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COUNSELORS AT LAW

HAND Training  
Introduction to Public Housing  
and Public Housing Redevelopment



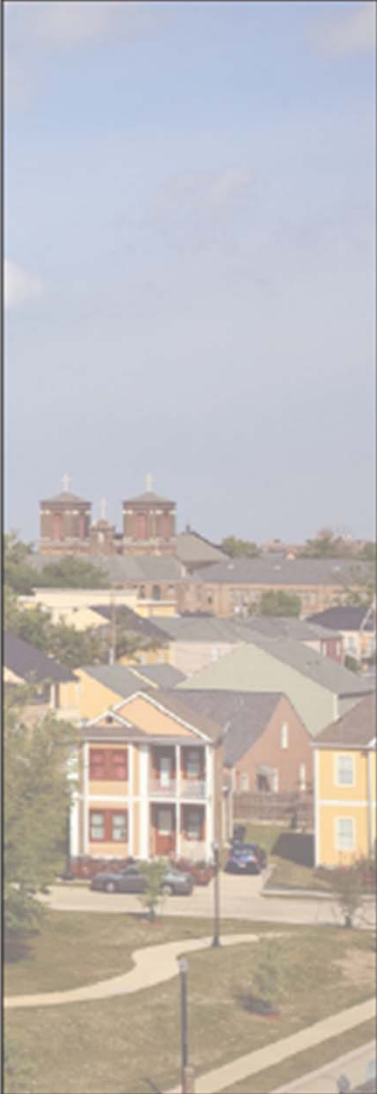
Chris Hornig and Eric Herrmann

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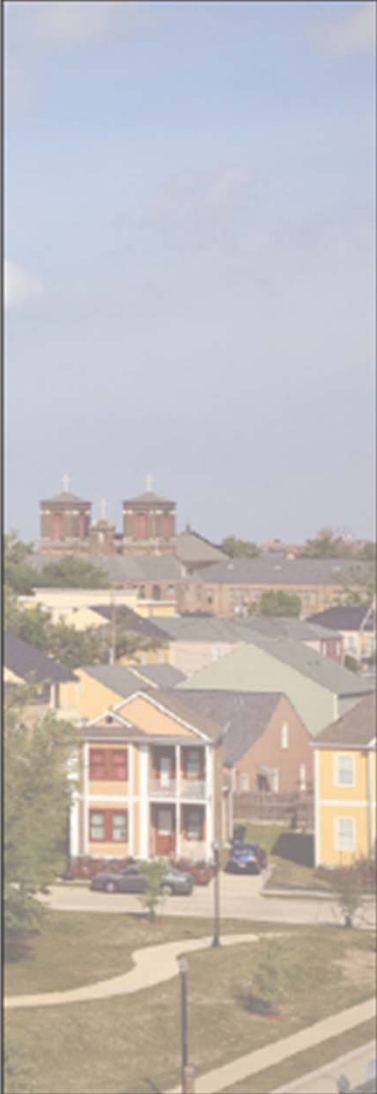


# Training Overview

- Public Housing Overview
- Mixed Finance Development
- RAD Overview



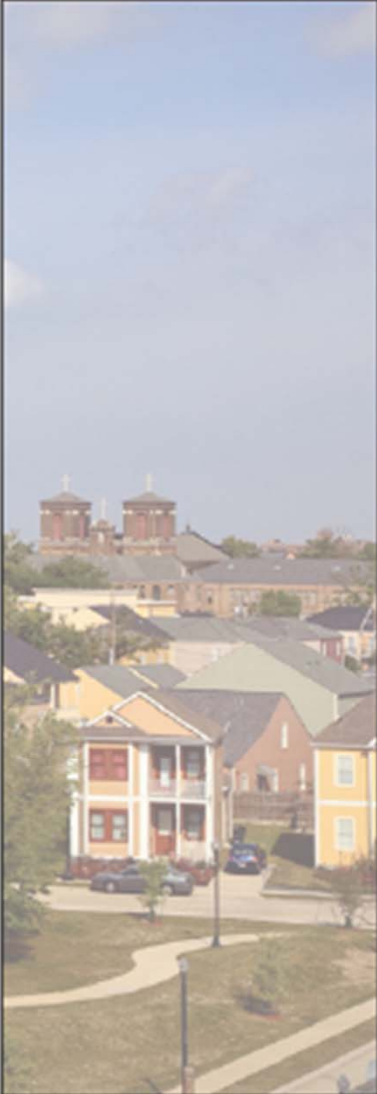
# Public Housing Overview



- 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.



