by the equity investor(s); a copy of the offering statement or syndication prospectus; a statement by the depository of the funds certifying that the limited partnership interests have been sold and as to the amount of such proceeds that are available for implementation of the Proposal; and an opinion of the owner entity's counsel, addressed to HUD.

I. Alternative management plan. An alternative management plan between the HA and the owner entity concerning the proposed method of dealing with a reduction in operating subsidy for the public housing units in the event of cutbacks in appropriated operating funds, or because of other changes in applicable law.

J. _____ [The loan documents required under item (IV) of this Exhibit F may specifically exclude the following documents:

1. [Loan documents approved by the Federal Housing Commissioner;]

2. _____

3. _____

4. _____

K. _____ A copy of the review and approval form executed by the appropriate official conducting the subsidy layering review pursuant to section 102 of the HUD Reform Act of 1989.

L. _____ Copies of all executed development-related contracts.

M. The HA shall also submit to HUD for review and approval the following evidentiaries:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____

EXHIBIT E - 1

PHASE 1

[Evidentiary materials that relate specifically to Phase 1 include the following:]

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT F

This Exhibit is the revised budget for the entire Proposal, including all public and private sources of funds, as applied to the uses (by category), as approved by HUD.

EXHIBIT F - 1

PHASE 1

This Exhibit is the Budget for Phase 1 of the Proposal, including all public and private sources of funds, as applied to the uses (by category), as approved by HUD.

[Must be included at the time the Mixed-Finance ACC Amendment is executed.]

EXHIBIT G

1. Public housing development funds (or HOPE VI funds, if applicable) needed for the implementation of the Proposal (or, if the Proposal is being implemented in phases, for Phase 1 and any other phase for which no separate ratio is specified on Exhibits G - 2 through the applicable number of phases), may be drawn down under this Mixed-Finance ACC Amendment only in a ratio to other public and private funds in the Proposal of not more than \$1.00 of public housing development funds (or HOPE VI funds, if applicable) to \$_____ of the aggregate amount of other public and private funds provided for in the Proposal, excluding any amounts agreed to by HUD, as provided below. The dollar amount to which this ratio applies is \$_____ (provided, however, that if the Proposal is to be implemented in phases and no other ratio is specified for any phase subsequent to Phase 1, this amount shall be deemed to be increased to the total amount of the Proposal.

2. Set forth below are the amounts and uses of funds that have been excluded, solely for the purposes of establishing the draw down ratio, from the aggregate amount of public and private funds to be provided under the Proposal. The following amounts are not subject to the draw down ratio requirement of Section 7 of this Mixed-Finance ACC Amendment (include amounts for front-end assistance approved by HUD):

<u>AMOUNT</u>	<u>PURPOSE</u>
\$ _____	[specify]
\$ TOTAL	

[Any separate ratio that is applicable to any other phase of the Proposal must be set forth in the respectively numbered Exhibit, with any exclusions specified as required under item 2 of this Exhibit.]



MIXED-FINANCE EVIDENTIARY MATERIALS

The following lists the evidentiary materials required in conjunction with HOPE VI Mixed-Finance public housing development. Separate evidentiary materials must be prepared for each phase of a HOPE VI mixed finance development project.

1. **Regulatory and Operating Agreement:** An agreement between the PHA and the owner entity that provides assurances about the operation of public housing for 40 years. The agreement also details how operating subsidy will be provided to the project.
2. **Declaration of Trust or Restrictive Covenant:** A declaration that is recorded and runs with the land, requiring that the property provide public housing. Any title search of the property will reveal that the property must provide public housing for a period of 14 years. Also provides that the property cannot be disposed of without HUD approval.
3. **Ground Lease:** Executed between the PHA and the ownership entity if the PHA will continue to own the underlying land on which the project is built.
4. **Partnership Agreement:** Document which governs the rights and responsibilities of the ownership entity.
5. **Development Agreement** and other related agreements: Specifies who will develop the project and what their responsibilities will be.
6. **Management Agreement:** Governs how the project will be managed.
7. **Project Financing:** Loan and Grant Agreements, notes, mortgages, assignment of rents and leases, security agreements, and any other documents related to the project's financing.
8. **Evidence of Title/Site Control.**
9. **Opinions of Counsel:** Legal opinions that the documents are valid and legally enforceable and that the parties are authorized to execute the documents.
10. **Cooperation Agreement:** Agreement between the PHA and the City concerning PILOT payments, local tax exemption, and local government services for the proposed housing units.
11. **Subsidy Layering Review and Approval** (if not done by HUD).
12. **Escrow and Disbursing Agreement.**

