Public Housing Mortgage Program
Proposed Notice for Comment
Comments Requested by January 31, 2010

HUD is publishing the below proposed Notice on the Public Housing Mortgage Program (PHMP) for comment. Through the PHMP, public housing authorities can undertake the development and rehabilitation of low income housing by mortgaging their public housing real estate assets to secure financing with HUD approval. Unlike the Capital Fund Fianncing Program (CFFP) and the Operating Fund Financing Program (OFFP), the PHMP does not involve the use of public housing funds to repay the financing. The proposed Notice formalizes a program that HUD has been implementing on a case-by-case basis since 2005. Since that time HUD has approved six transactions involving approximately $30 million in financing. The proposed PHMP Notice is intended to advise housing authorities of the framework of the program essentially as it exists today as well as to solicit public comment on the proposed Notice.

HUD is seeking comments on the proposed PHMP Notice from interested parties to inform its effort to structure a program that is useful to public housing authorities, but at the same time is mindful of the long term federal interest in the public housing portfolio. The structure of the program is intended to balance requirements of the financial marketplace with those of public housing, including restrictive use requirements that can limit the economic value of public housing properties. Toward this end, the proposed Notice describes a program that would permit mortgages to be placed in first position on non-dwelling units. In the event of default, this would permit a lender to foreclose on a property and extinguish any HUD interest. For dwelling units, while foreclosure would be permitted, similar to the mixed finance program, a Declararation of Restrictive Covenants would be in first position and the public housing units would be required to continue to be operated in accordance with public housing requirements. When submitting comments on the proposed Notice, HUD requests that interested parties specifically comment on these aspects of the PHMP.

While HUD is implementing the PHMP on a case-by-case basis, proposals requesting HUD to permit foreclosure on dwelling units will receive additional scrutiny and a higher level of review as HUD has not approved transactions utilizing this aspect of the program and is mindful the risks involved.

Interested parties should submit comments by January 31, 2010 to:

Via Mail

PHMP Comments
C/O Dominique Blom
Deputy Assistant Secretary
U.S. Dept. of HUD
Office of Public Housing Investments
451 7th Street SW, Room 4130
Washington, D.C. 20410

Via email

PHMP_Notice_Comments@hud.gov

PUBLIC INSPECTION OF PUBLIC COMMENTS. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying in Room 4134 at HUD Headquarters. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Kevin Gallagher, Capital Program Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone number 202-402-4192 (this is not a toll-free number).

Public Housing Mortgage Program
Proposed Notice

I. Purpose

The purpose of this Notice is to address the approval process for Section 30 transactions outside of the Capital Fund Financing Program (CFFP) and the Operating Fund Financing Program (OFFP). In the Public Housing Mortgage Program (PHMP), Public Housing Authorities (HAs) borrow money from private lending institutions for various affordable housing development or modernization activities. The proceeds may come in the form of construction loans; bridge loans for Low-Income Housing Tax Credit (LIHTC) equity or other temporary financing; or permanent financing repaid through net operating income of the developed or modernized housing property. However unlike CFFP or OFFP transactions which involve loans secured by a security interest in a HA's contractural right to receive Capital or Operating Funds, PHMP loans are secured by a mortgage against the HA's public housing real property or by a grant of a security interest in some tangible form of personal property owned by the HA.

II. Background

A. General. Section 516 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA)(Public Law 105-276, October 21, 1998) added Section 30, Public Housing Mortgages and Security Interest, to the United States Housing Act of 1937 (1937 Act)(42 U.S.C. 1437z-2). Section 30 of the 1937 Act authorizes HAs, subject to approval by the Secretary, to pledge or mortgage public housing projects or other property of the HA and specifically provides as follows:

> (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.

In addition, Section 519 of QHWRA amended Section 9 of the 1937 Act to allow the creation of the CFFP and OFFP. Procedures for implementing and approving Section 30 transactions that involve Capital or Operating Funds are separate from this Notice. If public housing property is pledged as part of a financing and Capital Funds are to be used to pay debt service, approval will be through the CFFP. Similarly, if public housing property is pledged as part of a financing and operating subsidy (which includes public housing rental income) is to be used to repay a loan for rehabilitation or development, approval will be through the OFFP. PHAs may pursue multiple financings simultaneously to fund a single or multiple scopes of work. Each type of financing (CFFP, OFFP, or PHMP) would require written approval. A discussion of these programs is included in Appendix 1 for informational purposes.

