HAND Training

Introduction to Public Housing
and Public Housing Redevelopment

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Training Overview

• Public Housing Overview
• Mixed Finance Development
• RAD Overview
Public Housing Overview

• What is “Public Housing”?  
  – “Public Housing” is housing for low-income families, owned and operated by local Public Housing Authorities (“PHA”s) or their partners, and funded and regulated by HUD.
  – Provides housing for approximately 2 million residents in 1.2 million public housing units
  – 3,300 PHAs, ranging in size from 10 units to 180,000 units
  – $14,549 average annual income
  – 53% of households include an elderly or disabled person
Public Housing Overview

• What is a Public Housing Authority?
  – Created under state law and generally controlled at the municipal or county level, and governed by a Board of Commissioners
  – Receive funding for public housing pursuant to an Annual Contributions Contract (“ACC”) with HUD
  – All significant aspects of a PHA’s operations must be set forth in written policies adopted after public hearing.
• PHAs also administer the Housing Choice Voucher Program (“Section 8”)
  – “Tenant-based” assistance to a particular household, which receives a voucher to subsidize rent at any housing that meets program requirements.
  – Up to 20% of a PHA’s voucher pool can be “project-based” and attached to specific properties for the term of a contract between the PHA and the property owner
  – Often used to “cross-subsidize” public housing units in mixed-finance development
Public Housing Overview

• Basic features of Public Housing

  – Public housing residents must have adjusted household income at or below 80% of Area Median income
  
  – At least 40% of families admitted to a PHA’s public housing units must have incomes at or below 30% of AMI
  
  – Rents set at 30% of adjusted household income
    
    • Average tenant payment is $345 per month
  
  – Federal Operating Subsidy and Capital Subsidy cover operating and capital costs in excess of what rents will support
Public Housing Overview

• Federal Operating Subsidy

  – The amount of operating subsidy a PHA is eligible for is based on the Operating Fund formula.

  – Subsidy = Projected Expenses – Projected Rents

  – Projected Expenses are based on HUD Project Expense Level (“PEL”) calculator, not agency average or prior development

  – Operating subsidy is provided and accounted for on a project (not portfolio) basis

  – Appropriations are routinely well below calculated need, in which case PHAs receive a “prorated” amount
Public Housing Overview

• Federal Capital Subsidy
  – PHAs receive proportional share of annual Capital Fund appropriation based on Capital Fund formula.
  – Formula takes into account ongoing repairs and replacements needed to keep developments in good condition as well as accumulated unmet annual needs from prior years.
  – Annual appropriations are well below the annual accrual needs and the backlog continues to grow.
  – As of 2013, capital needs were estimated at $4 billion annual and the accrued backlog was at least $26 billion.
## Public Housing Overview

### Budget Outlook

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<th>Program</th>
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<th>Trump Budget</th>
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Public Housing Overview

• Physical Condition of Public Housing
  – About 85 percent of public housing units meet or exceed HUD standards for decent, safe housing
  – Huge capital backlog and insufficient operating and capital subsidy make it challenging to maintain and operate public housing
  – The number of public housing units has fallen by more than 200,000 since the mid-1990s as units have been demolished or otherwise removed from the program
Public Housing Overview

• Demolition and Disposition
  – Authorized by Section 18 of the Housing Act of 1937
  – Any redevelopment where title changes hands must be approved by Special Applications Center
  – Generally, for demolition and disposition, development must be **obsolete** as to physical condition, location, or other factors
  – RAD conversions generally do not require SAC approval
Mixed-Finance Development

- Any development where public housing units are owned, in whole or in part, by an entity other than a PHA
- Not allowed prior to the early 1990s
- Typical transaction:
  - PHA demolishes obsolete project
  - PHA competitively selects private developer partner who obtains tax credits and other financing
  - PHA may or may not participate in ownership entity
  - PHA ground leases land for nominal amount
  - PHA provides capital funds and/or operating subsidy
  - Developer operates a certain number of units as public housing
Mixed-Finance Development

• Steps in Development Process
  – PHA receives demolition or disposition approval from SAC
  – PHA competitively procures private developer
  – PHA submits Mixed-Finance Development Proposal to HUD HQ
  – Developer negotiates real estate, regulatory, and financing documents with PHA and funders
  – PHA submits “evidentiary documents” to HUD in final form
  – Upon HUD approval of evidentiary submission, transaction is cleared to close
Mixed-Finance Development

• Key evidentiary documents:
  – Regulatory and Operating Agreement (“R&O”)
    • PHA commits to pass subsidy it receives from HUD through to the mixed-finance development, less holdback for administrative costs
  – Mixed-Finance Amendment to the ACC
  – HUD Declaration of Restrictive Covenants
    • requires public housing units to be operated in compliance with public housing requirements for at least 40 years—must be senior to all mortgages
  – Ground Lease from PHA to Owner
  – Legal Opinions and PHA Certifications to HUD
  – Title Policy and Survey
  – Management documents
• PHA role
  – May be limited to role of lender, subsidy provider, and/or ground lessor
  – Many PHAs seek to minimize private entity’s role
    • May serve as sole or managing general partner
    • May seek right to replace private developer after stabilization
    • May want to act as property manager
  – Significant PHA role may raise concerns for investors and lenders
    • PHA capacity to run tax credit property
    • Tax exempt use property
Mixed-Finance Development

