



HUD'S RENTAL ASSISTANCE DEMONSTRATION PROGRAM

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AGENDA

- RAD Overview
- Conversion Process
- PHA Requirements
- RAD and LIHTC
- Sample Transaction: Franklin, VA

The State of Public Housing

- There are approximately 1.2 million units in the public housing (Section 9) program across 3100 + PHAs. Those units have a documented capital needs backlog of approximately \$25 billion.
- There is not enough HUD funding to address the capital needs of public housing units. Appropriations for public housing are declining.
- As a result, approximately 10,000 public housing units are demolished or disposed of each year.
- Property conditions and HUD liens on public housing units make it difficult to access private capital for renovation.

WHAT IS RAD?

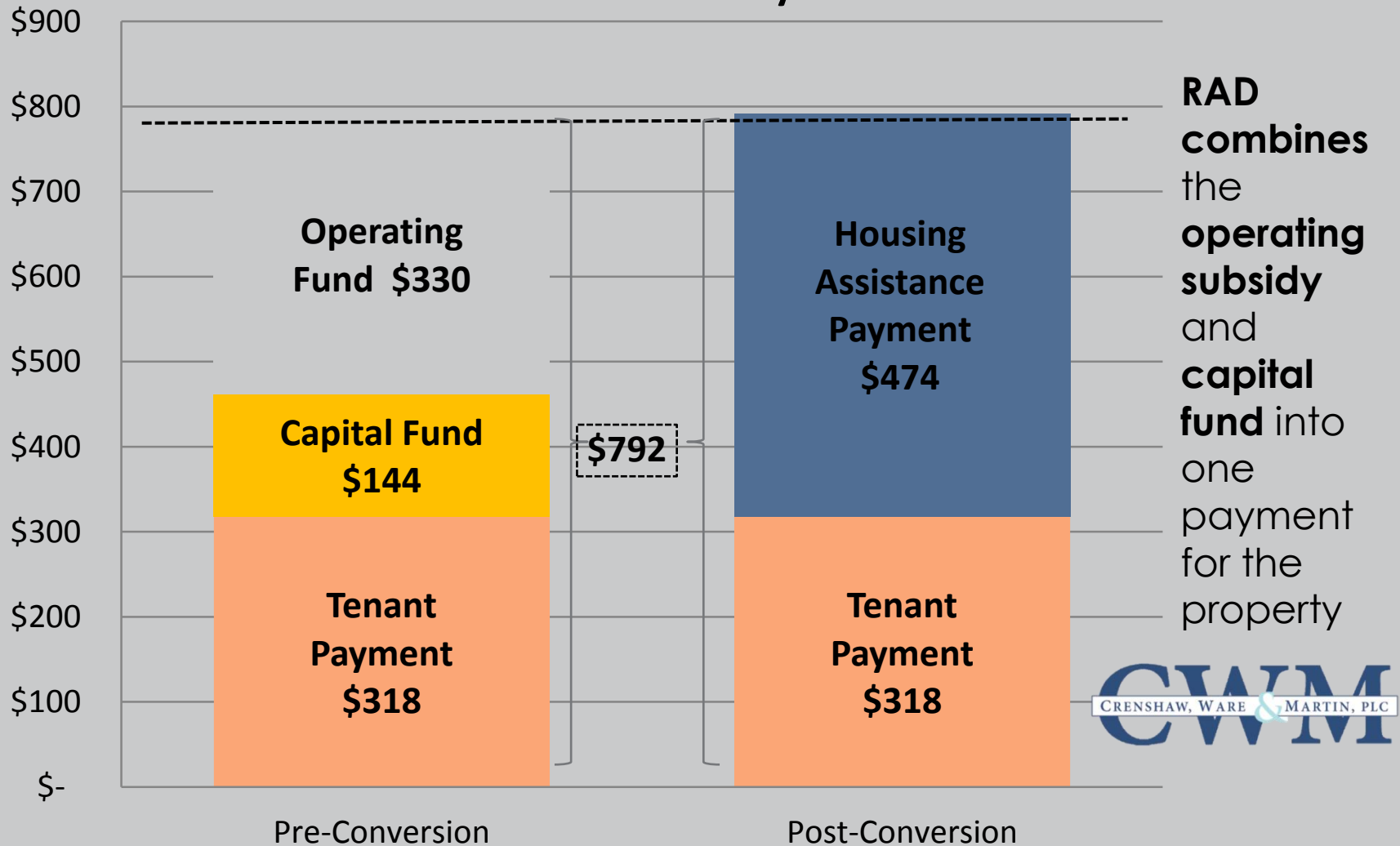
- The Consolidated and Further Continuing Appropriations Act of 2012 authorizes the U.S. Department of Housing and Urban Development (“HUD”) to implement the Rental Assistance Demonstration (“RAD”) program.
- RAD is a HUD initiative that allows the conversion of HUD-assisted rental units from the Low Income Public Housing (LIPH) program to the Project-Based Section 8 program.
- RAD is a voluntary program: PHAs have the choice to apply or not.

WHAT IS RAD? (continued)

- RAD is a new tool for preserving assisted rental housing.
- RAD combines the operating subsidy and capital fund subsidy received for each LIPH unit and converts them into a long-term Section 8 Housing Assistance Payment (“HAP”) contract.
- The goal is to allow Public Housing Agencies (“PHAs”) to finance the renovation or redevelopment of assisted units and receive higher rents than under a mixed-finance transaction.
- RAD is meant to ensure funding certainty under long-term contracts while giving property owners more flexibility to obtain financing and operate the units.

WHAT IS RAD? (continued)

HUD's Sample Public Housing Conversion Per Unit Monthly



WHAT IS RAD? (continued)

- First Component: allows Public Housing properties to convert to long term, project-based Section 8 contracts. Unit cap initially at 60,000 units, increased to 185,000 units.
- Second Component: allows owners of projects under HUD's legacy programs (Rental Supplement, Rental Assistance Payment, and Moderate Rehabilitation) to convert tenant-based vouchers issued upon contract expiration or termination to project-based vouchers. No unit cap.

Main Features of RAD

- By law, the long-term Section 8 contract must be renewed
 - ▶ ensures that the units remain permanently affordable
- Residents continue to pay 30% of their income towards the rent
 - ▶ For most tenants, rents under RAD should remain the same as public housing rents
 - ▶ Tenants paying a flat rent in public housing may see a rent increase
 - ▶ Rent may also change as a result of any applicable utility allowance for tenant-paid utilities

Main Features of RAD (continued)

- Initial 60,000 units processed using rents calculated from 2012 Appropriations. Adjusted each year by an Operating Cost Adjustment Factor (“OCAF”) starting in CY14.
- New awards processed using rents calculated from 2014 Appropriations. Will be adjusted each year by OCAF starting in CY15
- Requirements regarding PHA control of the converted project
 - ▶ maintain public stewardship
- Cost neutral for HUD: simply shifts funding from LIPH to Section 8. No new federal funds

Selection

HUD now processes the applications received each month in the following order of priority:

1. Redeveloping physically or functionally obsolete housing
2. Part of a comprehensive neighborhood revitalization plan
3. In imminent danger of losing financing (e.g. expiring LIHTC award)
4. Other applications using LIHTC
5. Portfolio or multi-phase applications where at least 50% of properties fall under any of the above categories
6. All other applications

Governing Regulations and Guidance

- Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011)
- Notice PIH 2012-32, REV-1 (July 2, 2013)
- Notice PIH 2012-32, REV-2 (June 15, 2015)
- RAD Relocation Notice (Notice H 2014-09 / PIH 2014-17)

The Conversion Process

Overview of the Conversion Process

- PHA applies for RAD
- HUD issues a Commitment to enter into a Housing Assistance Payment (“CHAP”) contract
- PHA enters a Public Housing Information Center (“PIC”) removal request
- Monthly check-in calls. Transaction Manager assigned
- PHA submits Financing Plan
- RAD Conversion Commitment (“RCC”) is issued
- Closing/RAD Use Agreement is recorded
- RAD HAP Contract takes effect

Key Closing Documents

These documents are applicable to all RAD transactions regardless of the financing type and regardless of whether PHA chooses PBV or PBRA:

- RAD Conversion Commitment
- RAD Use Agreement
- RAD Housing Assistance Payment Contract
- Release of the Declaration of Trust

Election of PBV or PBRA

- PHA must choose between two forms of project-based Section 8 assistance: Project-Based Vouchers (“PBVs”) and Project-Based Rental Assistance (“PBRA”).
- The selection is made in the RAD Application. It can be changed when the CHAP is issued, but it impacts the conversion process so should be done as early as possible.
- PBV HAP Contracts are administered by the PHA itself, or a partnering PHA if the PHA that owns the property does not operate a Housing Choice Voucher program.
- PBRA HAP Contracts are administered by HUD’s Office of Multifamily Housing Programs.

Election of PBV or PBRA (continued)

- RAD Rents: PBV rents may not exceed the “reasonable” (market) rent. PBRA rents are capped at 120% of FMR if current funding is higher than market, or capped at 150% of FMR if current funding is below market
- Initial Contract Term: Minimum of 15 years for PBVs (can be extended to 20 years with consent of PHA); 20 years for PBRA. Both types of conversions are automatically offered renewal contracts, which the PHA must accept
- Choice Mobility: In a PBV conversion, residents are eligible to move with the first available Housing Choice Voucher after one year of residency. In a PBRA conversion, residents are eligible to move after two years (from the later of date of execution of HAP contract or the move-in date), but PHA can limit the number of moves.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
I. General Provisions		
Congressional Appropriations	<p>As a subcomponent of the Housing Choice Voucher (HCV) program, PBVs are subject to annual appropriations as approved by Congress and allocated by HUD through each PHA's Annual Contributions Contract. If Congress provides less than full funding for the HCV program, then PHAs administering HCV programs are faced with decisions regarding how best to absorb the impact of these cuts.</p> <p>If, in the event of insufficient funding, a voucher agency determines that it must terminate the contract, it must comply with the provisions of 24 CFR 983.205(c); however, the RAD Use Agreement would continue for what would have been the remaining term of the HAP contract.</p>	<p>PBRA HAP contract renewals are subject to annual appropriations as approved by Congress. To date, HUD has never failed to renew a PBRA contract. This record has been upheld even in years when HUD did not have enough funding to renew PBRA contracts for a full 12-month period.¹</p>

¹ During years where Congress has failed to appropriate sufficient funds to fully renew all PBRA contracts, it has allowed HUD instead to reduce the number of months of renewal funding to just the amount needed to extend the renewal into the next fiscal year.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
Income Mixing	<p><u>Under RAD</u>, up to 50% of the units in a project may be assisted, excepting single-family homes (four or fewer units per building) or units serving elderly/disabled families or families receiving supportive services.</p> <p>Note: For existing public housing tenants, assistance may not be terminated if services are declined.</p>	No limit on percentage of PBRA units in a project (i.e., can be 100% assisted).
II. Contracts and Rents		
Initial Contract Term	The initial contract term must be for at least 15 years but the voucher agency may increase it up to 20 years. The voucher agency may also automatically extend the contract for another 15 years.	20 year initial term.
Contract Renewal	Mandatory. Upon contract expiration, administering agency offers, and PHA accepts, contract renewal.	Mandatory. Upon contract expiration, HUD offers, and PHA accepts, contract renewal.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
Rent Caps	Current public housing funding is limited by the lower of (1) reasonable rent or (2) 110% of the FMR.	Current public housing funding cannot exceed 120% of the FMR, except in the case where current funding is below market, in which case the current funding cannot exceed 150% of FMR, but only if supported by a rent comparability study.
Contract Rent Increases	OCAF annual adjustments, as published in Federal Register, up to reasonable rent charged by comparable unassisted units in private market.	OCAF annual adjustments. Published annually in Federal Register.
Vacancy Payments	The voucher agency may provide up to two full months of vacancy payments per 24 CFR 983.352.	The project is eligible for 60 days of vacancy payments pursuant to 24 CFR 880.611.
Rehab Assistance Payments	Under RAD, unoccupied units undergoing rehab or construction are eligible for Rehab Assistance Payments equal to the subsidy the project received prior to conversion under the Operating Fund and Capital Fund programs. See Section 1.6.B.8 (Section 1.7.A.9 for PBRA) of the RAD Notice. These Rehab Assistance Payments are limited to units eligible for Operating Fund subsidy prior to RAD conversion.	Same.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
III. Tenants		
Re-Screening of Tenants at time of Conversion	No re-screening of initial tenants.	Same.
Right to Return for Initial Tenants at Time of Conversion	Residents have right to return once rehab/new construction is completed.	Same.
Phasing of Rent Increase	PHA can implement phased rent increase phased over 3- or 5- year period if RAD conversion results in tenant monthly rent increases by more than 10% or \$25.	Same.
Resident Participation	Residents have right to establish and operate resident organization. The project shall also provide \$25 per occupied unit annually in resident participation funding.	Same.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
<p>Choice Mobility</p>	<p>Resident right to move with voucher (or other comparable tenant-based rental assistance) after 12 months from occupancy. See 24 CFR 983.260.</p> <p>Tenant-based voucher comes from existing voucher supply from PHA, subject to availability. If no tenant-based rental assistance is available, family receives next available opportunity.</p> <p>There are no Choice Mobility exceptions in PBV.</p>	<p>Under RAD PBRA contracts, residents have the right to move with tenant-based assistance after the later of 24 months from date of execution of the HAP contract or 24 months after the move-in date.</p> <p>HUD allows PHAs to limit the number of Choice-Mobility moves under the PBRA program in two ways:</p> <ul style="list-style-type: none"> • A PHA is not required to provide more than one-third of its turnover vouchers to residents of RAD properties requesting them in any one year; and • A PHA can limit Choice-Mobility moves to no more than 15 percent of assisted units in each RAD property.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
		<p>If a PHA invokes either of the above limits on Choice-Mobility, the PHA must establish and maintain a waiting list and place households requesting Choice-Mobility in RAD properties at the top of the waiting list.</p> <p>Choice-Mobility applies to all PBRA conversions <u>unless a project has received an exemption</u>. Under PBRA, HUD provides for good cause exemptions for up to 10 percent of all RAD units:</p> <ul style="list-style-type: none"> • PHAs that do not administer a voucher program either directly or through an affiliate. • PHAs that have more than one-third of their turnover vouchers set aside for veterans or homeless populations. This preference must be documented by the PHA's board prior to submission of the RAD application.

HUD's Guide to Choosing Between PBVs and PBRA for Public Housing Conversions (continued)

Program Requirement	Project Based Vouchers (PBVs)	Project Based Rental Assistance (PBRA)
IV. Other		
Program Cap	Under the PBV program, not more than 20% of a voucher agency's budget authority can be project-based; however, this provision was waived for RAD units.	N/A
REAC Uniform Physical Condition Standards (UPCS) Inspections	N/A (there are no REAC UPCS inspections in the PBV program unless project has an FHA-insured loan)	Subject to REAC UPCS inspections and protocols.
Management and Occupancy Reviews (MORs)	N/A (there are no MORs in the PBV program unless project has an FHA-insured loan)	Subject to annual MORs and associated protocols, as administered by the Office of Housing.
REAC Annual Financial Statements (AFS)	N/A (there are no AFS submissions in the PBV program, unless project has an FHA-insured loan)	Subject to AFS requirements.
Cash Flow	No restriction.	Same.

CHAP

- The CHAP is the equivalent of a HUD RAD award letter
- The CHAP sets forth the required milestones
- The CHAP specifies the number of units to be converted and the contract rents. Does not address additional land or non-dwelling units.
- Within 30 days of CHAP issuance, PHA submits PIC application for the units to be “Removed from Inventory/RAD.”

PIC ENTRY

- The PIC entry amounts to acceptance of the CHAP
- PIC entry exempts the property from scoring under the Public Housing Assessment System (“PHAS”). Properties with CHAPs are still subject to physical inspections and other PHAS assessment, but will not be scored
- Allows the PHA to also propose additional real property to be removed from public housing restrictions (associated land and non-dwelling units)

CHECK-IN CALLS

- Transaction Manager will schedule monthly check-in calls.
- Goal is to check on progress made by the PHA and discuss any necessary changes in the planned conversion.
- Includes discussion of progress on Financing Plan and any changes in amount of financing needed.

CHAP AMENDMENT

Need to discuss changes with the Transaction Manager (“TM”) and request a CHAP amendment if any of the following occurs:

- Change in unit configuration
- Change in unit count, unit distribution or rents
- Phasing or decision to only convert a portion of an AMP
- Breaking-up or combining CHAPs
- Rent-bundling (where rents are bundled across two or more projects). PHA must submit request using the RAD Rent Bundling Worksheet

FINANCING PLAN

The Financing Plan includes:

- Type of Conversion (PBV or PBRA)
- Development Budget (sources/uses) entered into transaction log of Resource Desk
- Operating Pro-Forma (revenues/expenses) entered into transaction log of Resource Desk
- Proposed financing

FINANCING PLAN (continued)

- Physical Condition Assessment (“PCA”) (now Capital Needs Assessment “CNA”)
- Scope of work
- Environmental Reviews (required by statute whenever a project first receives Section 8 project-based assistance)
- Evidence of Annual Plan or Significant Amendment
- If applicable, executed amendment to Attachment A of MTW Agreement
- Accessibility and Relocation Checklist
- Market study only required at HUD’s request

FINANCING PLAN (continued)

DUE DATE

- Non LIHTC transactions: the Financing Plan (or, for FHA transactions, the Application for Firm Commitment) is due 180 days from CHAP issuance date
- 4% LIHTC transactions: evidence of LIHTC Application and completed CNA due 180 days from CHAP issuance date. Financing Plan due within 90 days of 4% LIHTC award
- 9% LIHTC transactions: evidence of application for first available 9% LIHTC round 90 days after CHAP issuance date. Financing Plan due within 180 days of 9% LIHTC award

FINANCING PLAN (continued)

- Once the Financing Plan is uploaded, TM has 5 days to determine if the submission is complete.
- If incomplete, TM issues a request for the missing documents and the PHA must submit them within 5 business days or the CHAP is at risk of being revoked.
- If complete, TM will review the documents and may have questions. Any questions or requests for additional information must be answered within 5 business days.
- Once all questions have been addressed, TM notifies the PHA of acceptance of the Financing Plan and the RCC is issued.

RCC

- Memorializes the key elements of the Financing Plan
- Gives instructions and requirements for closing
- Executed by HUD and the owner (if there is a new owner, both the PHA and the new owner execute)
- PHA must execute the RCC within 30 days of issuance
- Once RCC is issued, HUD RAD Team assigns a Closing Coordinator
- RCC expires in 90 days, but closing is expected to occur within 45 to 60 days of RCC issuance
- RCC survives closing

RCC (continued)

- The RCC survives closing
- Includes 9 Exhibits:
 - ▶ Exhibit A: Closing Preparations
 - ▶ Exhibit B: Form of RAD Use Agreement
 - ▶ Exhibit C: Form of RAD HAP Contract
 - ▶ Exhibit D: Sources and Uses (Completed by the TM based on approved Financing Plan. Any changes must be reviewed and approved by the TM)
 - ▶ Exhibit E: Key Business Terms (completed by the TM. Includes lender name, interest rate, amount and term of loans)
 - ▶ Exhibit F: List of Repairs or New Construction
 - ▶ Exhibit G: List of critical repairs (they must be completed prior to closing and a Certification of Completion is required)
 - ▶ Exhibit H: Form A or Form B (Accounts Payable)
 - ▶ Exhibit I: Excess obligations (TM lists out excess obligations that must be satisfied prior to closing)

HUD FIELD OFFICE COUNSEL

- Generally, all documents needed for the RAD conversion are reviewed by HUD's RAD team in Washington, D.C. (Transaction Manager and/or Closing Coordinator)
- In addition, the HUD Field Office counsel reviews and approves the following documents:
 - ▶ Survey
 - ▶ Title Policy Pro Forma
(clean title, correct legal description, proper recording order)
 - ▶ Organizational Documents for key entities and partners (and verification of PHA involvement)
 - ▶ Subordination Agreements/Release of Existing Debt
 - ▶ RAD Use Agreement
 - ▶ Release of Declaration of Trust
 - ▶ Opinion of Owner's Counsel
 - ▶ Additional Documents, if requested

CLOSING

- Draft documents submitted to HUD for review and approval by RAD staff and field counsel.
- List of required documents available on RAD Resource Desk
- Once all documents are approved, the execution of the RAD Use Agreement is the final step.

CLOSING (continued)

- The Public housing project, the associated underlying land, grounds, green space, parking lot, non-dwelling units are officially removed from the public housing program and the Annual Contribution Contract (“ACC”).
- HUD releases the existing public housing Declaration of Trust.
- The asset is transferred to the Section 8 program and a RAD Use Agreement is signed and recorded.

RAD Use Agreement

- Constitutes a lien on the property
- Recorded in first position
- Contains affordability and use restrictions for the property
- Binding on all current and future owners. Enforceable against current and future owners by HUD, tenants and applicants for occupancy
- Obligates future owners to comply with affordability requirements, even in the event of HAP Contract termination or default, foreclosure, bankruptcy, or transfer of control
- Same term as the HAP Contract. Auto-renews when the HAP Contract is renewed
- But if the HAP Contract is terminated by HUD for breach, then the RAD Use Agreement only requires that new tenants have incomes at or below 80% of AMI and rents must not exceed 30% of 80% of AMI.

RAD HAP Contract

- The HAP Contract is the vehicle for providing rental assistance payments
- PBRA: HUD Forms 52620 (Part 1) and 52618 (Part 2). PBRA HAP Contract is signed by HUD and the PHA or New Owner. Term is 20 years.
- PBV: HUD Forms 52530A (Part 1) and 52530A (Part 2) and PBV HAP Rider, HUD Form 52621. PBV HAP Contract is signed by the voucher agency and the PHA or New Owner. Term is 15 years and may be increased up to 20 years
- Effective Date = 1st day of the 1st month following closing
- Includes contract rents for each unit type
- Subject to mandatory contract renewal upon expiration of initial term and each renewal term

POST CLOSING

- PHA submits .pdf versions of the signed HAP contract and the signed RAD Use Agreement to the Closing Coordinator (within 1 day)
- PHA submits all other signed documents to the Closing Coordinator within 1 week
- Recorded documents are sent to the Closing Coordinator when available
- PHA performs final steps to remove the units from PIC (Submission of HUD Form 50058 End of Participation prior to the new HAP Contract effective date)

PHA Requirements

Planning

- Identify units to be converted. Consider entire portfolio conversion
- Demolition of existing LIPH units and new construction is permitted. RAD assistance can be transferred to a different site (in that case, a Relocation Plan must be submitted; no PCA required)
- Quantify capital needs
- Prepare preliminary development and operating budgets

Planning (continued)

- Use the HUD Excel RAD Inventory Assessment Tool (“Tool”) on RAD website to review current funding, estimated RAD contract rents, estimated first-year income and expenses and estimated net operating income available to service debt
- Identify potential sources of funds (debt and/or equity). Letters of intent will need to be attached to the RAD Application
- Hold at least two (2) resident meetings
- Hold a Board of Commissioners’ meeting to approve submission of the RAD Application

Planning (continued)

Special Issues

- Capital Fund Financing Program (“CFFP”). CFFP loans are secured by future capital fund allocations, which the PHA will no longer receive for RAD projects. Need lender approval to pay off or restructure the debt, even if capital funds on remaining public housing units can service the debt.
- Operating Fund Financing Program (“OFFP”). OFFP loans are secured by public housing subsidy, which the PHA will no longer receive for RAD projects. Need lender approval.
- Energy Performance Contracts (“EPCs”). EPCs include long term financing secured by all properties included in the implementation of energy conservation measures. Need lender approval to release properties to be converted, prepay the debt in whole or in part, and restructure the loan. Also need to submit updated documentation to HUD’s Energy Center.
- Existing Mixed-Finance transactions (including HOPE VI). Existing debt will likely need to be prepaid. Need lender approval.

Fair Housing and Civil Rights Review

- HUD now requires upfront civil right review and approval for:
 - ▶ New construction (to assess minority concentration)
 - ▶ Reduction of assisted units, change in unit configuration, or change in unit type (to assess whether change would result in discrimination)
 - ▶ Transfer of assistance (to assess relevant Site and Neighborhood Standards, accessibility and any change in units)

General RAD Requirements

- The RAD conversion must be included in the Annual Plan, or the PHA must submit a Significant Amendment to the Plan. (See HUD's sample PHA Plan Significant Amendment included as Attachment 1D to the RAD Notice)
- Need to obtain a RAD Physical Condition Assessment, now called a Capital Needs Assessment ("CNA"), for all projects that do not fall within exceptions. The goal is to determine how much rehab is needed and size of replacement reserves

General RAD Requirements (continued)

- Exemptions from CNA: project built within last 5 years; new construction or substantial rehab (“down to the studs”); LIHTC. But no property is exempt from sizing replacement reserves with the HUD Excel Tool
- Section 18 Demolition/Disposition rules do not apply unless the number of units is reduced by more than a *de minimis* amount
- A project cannot have both RAD and Section 18 approval. The PHA must select one. Projects that already have a Section 18 approval are not eligible for RAD if the PHA has taken action based on the Section 18 approval (e.g., entered into demolition contract or requested Tenant Protection Vouchers)

Resident Rights

- Any displacement of existing residents for more than 1 year requires compliance with the Uniform Relocation Act
 - ▶ All tenants have a right to return
- Existing residents who are temporarily relocated during construction must have the right to return to the completed RAD project
 - ▶ If a portion of the property is demolished and built back on another site, the residents in the units to be torn down must have a unit reserved for them in the new site
- Rehab Assistance payments provided by HUD to assist with relocation costs
- RAD does not allow rescreening of existing residents who have a right to return
- If tenant's rent would increase more than the greater of 10% or \$25 then the increase is phased in over 3 to 5 years
- PHAs must consult and engage residents throughout the RAD process

Resident Rights (continued)

- Choice mobility available to tenants (after 1 year for PBV tenants; after 2 years for PBRA tenants)
- Resident participation funds remain available (\$25 per unit per year, of which at least \$15 per occupied unit per year must go to the tenant organization)
- Investor will review and approve the form of lease
- Owner entity must sign Consolidated Owner Certification stating that residents had 30 days advance notice
- Leases must be renewed unless cause for termination exists
- New leases for existing residents must be signed prior to the effective date of the HAP contract
- Residents can still participate in Family Self Sufficiency and Resident Opportunities and Self Sufficiency Programs

RAD and LIHTC

Adding LIHTC to the RAD Process

- LIHTC is a key component if substantial rehabilitation is needed
- The property may not qualify for a large enough loan/may not be able to generate enough cash flow for debt service
- If the existing units have low contract rents/high expenses and need substantial rehab, 9% LIHTC may be the only way to finance the renovation
- Opportunity to earn a developer fee

LIHTC Program Overview

- Established by the Tax Reform Act of 1986 to encourage private investment in affordable housing
- Program administered by state housing finance agencies
- States receive tax credits based on population, therefore the amount of available 9% credits is limited. Selection priorities and procedures vary in each state and are outlined in a Qualified Allocation Plan (“QAP”)
- Dollar for dollar reduction of federal tax liability for the owner of the qualified project
- Credits claimed over a 10 year period
- Restrictions in place for 15 years
- Many states extend the restrictions for a longer period

Types of LIHTC

- 9% LIHTC are the best you can get
 - More equity – 70% present value
 - But much more competitive because limited amount in each State
- 4% LIHTC with Tax-Exempt Bonds
 - Less equity – 30% present value
 - Easier to obtain (bonds are competitive but 4% credits are automatic and not subject to the per capita limit)
 - More complex financing structure
 - Higher closing costs
- Rates change monthly as published by the IRS

LIHTC Program Requirements

- Occupancy/Income Requirements
 - ▶ Either 20% of units occupied by households with incomes at or below 50% of AMI, adjusted for family size (“20/50”)
 - ▶ Or 40% of units occupied by households with incomes at or below 60% of AMI, adjusted for family size (“40/60”)
 - ▶ The set-aside election is made on IRS Form 8609
 - ▶ The requirements of the minimum set-aside must be met no later than the close of the first year of the credit period and must continue throughout the compliance period
 - ▶ Tenant income must be reviewed and documented at least annually throughout the compliance period
- Rent Requirements
 - ▶ The gross rent for a LIHTC unit may not exceed 30% of the imputed income limit applicable to such unit size
- Maintain habitability standards
- Operate under the occupancy/income and rent restrictions for at least 15 years (30 or more years in many States pursuant to Extended Use Agreements)

Credit Calculation

- Credits based on Eligible Basis, not total development costs. The determination of a building's Eligible basis is the starting point for the computation of the credit
 - ▶ Most costs, minus non-depreciable items (Eligible basis includes rehabilitation costs, reasonable developer fee)
 - ▶ Examples of non-eligible costs: land, syndication costs, financing costs, legal fees related to the acquisition of land, costs of surveys, federal grants
- Qualified basis
 - ▶ The qualified basis of a building is that portion of the building's eligible basis that is attributable to low-income tenants
- The credit is calculated to provide a yield over a 10 year period equal to 70 percent or 30 percent, as applicable, of the building's qualified basis

Credit Calculation (continued)

- Eligible basis \times percent qualified units \times applicable percentage \times 10 years = total tax credits
- Total tax credits \times price per credit = investor total equity
- Note that most of the investor's equity will not be contributed to the owner entity until the project is completed

Recapture

- 10 year credit period / 15 year compliance period means the credits are “accelerated”, i.e. claimed faster than they are earned
- Recapture percentage depends on year in which recapture event occurs. Only the accelerated portion of the credit is recaptured.
- Recapture events - Recapture occurs if there is a decrease in qualified basis:
 - ▶ Nonqualified unit: for example, a unit not occupied by a qualified tenant, or a unit for which the owner charges above limit rent
 - ▶ Building disposition through sale or foreclosure unless the building is expected to continue to be operated as a low income building
 - ▶ Unit not suitable for occupancy (casualty loss or dilapidated unit)

Recapture (continued)

- Opportunities to cure issues that could lead to Recapture
 - ▶ Compliance issues corrected before year end do not lead to recapture
 - ▶ Units affected by a casualty event can be repaired/placed back in service
- Recapture amount calculated based on the decrease in qualified basis / new applicable fraction, plus interest

RAD and LIHTC

The tax credit “fast track”

- HUD Process created in 2014 for RAD conversions using 9% or 4% LIHTC with conventional/non-FHA financing
- Traditional RAD Milestones are consolidated
- Requirements listed at www.radresource.net (see *Fast Track Submission Checklist*)
 - ▶ Underwriting Documents
 - ▶ Administrative Program Requirements
- If you apply but do not receive tax credits, you have 90 days to come up with a feasible alternative financing plan or your CHAP may be revoked

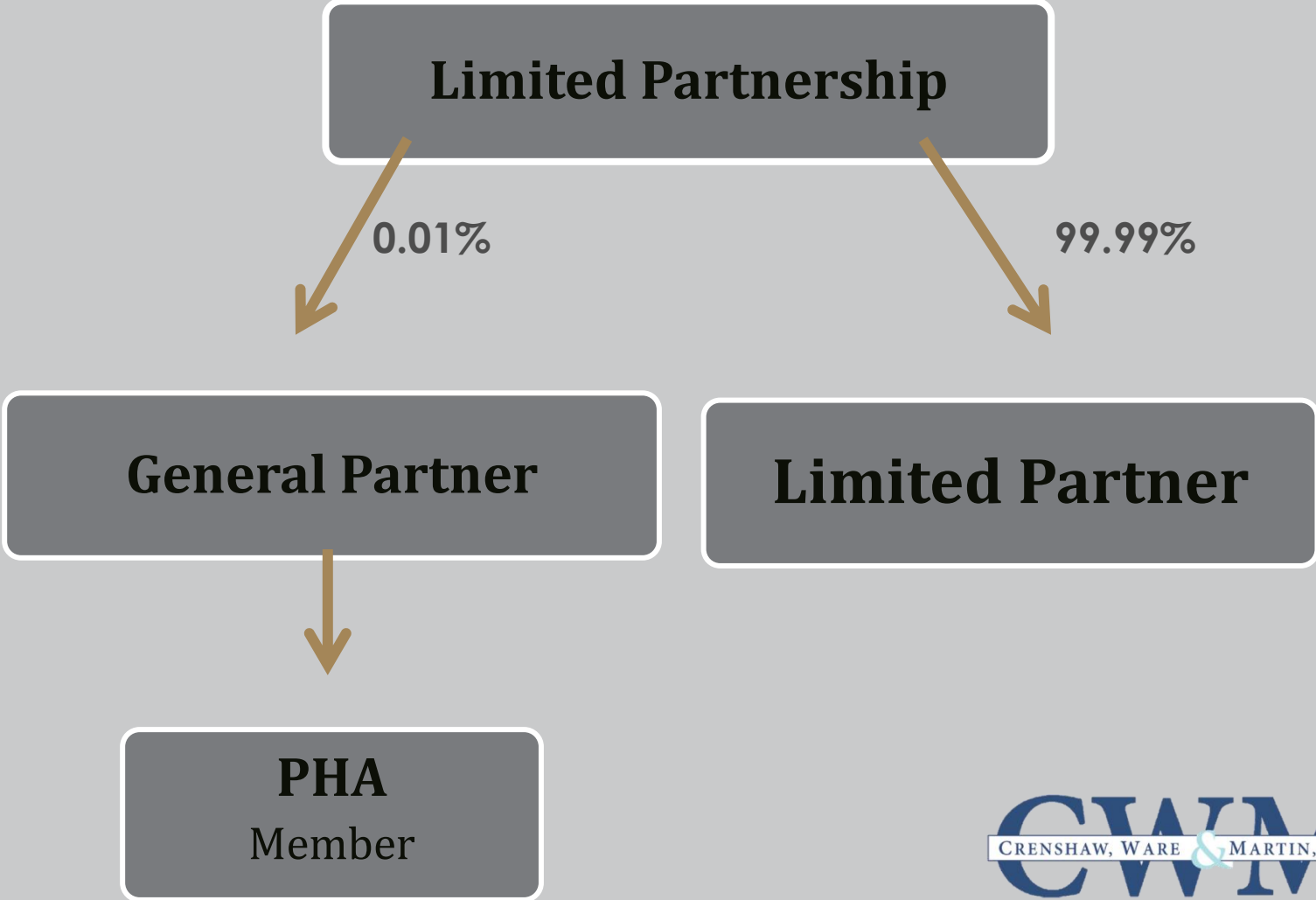
Ownership Structure in LIHTC/RAD Transactions

- Under RAD, the converted units must be owned or controlled by a public or nonprofit entity, except where LIHTC are used, in which case ownership by a for-profit entity is permitted but only if the PHA preserves its interest in the property in a manner approved by HUD
- Owner of the units is a for-profit entity (limited partnership)
- Tax credit investor is the limited partner and typically owns 99.99% of the entity
- General Partner typically owns 0.01% and oversees operations

Ownership Structure in LIHTC/RAD Transactions (continued)

- PHA must have some “control” over the limited partnership. PIH Notice 2012-32, REV-2 clarifies what is required:
 - ▶ PHA, or wholly-owned affiliate, serves as the sole general partner or managing member;
 - ▶ Long-term ground lease;
 - ▶ PHA retains control over the leasing of the project;
 - ▶ PHA retains consent rights over certain acts of the owner (e.g., disposition of the project, leasing, selecting management agent, setting the operating budget, making withdrawals from reserves); or
 - ▶ Other means that HUD finds acceptable
- Right of first refusal for benefit of PHA and subordinate financing provided by the PHA is not sufficient to meet the “control” requirement

Ownership Chart for LIHTC/RAD Transaction



Potential Roles for the PHA

- PHA can maintain ownership of the land. Ground lease to the limited partnership
 - ▶ Ground Lease Payments
- PHA can sell the land to the limited partnership
 - ▶ Seller financing
- PHA can provide subordinate financing, secured by a lien on the units
 - ▶ Financing fees/debt service
- PHA can serve as sole developer, or co-developer
 - ▶ Opportunity to earn a developer fee

Potential Roles for the PHA (continued)

- PHA will generally be a member (or the sole member) of the general partner entity
 - ▶ Cash flow
- PHA can serve as property manager
 - ▶ Opportunity to earn a property management fee
- Right of first refusal for sale of the property
- Fees earned by the PHA are unrestricted funds (NOT program income)

Parties to the Transaction

- Developer
- Lender
- LIHTC investor
- State Housing Finance Agency
- Residents
- Consultant, General Contractor, Architect, Engineer, Surveyor, Title Company, Locality, Attorneys, Accountants

Investor Considerations

- Price per credit matters, but is not the only concern
- Investor familiarity with PHAs
- Guaranties (construction completion, operating deficit and recapture)
- Investors tend to require a developer with LIHTC experience
- Investors/their counsel will review all contracts and loan documents. May require Riders

Permanent Loan – RAD Requirements

- Fixed Interest Rate
- Fixed Term
- Fully amortizing over no more than 40 years
- Maturity or balloon no earlier than 18 years from closing (exception: loans in PBV transactions can mature at the same time as the termination of the PBV HAP Contract)
- DSCR cannot be less than 1.11 over a ten year period using 2% growth in revenue and 3% growth in expenses

Choosing a Lender

- Experience with PHAs
- Familiarity with HUD and with RAD. Lack of familiarity with the process may result in delays and increased costs
- Underwriting, DSCR requirements and due diligence
 - Timeline
 - Costs involved (lender's legal fees, third party reports such as environmental reviews)
- Investor will want to approve the loan structure and loan documents

Choosing a Lender (continued)

FHA-Insured Financing

- FHA-Insured Financing can be used with RAD: Section 223 (f) for refinancing or acquisition with minor repairs; Section 221(d)(4) for substantial rehab; Section 223(f) LIHTC Pilot processing for rehab up to \$40,000 per unit
- The RCC and the FHA Firm Commitment are conditioned upon each other
- FHA RAD transaction is assigned both a RAD closing coordinator and a Hub Multi-Family closing coordinator in the jurisdiction where the project is located
- HUD follows the HUD FHA process
- FHA-Insured Financing is subordinate to RAD Use Agreement

Other Funding Sources

- PHA can use current public housing funds for predevelopment costs and construction
- HOME and CDBG funds can be used but remain subject to the HOME and CDBG program restrictions
- Affordable Housing Program (“AHP”) of the Federal Home Loan Bank
- Local or State Housing Trust Funds

Choosing a Contractor

- Price matters but is not the only concern
- Low bidder may be a company that submits a plethora of change orders
- Experience with PHAs
- Experience with LIHTC process and ownership structure
- Investor will want some input on the contractor selection, construction contract and insurance coverage

Sample Transaction: Franklin, VA



RENTAL ASSISTANCE DEMONSTRATION

RAD Spotlight on Franklin, Virginia

U.S. Department of Housing and Urban Development

Secretary Julián Castro

RAD Spotlight on Franklin, Virginia: Full Conversion of a Small Portfolio

The Franklin Redevelopment and Housing Authority is a small public housing agency located in Franklin, Virginia, about three hours south of Washington, DC. The FRHA's public housing portfolio is composed of 150 total units, all in need of significant repairs and upgrades. According to the FRHA's Executive Director Philip Page, Jr., the housing authority's public housing stock was at a "tipping point." The FRHA had two options, either continue using capital funds for a few more years to maintain the properties at their current state, or completely renovate the portfolio, giving the units another lease on life.



In 2013, the FRHA was receiving \$196,000 per year in capital funding for all of their public housing units, an amount that was insufficient to address its \$7 million dollar capital needs backlog. The housing authority knew that continued reliance on capital funds would not afford them the ability to deliver quality affordable housing to its residents. However, in June 2013, the FRHA was awarded 9% low-income housing tax credits (LIHTC) by the state, which provided a springboard for rehabilitation.



With the LIHTCs in hand, the FRHA needed a tool that would enable them to effectively leverage the tax credit equity to make much needed repairs to their portfolio of public housing units. The Rental Assistance Demonstration (RAD) provided a path forward. RAD allowed the FRHA to use both tax credit equity, as well as conventional financing and debt, to

generate enough capital to place their entire public housing portfolio on a stable funding platform. Converting under RAD enabled the FRHA to address its backlog of capital needs, thereby providing their residents with long-term stability, affordability, and high quality housing.

The State of FRHA's Portfolio

The FRHA's public housing portfolio is composed of three properties— Berkeley Court Apartments, Pretlow Gardens, and Old Town Terrace—totaling 150 units. With the oldest development built over forty years ago, the FRHA found itself needing to conduct repairs and provide improvements of upwards of \$47,275 per unit, an amount that far exceeded the \$196,000 it received in capital funds.



WHAT IS RAD?

The Rental Assistance Demonstration (RAD) allows public housing agencies (PHAs) and owners of HUD-assisted properties to convert units to project-based Section 8 programs, providing an opportunity to invest billions into properties at risk of being lost from the nation's affordable housing inventory. The "first component" of the program allows properties funded under the Public Housing and Section 8 Mod Rehab programs to convert their assistance to long-term, project-based Section 8 contracts. The "second component" of RAD allows owners of projects funded under HUD's legacy programs (Rental Supplement, Rental Assistance Payment, and Moderate Rehabilitation) to convert units to Section 8 project-based vouchers.

The 1.2 million units in the Public Housing program have a documented capital needs backlog of nearly \$26 billion. As a result, the public housing inventory has been losing an average of 10,000 units annually through demolitions and dispositions. Meanwhile, the 38,000 units assisted under HUD's legacy programs are ineligible to renew their contracts on terms that favor modernization and long-term preservation. The current conditions of many of these properties inhibit investment and recapitalization efforts in the communities with the most need. By drawing on an established industry of lenders, owners, and stakeholders, RAD allows PHAs and owners of HUD-assisted housing to preserve and improve affordable housing units that could be subject to vouchers and demolition. RAD creates greater funding certainty while allowing increased operational flexibility to empower PHAs and owners to serve their communities.

As of December 10, 2014, 110 RAD applications have closed, covering 11,433 units and representing over \$500 million in new investment. PHAs have submitted over 1,000 applications covering more than 185,000 units. RAD's initial statutory authority set a cap of 60,000 units of public housing and Mod Rehab housing that could seek to convert under RAD's first component. PHA demand exceeds RAD's current authority and HUD has requested that Congress lift the cap on eligible units to allow more PHAs to participate in the program.

RAD Spotlight on Franklin, Virginia:

Full Conversion of a Small Portfolio



Due to the age of the properties and the growing unmet needs of the residents served, the FRHA's communities were in desperate need of immediate repairs, as well as a path to addressing long-term capital needs in the future. RAD affords public housing authorities (PHAs), like the FRHA, with the ability to utilize a variety of financial resources to facilitate renovations and, in some circumstances, new construction. Additionally, RAD provides PHAs with the ability to create a pool of funding to draw from for future capital needs.



Renovation Plan

Converting an entire portfolio requires close attention to the relocation needs of the residents and the requirements set out in the RAD Relocation Notice. The FRHA's planned renovations for each property require that no more than three to five buildings are renovated at a time, ensuring adequate vacancies throughout the renovation process. This will require temporary relocation for up to ten families at a time. The FRHA will move the tenants temporarily into vacant units in other developments owned by the authority, or cover temporary hotel expenses if other units are not available. When the units are completed, the FRHA will move those tenants back into their prior residences and begin the process over with the next ten tenants. It is anticipated that it will take three to four weeks for each grouping of units, and all of the residents will be back in permanent, renovated homes within seven to nine months. For each transaction, the development budget includes a provision for relocation expenses (estimated at \$50,000 for each transaction). This will be used to cover temporary moving expenses, storage expenses and hotel expenses if necessary.

Financing Overview

The rehabilitation will provide for \$51,060 per unit in construction costs. Debt, equity, grants and soft loans, along with \$526,000 in public housing capital funds combined provide \$68,580 per unit in sources, covering the hard



and soft costs of the transactions. This transaction leverages FRHA's capital fund contribution to raise over \$9.7 million in other sources, a ratio of \$18.55 for every \$1 in capital funding. In addition to initial repair funds, the FRHA is also able to contribute \$45,000 per year, or \$300 per unit per year, to an annual contribution to replacement reserve which will allow the housing authority to make needed capital repairs in the future.

A small PHA and a complex transaction

For smaller housing authorities like FRHA, pulling off a successful portfolio conversion requires collaboration between the housing authority staff and the development team, as well as a commitment by all involved to preserve long-term affordable housing. The FRHA's development team helped the agency navigate the complexity of redeveloping its entire public housing portfolio. The FRHA's Executive Director, Philip Page, was formerly the Director of Development for a mid-sized PHA, but the team also included many sophisticated and experienced small firms that acted as an extension of the housing authority. FRHA worked with an architect on design and construction issues, a development consultant for financing and grant applications, and a local attorney with experience in tax credit and mixed-finance transactions.



Converting the entire portfolio of public housing units through RAD was the FRHA's plan from the start. For Page and the FRHA, RAD presented itself as a life line to the authority's public housing units. The FRHA's ability to bring together an experienced development team committed to preserving affordable housing combined with designing comprehensive relocation and financing plans led the way to a successful RAD conversion.

"The prime reason we chose to convert our housing using RAD was that it gave us the ability to reposition ourselves, and our housing stock, for the future. The numbers had to work, and they did, but the biggest benefit was being able to reposition away from the perceptions of dilapidated public housing into modern, high quality housing that just happens to be affordable."

- Philip Page, Jr., Executive Director

RAD Spotlight on Franklin, Virginia:

Full Conversion of a Small Portfolio



Conclusion

- With the continued deterioration of public housing units, and the continued funding uncertainty for Capital Funds, RAD may be one of the only viable options to renovate and preserve units
- RAD can be a good tool, combined with LIHTC, to help finance substantial rehabilitation
- Complete re-do or “gut rehab” and new construction will necessitate higher debt
- RAD does not always work, even with LIHTC. Run the numbers carefully
- Select your partners carefully

RESOURCES

- RAD Website: www.hud.gov/rad
- RAD Resource Desk: www.radresource.net

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