13. **Other Documentation** as required by HUD. These documents may include:
- a. Government approvals and permits (may be a certification)
 - b. Authority Reserve Escrow Agreement
 - c. Guarantee of Completion
 - d. Limited partnership agreement, offering statement or syndication prospectus, proceeds statement
 - e. Predevelopment Agreement
 - f. Previous Participation Certifications
 - g. Program Management Agreement
 - h. Form of PH Tenant Lease

PHA NAME: _____

DEVELOPMENT NAME: _____

EVIDENTIARY MATERIALS CHECKLIST

DOCUMENT (as Appropriate)	YES	NO	NA
Regulatory and Operating Agreement			
Declaration of Trust or Restrictive Covenant			
Ground Lease			
Partnership Agreement			
Development Agreement			
Management Agreement			
Project Financing			
Evidence of Title/Site Control			
Opinions of Counsel			
Cooperation Agreement			
Subsidy Layering Review			
Other Documentation as required by HUD:			
Government approvals and permits			
Authority Reserve Escrow Agreement			
Guarantee of Completion			
Limited partnership agreement			
Predevelopment Agreement			
Previous Participation Certifications			
Program Management Agreement			
Form of PH Tenant Lease			



HOPE VI HOMEOWNERSHIP

In furtherance of HOPE VI's goal of creating mixed-income communities, HUD encourages HOPE VI Revitalization Grantees to include homeownership units in their Revitalization Plans. An eligible homeownership replacement unit is a housing unit that replaces a unit demolished or disposed of in connection with a HUD-approved HOPE VI Revitalization Plan. Eligible homeownership activities include:

1. replacement homeownership units that are made available through housing opportunity programs for construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as those established under the **Nehemiah** Homeownership Program (12 USC 1725j);
2. development of replacement homeownership units that meet the regulatory requirements of the **Section 32** Program at 24 CFR part 906;
3. development of replacement homeownership units that meet the statutory requirements of the **HOPE I** Program (HOPE for Public and Indian Housing Homeownership) (42 U.S.C. 1437aaa *et. seq.*);
4. development of replacement homeownership units that meet the statutory requirements of the **HOPE II** Program (HOPE for Homeownership of Multifamily Units) (42 U.S.C. 12871-80; Pub. L. 101-625, secs. 421-31; 104 Stat. 4079, 4162-72);
5. development of replacement homeownership units that meet the statutory requirements of the **HOPE III** Program (HOPE for Homeownership of Single Family Homes) (42 U.S.C. 12891-98; Pub.L. 101-625, secs. 441-48; 104 Stat. 4079, 4172-80);
6. other appropriate replacement homeownership activities, including **downpayment** assistance for displaced residents and the provision of **closing costs**.

Homeownership Proposal

A HOPE VI Grantee that wishes to include homeownership in its Revitalization Plan must prepare and submit a Homeownership Proposal to HUD for approval. The Homeownership Proposal specifies the plans the Grantee will undertake for the mixed finance development of the homeownership replacement units in conjunction with a Partner. Each Homeownership Proposal must include some or all of the following documentation:

1. an identification of the **participating parties and the activities** to be undertaken by each of the participating parties and the Grantee and the legal and business relationships between the Grantee and each of the participating parties;
2. a detailed description of all **financing** (including construction and permanent budgets) necessary for the implementation of the proposal, specifying the sources (with respect to each of the proposed categorical uses of all such financing) to be summarized for the entire Proposal in the Budget attached to the Mixed-Finance ACC Amendment as Exhibit F;
3. a **description of the homeownership units** to be developed, including the number and type (with bedroom count and distribution) of units, and the types and amounts of non-dwelling space to be provided;
4. an identification and description of the **proposed site**, site plan, and neighborhood;
5. a **market study** for the proposed project;
6. a preliminary development construction **cost estimate** based on the schematic drawings and outline specifications and current construction costs prevailing in the area;
7. the **development schedule**, including the architect's or contractor's estimate of the time required to complete each major development stage;
8. information concerning any necessary relocation of site occupants, including identification of each resident to be relocated, the distribution plan for notices, and the anticipated cost and source of funding for relocation benefits;
9. evidence of compliance of the homeownership replacement units with the applicable homeownership program requirements; and
10. any additional information requested by HUD to more fully describe any aspect of the Homeownership Proposal, including, schematic drawings and designs of the proposed building and unit plans, and outline specifications.