Apart from Section 30, the following requirements apply to public housing property and assets:

1. **Section 7 of the Annual Contributions Contract (ACC) (HUD-53012A, 7/95) (Terms and Conditions Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States)** provides as follows:

> **Covenant Against Disposition and Encumbrances.** The HA (housing authority) shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of this ACC and applicable HUD requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the projects covered by this ACC, and normal uses associated with the operation of the project(s), the HA shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD. In addition, the HA shall not pledge as collateral for a loan the assets of any project covered under this ACC.

2. **Section 8 of the ACC** provides as follows:

> **Declaration of Trust.** Promptly upon the acquisition of the site of any project, the HA shall execute and deliver an instrument (which may be in the form of a declaration of trust, a trust, trust indenture, or such other document as may be approved by HUD), confirming and further evidencing, among other things, the covenant of the HA not to convey or encumber the project except as expressly authorized in this ACC. Such instrument and all amendments shall be duly recorded or filed for record wherever necessary to give public notice of their contents and to protect the rights and interest of HUD and of any bondholders. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired by the HA in connection with

the projects, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended.

3. Declaration of Trust including Forms: HUD-52190-A (Development Grant Projects, "Development DOT"); HUD-52190-B (Public Housing Modernization Grant Projects, "Mod DOT"); and similar Declaration of Restrictive Covenants used in Mixed Finance transactions approved by HUD in which the HA (or the owner in the case of a mixed finance public housing development) declares and acknowledges that during the existence of the trust created and as recorded in land records, HUD is the beneficiary of a restrictive covenant encumbering the described public housing property, which includes a requirement that the property be operated in accordance with public housing requirements, as well as restrictions on mortgaging or transferring the property without written approval from an authorized HUD official. See PIH Notice 2009-28 (Guidance on requirement for PHAs to record current Declaration of Trusts (DOTs) against all public housing property and guidance on adding and removing public housing units and other property from the Annual Contributions Contract (ACC)) issued August 14, ,2009 for further informtion..

B. Unsecured Financing: HAs, or their affiliates or instrumentalities, that undertake financings that do not pledge or provide a security interest in or otherwise encumber public housing property (unsecured financings) are not required to obtain HUD approval of such financings pursuant to Section 30 of the 1937 Act or Section 7 of the ACC. HAs that undertake unsecured financings must include non-recourse language in all financing documents, which explicitly states that the financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), disposition proceeds approved pursuant to Section 18 (unless explicitly permitted in the Section 18 approval), and Section 8 or Housing Choice Voucher Program property; otherwise such financing will be considered a violation of the ACC and the 1937 Act and subject to all available HUD remedial action. Public housing property includes all public housing assets and income, any public housing Project (as the term "Project" is defined in the ACC between the HA and HUD), any Operating Receipts (as the term "Operating receipts and Operating expenditures" is defined in the ACC), Public Housing Capital Funds or Operating Funds, HOPE VI or other development grants and other grants to the HA from HUD under the 1937 Act. HAs should be aware that certain assets, such as proceeds from the Section 18 disposition of public housing must be used for the purposes specified in Section 18(a)(5) of the 1937 Act.

Fee-for-service amounts charged to Asset Management Projects (AMPs) or programs and earned by a Central Office Cost Center may not be protected by such non-recourse language. HAs are advised to negotiate more expansive non-recourse provisions to the extent that they wish to ensure protection to such assets or income and are further advised that the level of protection provided such assets in agreements entered into by the HA does not impact upon the HAs obligations to fulfill all public housing requirements related to the operation, management, maintenance and development of their public housing portfolio.

