



Klein Hornig ^{LLP}

COUNSELORS AT LAW

Strategic Planning for RAD Conversions

Thursday, April 6, 2017



Presenters

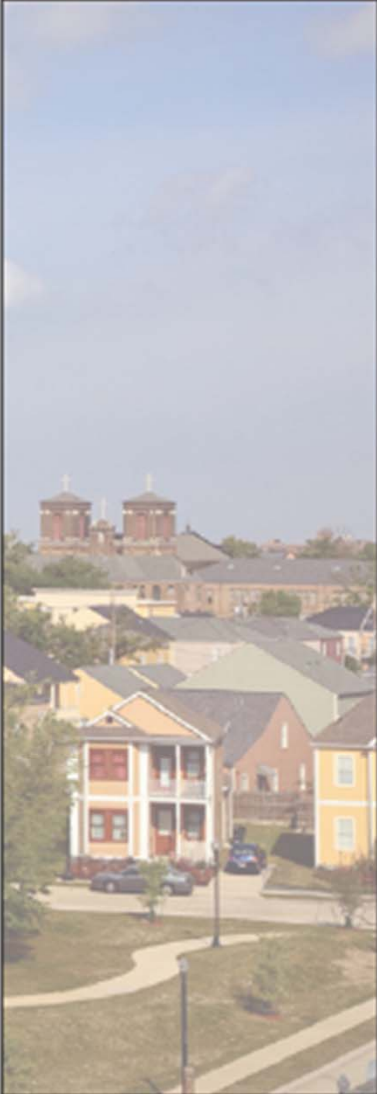
Tom Davis, Director of the Office of Recapitalization, Office of Multifamily Housing Programs, U.S. Department of Housing and Urban Development

Shelynda Burney Brown, Vice President for Real Estate Development, Community Preservation and Development Corporation

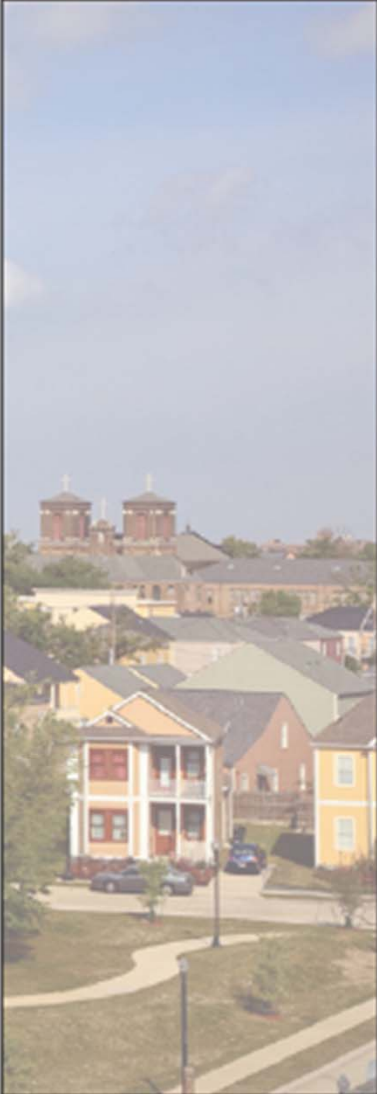
- Hollins House, Baltimore
- Fay Towers, Richmond

Chris Hornig, Partner, Klein Hornig LLP

- Mid-Atlantic
 - 4 in Baltimore; Cambridge; Hagerstown
 - Richmond (Fay Towers and Church Hill), Newport News, Staunton
- National



Current Status of Program



- Success to Date
- Evolution and shifts in emphasis
- Prospects under Trump/Carson
- Expectations for PHAs without current RAD Allocation