Nehemiah Homeownership Program

The 1993 HOPE VI Appropriations Act provided that HOPE VI funds could be used for housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as those established under sections 603-607 of the Nehemiah Homeownership Program. The eligibility requirements are found in section 605.

HOPE VI funds may be used to:

- write down the cost of construction to the sales price (i.e., the appraised, market value) of the home;
- provide second mortgages to homebuyers to make the home affordable to low-income families (homebuyers must maximize their first mortgage);
- provide downpayment assistance for displaced residents; and
- help the family pay closing costs.

The HOPE VI program requires that a Nehemiah-like homeownership program have essentially the same eligibility requirements as those found in section 605 of the Nehemiah statute. The requirements of the Nehemiah Program are as follows:

1. Homes must be newly constructed or involve substantial rehabilitation.
2. The homebuyer may not have owned a home during the three-year period preceding the purchase of a home.
3. The family's income on the date of purchase of a home may not exceed the greater of:
 - a. the median income for a family of four persons in the MSA involved (except that if, and to the extent that the unit of general local government demonstrates to HUD that such action is necessary to achieve or maintain neighborhood stability, no more than 15 percent of the families in a project at any time during development or occupancy may have incomes up to 115 percent of such median income); or
 - b. the national median income for a family of four persons.
4. The homebuyer must make a downpayment on the home in the amount of 10 percent of the sales price of the home, or in an amount determined by HUD in the approved Homeownership Proposal as being essentially the same as a ten percent downpayment.
5. The conveyancing or financing documents must include an anti-speculation provision, as approved by HUD, when the development cost is greater than the purchase price (i.e. the appraised market value).
6. The homeowner is prohibited from leasing the home.

Section 32 Homeownership Program

HOPE VI funds may be used for replacement homeownership units that meet the requirements of the Section 32 Program. Proposed regulations at 24 CFR part 906 describe the following elements of a Section 32 homeownership program:

1. A PHA can make available for purchase by low-income families for use as their principal residences public housing dwelling units, public housing projects, and other housing units or projects owned, assisted, or operated, or otherwise acquired by the PHA for sale under a Section 32 homeownership program.
2. Section 32 requires that buyers be low-income.
3. A Section 32 homeownership program may provide for financing to eligible families purchasing dwelling units under the program, or for acquisition of housing units or projects by the PHA for sale under the program.
4. A PHA may use assistance from amounts it receives under the Capital Funds under section 9(3) of the 1937 Act programs to provide financing assistance to public housing residents only. Public housing residents may use such assistance to purchase the unit in which they reside, another public housing unit, or a residence not located in a public housing development.
5. A PHA may provide financing assistance for other eligible purchasers from other income, i.e., income not from 1937 Act programs, such as proceeds from selling public housing units, loan repayments, and public housing debt forgiveness funding not already committed to another purpose.
6. A PHA must not use 1937 Act funds to rehabilitate units that are not public housing units.
7. Construction of homes to be sold under Section 32 are developed under HUD's development regulation (24 CFR part 941).
8. When a public housing unit is sold, it is removed from the ACC and is no longer eligible for operating subsidy or modernization assistance.

(A) rehabilitation involving costs in excess of 60 percent of the maximum sale price of a home assisted under this title in the market area in which it is located; or

(B) the rehabilitation of a vacant, uninhabitable structure.

(9) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State. [12 U.S.C. 1715l note]

SEC. 603. ASSISTANCE TO NONPROFIT ORGANIZATIONS.

(a) *IN GENERAL.*—The Secretary may provide assistance to nonprofit organizations to carry out Nehemiah housing opportunity programs in accordance with the provisions of this title. Such assistance shall be made in the form of grants.

(b) *APPLICATIONS.*—Applications for assistance under this title shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe. [12 U.S.C. 1715l note]

SEC. 604. USE OF ASSISTANCE.

(a) *IN GENERAL.*—Any nonprofit organization receiving assistance under this title shall use such assistance to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with a Nehemiah housing opportunity program approved under this title.

