



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of:

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

Notice PIH 2011-30 (HA)

Issued: June 8, 2011

Expires: Effective until amended,
superseded, or rescinded

Cross Reference:

Subject: PHA Mortgaged Projects: Procedures for Section 30 Mortgage Transactions.

I. Purpose: The purpose of this notice is to provide guidance to public housing authorities (PHAs) on how to pursue HUD approval to place a mortgage or other encumbrance on public housing property where the subject property is owned by the PHA, defined as PHA mortgaged transactions (PMT).

II. Background: PHAs may mortgage or otherwise encumber their public housing real estate and other property to secure financing transactions under section 30 of the United States Housing Act of 1937, (1937 Act), as amended, (42 U.S.C. 1437z-2), with prior HUD approval. Pursuant to section 30 and subject to HUD approval, a PHA may pledge a security interest in its personal property (e.g., bank accounts) and may mortgage or otherwise encumber real property covered by the 1937 Act that it owns. HUD reviews PMT transaction proposals under the authority of section 30 of the 1937 Act, applying the process and requirements of the Mixed-Finance development program (see 24 CFR 941, subpart F) as further presented herein. PMT proposals processed under 24 CFR 941, subpart F, do not require a separate Section 30 submission.

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Public Law 105-276, October 21, 1998) added section 30 to the 1937 Act, discussed in detail below. Specifically, section 30 provides:

(a). GENERAL AUTHORIZATION – The Secretary may, upon such terms and conditions as the Secretary may prescribe, authorize a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency.

(b). TERMS AND CONDITIONS – In making any authorization under subsection (a), the Secretary, may consider –

(1) the ability of the housing authority to use the proceeds of the mortgage or security interest for low-income housing uses;

(2) the ability of the public housing agency to make payments on the mortgage or security interest; and

(3) such other criteria as the Secretary may specify.

(c). NO FEDERAL LIABILITY – No action taken under this section shall result in any liability to the Federal Government.

III. PMT Transactions fall into four broad categories:

1. Mortgage/Encumbrance used to develop public housing: The PHA executes a mortgage or other security instrument in favor of a lender which places a lien on public housing property, where financing proceeds are used for public housing development.
2. Mortgage/Encumbrance used to modernize public housing: The PHA executes a mortgage or other security interest in favor of a lender which places a lien on public housing property, where financing proceeds are used for modernization of public housing.
3. Mortgage/Encumbrance used to develop affordable housing: The PHA executes a mortgage or other security instrument in favor of a lender which places a lien on public housing property, where financing proceeds are used to develop affordable housing that is not public housing. PHAs may undertake financing secured by a mortgage on public housing dwellings or non-dwelling property.
4. Mortgage/Encumbrance used to modernize affordable housing: The PHA executes a mortgage or other security instrument in favor of a lender which places a lien on public housing property, where financing proceeds are used to modernize affordable housing that is not public housing. PHAs may undertake financing secured by a mortgage on public housing dwellings or non-dwelling property.

IV. PMT proposal submissions: HUD processes PMT transactions on a case-by-case basis pursuant to mixed-finance regulations at 24 CFR 941, subpart F. The process and submittal requirements of subpart F apply unless otherwise determined by HUD. The attached PHA mortgage matrix (PMT Matrix) presents general submittal requirements applicable to transactions pursuant to this notice¹. HUD reserves the right under section 30 to request additional submissions or eliminate certain requirements depending on the type of transaction.

A PMT proposal presents details of the proposed financing and includes at a minimum, submittals as shown in the PMT matrix or as required by HUD, plus the following financial information:

Description of all financing terms (items 1. through 3. may be in the bank commitment letter) and the remaining items may be narratives, as long as each appears somewhere in the PMT proposal, including:

1. Amount of financing;
2. Name of lender(s);
3. Interest rate(s);

¹ Descriptions and instructions for the column and row references in the PHA Matrix to Proposal Sections/Subsections, Where to Address, and Regulatory Citations can be found in more detail on the mixed-finance website at <http://www.hud.gov/offices/pih/programs/ph/hope6/mfph/>.

4. Term(s) of financing;
5. Security and/or collateral (please indicate which financing is secured by which collateral, and any cross-collateralization);
6. Recourse terms (including recourse to any cash flow or reserves);
7. Income restrictions (number of units to which it is applicable, total number of public housing units to which it is applicable);
8. Payment terms as one or more of the following options with descriptions as needed: scheduled debt service payments, repayment only if in default, available cash flow, forgivable under the terms (recoverable grant/forgivable loan) or none;
9. Cost of issuance (fees and expenses directly associated with issuing the loan);
10. Capitalized interest (if any);
11. Debt service reserves; and
12. Special provisions, including unusual loan terms or explanations of the deal's structure.

