

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 8 - LOW-INCOME HOUSING
SUBCHAPTER I - GENERAL PROGRAM OF ASSISTED HOUSING

§ 1437z-7. Mixed-finance public housing

(a) Authority

A public housing agency may own, operate, assist, or otherwise participate in 1 or more mixed-finance projects in accordance with this section.

(b) Assistance

(1) Forms

A public housing agency may provide to a mixed-finance project assistance from the Operating Fund under section 1437g of this title, assistance from the Capital Fund under such section, or both forms of assistance. A public housing agency may, in accordance with regulations established by the Secretary, provide capital assistance to a mixed-finance project in the form of a grant, loan, guarantee, or other form of investment in the project, which may involve drawdown of funds on a schedule commensurate with construction draws for deposit into an interest-bearing escrow account to serve as collateral or credit enhancement for bonds issued by a public agency, or for other forms of public or private borrowings, for the construction or rehabilitation of the development.

(2) Use

To the extent deemed appropriate by the Secretary, assistance used in connection with the costs associated with the operation and management of mixed-finance projects may be used for funding of an operating reserve to ensure affordability for low-income and very low-income families in lieu of the availability of operating funds for public housing units in a mixed-finance project.

(c) Compliance with public housing requirements

The units assisted with capital or operating assistance in a mixed-finance project shall be developed, operated, and maintained in accordance with the requirements of this chapter relating to public housing during the period required by under¹ this chapter, unless otherwise specified in this section. For purposes of this chapter, any reference to public housing owned or operated by a public housing agency shall include dwelling units in a mixed finance project that are assisted by the agency with capital or operating assistance.

(d) Mixed-finance projects

(1) In general

For purposes of this section, the term “mixed-finance project” means a project that meets the requirements of paragraph (2) and is financially assisted by private resources, which may include low-income housing tax credits, in addition to amounts provided under this chapter.

(2) Types of projects

The term includes a project that is developed—

(A) by a public housing agency or by an entity affiliated with a public housing agency;

(B) by a partnership, a limited liability company, or other entity in which the public housing agency (or an entity affiliated with a public housing agency) is a general partner, managing member, or otherwise participates in the activities of that entity;

(C) by any entity that grants to the public housing agency the right of first refusal and first option to purchase, after the close of the compliance period, of the qualified low-income building in which the public housing units exist in accordance with section 42 (i)(7) of title 26; or

(D) in accordance with such other terms and conditions as the Secretary may prescribe by regulation.

(e) Structure of projects

Each mixed-finance project shall be developed—

(1) in a manner that ensures that public housing units are made available in the project, by regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest;

(2) in a manner that ensures that the number of public housing units bears approximately the same proportion to the total number of units in the mixed-finance project as the value of the total financial commitment provided by the public housing agency bears to the value of the total financial commitment in the project, or shall not be less than the number of units that could have been developed under the conventional public housing program with the assistance, or as may otherwise be approved by the Secretary; and

(3) in accordance with such other requirements as the Secretary may prescribe by regulation.

(f) Taxation

(1) In general

A public housing agency may elect to exempt all public housing units in a mixed-finance project—

(A) from the provisions of section 1437d (d) of this title, and instead subject such units to local real estate taxes; and

(B) from the finding of need and cooperative agreement provisions under section 1437c (e)(1)(ii) and 1437c (e)(2) of this title, but only if the development of the units is not inconsistent with the jurisdiction's comprehensive housing affordability strategy.

(2) Low-income housing tax credit

With respect to any unit in a mixed-finance project that is assisted pursuant to the low-income housing tax credit under section 42 of title 26, the rents charged to the residents may be set at levels not to exceed the amounts allowable under that section, provided that such levels for public housing residents do not exceed the amounts allowable under section 1437a of this title.

(g) Use of savings

Notwithstanding any other provision of this chapter, to the extent deemed appropriate by the Secretary, to facilitate the establishment of socioeconomically mixed communities, a public housing agency that uses assistance from the Capital Fund for a mixed-finance project, to the extent that income from such a project reduces the amount of assistance used for operating or other costs relating to public housing, may use such resulting savings to rent privately developed dwelling units in the neighborhood of the mixed-finance project. Such units shall be made available for occupancy only by low-income families eligible for residency in public housing.

(h) Effect of certain contract terms

If an entity that owns or operates a mixed-finance project, that includes a significant number of units other than public housing units enters into a contract with a public housing agency, the terms of which obligate the entity to operate and maintain a specified number of units in the project as public housing units in accordance with the requirements of this chapter for the period required by law, such contractual terms may provide that, if, as a result of a reduction in appropriations under section 1437g of this title or any other change in applicable law, the public housing agency is unable to fulfill its contractual obligations with respect to those public housing units, that entity may deviate, under procedures and requirements developed through regulations by the Secretary, from otherwise applicable restrictions under this chapter regarding rents, income eligibility, and other areas of public housing management with respect to a portion or all of those public housing units, to the extent necessary to preserve the viability of those units while maintaining the low-income character of the units to the maximum extent practicable.

Footnotes

¹ So in original.

(Sept. 1, 1937, ch. 896, title I, § 35, as added Pub. L. 105–276, title V, § 539[(a)], Oct. 21, 1998, 112 Stat. 2594.)

Effective Date

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Regulations

Pub. L. 105–276, title V, § 539(b), Oct. 21, 1998, 112 Stat. 2596, provided that: “The Secretary shall issue such regulations as may be necessary to promote the development of mixed-finance projects, as that term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a (b)] (as amended by this Act).”