(b) *SPECIFIC REQUIREMENTS.*—Each loan made to a family under this section shall—

- (1) be secured by a second mortgage held by the Secretary on the property involved;
- (2) be in an amount not exceeding \$15,000;
- (3) bear no interest; and
- (4) be repayable to the Secretary upon the sale, lease, or other transfer of such property. [12 U.S.C. 1715l note]

¹ Section 183 of the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992, provides as follows:

“SEC. 183. NEHEMIAH HOUSING OPPORTUNITY GRANTS.

“(a) HOMEOWNER INCENTIVE.—Section 604 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended—

“(1) in subsection (b)(4), by inserting before the period the following: ‘, subject to the provisions of subsection (c)’, and

“(2) by adding at the end the following new subsection:

“(c) HOMEOWNER INCENTIVE.—The nonprofit organization may provide that, upon the sale or transfer of a property purchased with a loan made under this section, any proceeds remaining after repaying the first mortgage shall be distributed in the following order:

(1) *DOWNPAYMENT.*—The amount of the downpayment made by the seller or transferor upon the purchase of the property shall be paid to the seller or transferor.

(2) *LOAN AND PROFIT.*—Any amounts remaining after distribution under paragraph (1) shall be shared equally between the Secretary and the seller or transferor, but only to the extent that the Secretary recovers an amount equal to the amount of the loan made under this section. If such remaining amounts are insufficient for the Secretary to recover the full amount of the loan made under this section, the second mortgage held by the Secretary under subsection (b)(1) shall be cancelled.

(3) *PROFIT.*—Any amounts remaining after distribution under paragraphs (1) and (2) shall be paid to the seller or transferor.

(b) *CONFORMING AMENDMENTS.*—Section 606(e)(5) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended—

“(1) by inserting ‘subject to the provisions of section 604(c),’ after the comma; and

“(2) by striking ‘(in which case)’ and all that follows through ‘repaid’.

(c) *APPLICABILITY.*—The amendments made by this section shall apply to any loan made under section 604 of the Housing and Community Development Act of 1987.

NEHEMIAH HOUSING PROGRAM

EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987—PRIOR TO OCTOBER 1, 1991

[Public Law 100-242; 101 Stat. 1951; 12 U.S.C. 1715l note]

TITLE VI—NEHEMIAH HOUSING OPPORTUNITY GRANTS¹

SEC. 601. STATEMENT OF PURPOSE.

It is the purpose of this title—

- (1) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership;
- (2) to undertake a concentrated effort to rebuild the depressed areas of the cities of the United States and to create sound and attractive neighborhoods; and
- (3) to increase the employment of neighborhood residents. [12 U.S.C. 1715l note]

SEC. 602. DEFINITIONS.

For purposes of this title:

- (1) The term “Fund” means the Nehemiah Housing Opportunity Fund established in section 609(a).
- (2) The term “home” means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any town house, and any manufactured home.
- (3) The term “lower income families” has the meaning given such term in section 3(b)(2) of the United States Housing Act of 1937.
- (4) The term “metropolitan statistical area” means a metropolitan statistical area as established by the Office of Management and Budget.
- (5) The term “nonprofit organization” means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.
- (6) The term “Secretary” means the Secretary of Housing and Urban Development.
- (7) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.
- (8) The term “substantial rehabilitation” means—

¹ Section 289(a) of the Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101-625, provides that no new grants or loans shall be made under this title after October 1, 1991. Section 289(b) of such Act repeated this title, effective on October 1, 1991.

SEC. 605. PROGRAM REQUIREMENTS.

(a) **IN GENERAL.**—Assistance provided under this title may be used only in connection with a Nehemiah housing opportunity program of construction or substantial rehabilitation of homes.

(b) **FAMILY NEED.**—Each family purchasing a home under this title shall—

(1) have a family income on the date of such purchase that is not more than whichever of the following is higher:

(A) the median income for a family of 4 persons in the metropolitan statistical area involved, except that if and to the extent that the unit of general local government demonstrates to the Secretary that such action is necessary to achieve or maintain neighborhood stability, not to exceed 15 percent of the families in a project at any time during development or occupancy may have incomes up to 115 percent of such median income; or

(B) the national median income for a family of 4 persons; and

(2) not have owned a home during the 3-year period preceding such purchase.

(c) **DOWNPAYMENT.**—

(1) Each family purchasing a home under this title shall make a downpayment of not less than 10 percent of the sale price of such home unless—

(A) the nonprofit organization determines a higher downpayment to be appropriate; or

(B) the first mortgage on the home is held by a State or unit of general local government under a home loan program of the State or unit of general local government, and the program provides for a lower downpayment.

