

Public Housing: Rental Assistance Demonstration

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Administering agency: HUD's Office of Public and Indian Housing, and Office of Multifamily Housing Programs

Year program started: 2012

Number of persons/households served: 60,000 public housing units, 8,300 private, HUD-assisted multifamily units

FY14 funding: \$0

See also: *Public Housing, Project-Based Rental Assistance, Public Housing Agency Plan*

As part of the FY12 HUD appropriations act, Congress authorized the Rental Assistance Demonstration (RAD) to help preserve and improve low income housing. RAD allows public housing agencies (PHAs) and owners of private, HUD-assisted housing to leverage Section 8 rental assistance contracts in order to raise private debt and equity for capital improvements. RAD has two components. The first pertains to public housing and the Moderate Rehabilitation (Mod Rehab); the second pertains to the Rent Supplement (Rent Supp) program, Rental Assistance Program (RAP), as well as the Mod Rehab program.

HISTORY

Congress authorized the Rental Assistance Demonstration (RAD) through the FY12 HUD appropriations act. HUD published PIH Notice-2013-32 on July 26, 2012 implementing RAD, with a set of revisions on July 2, 2013 and technical corrections on February 4, 2014. The FY14 appropriations act extended the time for second component conversions to December 31, 2014 from September 30, 2013.

HUD reports that as of December 31, 2013 it had received more than 176,000 applications under the first component to convert public housing and Mod Rehab units, and that nearly 58,000 of these units had received preliminary approval. HUD created a waiting list for the balance of applications in case any of the preliminary approvals did not proceed to the next stage of the approval process. More than 8,300 second component units were approved by December 31, 2012.

PROGRAM SUMMARY

The intent of the Rental Assistance Demonstration (RAD) is to help preserve and improve low income housing by enabling public housing agencies (PHAs) and owners of private, HUD-assisted housing to leverage Section 8 rental assistance contracts to raise private debt and equity for capital improvements. RAD has two components.

The first component allows up to 60,000 units of public housing and Moderate Rehabilitation (Mod Rehab) program units to compete for permission to convert their existing federal assistance to project-based Housing Choice Vouchers (PBVs) or to Section 8 project-based rental assistance (PBRA) by September 30, 2015. HUD proposed to limit the number of Mod Rehab units converted under the component to 1,250 units.

The second RAD component allows Rent Supplement (Rent Supp), Rental Assistance Program (RAP), as well as Mod Rehab projects to convert tenant protection vouchers to PBVs if a property's contract expired or terminated due to mortgage prepayment after October 1, 2006 or will expire or terminate due to prepayment before December 31, 2014. There is no limit to the number of units that may be converted under the second component, and there is no competitive selection process for it.

Key features of the first component. This section focuses on the first component's public housing provisions. RAD is a voluntary demonstration program. There is no new funding for RAD. Once converted under RAD, the amount of public housing Capital Fund and Operating Fund a specific development has been receiving is used instead as PBV or PBRA.

PHAs considering RAD can choose to convert public housing units to one of two types of long-term, project-based Section 8 rental assistance contracts:

1. Project-based vouchers (PBVs). These are Housing Choice Vouchers that are tied to specific buildings; they do not move with tenants as regular “tenant-based” vouchers do. If public housing units are converted to PBV, the initial contract must be for 15 years (but could be up to 20 years), and must always be renewed. HUD’s Office of Public and Indian Housing (PIH) would continue to oversee the units. Most of the current PBV rules would apply.
2. Project-based rental assistance (PBRA). If units are converted to PBRA, the initial contract must be for 20 years and must always be renewed. HUD’s Office of Multifamily Programs would take over monitoring. Most of the current PBRA rules would apply.

Voluntarily converting some public housing to Section 8 might be good because Congress continues to underfund public housing. This leads to deteriorating buildings and the loss of units through demolition. HUD estimates that 10,000 to 15,000 public housing units are lost each year. If a long-term rental assistance contract is tied to a property, private institutions might be more willing to lend money for critical building repairs. Congress is more likely to provide adequate funding for existing Section 8 contracts than for public housing. Therefore, some units that were public housing before conversion will remain available and affordable to people with extremely low and very low incomes because of the long-term Section 8 contract.

Ownership. The RAD statute requires converted units to be owned or controlled by a public or nonprofit entity. If there is a foreclosure, then ownership or control of the property will go first to a public entity, and if there is not a public entity willing to own the property, then to a private entity which could be a for-profit.