While unsecured financings may not require HUD approval, HAs are advised that, to the extent they intend to use Capital Funds or Operating Funds for the payment of debt service, the loan proceeds must be used for the development or modernization of public housing, the relevant HA approval documents (e.g. PHA 5 year and annual plan (HUD - 50075) the CFP Annual Statement/Performance and Evaluation Report (HUD - 50075.1) and CFP 5-Year Action Plan (HUD – 50075.2) must include the proceeds and the planned use of those proceeds, in the statement of financial resources, and the use of such Capital Funds or Operating Funds must be in accordance with public housing requirements. Development or pre-development activities must meet the requirements of 24 CFR Part 941. Modernization activities must comply with 24 CFR Parts 905 and 968. For HAs that intend to use Capital Funds for the payment of debt service, this use must be included in the appropriate HA approval documents. For HAs that intend to use Operating Funds for the payment of debt service, this use must be incorporated in a budget adopted in conformance with the requirements of 24 CFR Part 990.

HUD recomends that HAs that undertake unsecured financings include a conflicts provision in all financing documents. The conflicts provision should make clear to the lender or investor that public housing requirements prevail in the event of any conflict between provisions in the loan documents and public housing requirements, including the 1937 Act, as amended, Federal regulations, and the ACC, as amended.

C. Delegation of Authority (71 Federal Register 70783, December 6, 2006). The Assistant Secretary of Public and Indian Housing (Assistant Secretary) delegated to the Deputy Assistant Secretary of the Office of Public Housing Investments (OPHI) concurrent authority to approve proposals submitted by HAs pursuant to Section 30. The Assistant Secretary also delegated to all Public Housing Field Office Directors all authority to execute Amendments to the ACC that are associated with proposals submitted by HAs pursuant to Section 30, which have been approved by either the Assistant Secretary or the Deputy Asssistant Secretary of OPHI.

III. HUD's Consideration of Public Housing Mortgage Program Proposals

A. Protecting the Federal Investment in Public Housing. In reviewing PHMP requests, HUD must responsibly protect the federal investment in public housing, yet provide enough flexibility so as to allow those assets to generate additional funding for low-income housing uses.

As noted above, the PHMP derives its authorization from Section 30 of the 1937 Act. Section 30 provides that, in reviewing proposals submitted pursuant to that authority, the Secretary may consider:

1. the ability of the HA to use the proceeds of the mortgage or security interest for low-income housing uses;
2. the ability of the HA to make payments on the mortgage or security interest; or
3. such other criteria as the Secretary may specify.

As defined in Section 3 of the 1937 Act, "low-income housing" includes public housing and Section 8 residential units (housing assisted under the 1937 Act). In implementing the PHMP pursuant to Section 30, HUD has the discretion to allow HAs to use the PHMP financing proceeds for activities that would serve low-income populations outside of public housing and Section 8. HUD is utilizing this discretion to allow HAs to use Section 30 for activities related to the modernization or development of units restricted to populations at or below 80% of AMI

(Area Median Income). Thus, HUD will not require such modernization or development of units to be located in public housing or Section 8 housing. HUD is permitting proceeds from PHMP transactions to be used more expansively in order to provide flexibility to PHAs to decide at the local level what type of housing best serves the needs of low-income households in their community. In regard to the "other criteria" noted in item number three above, HUD will specify any "other criteria" on a case-by-case basis, or as to be specified in future rule making.

The use of proceeds may include:

1. modernizing public housing units;
2. acquiring or otherwise developing public housing units;
3. developing units for which project-based voucher units will be provided; or
4. modernizing, acquiring (with rehabilitation if necessary) or developing units to serve persons at or below 80% of area median income, which may include rental as well as homeownership units.

The proceeds of the PHMP transactions approved under this Notice will be considered non-public housing funds; however, the use of such proceeds must be in accordance with Section 30, the terms of the proposal, HUD's approval letter and any other references included therein.

B. Property and Assets. The HA may request to mortgage or grant a security interest in any of its real or personal public housing property. This may include land, dwelling units, appurtenances such as parking lots, community facilities, administrative and maintenance buildings, and personal property. While other assets may also include investments, bank accounts, personal property, and future funding, they typically involve Capital or Operating Funds. As earlier noted, separate procedures have been developed for transactions involving Capital or Operating Funds. For public housing property that does not include dwelling units, HUD may consider allowing the Declaration of Trust to be subordinate to the mortgage or security interest.