(2) Any downpayment made under this subsection shall accrue interest from the date on which such downpayment is made through the date of settlement, at a rate not less than the passbook rate. Such interest shall be paid by the nonprofit organization involved to the family purchasing the home for which such downpayment was made.

(d) **LEASING PROHIBITION.**—No family purchasing a home under this title may lease such home. [12 U.S.C. 1715l note]

SEC. 606. TERMS AND CONDITIONS OF ASSISTANCE.

(a) **LOCAL CONSULTATION.**—No proposed Nehemiah housing opportunity program may be approved by the Secretary under this title unless the nonprofit organization involved demonstrates to the satisfaction of the Secretary that—

(1) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(2) it has the approval of each unit of general local government in which such program is to be located.

(b) **PROGRAM SCHEDULE.**—Each nonprofit organization applying for assistance under this title shall submit to the Secretary an

estimated schedule for completion of its proposed Nehemiah housing opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(c) **MINIMUM PARTICIPATION.**—No nonprofit organization receiving assistance under this title may commence any construction or substantial rehabilitation (except with respect to homes to be constructed or substantially rehabilitated for the purpose of display) until not less than 25 percent of the homes to be constructed or substantially rehabilitated are contracted for sale to purchasers who intend to live in such homes and the required downpayment is made. The Secretary may apply this 25 percent requirement to all the homes under Nehemiah housing opportunity program or to a phase (approved under subsection (b)) consisting of at least 16 homes.

(d) **FINANCIAL FEASIBILITY.**—The Secretary may not provide any assistance under this title to any nonprofit organization unless such nonprofit organization demonstrates the financial feasibility of its proposed Nehemiah housing opportunity program, including the availability of non-Federal public and private funds.

(e) **HOME QUALITY AND LOCATION.**—A Nehemiah housing opportunity program may be approved under this title only if it provides that—

(1) the number of homes to be constructed or substantially rehabilitated under such program will not be less than whichever of the following is less:

(A) the greater of (i) 50 homes; or (ii) 0.25 percent of the number of existing dwelling units in the unit of general local government that provides the most assistance to such program; or

(B) 250 homes;

except that the Secretary may waive the requirements of this paragraph for any unit of general local government if the Governor of the State or the unit of general local government requests such waiver and certifies with supporting documentation that such requirements will prevent the State or the unit of general local government from being able to use such program effectively;

(2) each home constructed or substantially rehabilitated under such program will comply with—

(A)(i) applicable local building code standards;

(ii) in any case in which there is not an applicable local building code, a nationally recognized model building code mutually agreed upon by the sponsoring nonprofit organization and the Secretary; or

(iii) in the case of a manufactured home, the standards prescribed pursuant to title VI of the Housing and Community Development Act of 1974 and the installation, structural, and site requirements that would apply under title II of the National Housing Act; and

(B) the energy performance requirements established under section 526 of the National Housing Act in the case of manufactured housing, the energy conservation re-

Because title VI of the Housing and Community Development Act of 1987 was repealed effective October 1, 1991, by section 289(b) of the Cranston-Gonzalez National Affordable Housing Act, P.L. 101-625, the amendments to be made by such section 183 could not be executed.

quirements prescribed in accordance with section 203(b) of the National Housing Act;

(3) all homes constructed or substantially rehabilitated under such program will be located in census tracts, or identifiable neighborhoods within census tracts, in which the median family income is not more than 80 percent of the median family income of the area in which such program is to be located, as such median family income and area are determined for purposes of assistance under section 8 of the United States Housing Act of 1937;

(4) all homes constructed or substantially rehabilitated under such program will be concentrated in a single neighborhood and located on contiguous parcels of land, except that homes may be constructed or substantially rehabilitated in up to 4 identifiable neighborhoods that each consist of contiguous parcels of land if—

(A) the unit of general local government in which the project is located certifies that land cannot be made available in a single neighborhood for a program of the size required by paragraph (1);

(B) the nonprofit organization submits evidence satisfactory to the Secretary that construction or substantial rehabilitation in more than 1 identifiable neighborhood will result in cost reductions through economies of scale comparable to the cost reductions achieved by other programs eligible for assistance under this title; and

(C) the nonprofit organization submits evidence satisfactory to the Secretary that the program, by itself or together with improvement efforts that are or will be undertaken in the identifiable neighborhoods by the unit of general local government or private entities, will result in a substantial improvement in the overall quality and long-term viability of the neighborhoods; and

(5) sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this title upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such home without repayment (in which case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid). [12 U.S.C. 1715l note]

SEC. 607. PROGRAM SELECTION CRITERIA.

