Public Housing Repositioning Wednesday Webinar Series:

Developer Roles for Repositioning Public Housing

Panelists

Mike Andrews, Enterprise Community Partners subcontractor to HUD, Former Director of Development

Kathleen Foster, Enterprise Community Partners subcontractor to HUD, former VP for Real Estate Charlotte Housing Authority

Dan Esterling, Office of Public and Indian Housing

Luci Ann Blackburn, Choice Neighborhoods, Office of Public and Indian Housing

Greg Byrne, Office of Recapitalization

Jane Hornstein, Special Applications Center

Kathy Szybist, Special Applications Center

Why are we here?

The goal of this webinar series is to help explain and discuss common issues in the repositioning process.

Today's webinar will focus on:

What is the Role of a Developer?:

- When is a developer needed?
- Role of a Development Consultant
- Role of a Developer Partner

Webinar Topics	Dates
Developing a Repositioning Strategy	May 13, 2020
Options for Scattered-Site Units	June 3, 2020
Options for 50-and-Under PHAs	June 24, 2020
Resident Considerations	August 12, 2020
Streamlined Voluntary Conversion	September 2, 2020
Proceeds Notice	October 14, 2020
Common PHA Board Questions	October 28, 2020
Public Housing Program Closeout	November 18, 2020
Project-Based Voucher Program Overview	December 2, 2020
RAD and Section 18 New Blend Options	February 17, 2021
Preservation Strategies	March 17, 2021
Environmental Review Procedures	April 14, 2021
Developer Roles for Repositioning Public Housing	June 30, 2021

All webinars are recorded and posted at www.hudexchange.info

What is the Developer’s role?

- Responsible for all activities related to constructing, rehabilitating or purchasing real estate for affordable housing.
- Disciplines include resident engagement, community relationship, design management, construction management, affordable housing finance, HUD regulatory process (repositioning or mixed finance), property management oversight & asset management
- HFA & Investors require experience and proven track from developer as well as the financial ability to provide guarantees.

Development Process

Strategic Planning

What do you want to do with your asset and what tools are available?

Resident Engagement

Communication with residents about plans and practical matters.

Notices and rights

Implementing relocations

Problem solving

Pre-Development Activities

Gathering due diligence: title, survey, environmental, geo-tech, haz mat, etc.

Manage design process

Manage pre-construction process

Obtain permits

Problem solving

Affordable Housing Finance

Create financial plan (development and operating)

Applications for funding

Manage rules and underwriting

Negotiating terms

Closing financing

Manage funds

Problem solving

Construction Management

Selection of a general contractor

Pre-construction

Managing cost to budget

Section 3 and MWESB goals

Approval of work

Problem solving

Regulatory (HUD, State, PHA)

HUD: Repositioning (RAD, Section 18, SVC, Section 32), URA, FHEO, Section 3, procurement, Mix Finance, Davis Bacon.

State: Procurement, prevailing wages, other.

PHA: Procurement, bylaws, other policy

Problem Solving

Whether you need a developer role depends on your plan for the asset:

Repositioning alone may **not** require the developer role. Not required for:

1. Disposing of the asset through Section 18 or Section 22

2. Preserving the asset:
   - without rehab
   - with modest rehab that can be covered by PHA sources and/or other soft sources
   - With a loan not requiring guarantees beyond the PHA's financial capacity

Major Re-capitalization and/or New Construction typically requires the developer role:

- Complex Financing: 9% LIHTC, TE bonds and 4% credits

Role of Development Consultant

Typically, the Development Consultant does not provide any construction, LIHTC, or other monetary guarantees.

Has experience with the conversion options and can assist in developing a strategic plan for all assets owned by the PHA.

Can assist with managing the conversion process;

- hiring third parties to provide PCNA reports, Environmental reviews, surveys, title reviews, possible relocation services, etc.
- Managing regulatory requirements
- Documenting and updating the transaction through the RAD Resource Desk
- Helping the PHA handle changes in plan (no 9% credits) and switching financing options (4% or RAD construction blend + 4%)

Selecting a Development Consultant

Not required to follow federal procurement if no federal money will be used prior to closing, follow state and PHA

