



NATIONAL LOW INCOME HOUSING COALITION

THE RENTAL ASSISTANCE DEMONSTRATION – RAD

Key Features For Public Housing Residents

Ed Gramlich
National Low Income Housing Coalition
Modified, March 2017

RAD is just that...a “demonstration” project

Public Housing Authorities (PHAs) may voluntarily apply for HUD approval.

To do what?

To convert public housing units to one of two types of long-term, Project-Based Section 8 rental assistance contracts.

Up to 185,000 public housing units could be converted under the demonstration.

(In the past HUD has requested Congressional approval to convert all public housing units; so far Congress has not.)

There is no new money.

A PHA could choose to convert public housing units to either:

1. Housing Choice Vouchers that are tied to specific buildings.

That is, vouchers that are “project based”, so are called “Project-Based Vouchers” (PBVs).

HUD’s Office of Public and Indian Housing (PIH) continues to oversee the units.

Most of the current PBV rules would apply (part 983 rules).

or

2. Project-Based Rental Assistance (PBRA).

HUD’s Office of Multifamily Programs would take over monitoring.

Most of the current PBRA rules would apply (part 880 rules).

The amount of Public Housing Capital Fund and Operating Fund a specific development has been receiving is used instead as PBV or PBRA. .

Residents will want to learn whether their PHA is considering RAD

Although HUD reached the cap of 185,000 units a long time ago, not all preliminary approvals (“CHAPs”) will succeed to the next steps in the RAD conversion process.

HUD has until September 30, 2018 to have 185,000 units completely converted.

So HUD is still accepting applications. As of March 2017, there were nearly 30,000 units on the wait list, and HUD continues to accept “letters of interest”.

The new Administration might be interest in raising or even eliminating the cap on the number of public housing units that can convert under RAD.

At the application stage there is no requirement to notify the Resident Advisory Board (RAB), Resident Councils, other resident organizations, residents in general, or the broader community. So, you must always be asking.

Ask your PHA if is on the wait list or has sent in a “letter of interest”.

- Which development(s) are being considered for conversion?
- Do you agree with the buildings being considered?
- Are there other developments you think should be considered instead?
- Do you agree if a PHA applies to convert all of its developments?
- Do you even agree that conversion is appropriate?
- Does the PHA expect to convert to PBV or PBRA?
- Do you prefer PBV or PBRA?

Why might converting some public housing to Section 8 be OK, or even good?

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.

What is “long-term”?

If convert to PBV:

- Initial contract is for 15 years (but could be up to 20 years).
- Owner must renew each contract. (and Use Agreement must be renewed.)

If PBRA:

- Initial contract is for 20 years.
- Owner must renew each contract. (and Use Agreement must be renewed.)

Can current residents of converting developments be displaced?

“The permanent involuntary displacement of residents may not occur as a result of a project’s conversion of assistance...”

If a household does not want to transition to PBV or PBRA, they may move to other standard public housing owned by the PHA...if an appropriate unit is available.

Notice to residents of developments proposed for conversion

Before submitting a RAD application to HUD, the PHA must:

1. Notify residents and resident organizations of the projects proposed for conversion.

The PHA is not required to notify the Resident Advisory Board (RAB) or residents of other developments – just the development(s) slated for conversion.

2. Conduct two meetings with residents of projects proposed for conversion to discuss conversion plans and to give those residents a chance to comment.
3. Write responses to those residents' comments.

For RAD conversions after January 19, 2017 the required meetings must describe:

- The nature and extent of work;
- Changes in the number of assisted units, changes in bedroom sizes, or other change that might impact a household's ability to re-occupy the property;
- Any "de minimus" reduction of units that have been vacant for more than 24 months (see "One-for-One Replacement" on page 9);
- Plans to partner with an entity other than an affiliate of the PHA, and if so whether that partner will have an ownership interest;
- Whether RAD transfer the PBV or PBRA to another property, meaning residents would have to permanently move to another location.

In addition, for conversions after January 19, 2017, before the two resident meetings, PHAs must issue a RAD Information Notice (RIN) informing residents of their rights (see page 6).