(a) IN GENERAL.—In selecting Nehemiah housing opportunity programs for assistance under this title from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(1) non-Federal public or private entities will contribute land necessary to make each program feasible;

(2) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of homes constructed or substantially rehabilitated under each program;

(3) each program will produce the greatest number of units for the least amount of assistance provided under this title, taking into consideration the cost differences among different market areas;

(4) each program is located in a neighborhood of severe physical and economic blight (and, in determining the degree of physical blight, the Secretary shall consider the condition of the housing, other buildings, and infrastructure, in the neighborhood of the proposed program);

(5) each program uses construction methods that will reduce the cost per square foot below the average construction cost in the market area involved; and

(6) each program provides for the involvement of local residents in the planning, and construction or substantial rehabilitation, of homes.

(b) EXCEPTION.—To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in paragraph (1) or (2) of subsection (a), the Secretary shall not consider such form of contribution in evaluating such program. [12 U.S.C. 1715l note]

SEC. 608. DISTRIBUTION OF ASSISTANCE TO NONPROFIT ORGANIZATIONS.

(a) RESERVATION OF AMOUNTS.—Following the selection of any Nehemiah housing opportunity program for assistance under this title, the Secretary shall reserve sufficient amounts in the Nehemiah Housing Opportunity Fund for such assistance.

(b) DISTRIBUTION OF ASSISTANCE.—Following the sale of any home constructed or substantially rehabilitated under a Nehemiah housing opportunity program selected for assistance under this title, the Secretary shall provide to the sponsoring nonprofit organization an amount equal to the amount of the loan made to the family purchasing such home. Such amount shall be provided not more than 30 days after the sale of such home.

(c) MAXIMUM ASSISTANCE.—The assistance provided to any nonprofit organization under this title may not exceed \$15,000 per home. [12 U.S.C. 1715l note]

SEC. 609. NEHEMIAH HOUSING OPPORTUNITY FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the Nehemiah Housing Opportunity Fund. The Fund shall be available to the Secretary, to the extent approved in appropriation Acts, for purposes of providing assistance under section 603.

(b) ASSETS.—The Fund shall consist of—

(1) any amount appropriated under section 612;

(2) any amount received by the Secretary under section 604(b)(4); and

(3) any amount received by the Secretary under subsection (c).

(c) ADMINISTRATION.—Any amount in the Fund determined by the Secretary to be in excess of the amount currently required by carry out the provisions of this title shall be invested by the Secretary in obligations of, or obligations guaranteed as to both prin-

capital and interest by, the United States or any agency of the United States. [12 U.S.C. 1715l note.]

SEC. 610. REPORT.

Not later than March 1, 1990, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the activities carried out under this title. Such report shall include—

- (1) an analysis of the characteristics of the families assisted under this title, including family size, number of children, family income, sources of family income, race, age, and sex;
- (2) an analysis of the market value of homes purchased under this title;
- (3) an analysis of the non-Federal public and private financial or other contributions made to reduce the cost of homes constructed or substantially rehabilitated under each program;
- (4) an analysis of the sales prices of homes under this title;
- (5) an analysis of the amounts of the grants made to programs under this title; and
- (6) any recommendations of the Secretary for modifications in the program established by this title in order to ensure the effective implementation of such program. [12 U.S.C. 1715l note.]

SEC. 611. REGULATIONS.

Not later than July 1, 1988, the Secretary shall issue final regulations to carry out the provisions of this title. Any such regulations shall be issued in accordance with section 553 of title 5, United States Code, notwithstanding the provisions of subsection (a)(2) of such section. [12 U.S.C. 1715l note.]

SEC. 612. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title \$25,000,000 for fiscal year 1988 and \$100,000,000 for fiscal year 1989. Any amount appropriated under this section shall be deposited in the Nehemiah Housing Opportunity Fund, and shall remain available until expended. [12 U.S.C. 1715l note.]

SEC. 613. SUNSET.

No assistance may be provided under this title after September 30, 1989, except pursuant to a commitment made on or before such date. [12 U.S.C. 1715l note.]