Public Housing/HOPE VI Mixed Finance Year 15 Considerations

May 23, 2019
Hope VI/Mixed Finance History

- National Commission on Severely Distressed Public Housing

- HOPE VI targets

- Operated by appropriations from 1993 – 1999, codified in 2000 under section 24 of the 37’ Act

- Total Awards $6.7B to 648 projects

- Created over 110,000 homes
HOPE IV/Mixed Finance has leveraged nearly $10 billion in additional funding.
Mixed-Finance Development

Relevant Authorities

Section 24 and 35 of the Housing Act of 1937

24 CFR Part 905 Subpart F

General Counsel Diaz opinion
Hope VI/Mixed Finance

• Administered by the HUD Office Public Housing Investments.

• HUD Headquarters with numerous grant managers out stationed as well.
LIHTC Program and Mixed Finance

• The majority of public Housing Mixed Finance developments included LIHTC financing

• Credits are claimed across 10 year period
• 15 year initial compliance period
• After the risk of recapture is gone at Year 15, Investors look to make a quick exit from the project

• Projects are still subject to Public Housing requirements, including long term affordability requirements (40/20/10)
Year 15 Considerations

Major considerations for both Owner/PHA and HUD are:

A. Changes in Ownership

B. Recapitalization
Changes in Ownership

- **Right of First Refusal**

- **Owner maintains same entity w/ new limited member/limited partner (or simply acquires limited interest)**
  - HUD will require notice and a certification that new entity is obligated and able to act and operate in accordance with HUD approved Owner documents.

- **Letter to OPHI Director**

- **Owner maintains same entity w/ new GP or Managing Member**
  - HUD prior written approval required prior to transfer.
    - Request to HUD must include financial transaction details, and most recent project audited financial statement
Changes in Ownership

• New Entity Takes Possession
  – HUD prior written approval required.
  – Update to Mixed Finance ACC Exhibits, Amendments and Restatements of DORC, Ground Lease, and Regulatory & Operating Agreement to incorporate new entity.
  – Letter to OPHI Director detailing transaction financials along with most recent audited financial statement.
Changes in Ownership

• PHA takes Possession itself
  – Mixed Finance is defined at 24 CFR 905.600(b)(5) as the development or modernization of public housing units where the public housing units are owned in whole or in part by an entity other than a PHA.
  – HUD prior written approval is required. Financial terms must be provided in addition to an audited financial statement for the project. HUD mixed finance ACC released and units changed to traditional ACC units in PIC. DORC must be replace with HUD Public Housing DOT. R&O Agreement is released by HUD.
Recapitalization

• If recapitalization or refinancing is being proposed, HUD requires:
  – New development proposal to be submitted to OPHI (TDC Workbook Form 50156 w/ budgets and 15 yr pro forma).
  – All new Loan documents
  – Project Survey and Title
  – Counsel Opinion

• May require an updated DOT/DORC to extend affordability term to 20 years
Recapitalization/Section 30

• When a PHA takes Ownership itself (not through an instrumentality), the project is no longer mixed finance.

• To obtain financing secured by public housing property, PHAs must secure approval from HUD pursuant to Section 30 of the 37’ Act.

• The requirements for a Section 30 submission can be found in Housing Notice PIH 2011-30.