Be clear about scope of work, timing

Identify deliverables

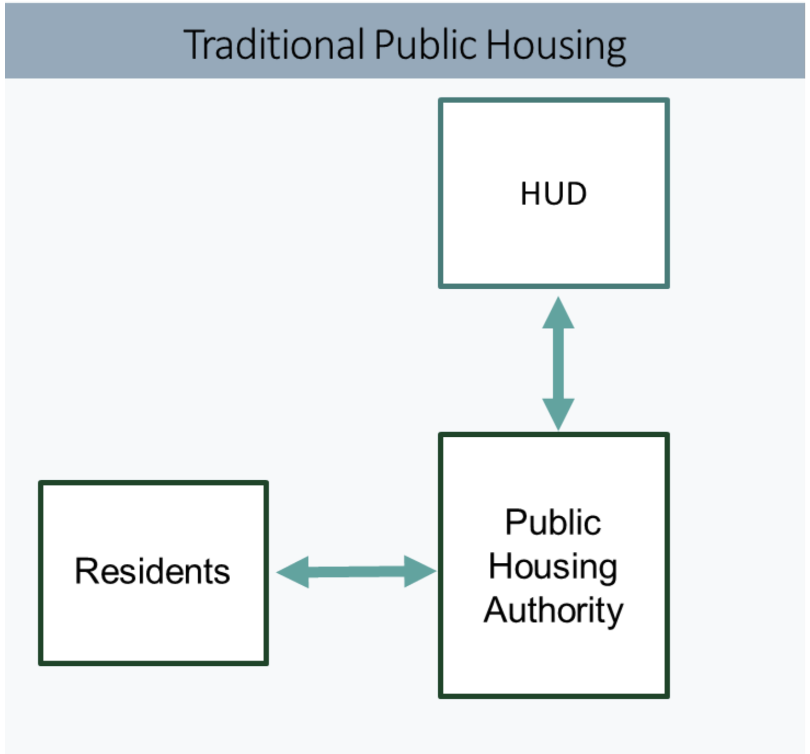
Think through ways to make the developer consultant share risk:

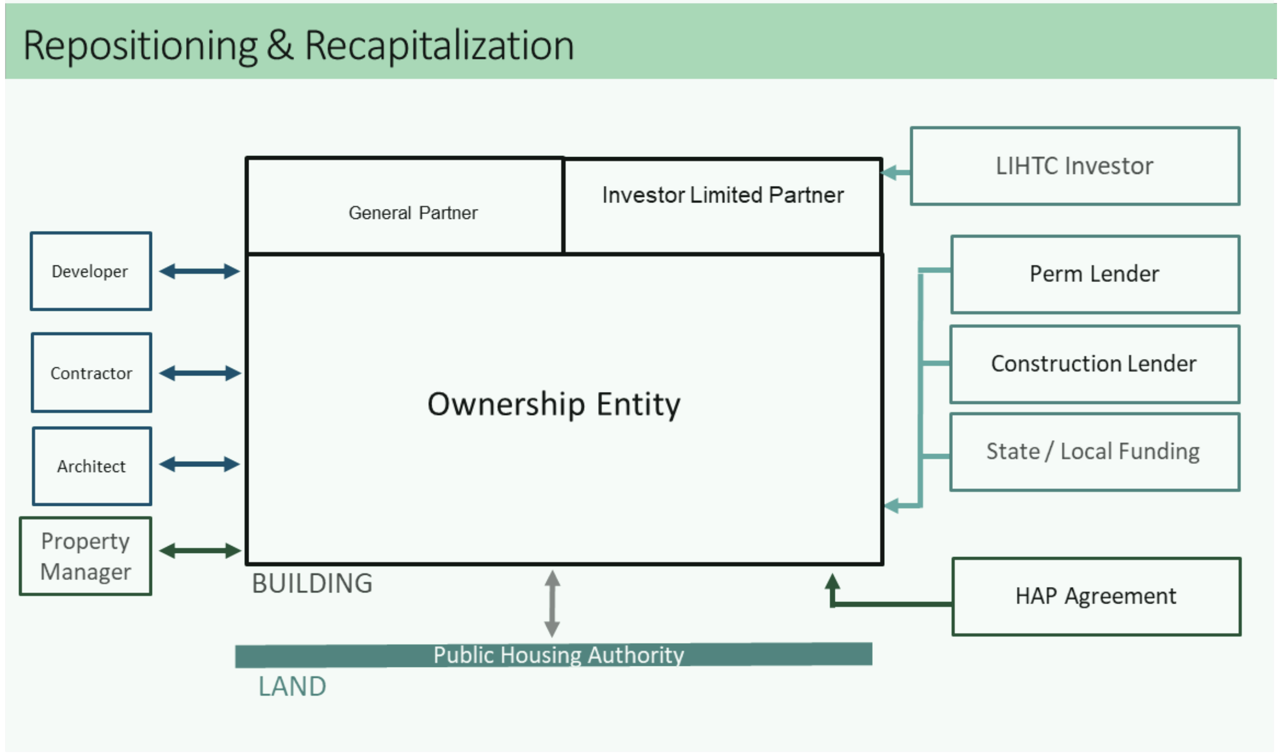
- Cap on fees
- % of fee tied to closing
- Importance of track record and references