• Management Issues
  – Public housing units must be managed in accordance with PHA’s “Admissions and Continuing Occupancy Policy” or “ACOP”
  – PHA may adopt site-based waiting list and special rules for mixed-finance developments, after public hearing
  – Private Owner may conduct applicant screening and selection, informal appeals for denial of admission, rent determinations, etc., however, PHA remains responsible for ensuring statutory requirements are met
Mixed-Finance Development

• Financial feasibility
  – Public housing units cannot generate net income and cannot support debt, any hard debt must be serviced by non-public housing units.
  – Subsidy is often less than the actual operating costs
  – Owner can establish a subsidy reserve, or cross-subsidize with revenue from the non-public housing units
Mixed-Finance Development

• Project Based Vouchers
  – PBV rents can be set at up to 110% of FMR (subject to “rent reasonableness” determination), which will be much higher than public housing operating subsidy
  – PBVs are limited to 25% of units at a project, with exceptions for elderly units, projects with supportive services, or projects in low poverty neighborhoods
  – Generally, attaching PBVs to projects requires competitive procurement, but under HOTMA, no procurement is necessary if PHA is ground lessor or owns any interest in the owner entity
  – Income from PBVs at non-public housing units can offset insufficient operating subsidy
Rental Assistance Demonstration (RAD)

• Overview (RAD Component 1)
  – Convert Public Housing to Project Based Rental Assistance (PBRA) Contracts or Project-Based Voucher (PBV) Contracts – Owner’s Choice
  – Authority for 185,000 units
  – Used for rehab or new construction
  – Competitive Process
    • Applications submitted for specific project, a PHA-defined portfolio of projects, or a multi-phase project.
Rental Assistance Demonstration (RAD)

• HAP Contracts
  – PBV 15 to 20 year term (subject to annual appropriations)
    • Administered by PHA
    • At expiration, mandatory renewal
  – PBRA – 20 year term (subject to annual appropriations)
    • Administered by HUD’s Office of Housing
    • At expiration, MAHRA Renewal Contract
Rental Assistance Demonstration (RAD)

- HAP Contracts
  - Contract rents capped at current subsidy levels (operating and capital subsidy)
  - Tenant payment remains the same under ACC and S8
  - Rent Adjustments by OCAF
  - Rent to owner shall not be reduced below initial rent under initial HAP contract.
  - No limitation on distributions.
Rental Assistance Demonstration (RAD)

- Use Agreement
  - 1st priority
  - Coterminal with HAP Contract (concurrent renewable)
  - If HAP contract is removed due to breach or insufficient appropriations, new tenants in covered units are limited to at or below 80% of AMI and rents at 30% of 80% of AMI for remainder of 20-year term
Rental Assistance Demonstration (RAD)

• “Transfers of Assistance”
  – RAD assistance can be moved to another site for replacement new construction
  – Choice between converting at closing or at placement in service
  – Owner enters into “New Construction Agreement,” similar to AHAP used for PBV units
Rental Assistance Demonstration (RAD)

• **Ownership/Control**
  - Ownership: Public or non-profit entity holds title
  - Control: Public or nonprofit entity has direct or indirect legal authority (e.g., via partnership agreement) to direct the financial, legal, beneficial or other interests of owner or has 51% or greater interest in GP in limited partnership.
  - Exceptions – Private Ownership/Control
    • HUD may allow for-profit ownership to facilitate LIHTC, but only if PHA preserves its interest in the property (e.g., via Ground Lease, ROFR, PHA Subordinate Debt)
Mixed-Finance vs. RAD

- In RAD, developer can approach PHA directly—no requirement for competitive procurement
- RAD subsidy is easier to predict than public housing operating subsidy (“guaranteed” OCAF), and may be more reliable in stressed federal budget
- In RAD, all residents have right to return, including over-income tenants; in mixed-finance approach there is more latitude to relocate ineligible residents
- SAC demo-dispo approval not required for RAD, unless unit count reduced by more than greater of 5% or 5 units
- RAD PBV Waivers
  - PBVs don’t count against 20% portfolio cap
  - 25% cap on PBV units in project increased to 100%
Mixed-Finance vs. RAD

• In RAD, site and neighborhood standards apply to all new construction even if on or adjoining the converted site; mixed finance development has carve out for on-site replacement units.

• Conversion under RAD will be considered a significant amendment to PHA’s Five-Year Plan – subject to Consolidated Plan requirements and public notice/consultation requirements.

• Changes to PHA Agency Plan to site-based waiting lists or other policies specific to mixed finance developments also require public notice/consultation.
Questions?

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