The PHA must use:

- Effective means of communication for people with hearing, visual, and other communication-related disabilities.
- Hold meetings in places physically accessible for people with disabilities.
- Provide meaningful access to its programs and activities for people who have a limited ability to read, speak, or understand English.

These meetings are separate from the Significant Amendment process (see page 5), which doesn't have to take place until about five months after preliminary approval.

If your development is chosen for conversion

Once there is preliminary approval (a “CHAP”), the PHA must hold at least one more meeting with residents of the selected development(s).

After January 19, 2017, this meeting must be held before a Financing Plan is sent to HUD showing the PHA has all of the private financing needed.

If there is a major change in utility allowances or a substantial change in a conversion plan, the PHA must:

- Have additional meetings with the residents of the converting property.
- Carry out the PHA Plan Significant Amendment if the change involves a transfer of assistance, change in the number of assisted units, or change in eligibility or preferences for new applicants (see Significant Amendment below).

A substantial change includes the items listed under #3 on the previous page.

Once HUD approves a Financing Plan and issues a formal RAD Conversion Commitment (RCC) the PHA must:

- Notify each household that the conversion has been approved.
- Inform households of the specific rehab or construction plans, and any impact conversion will have on them.

HUD considers RAD conversion a “Significant Amendment” to the PHA Plan

This is good. A Significant Amendment to the PHA Plan requires:

- Resident Advisory Board (RAB) involvement,
- PHA-wide notice,
- broad public outreach, and
- a public hearing.

However, HUD does not require a Significant Amendment process to begin until the RAD conversion application process is too far along.

- A PHA only has to have the Significant Amendment completed in time for a PHA to submit its RAD Financing Plan.
 - The RAD Financing Plan must include a letter from HUD approving the Significant Amendment.
 - A Financing Plan is a document sent to HUD showing that a PHA has buttoned down all the necessary financing.
- Financing Plans are ***due six months after*** HUD has issued a “CHAP” – a preliminary approval for RAD conversion.

By this time a PHA will have invested too much effort to respond to resident and community input. Decisions about whether to apply for RAD conversion, and if so which developments should be converted, ought to be discussed as a Significant Amendment by ***all*** PHA residents and the surrounding community ***before*** a RAD application is sent to HUD – not close to the time when a PHA has all of its financing and construction plans approved and is ready to get started with the RAD conversion.

Significant Amendment, *continues*

Significant Amendment, *continued*

A RAD conversion Significant Amendment must:

- Describe the units to be converted, including:
 - number of units,
 - bedroom distribution of units, and
 - type of units (eg family, elderly, disabled, etc.).
- Indicate any change in the number of units or bedroom distribution of units.
- Indicate any change in policies regarding eligibility, admission, selection, and occupancy of units.

Basic resident rights for both PBV and PBRA

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 a unit is available.

Right to Return

Residents temporarily relocated while rehab is conducted have a right to return.

Rescreening

Current residents cannot be rescreened.

Good Cause Eviction

Owner must renew a resident's lease, unless there is "good cause" not to.

Tenant Rent

PBV and PBRA limit resident rent payment to 30% of income, or minimum rent, whichever is higher.

Any rent increase of 10% or \$25 per month (whichever is greater) solely due to conversion is phased in over three to five years.

PBRA and the PHA Plan and RAB

Properties converted to PBRA are no longer required to meet PHA Plan requirements.

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.

\$25 per unit for tenant participation

Whether a property is converted to PBV or PBRA, the owner must provide \$25 per unit annually for resident participation.

At least \$15 per unit must be provided to “the legitimate resident organization” to be used for resident education, organizing around tenancy issues, and training activities.

If there isn’t a legitimate resident organization, residents and owners are encouraged to form one.

Resident participation provisions

Residents have the right to establish and operate a resident organization.

If converted to PBRA, then the current Multifamily program’s participation provisions apply, the so-called “Section 245” provisions.

If converted to PBV, instead of using public housing’s so-called “Section 964” provisions, residents have participation provisions similar to those of “Section 245”.