Developer Role in Complex Transactions

LIHTC, 9% AND TE BONDS WITH 4% CREDITS

Development Structure





When should a PHA be a LIHTC Developer?

- When a commitment has been made to invest the staff, time and resources needed to be successful
- To fill a gap in the local housing system
- To have more control or influence on the type of housing developed
- To have control over access to housing in your community
- Financial benefits, diversify organizational revenue
- When they have enough experience to meet HFA and investor requirement

What is required to be a LIHTC developer?

ORGANIZATIONAL COMMITMENT FROM LEADERSHIP AND BOARD

TECHNICAL ABILITY TO SUCCESSFULLY MANAGE ALL OR PARTS OF THE PROCESS

ADMINISTRATIVE SYSTEMS NECESSARY TO MANAGE (ACCOUNTING AND FINANCE, DECISION MAKING)

FINANCIAL STRENGTH

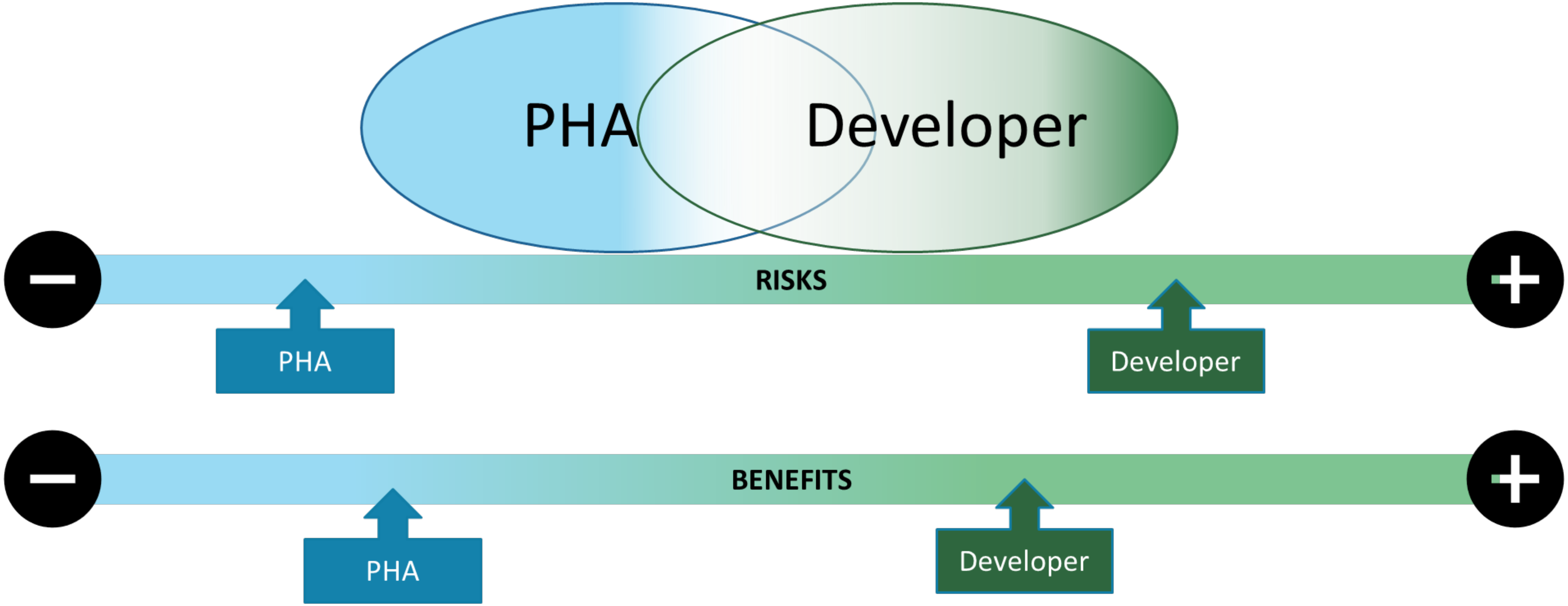
Common Developer Partnering Roles in LIHTC

Fee Developer without Ownership (aka "Turnkey Developer"): Developer is **r**esponsible for planning and development; hiring project participants; arranging financing; closing; construction supervision; LIHTC compliance; limited guarantees (construction completion; initial credit delivery; lease-up shortfalls). PHA is general partner and responsible for any required long-term guarantees (operating deficit; recapture). PHA to be Property Manager if 3-4 years LIHTC experience.

Co-Developer with Ownership: Developer has all responsibilities above plus all necessary long-term guarantees to tax credit investor; typically co-general partner for length of guarantees; may require third party experienced property manager for length of guarantees.

In all roles, transparency and trust are crucial.

A Continuum of Development Options



Working with Developer Partners

DEVELOPING TRUST AND MANAGING A STRONG WORKING RELATIONSHIP IN REPOSITIONING

PHA role in development

PHA has primary role in conversion:

- Control requirements: Owner; Control requirements in LIHTC
- General Partner or co-General Partner
- Co-Developer
- Responsible for proactively protecting resident rights
- RAD or Section 18 application formal applicant
- Brings valuable long-term rental subsidy to the transaction
- May bring gap funds (cap funds, reserves, etc.) and/or relationships for local/state gap funding (points for LIHTC)
- Often brings LAND
- Responsibility for managing required HUD approvals
  - RAD resource desk is a joint portal: most effective to allow both PHA staff and Developer access to RRD.
  - Financing Plan can't be submitted without PHA ED signature
- Participation in design
- Oversight
- Often is lead contact in relocation and post-construction return Asset Management
- PBV Administrator
- Long-term Land-lease-holder and Asset Manager

Transparency: Importance of building and maintaining trust with residents, the developer, the larger community

Selecting a Developer Partner

Federal Procurement Rules: If using Federal HUD funds prior to closing

- 2 CFR Part 200
- Must also be in compliance with state procurement and PHA rules
- Strategy of deferring as many fees as possible until closing

Only state procurement/PHA rules apply if:

- Using non-federal funds prior to closing
- Able to postpone third party payments until closing (architect, environmental, etc.)

Developer can then select without an additional competitive process:

- Architect/Engineer
- Property Manager
- Contractor: But best practice is to use at competitive process at least at the subcontractor level

RFP vs RFQ

Request for Proposal (RFP): Price, scope of work, qualifications, experience, approach

Request for Qualifications (RFQ): Price need not be requested or used as an evaluation factor

RFQ is most common approach for conversion developments:

- Qualify a group of developers and then select based on characteristics of specific project
- Qualify a single developer: Negotiate with top-ranked respondent; go to second if agreement can't be reached

RFQ Process:

1. Publish RFQ
2. In person (or zoom) meeting/Questions period
3. Responses are scored (based on factors/points in RFQ: experience, qualifications, use of minority contractors, Section 3
4. Selection Committee holds interviews
5. Recommendation to Board
6. Select and sign Letter of Agreement/Developer Agreement

Key Terms in the Procurement

Be as specific as possible about PHA's assessment of property and redevelopment and what the PHA wants based on its strategic plan

- Proposed financing: PHA's preference for RAD, S.18, blend, etc.; FHA, LIHTC
- Desired # of very affordable units on site and/or TOA site
  RAD: Requirement that PHA comply with RAD Underwriting requirements (Notice REV4, Attach.1A)
- Required compliance with other financing underwriting standards as applicable: LIHTC, FHA, Mixed Finance

Specify key business terms for the Developer Agreement

- PHA's desire to be Property Manager
- PHA and the developer negotiate developer fee, cash flow, and guarantees that each will receive and provide
- Cost-sharing for pre-development expenses
- Minority participation and Section 3
- Developer role in relocation (if any)
- Required evidence of PHA or nonprofit control (land lease, Right of First Refusal, etc.) (LIHTC)
- Required developer guarantees, construction, operating deficit, etc.
- Required LIHTC, bond, FHA qualifications and experience
- Experience with new construction vs rehab (especially in-place rehab)
- Legal requirements

Negotiating Development Agreements

Hire Experienced Legal Counsel depending on the nature of transaction:

- RAD
- S.18
- LIHTC (9% and TE bonds with 4% credits)

Master Developer Agreement:

- Clarifies terms between PHA and Developer typically for a series of developments that may take place over many years
- Can take 12 months or more to negotiate and developer is unlikely to begin predevelopment until agreement is reached.
- PHA has imperfect information and Developer has advantage of knowledge of markets and financing/what other parties to financing (lender; investor) are likely to require

Project-specific Developer Agreement:

- Begin with a Letter Agreement or Term Sheet addressing business terms from the procurement
- Negotiate Developer Agreement for Specific Developments once likely phasing and financing is known

What's in the Developer's Interest?

1. Good Reputation
- To build the best development possible that meets resident needs
- To build a good working relationship with the PHA

2. Fees
- To maintain the business
- To recover staff costs during predevelopment and through development (Time = money)
- Timing of developer fees

3. Mitigate Risk
- Limited guarantees, esp. operating deficit guarantees
- In LIHTC:
  - eliminate risk of recapture (lease-up by experienced players)
  - Minimize risk of credit delivery delay (b/c shortfall often reduces developer fee)

4. Transparency
- Full disclosure about HUD processes and requirements especially as they impact development deadlines
- Access: RAD Resource Desk; participate in telecons with PHA and HUD where possible

Risks & Mitigations

Risk	Exposure	Mitigation
Construction Completion	Funding cost overruns or unforeseen conditions	Contingency, quality contractor, GMP contract, P&P Bond
Tax Credit Delivery	Loss of equity due to late delivery of project	Quality contractor, reasonable schedule, quality prop mgt
Operating Deficit	Requirement to fund operating shortfall	Operating Reserve, HAP contract, reasonable expense budget, quality prop mgt, quality asset management
Construction loan guarantee	Repayment of construction loan if permanent sources decrease	Developer fee is at risk
Repurchase obligation (LIHTC)	Repayment of equity invested	Experienced development team, experienced operators

Benefits

Type	Description / Value
Developer Fee	% of Total Project Cost paid to developer
Control: Project	Decision making related to design, construction, services, populations served, financial structure
Control: Team	Decision about general contractor, architect, property manager, financial partners. Relates to development and social goals (MWESB, Section 3, etc.)
Purchase of property	Ability to purchase at Year 15. Long term control of real estate and financial gain.
Cash distribution	GP Management fee, ground lease, cashflow. Unrestricted cash for PHA.
Population served	Ability to decide housing intake criteria. Relates to external relations for PHA.
Perceived Control	History may tie PHA to the property. Ability to influence decision if community perceives on-going responsibility

Guidance on Fees

RAD: Project Underwriting Standards: RAD Notice Rev. 4, Attachment 1A

S. 18: Fee limitations in meeting obsolescence standards only

Mixed Finance and Choice Neighborhoods: HUD Cost Control and Safe Harbor Standards

PBV: Administrative fees, etc. Quick Guide to PBV 2020 (www.hud.gov/rad)

PBRA: Quick Guide to PBRA 2020 (www.hud.gov/rad)

LIHTC: State Housing Finance Agency website, typically in Qualified Allocation Plan. (QAP)

FHA: MAP Guide

For more details, see Appendix A to the slides

Financing Closing

No debt conversion: PHA and HUD (RCC)

Debt only conversion: PHA, Bank, HUD

Tax-exempt bonds and 4% LIHTC:
- PHA
- Developer
- Bond issuer
- Bond purchaser (private or public offering)
- Construction lender
- Long-term lender (if short bonds)
- LIHTC investor

9% LIHTC:
- PHA
- Developer
- Construction lender
- Long-term lender
- LIHTC investor

Construction to Successful Operations

Construction:

- Oversight by developer, architect, construction lender, owner's rep
- Draw process and change orders
- Construction close-out and CO

Leasing up:

- Compliance with RAD Right of Return
- Compliance with LIHTC income qualifications (if applicable)
- Leasing to "new" residents: Any preferences addressed in PHA Administrative Plan

Operating deficit guarantees: Provided by General Partner. Sometimes capped at amount of developer fee

Operating Reserves: Built into budget. .Typical standard: 6 months of operating expenses and debt service

Replacement Reserves: Built into budget. Between $300 pupy and $500 pupy. In RAD initial deposit standard set by PCNA e-tool

Planning for exercise of Right of First Refusal(typically after year 15; sometimes earlier); review annual investor 1099 to plan to minimize exit taxes.

Questions?