Resident protections and rights. The statute and the notice implementing the statute spell out a number of protections and rights for residents, including:

- Displacement. Permanent involuntary displacement of current residents may not occur as a result of a project’s conversion. If a household does not want to transition to PBV or PBRA, they may move to other public housing if an appropriate unit is available.
- Tent rent. Existing PBV and PBRA rules limit resident rent payment to 30% of income, or minimum rent, whichever is higher. Any rent increase of 10% or \$25, whichever is greater, that is solely due to conversion is phased in over three to five years.
- Rescreening. Current residents cannot be rescreened.
- Right to return. Residents temporarily relocated while rehabilitation is conducted have a right to return.
- Renewing the lease. PHAs must renew a resident’s lease, unless there is “good cause” not to.
- Grievance Process. The RAD statute requires tenants of converted properties to have the same grievance and lease termination rights they had under Section 6 of the Housing Act of 1937. For instance, PHAs must notify a resident of the PHA’s reason for a proposed adverse action and of their right to an informal hearing assisted by a resident representative. Advocates think that HUD has not adequately implemented the statutory requirement.

Resident involvement. Before submitting a RAD application to HUD, the PHA must notify residents and resident organizations of a project proposed for conversion. The PHA is not required to notify the Resident Advisory Board (RAB) or residents of other developments. The PHA must conduct two meetings with residents of the selected project to discuss conversion plans and to give those residents a chance to comment. Once there is preliminary HUD approval, the PHA must hold at least one more meeting with those residents.

RAD conversion is a “Significant Amendment” to the PHA Plan. However, HUD does not require a Significant Amendment process to begin until two months after HUD has already given preliminary approval of the RAD conversion plan for a specific development (called a Commitment to enter into a Housing Assistance Payment contract, CHAP). Consequently, RAB involvement and the PHA-wide notice, broad public outreach,

and public hearing required by the Significant Amendment regulations will not take place until the conversion application process is too far along.

A RAD conversion Significant Amendment must describe the units to be converted, including the number of bedrooms, bedroom distribution of units, and type of units (e.g., family, elderly, etc.). It must also indicate any waiting list preferences and indicate any change in the number of units or bedroom distribution of units, as well as any change in policies regarding eligibility, admission, selection, and occupancy of units.

Whether a property is converted to PBV or PBRA, each year the PHA must provide \$25 per occupied unit for tenant participation. At least \$15 per unit must be provided to the legitimate resident organization for resident education, organizing around tenancy issues, or training. If there is no legitimate resident organization, residents and PHAs are encouraged to form one.

Residents have the right to establish and operate a resident organization. If a property is converted to PBRA, then the current Multifamily program's resident participation provisions apply, the so-called "Section 245" provisions. If a property is converted to PBV, instead of using public housing's so-called "Section 964" provisions, PIH Notice 2013-32 requires resident participation provisions similar to those of Section 245. For example, PHAs must recognize legitimate resident organizations and allow resident organizers to help residents establish and operate resident organizations. Resident organizers must be allowed to distribute leaflets and post information on bulletin boards, contact residents, help residents participate in the organization's activities, hold regular meetings, and respond to a PHA's request to increase rent, reduce utility allowances, or make major capital additions.

Properties converted to PBRA are no longer required to meet PHA Plan requirements. In addition, PBRA residents can no longer be on the RAB, be a PHA commissioner, or be on a jurisdiction-wide resident council – unless the PHA voluntarily agrees.

One-for-One Replacement. Although PIH Notice 2013-32 does not use the term "one-for-one replacement", HUD's informal material says there will be one-for-one replacement. However, there are exceptions. PHAs can reduce the number of assisted units by up to 5% or 5 units, whichever is greater, without seeking HUD approval. HUD calls this the "de minimus" exception. Furthermore, RAD does not count against the 5%/5 unit de minimus: any unit that has been vacant for 2 or more years; any reconfigured units, such as efficiency units made into one-bedroom units; or, any units converted to use for social services. Consequently, the loss of units can be greater than 5%.

Choice Mobility. HUD states that one of the major objectives of RAD is to test the extent to which residents have greater housing choice after conversion. PHAs must provide all residents of converted units with the option to move with a regular Housing Choice Voucher (HCV). For PBV conversions, after one year of residency a tenant can request a HCV and one must be provided if available; if a voucher is not available, the resident gets priority on the waiting list. For PBRA, a resident has the right to move with a HCV, if one is available, after two years.

Limits on PBVs per development. RAD limits to 50%, the number of units in a public housing development that can be converted to PBVs. However, the 50% cap can be exceeded if the other units are "exception units," those occupied by an elderly head of household or spouse, a disabled head of household or spouse, or a household with at least one member participating in a supportive service program.