C. Proposal. As described above, under the HUD Declaration of Trust/Restrictive Covenants and the ACC, a HA may not encumber its property without HUD approval. With this in mind as well as the general nature of the Section 30 statute, HUD will evaluate each proposal on a case-by-case basis. The primary factors for consideration will be the use of the funds in conformance with the guidelines provided herein, and the ability to repay the loan or mortgage. OPHI will be primarily responsible for the evaluation of any such requests. Therefore, all requests should be submitted to the Deputy Assistant Secretary for the OPHI. HUD's Office of General Counsel will also be involved in the reviews, with Field Office Counsel reviewing HUD Declaration of Trusts/Restrictive Covenants and title work, and Headquarter's Counsel performing the legal review of the financing proposal. Although the requirements of each proposal may vary based on the type of transaction, a typical proposal should include:

1. Cover letter
   a. Summary of the nature of the transaction being proposed, including the rationale for the use of the proceeds
   b. Description of the public housing property being provided as security for the loan

    c. Description of the use of the proceeds, including the number and type/size of units, income limits, location, costs, amount and status of financing sources
    d. Description of the source(s) of funds to be used to repay the financing
2. Financing term sheet
3. Debt service schedule, including schedule for debt service payment sources, i.e. operating proforma, land sale proceeds, etc.
4. Sources and uses schedule
5. Construction cash flow schedule
6. Commitment letters (including LIHTC allocation letter as appropriate)
7. Fairness opinion
8. Title report/HA counsel certification
9. Appraisal of mortgaged property (which includes the property the proceeds are to be used upon)
10. Loan/bond documents
11. Legal opinions
12. HA board resolution

Until such time as more specific examples are developed or otherwise made available, refer to the CFFP website referenced in Appendix 1 for definitions and sample documents. Applicants can modify the CFFP documents for applicability to the particular transaction being submitted for approval.

D. Legal Documents. The HA should submit all legal documents associated with the transaction to HUD for its review and approval. All legal documents associated with PHMP transactions should include language that addresses potential conflicts between the Federal public housing requirements and other program requirements associated with the proposed project. The documents should also contain non-recourse provisions that explicitly limit the mortgage or security interest, as well as any recourse, to the specific public housing assets approved by HUD. HUD may provide suggested language for these purposes, however, HA's legal counsel should ensure that the loan document language achieves these goals. If the transaction envisions the granting of a security interest in public housing dwelling units, the mortgage or declaration of trust securing these loan proceeds must be subordinate to HUD's Declaration of Trust/Restrictive Covenants. If the Lender properly exercises its remedies and forecloses on the units, it will become the fee owner of the real estate, but the Lender will take the units encumbered by the public housing use restrictions contained in HUD's Declaration of Trust/Restrictive Covenants. HAs are advised that, in the event of a default and resulting workout or foreclosure, HAs must make efforts to ensure that the lender or other new owner entity continues to operate, manage and maintain the public housing units in accordance with public housing requirements. See also the related discussion contained herein at Section III.E.2 Ability to Repay.

E. Issues of Consideration. The two main elements of the statute focus upon: (1) The ability of the HA to use the proceeds for low-income housing purposes; and (2) The ability of the HA to repay the debt. These two elements of the statute are the primary issues HUD considers during its review of PHMP proposals. In addition, HUD's review may also assess any ancillary risks involved in the transaction.

1. Use of Proceeds for Low-Income Housing Purposes

As also noted above, HUD is utilizing its discretion under the statute to allow HAs to use Section 30 for transactions under the PHMP that would develop non-public housing and non-Section 8 units, provided they are restricted to populations at or under 80% AMI. The HA should therefore include evidence of compliance with this statutory requirement in its proposal. This assurance can be provided in the form of a restrictive use covenant in favor of HUD to be placed on the subject property that limits its use to such households. A generally accepted minimum period that rental property must remain affordable is 15 years. In the case of homeownership units, the affordability limitation typically only applies to the initial homebuyer. If the proposed project is a mixture of affordable and market rate units, PHMP proceeds should only be used for the affordable portion on a pro rata basis.
Note that if public housing units are being developed, such projects will be approved though the established procedures and requirements under 24 CFR Part 941.

2. Ability to Repay

Assessing the ability to make payments on any loan includes not only an evaluation of the primary source of repayment, but also an analysis of the value of the property being mortgaged. Relative to its review of a loan secured by a mortgage on public housing property, HUD has not established any minimum underwriting criteria such as a debt coverage ratio or a loan to value ratio. Thus in undertaking a financing, it will be the responsibility of the HA and creditor to ascertain the sufficiency of the repayment sources to meet debt service requirements, and the ability of the property being provided as security to fully retire the debt in the event of a default. It will be the additional responsibility of the HA to ensure that their mortgaged assets do not over-collateralize the debt.