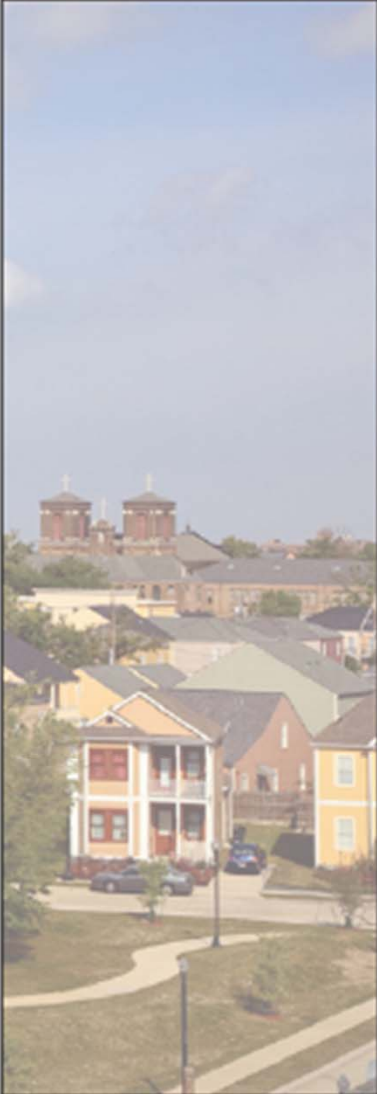


Objectives

- Assist people who are planning redevelopment efforts using RAD to identify particular program aspects that may shape strategic thinking or may be critical-path items for early resolution.
- Resources:
 - Notice PIH-2012-32 (HA) H-2017-03, REV-3
 - HUD RAD Notice H 2016-17/PIH 2016-17 Fair Housing/Civil Rights Requirements and Relocation Requirements



Fair Housing



- RAD Fair Housing, Civil Rights and Relocation Checklist
- Front-End Review; Approval required prior to Financing Plan
 - All new construction
 - Transfers of assistance to an area of minority concentration
 - Reduction of units
 - Changes to unit configuration
 - Change to population served
- Also scrutinized:
 - Relocation likely to exceed 12 months
 - Conversions involving new construction or substantial alteration



Fair Housing (Cont.)



- Site-and Neighborhood Standards
 - HUD may approve new construction in an area of minority concentration, consistent with the regulatory requirements cited above, provided that:
 - the new construction is located in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a revitalizing area); or
 - there are sufficient comparable housing opportunities in areas outside of minority concentration.
 - No automatic exception for on-site replacement



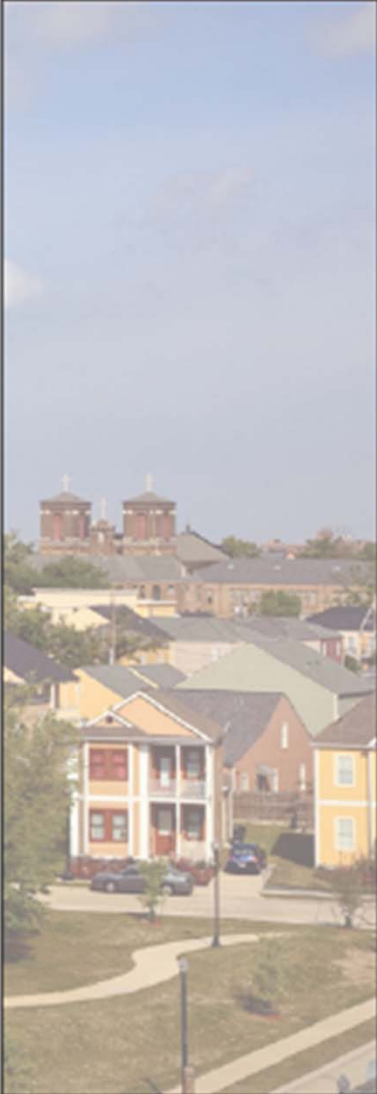
Mapping Characteristics of Converting Project to New Project (“Covered Project”)



- Conversions may not result in reduction of assisted units
 - Exceptions:
 - De minimis reduction of 5%
 - Where reduction allows PHA to more effectively or efficiently serve assisted households (needs HUD approval)
 - No cap on RAD units in project (Notice 1.6.A.2)
- HUD will approve unit reduction or reconfiguration for good cause, i.e. changing demographics
- But, existing tenants must be served unless they agree to accept Alternative Housing Options



Tenant Right to Return



- “Any public housing or Section 8 tenant that may need to be relocated temporarily to facilitate rehabilitation or construction has a right to return to an assisted unit at the Covered Project once rehabilitation or construction is complete.”
 - Rule applies to RAD and non-RAD units in Covered Project, e.g. PBV units that RAD tenants move to (Notice 1.6.C.1 & 1.7.B.1)
- If proposed project would preclude resident from returning (i.e., due to changes in bedroom distribution, reduction of assisted units, income eligibility requirements, etc.), resident must be given opportunity to comment and/or object
- If tenant objects, PHA must alter project plans to accommodate resident’s right of return (but resident can provide informed, written consent of choice to voluntarily and permanently relocate)



Tenant Right to Return (cont.)



- Planning for Uncertainty
 - Developer may have uncertain tenant profile before closing, and/or may not know intentions of LIHTC-eligible tenants
 - Generally, HFA and investors want developer to be conservative in setting LIHTC “Applicable Fraction”
 - HFA should be willing to amend extended-use agreement and increase qualified units at placement in service; will trigger upward adjusters



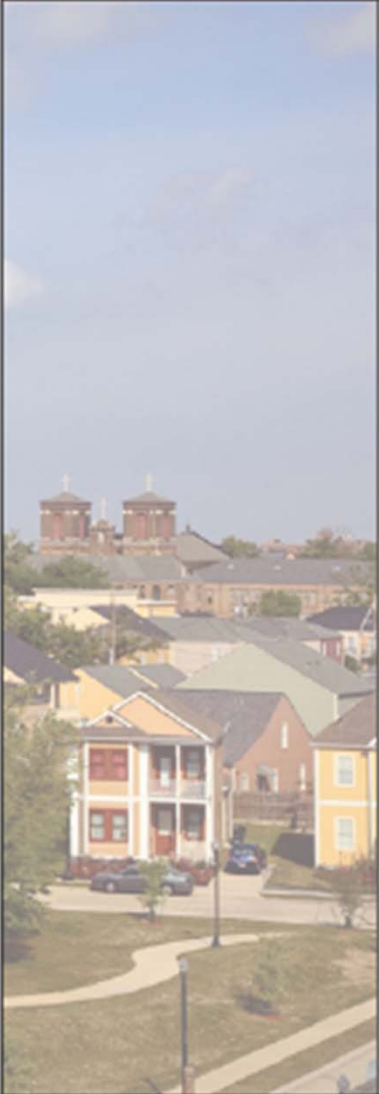
Relocation



- HUD RAD Notice H 2016-17/PIH 2016-17 Fair Housing/Civil Rights Requirements and Relocation Requirements
- Specific Types of Moves and Relocation Requirements
 - Moves within same building or complex of buildings
 - Not considered relocation under RAD, and not typically displacement under URA
 - PHA/Owner must reimburse residents for all reasonable out-of-pocket expenses (temporary or permanent relocation)



Relocation (cont.)



- Temporary relocation lasting 1 year or less
 - Temporary housing must be decent, safe and sanitary
 - Resident must be reimbursed for all reasonable out-of-pocket expenses, including moving expenses, increased housing costs (rent, utilities), and meals if housing lacks cooking facilities
- Temporary relocation anticipated to last more than 1 year
 - PHA/Owner must provide initial option of either temporary relocation and right of return to RAD project with relocation assistance, or permanent relocation with relocation assistance under RAD equal to that of “displaced person” under the URA



Relocation (cont.)



- Permanent moves in connection with a transfer of assistance
 - Where transfer of assistance to a new site, relocation of residents from previous site to new site is not itself involuntary permanent relocation under RAD (which is prohibited), but URA, and/or Section 104(d) may apply
 - Residents are also eligible for RAD temporary relocation assistance/ payments



Relocation (cont.)

- If distance from old site to new site is “significant” and it is not reasonable to require residents to move to new site, then PHA must adjust project to accommodate resident in an assisted unit (public housing unit, PB Section 8, or market unit with HCV) within reasonable distance of the old site (applied on a case-by-case basis)
- But can also be satisfied by resident acceptance of alternative housing option



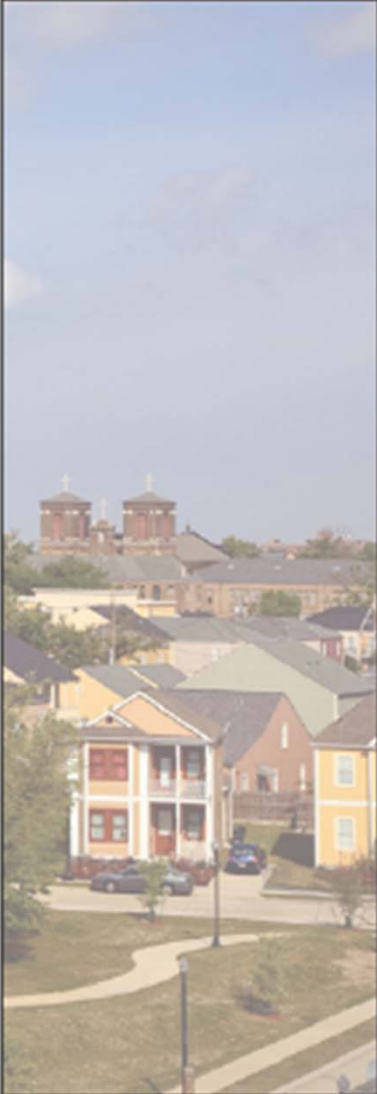
Relocation (cont.)



- Alternative Housing Options
 - PHA/Owner can offer alternative housing options so long as resident's right to return is preserved at all times prior to resident's voluntary choice to permanently relocate
 - All similarly-situated residents must be given the same offer of alternative housing options
 - PHA/Owner must ensure resident decisions are fully informed, voluntary and carefully documented
 - PHA/Owner may not propose resident waive relocation rights or entitlements to URA/Section 104 in connection with alternative housing options
- Notice and Documentation Requirements



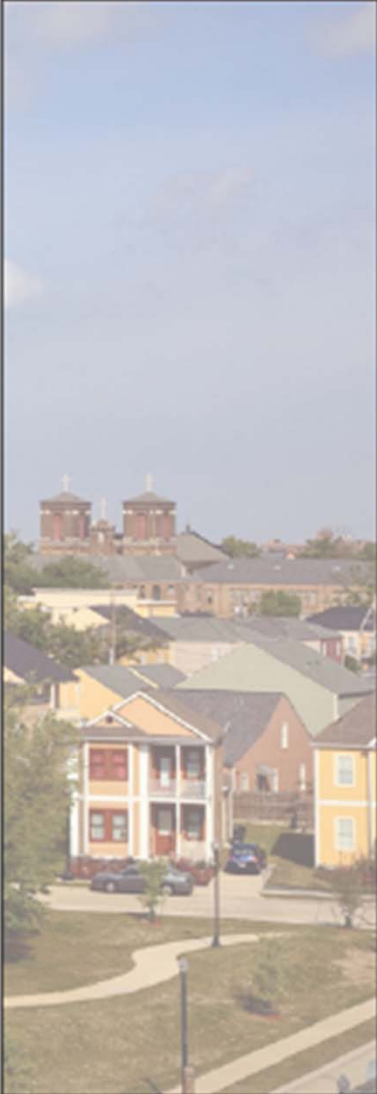
Transfers of Assistance



- RAD Jargon for:
 - Transfer from Converting Project to Covered Project on different, non-adjacent site
 - Later voluntary transfer similar to “8(bb)” where project ceases to be desirable housing
 - Following default and HAP termination
- “New Construction Agreement” in lieu of AHAP



Transfers of Assistance (Cont.)



- Choice between converting at closing or at placement in service
- **If convert at placement in service, tenants remain on public housing leases and can:**
 - continue to reside in place
 - move to other public housing
 - Be relocated with voucher
- **If convert at closing, tenants sign Section 8 lease for unbuilt unit**
 - Temporary housing using “pass-through lease”
 - In current unit or off-site
 - Ability to temporarily house tenants in public housing under pass-through lease
 - Investor concerns
- **Issues in Completing Conversion**
 - Fay Towers example – need to sign HAP and begin lease-up before all units completed



Amount of RAD Operating Subsidy



- Default Rule – Subject to FMV and reasonability limits, RAD rent will be equal to attributable public housing operating subsidy and capital funding of Converting Project
- Ability to reallocate subsidy from other projects – “Rent Bundling” or MTW Fungibility
- Conversion of future RHF or DDTF funds to operating subsidy (Notice 1.5.A)



PHA Role in Ownership



- PHA or Nonprofit must have ownership or control
- Where GP is a nonprofit, there is no HUD requirement of PHA control
 - Implications for Virginia LIHTC applications



Real Property Taxation and Abatements

- RAD project may not be covered by PHA's statutory exemption and Cooperation Agreement
- Need for PILOT Agreement



Early Starts (Relocation, Demolition, etc.)

- PHAs limited to spending \$100,000 of Capital Funds on predevelopment costs
- Converted Pending Transfer Agreement



Developer Fees

- In LIHTC transactions, the developer fee will be subject to the LIHTC allocating agency's limitations on developer fees. The undeferred portion of such developer fee (as documented in the LIHTC cost certification) may not, without HUD approval, exceed the greater of:
 1. 15 percent of the total development costs less acquisition payments made to the PHA, developer fee and reserves.
 2. The lesser of \$1,000,000 or 15 percent of the total development costs without offset for acquisition payments made to the PHA, developer fee and reserves.



Special Situations

- Energy Performance Contracts, CFFP, etc. may not be on title, but must be resolved
- Conversion applies only to units and necessary land; excess land or units that are not being replaced require Section 18 approval for demolition/disposition