Section 245-like resident participation rights – *Legitimate Resident Organization*

- Owner must recognize “legitimate resident organizations”.
- A “legitimate resident organization” is one that:
 - Is established by residents
 - Is representative of a development’s residents
 - Is completely independent of the owner
 - Meets regularly
 - Operates democratically
- Owners must allow residents and resident organizers to assist residents in establishing and operating resident organizations.
- A resident organizer is a resident or non-resident, but is not an employee or representative of the owner.

Section 245-like resident participation rights – *Protected Activities*

See next page

Section 245-like resident participation rights – *Protected Activities*

Owners must allow residents and resident organizers to conduct reasonable activities related to the establishment or operation of a resident organization.

Owners must allow residents and resident organizers to:

- Distribute leaflets in lobbies and common areas, and place leaflets at or under residents' doors, as well as post information on bulletin boards.
- Contact residents and conduct door-to-door surveys.
- Help residents participate in the organization's activities.
- Hold regular meetings on site. Management staff may not attend unless invited.
- Respond to the owner's request to:
 - increase rent;
 - change from project-paid utilities to tenant-paid utilities;
 - reduce utility allowances;
 - convert residential units to non-residential units;
 - make major capital additions;
 - prepay loans.

Grievance process and termination notice

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.

However, HUD has not adequately implemented this statutory requirement.

The National Housing Law Project notes that the public housing regulations have long-established processes that residents could use to question a PHA's actions or failure to take action regarding a lease or any PHA regulation that adversely affects a resident's rights, welfare, or status.

HUD's RAD provisions restrict residents' grievance rights because instead of using the well-developed public housing grievance process, residents will only have the limited grievance rights under either the PBV regulations or the PBRA regulations.

Termination of Rental Subsidy

Converted properties must follow the PBV and PBRA rules regarding notification and termination of the rental subsidy.

RAD also specifies written notice of lease termination:

- 14 days for nonpayment of rent;
- 30 days if other tenants' health and safety is threatened;
- 30 days for any drug-related or violent crime activity;
- 30 days for a felony conviction.

One-for-One Replacement

Although the HUD Notice (which is like the regulation for RAD) does not use the term “one-for-one replacement”, HUD’s informal material says there will be one-for-one replacement.

Exception

PHAs can reduce the number of assisted units by up to 5% or 5 units, whichever is greater, without seeking HUD approval (known as “Section 18”).

HUD calls this the “de minimus” exception.

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.
- Any units converted to use for social services.

So, the loss of units can be greater than 5%.

A PHA must demonstrate that any reduction of units:

- better serves residents;
- will not result in involuntary permanent displacement; and,
- will not discriminate.

Change in unit configuration

If a PHA proposes changes that will result in, for example, fewer 3-bedroom units, the PHA must demonstrate that it will not result in:

- involuntary displacement or
- discrimination.

What if there is temporary or permanent relocation?

Temporary Relocation

If temporary relocation is expected to be for more than one year, the PHA must offer residents the choice of:

- Temporary relocation assistance, including temporary housing and reimbursement for out-of-pocket expenses related to the temporary relocation, or
- Permanent relocation assistance and payments at URA levels.

Residents must have at least 30 days to decide between permanent and temporary relocation assistance.

A PHA cannot employ any tactics to pressure residents to give up their right to return or to accept permanent relocation assistance and payments.

Permanent Relocation

“If proposed plans for a project would prevent a resident from returning to the RAD project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the PHA must alter the project plans to accommodate the resident in the converted project.”

If a resident voluntarily agrees to permanent relocation, the PHA must obtain informed, written consent from the resident that also confirms that the resident agrees to end the right to return. That consent must also acknowledge that the resident will receive permanent relocation assistance and payments consistent with URA.

Replacement housing options for residents who voluntarily relocate permanently include providing:

- Other public housing
- A project-based voucher
- A regular tenant-based voucher
- Homeownership housing

Separate HUD guidance (Notice H 2016-17/PIH 2016-17) requires:

- PHAs or owners to prepare a written relocation if permanent or temporary relocation is expected to be greater than 12 months;
- PHAs to provide residents with a RAD Information Notice (RIN) before a RAD application is submitted in order to ensure that residents are informed of potential project plans and of their rights in connection with RAD;
- Owners to provide a notification of Return to the Covered Project; and,
- PHAs to maintain detailed data regarding each household that will be relocated, with key dates of notices and moves.