In fulfilling its statutory responsibility to assess the ability of the financing to be repaid, HUD will assess pro forma projections submitted by the HA. If the PHMP transaction envisions public housing assets securing a loan that is used for non-public housing, the security instrument must encumber both the public housing units and the non-public housing (including both the real and personal non-public housing property) and must contain language ensuring that, upon a default by the HA, the Lender's first remedy will be to proceed against the non-public housing property collateral. HUD will also review an appraisal of the public housing property being mortgaged and any non-public housing property. Lastly, HUD will ensure that financing documents contain non-recourse language limiting the creditor's recourse to the property being financed and the public housing property being mortgaged, as well as any other non-public housing property. As in the Mixed-Finance program, construction and permanent financing should close simultaneously where the PHMP proceeds are used to finance construction.

For proposals in which PHMP proceeds are to be used to finance development, HUD will review development pro formas, documentation of LIHTC allocations, irrevocable commitments of funds from equity or other finance providers, or other documentation, all evidencing irrevocable commitments of financing in an amount sufficient to fully fund the permanent financing needs of the development.

For proposals in which rental or other income is to be used to repay the loan, operating pro formas can be submitted as evidence of the ability to repay. In consideration of the ability to repay the loans, escrow accounts may be established to guarantee that the minimum payments can be made, such as with interest-only loans.

3. Mortgages and Restrictive Covenants

In traditional public housing HUD Declarations of Trust/Restrictive Covenants must be recorded in first position. HUD DOTs require long term use restrictions so that the property be operated as public housing, and precludes the property from being sold, foreclosed, or otherwise transferred without the express written approval of HUD. For PHMP, the use restrictions remain in place, but foreclosure by the lender is possible in the event of default without additional approval by HUD. As part of the approval letter conditions and closing of alternative financing under PHMP covering public housing dwelling units, the existing HUD Declarations of Trust/Restrictive Covenants would be amended but would remain in first position, and would require the public housing units be operated in accordance with public housing requirements, but would explicitly permit foreclosure subject to the continued use restrictions.

For PHMP alternative financing that does not mortgage public housing dwelling units, HUD will consider permitting the HUD Declaration of Trust/Restrictive Covenants to be subordinate to the mortgage.

HAs that mortgage their public housing property (e.g., dwelling units or administrative buildings) undertake the risk of foreclosure of such public housing property, without any further approval by HUD, should they be unable to repay the associated loan or bond. HAs are cautioned to ensure that, to the extent that they forfeit such administrative buildings or other public housing assets, they will maintain their ability to operate, manage, maintain and develop their public housing as required by law and implementing regulations. HUD's review of proposals submitted pursuant to the PHMP will not extend to ascertaining the ability of the HA to manage its public housing stock in the event of a forfeiture of the pledged public housing property.

In instances where the proceeds will be used to assemble land, repayment risk can be mitigated, and the ability to use the proceeds for low-income housing purposes enhanced by the HA, or other associated parties, paying no more than fair market value (FMV), as determined by an appraisal on each property by a state-licensed certified general real property appraiser. To ensure that the proceeds of a PHMP transaction are used for low-income housing purposes, as a condition of approval, HUD will request that the HA commit to a timeframe, preferably no longer than 48 months after HUD's approval, wherein construction will start or the HA will sell the acquired property and repay the loan.

F. Permitted Uses. To demonstrate permitted uses of the PHMP, examples of approved Section 30 transactions are included below. However, anticipated transactions and accompanying issues of consideration in addition to those stated above include:

1. **Predevelopment Loans.** HUD will not consider a loan pursuant to the PHMP on a purely speculative basis. HUD will consider a loan to pay predevelopment costs only if firm commitments are provided for the permanent or other financing that will be used to repay the loan. Loans of this type are primarily used for third-party expenses. HA administrative costs are not allowed.
2. **Acquisition.** PHMP funds can be used for acquisition. However, if the property purchased will be public housing, the HA must meet 24 CFR Part 941 requirements for the acquisition.
3. **Infrastructure/site improvements.** HAs redeveloping existing public housing land may need to secure a loan on the property to pay for infrastructure, other site improvements or demolition of existing structures.
4. **Grants and forgivable loans for rehabilitation or development of public housing units**. The Federal Home Loan Bank (FHLB), through its Affordable Housing Program (AHP), competitively awards funding for the development or rehabilitation of affordable housing. Repayment of these funds is generally not required if the housing remains affordable for a period of up to 20 years (speak with a FHLB member bank for details). Even if these or other such funds are provided as a forgivable loan or a revocable grant, Section 30 mandates that the use of such funds for the rehabilitation or development of public housing units would necessitate an alternative financing program approval from HUD to allow any use restrictions that would be placed on the property as a condition of the grant or loan.

G. HUD Monitoring and Reporting. HUD has initially developed the following basic methods of monitoring the activities and expenditures of these transactions that are specific to the approvals under this Notice. Such methods will be included in the approval letters and as modified thereafter by HUD. These procedures are similar to those established for HOPE VI reporting. In general, there are two areas of primary concern: (1) the proper expenditure of the financing proceeds, including the progress/status of the loan; and (2) the timely completion of the accompanying activities.

Since the financing proceeds are not provided by HUD and thus are not monitored though the existing reporting and financial systems, the HA should submit a quarterly Performance and Evaluation (P&E) report for each approved PHMP transaction. It is HUD's intent that reporting can be accomplished electronically. The type of report will depend on the stage of the program. During the period in which the loan proceeds are being utilized and the activities are taking place, the reports should include the following:

1. A description of activity financed with the PHMP proceeds, i.e., modernization, development, etc.
2. The number of public housing units approved/completed
3. The number of non-public housing units below 80% AMI approved/completed
4. The number of non-public housing units above 80% AMI approved/completed
5. The square footage of non-dwelling space serving persons below 80% AMI approved/completed
6. The amount of financing obligated/expended, including:
   a. PHMP proceeds
   b. Public housing funds
   c. Non-public housing funds

These reports should be submitted until all financed activities are complete and have been included in an Actual Cost Certification approved by OPHI and included in an audited financial statement. If the activity is the development of new units, HUD's Actual Development Cost Certificate should be used. If the activity is the modernization of existing units, HUD's Actual Modernization Cost Certificate (HUD - 53001) should be used.

After the completion of the activities and until the loan or mortgage is repaid, the HA should continue to report on the status of the repayment and include the following:

1. Lender/Issuer
2. Principal (original loan or mortgage amount)
3. Term
4. Interest rate
5. Fully amortizing – yes/no
6. Variable rate
7. Outstanding balance at FYE – amount
8. Are payments current – yes/no
9. If no, number of months late
10. Default – yes/no
11. Special provisions – narrative

H. Descriptions of Some Approved Transactions.

Newport, KY:
A PHMP transaction was approved for the Housing Authority of Newport, KY (HAN) in conjunction with its HOPE VI program. As part of the HOPE VI program,
HAN was to dispose of two public housing developments and a portion of a third and develop replacement units throughout the city. HAN was approved to dispose of the property to the city of Newport to subsequently assign/sell the property to a private developer to continue the city's effort to redevelop its riverfront. One of the replacement projects was the rehabilitation of the Corpus Christi Church into 20 elderly apartments. HAN initially proposed to use sales proceeds from the public housing property in the development of this project. However, the timing of the project did not coincide with the city's availability of funding to purchase the property. Therefore, HAN contracted with Sun Trust Bank for the issuance of bonds with the public housing property as collateral. The bond proceeds were used for the development of the project. The bonds were paid off when the city provided the funding for the purchase of the property.

Pueblo, CO:
The Pueblo Housing Authority (PHA) in Colorado was approved to mortgage four of its public housing developments in order to borrow funds from Wells Fargo. Wells Fargo issued taxable bonds and a letter of credit to PHA in the amount of $4,200,000 secured by the public housing properties. With these funds, the PHA assisted four tax credit projects that are owned by the PHA's instrumentality. The proceeds were used to retire the debt and complete the construction of one of the tax credit developments. Cash flow from the tax credit properties is being used to

pay off the $4.2 million letter of credit. The Declaration of Trust remains in first position on the public housing developments.