# Public Housing Overview



- 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



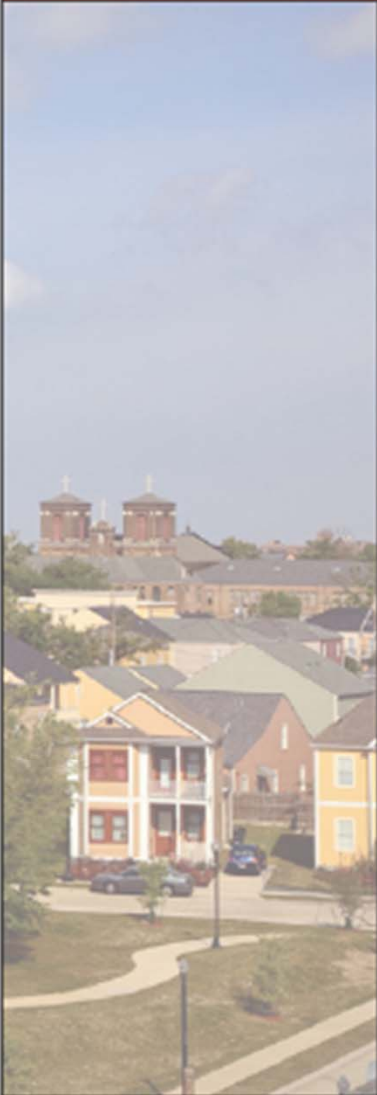
- Basic features of Public Housing
  - Public housing residents must have adjusted household income at or below 80% of Area Median income
  - At least 40% of families admitted to a PHA's public housing units must have incomes at or below 30% of AMI
  - Rents set at 30% of adjusted household income
    - 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.
- $\text{Subsidy} = \text{Projected Expenses} - \text{Projected Rents}$
- 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.

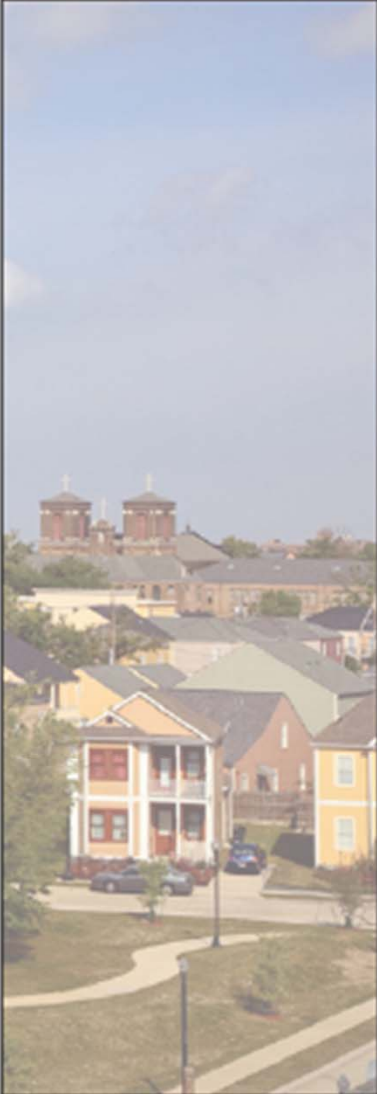




# Public Housing Overview

- Budget Outlook

<b>Program</b>	<b>FY16</b>	<b>Trump Budget</b>	<b>Funding Lost</b>	<b>% Cut</b>
Public Housing Operating Fund	\$4.500 B	\$3.900 B	\$0.600 B	13.3%
Public Housing Capital Fund	\$1.900 B	\$0.600 B	\$1.300 B	68.4%



# 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

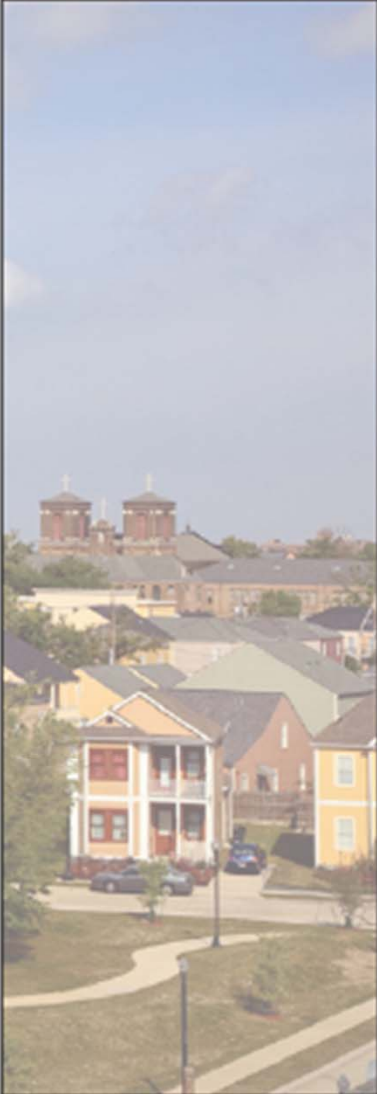


- **Mixed-Finance Development**

- 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



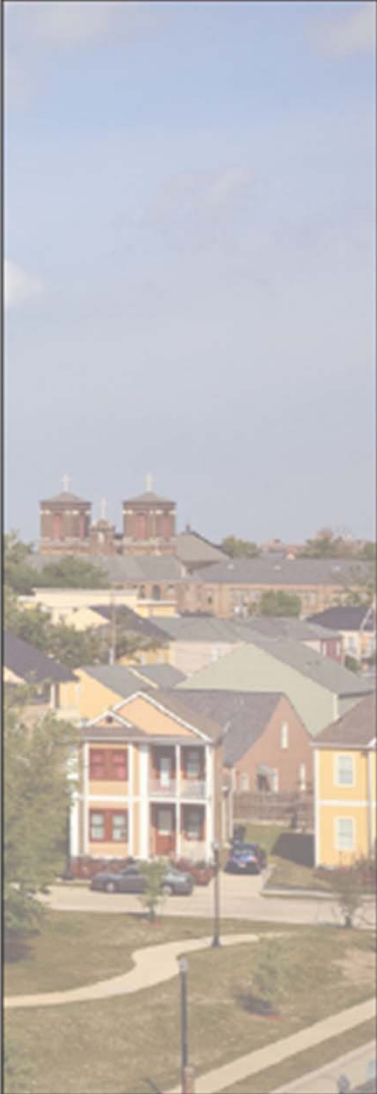
# Mixed-Finance Development



- 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



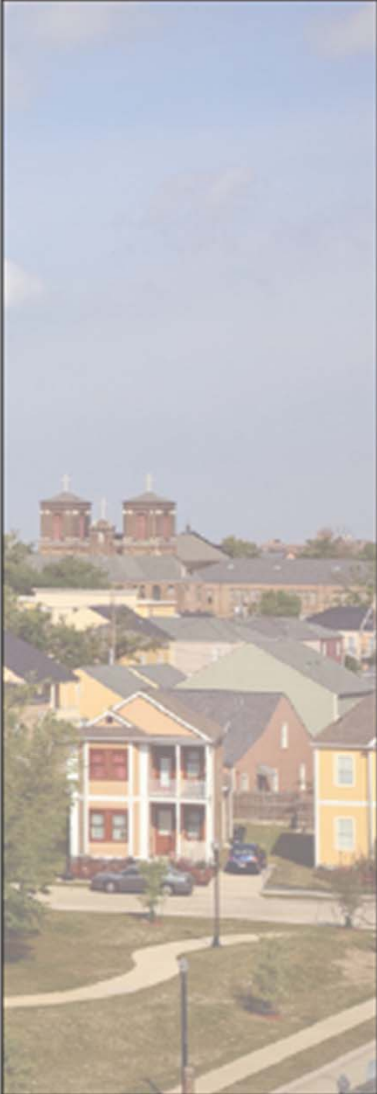
# Mixed-Finance Development



- 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



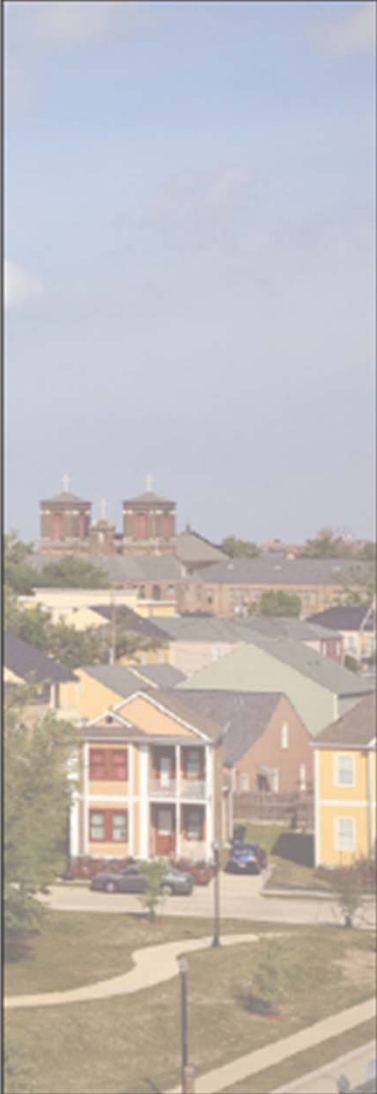
# Mixed-Finance Development



- 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
  - Coterminous 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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