Section 3 applies

The PHA or owner is only obliged to give residents preference for employment and training opportunities tied to new construction or repairs as a result of RAD.

There is no ongoing Section 3 obligation for management, maintenance, and repairs.

Choice Mobility

PHAs must provide all residents of converted units with the option to move with a regular Housing Choice Voucher (HCV).

For PBV the regular PBV rule applies:

- After one year of residency, a tenant can request a HCV.
- If a voucher is available, it must be provided.
- If a voucher is not available, the resident gets priority on the waiting list.

If because of RAD, a PHA's total number of PBV units (regular PBVs and RAD PBVs) is greater than 20% of the PHA's authorized number of Housing Choice Vouchers (HCVs), the PHA would not be required to provide more than 75% of its turnover HCVs in any single year to residents of RAD projects.

For PBRA a resident has the right to move with a HCV, if one is available, at the later of:

- 2 years from a resident's move-in date; or,
- 2 years from the date a PHA and HUD complete a Section 8 Housing Assistance Payment contract.

For PBRA a PHA could limit Choice-Mobility moves to:

- 1/3 of its turnover vouchers; or
- 15% of the assisted units in a property.

If the HAP contract is removed for breach of contract

HUD can remove the PBV or PBRA Housing Assistance Payment (HAP) contract if the owner is in serious noncompliance.

New tenants could have incomes greater than most public housing residents – 80% of area median income (for example, \$55,350 in Chicago for 3-person household).

Rents could be higher – 30% of 80% of area median income (for example, \$1,384 per month in Chicago for 3-person household).

Who will own the converted properties?

The RAD statute requires ownership or control by a public or nonprofit entity.

Examples of ownership or control include the public or nonprofit entity:

1. Having a “fee simple” interest in the property;
2. Having direct or indirect legal authority to direct the financial and legal interests of the “project owner” (through a contract, partnership share, agreement of an equity partnership, voting rights, or other means);
3. Having 51% or more interest of the general partner share in a limited partnership; or being the managing member of a limited liability corporation (LLC); or having 51% or more of the membership shares of an LLC; or
4. As of January 19, 2017, having a ground lease with the owner.

What about Low Income Housing Tax Credit (LIHTC) properties?

A LIHTC property may be owned and controlled by a by a for-profit, but only if the PHA preserves “sufficient interest” in the property.

Sufficient interest could include:

- The PHA or an affiliate under its sole control is the general partner or managing member;
- The PHA retains fee ownership and leases the real estate to the LIHTC entity as part of a long-term ground lease;
- The PHA retains control over project leasing, for example maintaining and administering the waiting list, and performing eligibility determinations; or,
- The PHA enters into a Control Agreement allowing the PHA to retain:
 - certain rights over the project, such as administering the waiting list
 - consent rights over certain acts of the owner (for example, leasing, selecting the management agent, setting the operating budget, making withdrawals from reserves, and selling the project).

What if there is foreclosure?

Then ownership or control of the property will go:

First to a public entity.

Second to a “private” entity if there isn’t a public entity.

HUD does not specify if the “private” entity must be a nonprofit; according to HUD’s response to comments, it could be a for-profit.

Limits on PBVs per development

For projects that were not closed after January 19, 2017 there is no limit on the number of PBVs that can be attached to a property.

For projects that did close before changes were made on January 19, 2017, RAD limited to 50%, the number of units in a public housing development that can be converted to PBVs.

Exception Units

The 50% cap can be exceeded if the “exception units” are occupied by:

- An elderly head of household or spouse.
- A disabled head of household or spouse.
- A household with at least one member receiving a supportive service.

However, a public housing household whose development is converted can't be involuntarily displaced as a result of this cap.

If a family in an “exception unit” does not want to participate in a supportive service, the household can't be terminated from PBV.

But, once an original household leaves a converted “exception unit”, that unit can only be rented with PBV to a household that meets one of the three exception categories (supportive services, elderly, or disabled).

What does the 50% cap mean for a development converted to PBV instead of PBRA?

- 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.

- Some developments might change in character after current residents leave so that the development can continue to get PBVs. For example, a mostly family development might become 100% elderly.