Cook County, IL The Cook County Housing Authority (Authority) received a recoverable grant through the Federal Home Loan Bank's (FHLP) Affordable Housing Program (AHP). The AHP proceeds were used to fund modernization at a public housing project. The AHP requires a restrictive use covenant be placed on the property the proceeds are used upon. The restrictive use covenant triggers HUD approve the transaction pursuant to Section 30. The low risk nature of the transaction enabled HUD to process Cook County's proposal on an expedited basis.

G. Paperwork Reduction Act. The information collection requirements contained in this document are pending by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 2501-3520). The OMB control numbers are XXXX-XXXX. In accordance with the Paperwork Reduction Act, 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.

H. **Contacts:** For further information or technical assistance, contact Mark Murfield at (913) 551-5590 or Kevin Gallagher (202) 402-4192 at the OPHI.

Public Housing Mortgage Proposals will be submitted to:

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

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

Appendix 1

Section 519 of QHWRA amended Section 9 of the 1937 Act to create new Capital Fund and Operating Fund Programs.

1. **Section 9(d) of the 1937 Act** authorizes the use of Capital Fund assistance to Public Housing Agencies (HAs) to carry out capital and management activities including the development, financing and modernization of public housing projects. See www.hud.gov/offices/pih/programs/ph/capfund for additional information.

2. **Section 9(e) of the 1937 Act** authorizes the use of Operating Fund assistance to HAs for operation and management of public housing as well as the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish.

HUD has published proposed rules for 24 CFR Parts 905 and 990 in regard to the **Capital Fund Financing Program (CFFP)** and the **Operating Fund Financing Program (OFFP)** respectively. The CFFP utilizes the authority of Sections 9(d) and 30. The **OFFP** will utilize the authority of Sections 9(e) and 30 of the 1937 Act. The rules will standarize implementation of the CFFP and initiate the implementation of the OFFP. Both programs will be administered by OPHI.

The **CFFP**, which is based on Section 30 and Section 9(d) of the 1937 Act, has been administered by the Office of Public Housing Investments (OPHI) as a pilot program since 2003. Under the CFFP, HUD may authorize a HA to borrow private capital to make improvements to its public housing and pledge, subject to the availability of appropriations, a portion of its future year annual Capital Funds to make debt service payments for either a bond or conventional bank loan. The loans or bonds are obligations of the HA. HUD does not guarantee these loans or bonds. The HA obligation is subject to the availability of appropriations by Congress and compliance with statutory and regulatory requirements. A HA must obtain written HUD approval prior to executing any document that would encumber or pledge as collateral any Public Housing asset including real and personal property or future public housing funds such as Capital Funds. Current HUD web guidance for CFFP is found at www.hud.gov/offices/pih/programs/ph/capfund/cffp.cfm.

As of the end of FY 2008, HUD had approved over $3.5 billion in the CFFP with almost 200 participating HAs.

In addition to the public housing requirements stated in the Notice**, Sections 9(d)(3) and 9(e)(3) of the 1937 Act** require certain **"Conditions on Use for Development, Modernization and Operation."**

(a) *Acquisition or Development*: Property acquired or developed with 1937 Act funds must be operated as public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD. This 40-year period is extended if PHA receives other funding, such as Capital Funds or Operating Funds.

(b) *Capital Fund*: Property modernized or receiving assistance of Capital Funds must be operated and maintained as public housing for a 20-year period that begins on the latest date on which modernization is complete or assistance is provided with Capital Funds covered by the Capital Fund ACC Amendment. The 20-year requirement may extend the use of the property as public housing beyond the original 40-year ACC requirement or beyond any requirement incurred as a result of receiving Operating Funds.

(c) *Operating Fund*: Property that receives Operating Funds must be operated as public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided. The 10-year requirement may extend the use of the property as public housing beyond the original 40-year ACC requirement or beyond any requirement incurred as a result of receiving Capital Funds.

(d) *Applicability of the latest expiration date:* Public housing subject to conditions on use mentioned above or any other provision of law mandating the operation of the housing as public housing, must be maintained and operated as required until the latest such expiration date, except as otherwise provided in the 1937 Act (e.g., Sections 9(m)(2) of Section 18 of the 1937 Act).