Appendix A: Guidance on Fees

- PREDEVELOPMENT FEES: CONSULTANTS AND THIRD PARTIES (ARCHITECT, ENGINEER, TITLE, SURVEY, ETC.)
- DEVELOPER FEE AND TIMING
- OTHER FEES

Consultant and Third-Party Development Costs

Type	RAD	RAD + LIHTC	Mixed Finance/CHOICE Safe Harbor	Mixed Finance/CHOICE and Rental S8 Max	LIHTC	FHA
Third Party Development Costs	To be negotiated	To be negotiated	**75%** PHA and **25%** Developer; reflects up from HUD grant funding	N/A	N/A	N/A
Grantee/Administrative Consultant Costs	N/A	Follows LIHTC rules	**3%** of total project budget minus supportive services + community improvements; **2%** if grantee is also developer; **5%** of total grant for CHOICE	**6%** of total project budget minus supportive services and community improvements; **5%** of total grant for CHOICE	Varies by state; typically calculated as part of developer fee	MAP

Developer Fee

Type	RAD	RAD + LIHTC	Mixed Finance/CHOICE Safe Harbor	Mixed Finance/CHOICE and Rental S8 Max	LIHTC	FHA
Developer Fees	**10%** of total budget minus developer fee, reserves, acq. costs from related entity. Overruns in excess of funding contingency can be drawn from developer fee. Preference for Homeless CoC referrals + persons exiting permanent supportive housing of at least **25%** of units; HUD will permit a **25%** increase in fee	Subject to HFA's limits on developer fee PLUS undeferred fee can't be greater than **15%** of total dev. costs minus acq payments made to the PHA, minus developer fee, less of $1M or **15%** of total development costs without offset. Overruns in excess of funding contingency can be drawn from developer fee. Preference for Homeless CoC referrals + persons exiting permanent supportive housing of at least **25%** of units; HUD will permit a **25%** increase in fee	Lesser of the state FHA maximum or 9% of total project costs minus dev. Fee, reserves, FSS costs, grantee costs not reimbursed at closing (i.e, demolition).	**12%** of total development costs with same subtractions as Safe Harbor. Above **12%** only allowed by HFA AND with signed justification demonstrating increased risk.	Set by the state HFA and reflected in the QAP.	MAP

Timing

	RAD	RAD + LIHTC	Mixed Finance/CHOICE Safe Harbor	Mixed Finance/CHOICE and Rental S8 Max	LIHTC	FHA
Pay-Out Schedule	N/A	N/A	Closing: Not to exceed **50%.** Const completion: **25%** of fee Stabilized Occupancy: **25%;** portion of fee can be further deferred	Payment of **>50%** at closing or **<25%** at stabilized occupancy will be scrutinized	Set by the HFA and reflected in the QAP	MAP

Other fees

Type	RAD	RAD + LIHTC	Mixed Finance/CHOICE Safe Harbor	Mixed Finance/CHOICE and Rental Section 8 maximum	LIHTC	FHA
Contractor	N/A	Set by HFA in QAP	Overhead: **2%** Profit: **6%** Gen Conditions: **6%**	Combined **14%** with justification	Set by HFA in QAP	MAP
Property Management	Follow PBV or PBRA limits (check w/FO)	Follow lowest of PBV, PBRA or LIHTC (QAP)	**6%** of EGI; or flat PUM fee for occupied units (FO guidelines); or **6%** of imputed tax credit rent for PH/LIHTC units	Higher fees require sign. Justification	Set by HFA in QAP	MAP
Legal	N/A	N/A	No express limit; Legal costs reviewed by HUD	N/A	N/A	N/A

NB: % based on hard const. cost; Gen. conds. Include the bond premium

Appendix B: Ownership Entities

PHA Ownership Entity

Requirements based on Repositioning Tool Used

RAD

- No debt or debt-only conversion: PHA owns (or can transfer to nonprofit)
- LIHTC: LP owns but PHA or nonprofit must show control: Long-term land lease, right of first refusal, etc.
- TOA: Placing RAD units in new property. HUD legal to review "control" measures apply.

Section 18

- Disposition requires transfer to another entity; sale for FMV or less than FMV with commensurate public benefit
- SVC: No disposition required, but if sale, must follow S. 18 dispo guidelines

PBRA

- PHA or nonprofit ownership/control. PBRA administered by third party.

PBV

- PHA or nonprofit ownership/control. But PHA subsidiary or nonprofit owns for purposes of HAP contract. PHA administers PBV program. Independent third party required for rent-setting, inspections.