A public housing household whose development is converted cannot be involuntarily displaced as a result of this cap. Therefore, if a family in an "exception unit" does not want to participate in a supportive service, the household cannot be terminated from PBV. However, once an original household leaves a converted

exception unit, that unit can only be rented using PBV to a household that meets one of the three exception categories (supportive services, elderly, or disabled). What this means is that some PHAs might urge half of the households to move to other developments, if available – but, a resident’s decision to relocate must be voluntary. It could also mean that for a development to be able to continue to use PBVs after current residents leave exception units, some developments might change in character. For example, a development mostly occupied by families might become 100% elderly.

Key features of the second component. Owners of Mod Rehab properties have an alternative to the competitive process of the first RAD component. They may seek HUD permission to convert Enhanced Vouchers (EVs) that tenants are entitled to when a Mod Rehab contract expires to PBVs. The second component enables owners of Rent Supp and RAP properties to choose to receive PBVs instead of tenant protection vouchers (TPVs) that would have been provided in response to a Rent Supp or RAP contract expiring or being terminated due to mortgage prepayment.

Eligible properties are those with contracts that expired or terminated after October 1, 2006 or will expire or terminate before December 31, 2014. There is no limit to the number of units that may be converted under this component, and there is no competitive selection process.

Owners must notify residents of an intent to convert TPVs to PBVs. There must be a briefing to inform residents about the differences between PBVs and EVs (for Mod Rehab) and TPVs (for Rent Supp and RAP), including different rights, potential impact on rent payments, and mobility provisions. Residents must be made aware that they may remain in their unit with an EV or TPV and cannot be forced to move for rejecting a PBV. Residents must have an opportunity to comment at the briefing.

FUNDING

HUD’s FY14 budget proposal to Congress requested approval to convert an additional 90,000 units, but Congress did not grant an expansion of RAD’s first component. It also requested \$10,000 for targeted expansion of RAD to public housing properties that cannot feasibly convert at existing funding levels and are located in high-poverty neighborhoods.

FORECAST FOR 2014

The Administration’s FY15 budget proposal to Congress again asks for \$10,000 for targeted expansion of RAD to public housing properties that cannot feasibly convert at existing funding levels and are located in high-poverty neighborhoods. It also seeks to completely eliminate the cap on the number of public housing and Mod Rehab units that can be converted while extending the application deadline to September 30, 2018. HUD is also asking that Section 8 Mod Rehab Single Room Occupancy (SRO) properties be eligible for RAD conversion. For the second component of RAD, HUD requests that Rent Supp and RAP units be allowed to convert to PBRA (in addition to PBV), while extending the sunset date for all second component conversions to September 30, 2016.

TIPS FOR LOCAL SUCCESS

For residents of developments given preliminary or final approval, make sure that the PHA or private, HUD-assisted housing owner is complying with all resident participation and protection provisions. Once HUD issues a formal RAD Conversion Commitment (RCC), the PHA must notify each household that the conversion has been approved, inform households of the specific rehabilitation or construction plan, and describe any impact conversion will have on them.

Be on the lookout for any substantial change in a conversion plan. A substantial change includes: a change in the number of assisted units, a major change in the scope of work, a transfer of assistance to a different property or owner, or a change in the eligibility or preferences for new applicants. If there is a substantial

change in the conversion plan, the PHA must have additional meetings with the residents of the converting property and carry out the PHA Plan Significant Amendment process with the RAB, all PHA residents, and hold a public hearing.

For public housing residents at PHAs that have not applied for RAD conversion, or who live at developments not selected for conversion, be alert to the possibility that Congress could approve an expansion of RAD. If RAD grows, be prepared to influence your PHA's considerations. Do you agree that RAD is appropriate for public housing in your area? If RAD makes sense, which developments should be considered? Make sure you fully understand the differences between PBVs and PBRAs so that you can influence the option best for you.

WHAT TO SAY TO LEGISLATORS

Ask Members of Congress to ensure that HUD prepares, conducts, and publishes an assessment of the impact of conversion on public housing residents to ensure that further conversions do not result in adverse consequences for residents, as required by statute. Did residents have a genuine role during and after conversion? Were residents evicted just prior to conversion? Did every resident household that wanted to remain after conversion? Was there inappropriate re-screening? Are Section 6 resident protections, such as grievance procedures, being fully honored? Are residents of converted properties able to participate on resident councils and Resident Advisory Boards? Is there compliance with the one-for-one replacement requirement? Are PHAs truly owning or controlling converted properties? Are conversions to PBRA consuming too many scarce tenant protection vouchers at the expense of other tenant protection voucher needs?

FOR MORE INFORMATION

- National Low Income Housing Coalition, 201-662-1530, www.nlihc.org
- NLIHC's "RAD: Key Features for Public Housing Residents," http://nlihc.org/sites/default/files/RAD_Key_Features_Jan14.pdf
- HUD's RAD website, <http://portal.hud.gov/hudportal/HUD?src=/RAD>