V. PMT proposal procedures: The steps for requesting HUD approval are as follows:

1. PHAs complete and submit to HUD a proposal with the above information, plus the information provided in the PMT matrix, as determined by HUD. Information is assembled in a binder with each document separately tabbed and identified by a table of contents;
2. HUD reviews the proposal and provides feedback to the PHA. The PHA makes any necessary revisions and submits any additional information to HUD.

Given the nature of the transaction, a HUD Project Review Panel may be convened to review, provide comments and request additional submission requirements from the PHA.

VI. Procedures for submitting evidentiary documents:

1. HUD identifies for the PHA which evidentiary documents are required, which typically include an ACC amendment, declaration of trust (DOT), loan documents and a legal opinion;
2. PHA submits draft copies of required documents for HUD review and approval prior to closing;
3. HUD reviews draft evidentiary documents and the PMT proposal and if approved, issues an approval authorizing the PHA to execute and record, if required, all evidentiary documents.
4. After closing (meaning the execution and recordation of all evidentiary documents related to the project) the PHA submits a binder and compact disc (CD) of all documents and a certified statement that no changes have been made to the documents since HUD's initial review and approval or, if changes have been made, identifying those changes.
5. HUD reviews the final executed evidentiary documents and issues an approval.

VII. Additional guidance:

1. In the initial underwriting, if a PHA commits cash flow from public housing units to repay a loan or other type of financing, HUD considers the proceeds of the loan or other financing to be public housing capital funds. The use of the proceeds must then comply with all applicable public housing requirements as defined in the ACC amendment. This impacts the total development cost (TDC) by requiring the inclusion of the proceeds of the financing in

TDC. However, if cash flow from public housing units is not pledged in the initial underwriting to repay a loan or other type of financing, the proceeds may be used for affordable housing purposes, as well.

2. PHAs may pledge personal property on the project being mortgaged. PHAs may not pledge personal property on projects not being mortgaged.
3. In instances where the loan proceeds are used to assemble land, PHAs should not pay more than fair market value (FMV) as determined by an appraisal on each property by a state-licensed, certified general real property appraiser.
4. A mortgage in first lien position on non-dwelling units is allowed. The PHA must submit a request for the mortgage to be in first position ahead of any HUD restrictions. A mortgage in first lien position on dwelling units is not allowed.
5. For transactions where proceeds are used for affordable housing, an affordable housing covenant which names HUD as a beneficiary and requires HUD approval for release of the covenant prior to its expiration is required. HUD must be a beneficiary for the entirety of the restrictive use period. The affordable housing covenant must contain the occupancy restrictions and the term of the affordable housing. At minimum, an occupancy restriction of 80% of area median income (AMI) and an affordability restriction of 15 years is required. The title report submitted to HUD must show the affordable housing covenant in first position ahead of any mortgages or other financing liens on the property. In addition, the covenant must contain a statement that HUD retains the right to enforce the restrictions contained in the covenant.

When a mortgage is placed upon public housing and affordable housing property, the PHA ensures all appropriate legal documents contain a provision stating that any secured party must proceed against the affordable housing first and that the secured party may proceed against the public housing only where the proceeds from the foreclosure of the non-public housing are insufficient to satisfy the loan. This applies where the lender is able to foreclose upon the affordable and public housing separately, such as where the housing is on separate legal parcels. This stipulation is stated in the ACC amendment.

VIII. Environmental Review: Federal assistance is subject to the National Environmental Policy Act and applicable environmental regulations. Conditional approval of proposals is subject to environmental review requirements. PHAs, partners and contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property, or commit or expend HUD or local funds for eligible activities, until the responsible entity completes the environmental review required by 24 CFR Part 58 or HUD performs an environmental review under 24 CFR Part 50.

IX. Paperwork Reduction Act: The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 2501-3520). The OMB control number is 2577-0265. In accordance with PRA, HUD may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection displays a currently valid OMB control number.

Contact: For further information or technical assistance, contact Nicole Puri at (202) 402-6328 or nicole.d.puri@hud.gov in the Office of Public Housing Investments.

Submit PMT proposals to:

U.S. Department of Housing and Urban Development
Office of Public Housing Investments
451 Seventh Street, SW Room 4130
Washington, DC 20410

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing