



2015 LEGAL AND POLICY SEMINAR RAD UPDATES

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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.

STATUS REPORT

- More than 35,000 units converted through RAD so far
 - Approximately 18,000 units under First Component
 - Approximately 17,000 units under Second Component
- Program currently in place through 2018
- Unit cap lifted for First Component from 60,000 to 185,000 units
- CHAPs for approximately 110,500 units have been issued
- Discussions to lift the unit cap

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

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

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 (“TM”) 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 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)

- Capital Needs Assessment “CNA” (formerly “Physical Condition Assessment”)
- 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)
 - Land and Property proposed for removal
 - 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

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)

ITEMS TO CONSIDER BEFORE APPLYING

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.

Planning (continued)

Special Issues

- 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.

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)

Challenges

- RAD involves multiple regulatory processes and systems that would normally require approval by different offices of HUD
- Learning curve on both sides (HUD and PHA)
- Volume: slow start, but now that the initial cap has been raised the HUD RAD office has seen a lot more applications
- Flexibility means a lot of various creative structures which challenge HUD staff and increase complexity of closings (both for HUD and for the PHA)

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)

RESOURCES

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

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