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Monitoring Compliance in Public Housing Redevelopment

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MRBs and Other Federal Homeownership Programs
FEBRUARY 1 – 3



Housing Credit
FEBRUARY 3 – 5



Section 8 and Other Federally Assisted Multifamily Housing
FEBRUARY 8 – 10



HOME and Housing Trust Fund
FEBRUARY 10 – 12



Speakers

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Agenda

- Overview of types of Section 8
- Overview of repositioning options including Rental Assistance Demonstration (RAD), Section 18 demolition/disposition, and Section 22 voluntary conversions
- Compliance considerations when combining Housing Credits with public housing repositioning tools
- Discuss best practices for working with housing authorities and managing lease-up in public housing conversions

Overview

What is public housing repositioning?

Resources

- HUD public housing repositioning webinars
 - Click [here](#)
 - Click [here](#)
- PIH TPV and voluntary conversion websites
 - https://www.hud.gov/program_offices/public_indian_housing/repositioning
- NCSHA presentation on types of Section 8
 - Click [here](#)

Resources: Important Notices

- RAD Notice Revision 4
 - Notice H 2019-09/PIH 2019-23
- Tenant Protection Vouchers (TPVs)
 - Notice PIH 2001-41, Notice 2013-27
- Demo/Dispo
 - New! Notice PIH 2021-07
- Streamlined voluntary conversion
 - Notice PIH 2019-05

A word of caution...

- We are compliance experts, not development experts
- This session will not focus on development
- We will focus on compliance after conversion
- In other words, this session gives an overview of programs and then discusses what happens after a PHA has decided to reposition its public housing

What is public housing?

- Project-based assistance operated by Public Housing Authorities (PHAs)
 - Sometimes called Section 9 or ACC units or LIPH
- Operated/funded through an Annual Contributions Contract (ACC) with HUD

How is public housing funded

- Operating subsidy and tenant rents are the two largest sources of income
 - Tenant rents are income-based or flat
 - Operating Funds (Op-Fund)
 - Calculated by HUD to cover a portion of ongoing costs to operate developments
 - Congress has not fully funded the total eligibility levels in years – proration
- Capital Funds (Cap Fund)
 - Funding source for development, financing, and modernization of PH and management improvements based on factors like number of bedrooms in developments, location, age of units, etc.

What is repositioning?

- “Repositioning” public housing means converting units from public housing to long-term Section 8 rental assistance
- This is completely voluntary and up to the PHA
 - Doing nothing is a choice
 - Public housing is not going away

What is repositioning?

- Converting to Section 8 preserves affordability through either a project-based or tenant-based subsidy
 - Housing Choice Vouchers (HCV)
 - Project Based Vouchers (PBV)
 - Project-based rental assistance (PBRA)

What is repositioning?

- Once these units are converted, they are no longer public housing
 - New Section 8 funding platform
 - New policies, procedures, forms, processes, software
 - Staff training

Why is repositioning happening?

- Back in 2010, conservative estimates said there was \$26 billion in backlog of capital needs for public housing
- Leverage other resources to address the capital needs of public housing
- Helps preserve affordable housing for families

What's the goal?

- Improve physical condition and modernize aging properties
- Stabilize financial performance and long-term operations
- Complete substantial rehab of deteriorated properties
- Demolish and redevelop distressed/obsolete properties
- Transfer assistance to other neighborhoods
- Thin densities and mix incomes
- Support neighborhoods of opportunities

How do LIHTCs fit in?

- Approximately 40% of these developments also receive LIHTCs at the same time
- Sometimes this is a PHA's first tax credit deal
- Everyone underestimates the level of effort it takes to do a tax credit lease up at the same time as a public housing repositioning

What is Section

8?

Overview of programs



What is Section 8?

- Section 8 of the 1937 Housing Act refers to a few different programs
 - Housing Choice Vouchers (HCV)
 - With special purpose vouchers including VASH, NED, FUP, Mainstream, etc.
 - Project Based Vouchers (PBV)
 - Project-based rental assistance (PBRA)

What is Section 8?

- Under all of them, rental subsidy (HAP) is paid on behalf of an eligible family to pay all or a portion of their rent
 - Tenant-paid rent is based on income
 - Calculation varies slightly between PIH and MF programs
 - Housing Assistance Payment (HAP) is paid on behalf of eligible families for the difference between tenant rent and contract rent
 - Calculation differs in PIH and MF programs

Types of Section 8

- Project-based rental assistance (PBRA)
 - HUD's Office of Multifamily Housing
 - HAP contract between HUD and project owner
 - Assistance is project-based
 - Governed by owner's Tenant Selection Plan (TSP), HUD Handbook 4350.3, and 24 CFR 880

Types of Section 8

- Housing choice vouchers (HCV)
 - HUD PIH
 - Assistance is tied to a family through a HAP contract between the PHA and the owner for one unit
 - 24 CFR 982 and PHA's administrative plan
- Project-based vouchers (PBV)
 - HUD PIH
 - Component of the PHA's HCV program
 - Assistance is tied to a project for multiple units through a HAP contract between the PHA and the owner (which may be the PHA)
 - 24 CFR 982, 983, and PHA's administrative plan

Tenant Protection Vouchers (TPVs)

- Used to protect families during certain types of conversions in certain types of housing conversion actions
 - Not just for PH repositioning
- Three different types: replacement, relocation, enhanced

Tenant Protection Vouchers (TPVs)

- Considered special admissions to the HCV/PBV program
 - “Special admission” means they don’t come from the normal waiting list
 - Follow normal HCV/PBV rules
 - Must be an eligible low-income family
 - Different than RAD where families are automatically income eligible
 - PHA may screen families using the same screening criteria as regular admissions from the PHA’s waiting list

Repositioning Strategies

Overview of RAD, Section 22, and Section 18

Repositioning Strategies

- Section 8 conversion options for public housing:
 - Rental Assistance Demonstration (RAD) Program
 - Demolition/Disposition (Section 18)
 - RAD/Section 18 Blend
 - Streamlined Voluntary Conversions (Section 22)

RAD

Rental Assistance Demonstration Program

What is RAD?

- Converts public housing to long-term project-based Section 8 with either:
 - Project Based Vouchers (PBVs)
 - HUD Public and Indian Housing (PIH)
 - Project-based rental assistance (PBRA)
 - HUD Office of Multifamily Housing
 - RAD is the only option that allows conversion to PBRA

Key Components of RAD

- HAP contracts are renewed in perpetuity
- Predictable contract rents to start based on current funding and rents adjusted by Operating Cost Adjustment Factor (OCAF) annually
 - i.e., predictable rents that will trend upward
- RAD is the only repositioning option that allows public housing funds/reserves to be used to directly support conversion
 - i.e., public housing funds can be used towards development budget, relocation, replacement reserves, etc.

Key Components of RAD

- Resident right to return
- No re-screening/eligibility determination of residents upon conversion
- Some public housing rights continue
 - Compliance for Section 8 under RAD is slightly differently than standard programs
- Choice mobility to receive a tenant-based voucher

Section 18

Demolition/Disposition

Demo/Dispo

What is Section 18 Demo/Dispo?

- Under Section 18 of the Housing Act of 1937, PHA may either demolish or dispose of public housing
- In the past, limited to properties that were physically obsolete, but in 2018 HUD expanded PHAs' ability to use it to help reposition public housing to more sustainable platform
 - Despite the name, you can preserve an asset under Section 18

What is Section 18 Demo/Dispo?

- Apply to HUD's Special Applications Center (SAC)
- Generally, HUD approves if:
 - Physically obsolete
 - Scattered sites (non-contiguous) with operational challenges
 - Owned by a PHA with 250 or fewer units or less
 - More “efficient and effective” operations

What does it do?

- Gives PHA control over the future use of the property by allowing PHA to:
 - Demolish the building
 - Transfer ownership of the building
 - Demolish the building and transfer ownership of vacant land

Common Examples

- Reposition/preserve an existing building to transfer ownership of the building to another entity
 - Removes units from PHA's Annual Contribution Contract (ACC), PIC, and removes the Declaration of Trust (DOT)
 - Rehabilitate with other financing like LIHTCs
 - May add PBVs to achieve affordability
- Dispose of building in the open market and take proceeds to develop new housing

What happens to families?

- Any unit occupied in last 24 months is eligible for Tenant Protection Vouchers (TPVs)
 - PHA does not necessarily get 100% TPVs – some situations are only eligible for 25% TPVs
 - May use other means to achieve 100% affordability
 - Family needs to income-qualify for the TPV under Section 8 rules

What happens to families?

- PHA has the authority to use TPVs as either:
 - Tenant-based vouchers (HCV)
 - Project-base vouchers (PBV)
- PHA does not need tenant consent to PBV the vouchers
 - Voucher “belongs” to the PHA not the family
 - Do need resident consultation at the time of application though

RAD/Section 18 Blends

- Section 18 can be blended with RAD in the same development
 - 75% of units convert through RAD
 - Either PBV or PBRA
 - 25% through Section 18 with TPVs that become PBVs
- May increase potential revenue for project thus allowing you to get more financing
 - Rents may be higher under Section 18 since rents are set via standard PBV rules

RAD/Section 18 Blends

- RAD rights apply to all units, not just the RAD units
- Two separate HAP contracts
 - One for the RAD units (either PBRA or PBV)
 - One for the units removed through Section 18 (PBV)

Voluntary Conversions

Section 22

Voluntary Conversions

- Section 22 of the Housing Act of 1937 allows PHAs to either:
 - Prove it's more cost effective to run units with a voucher
 - Voluntary Conversion
 - Close out their public housing program with no cost test for PHAs with 250 units or less
 - Streamlined Voluntary Conversion (SVC)

Voluntary Conversions

- TPVs issued to residents that have occupied units in last 24 months
 - Voucher “belongs” to the resident – they can stay at the property with a tenant-based voucher or move
 - If property will be used as housing after conversion, resident cannot be displaced

Voluntary Conversions

- PHA may project-base the TPV, but must have written tenant consent
 - Family briefing requirements
 - Need to educate residents
 - Field Office must participate
 - All PBV requirements apply
 - Can backfill with PHA's vouchers if some residents don't want PBV – subject to program caps

Changes to Consider

Post-conversion issue

Policies and Forms

- Public housing Admissions and Continued Occupancy Policy (ACOP) no longer applies
 - HCV/PBV – Administrative Plan (Admin Plan)
 - Requires Board approval
 - PBRA – Tenant Selection Plan (TSP)
- Public housing forms may no longer apply and likely need some new forms
 - Application and forms may be old and may need updating
 - Forms probably don't ask the right questions for LIHTC
 - If allocating agency has required forms, PHA needs to use them

Ineligible Families

- In RAD, family is automatically eligible for Section 8 but may not be eligible for LIHTC
 - What is the PHA/owner/investor going to do if a family is over income for LIHTC?
- With other repositioning options, the family may not be eligible for Section 8
 - Income limits is generally 80% since family is “continuously assisted”
 - Rescreened per regulations and admin plan

Leases

- Public housing leases follow specific rules at 24 CFR 966
 - Leases need to be revised – probably haven't been reviewed in years
- Legal counsel needs to review
- Are there HFA-required forms that need to be added?
- Other addenda specific to programs
- Language that was totally fine in PH may be wrong for LIHTC
 - HFA and/or consultant should review

Choice Mobility

- Mandatory component of RAD
 - Also applies to non-RAD units in a RAD development
 - After one year in PBV, after two years in PBRA
- May establish a cap
- Software may need to establish a choice mobility wait list
- In reality – residents are happy with their rehabbed unit and don't necessarily exercise choice mobility the minute they can
 - However, PHAs need to plan accordingly

Utility Allowance Issues

- UAs are often a hidden stumbling block in these conversions
 - If, as part of the conversion, the UA will change, this can change both contract rents and tenant rents
 - Everyone needs to be aware from the very beginning what's happening with utilities
 - If HOME is layered in, may not use the HCV UA
 - RAD: Site-specific UAs are set according to MF rules for both RAD PBV and RAD PBRA
 - May use HCV UA for RAD PBV instead of site-specific
 - Not applied until the year after conversion
 - For other conversions, must use HCV UA for PBV units
 - New UA on new PBV HAP contract
 - May impact tenant-based rent

Students

- No student rule in public housing
 - Nobody has every looked at family's student status
 - What does that mean for LIHTC eligibility?
 - New forms need to be used
- Section 8 student rule differs from LIHTC student rule – need to comply with both

Tenant Rents

- In RAD projects, if tenant's rent will increase purely as a result of the conversion, rents are phased-in
- If project does not include RAD, no phase-in mechanism for tenant rents
- Typically an issue with public housing flat rent families or with changes in UAs

New Files

- Best practice is to maintain two files
 - Strongly recommend against one big file
 - EIV may NEVER be in an LIHTC file
- From a practical standpoint this means physically putting together new files
- From a theoretical perspective this means staff needs to wear “different hats” when working on files

Lessons Learned

What needs to be considered from a compliance perspective?

First Timers

- This may be PHA's first LIHTC conversion
 - HFA may need to be more “hands on” than usual
 - PHA should be working with a third-party consultant
 - Not just for file approvals but to help with the process
 - Set expectations early
 - Required forms, file set up, compliance requirements, mandatory trainings, etc.
 - PHA should figure out who their over-income families are early and make a plan
 - May have no idea how to track the unit mix and what unit designations are – this concept does not exist in public housing
- Maintaining a separate LIHTC file may be mind blowing

Residents

- This is personal for residents – many are worried they are going to lose their home
- Frequent communication is key
- Qualification/lease up is harder if residents are worried that they are going to lose their assistance
- Prepare brief talking points before you start interviewing residents
 - May be more comfortable one-on-one than in a group briefing

Time Management

- There is less time than everyone thinks to get this done
 - Conversion date of public housing and acquisition date are often moving targets
 - PHA often unclear about when these are and if they are the same date
 - For acq/rehab, 240 days seems like a lot, but it's not
 - This is a huge lift with a lot of moving pieces and the compliance piece is often not started far enough in advance
 - 2 weeks before closing is not the right time to think about how the conversion is going to happen

Staffing

- Particularly for small agencies, resource allocation can be an issue
- Staff needs to meet with residents, collect paperwork, convert residents in software, collect verifications, sign leases and TICs
 - PHA needs a plan for how they are going to get the work done

Software, software, software

- Just because the PHA has public housing software, doesn't mean it's ready for conversion
 - Need LIHTC and/or PBV/HCV, PBRA modules
 - Does the software even have one?
 - If it does, multiple modules need to be set up which takes time
 - PHA needs to be able to answer important questions on the unit mix
- Software vendor needs to be brought in early – at least 90 days before conversion
- This can cause major delays in lease-ups

Training

- Just because staff are public housing experts, doesn't mean they understand LIHTC, PBV, PBRA, RAD
 - State-specific LIHTC compliance requirements
- Whoever performs the lease-up needs compliance training

Designated Conversion Coordinator

- Designate a conversion coordinator
- Liaison between residents and conversion activities

COVID Issues in Repositioning

- Benchmarks and deadlines still need to be met
- Biggest challenge: How are in-place residents interviewed?
- Adds a lot of time and resources
- Verification becomes a huge issue
- PHA needs to be aware of allocating agency's regulatory relief, if any, and follow state agency requirements
- Customer service
 - Public housing residents still need to feel part of the community

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