



NATIONAL LOW INCOME HOUSING COALITION

Revised RAD Notice Issued

Preliminary summary of key changes in the public housing component pertinent to public housing residents

On June 15, HUD published a greatly revised Rental Assistance Demonstration (RAD) Notice. The revision, PIH 2012-32 REV-2, incorporates changes authorized by the FY15 Appropriations Act, including increasing the number of public housing units that can be converted through RAD from 60,000 to 185,000 units (see *Memo 1/12*). The Notice also includes lessons learned from the past two years of RAD implementation, and weaves in answers to frequently asked questions. The Notice effectively acts like a program regulation.

RAD is intended to preserve and improve low income housing by enabling public housing agencies (PHAs) to leverage Section 8 rental assistance contracts to raise private debt and equity for capital improvements. RAD has two components. The first allows up to 185,000 public housing units to be converted from their existing federal assistance to project-based Housing Choice Vouchers (PBVs) or to Section 8 project-based rental assistance (PBRA) by September 30, 2018. The second component allows private properties assisted through the Rent Supplement (Rent Supp), Rental Assistance Program (RAP), and Moderate Rehabilitation programs to convert an unlimited number of Tenant Protection Vouchers (TPVs) to PBRA, or as of the FY15 Appropriations Act, to PBVs.

Pages 3 and 4 of the 235-page Notice list 15 major revisions for the public housing component and five major revisions for the second component. This supplement to the June 22 *Memo* article offers a preliminary summary of key changes in the public housing component pertinent to public housing residents.

Five provisions are at the front-end of the Notice under “Project Conversion Requirements,” including:

- The relocation requirements of Notice PIH 2014-17 (see *Memo, 7/18/14*) are highlighted. (page 26)
- “Right to return” language from the previous Notice is repeated in the revised Notice; however, now this language also applies to PBRA conversions, not just PBV conversions. (page 27)
 - Any resident who has to temporarily relocate while their public housing unit is being rehabilitated has the right to return to an assisted unit at the project once rehabilitation is complete.
 - Permanent, involuntary displacement may not occur as a result of RAD, including RAD conversions involving a change in bedroom distribution, a reconfiguration of efficiency apartments, or a repurposing of units to be used for social services.

- Federal accessibility requirements apply to all RAD conversions. The most typical requirements are those of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act. The Notice encourages PHAs to use universal design principles, visitability principles, and active design guidelines. (pages 27-28)
- Requirements regarding site and neighborhood standards are spelled out. If RAD conversion involves new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will conduct a front-end civil rights review. The Notice indicates the conditions necessary for HUD to approve such conversions. (page 28-29)
- The meaning of “ownership and control” of post-conversion projects is refined. This improvement has the potential to address concern expressed by many residents – that their public housing homes could be privatized after RAD conversion. (pages 30-31)
 - The statute and previous Notice require a public or nonprofit entity to own or control the project. The revised Notice provides more detail regarding the meaning of “ownership or control.” The public or nonprofit entity must:
 - Hold fee simple interest in the real property;
 - Have direct or indirect legal authority (via contract, partnership share or agreement of an equity partnership, voting rights, or other means) to direct the financial and legal interests of the project owner; or
 - Have a 51% or more interest of the general partner share in a limited partnership, or be the managing member of a Limited Liability Corporation (LLC), or have 51% or more of the membership shares of an LLC.
 - HUD may allow ownership of a project to be transferred to a Low Income Housing Tax Credit (LIHTC) entity controlled by a for-profit entity to enable the use of LIHTC assistance, but only if HUD determines that the PHA preserves sufficient interest in the property. Preservation of a PHA’s sufficient interest in a project using LIHTCs could include:
 - The PHA, or an affiliate under its sole control, is the sole 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, such as exclusively maintaining and administering the waiting list for the project, including performing eligibility determinations that comply with the PHA Plan; or
 - The PHA enters into a Control Agreement by which the PHA retains consent rights over certain acts of the owner (for example, disposition of the project, leasing, selecting the management agent, setting the operating budget, and making withdrawals from the reserves) and retains certain rights over the project, such as administering the waiting list.

Fair Housing

A variety of fair housing features are presented upfront in the Notice under “General Program Description.” (pages 19-20)

- The Notice states that “as with the administration of all HUD programs and HUD-assisted activities, fair housing and civil rights issues must be considered in the administration of RAD transactions. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status, or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing.”
 - The Notice provides a long list of elements of RAD transactions that have civil rights implications, such as occupancy policies, changes in unit configuration, waiting list administration policies, and tenant selection policies. All RAD transactions that include at least one of the listed elements must undergo a HUD front-end review for compliance with civil rights and fair housing requirements.
 - PHAs must submit an Accessibility Checklist to ensure compliance with Section 504 of the Rehabilitation Act of 1973 when new construction or substantial rehabilitation is undertaken.
 - A Relocation Checklist is required when a construction schedule indicates that relocation is likely to exceed 12 months.

In the section on “Resident Notification,” the Notice provides details regarding a PHA’s obligation to:

- Use effective communications for persons with hearing, visual, and other communications-related disabilities when providing notices and conducting meetings.
- Hold resident meetings at facilities that are physically accessible to persons with disabilities. If that is not possible, use alternative means such as other sites or offering in-home meetings.
- Provide meaningful access to programs and activities for persons who have a limited ability to speak, read, or understand English. (page 79)

New RAD Application Priorities

HUD will have six levels of priority for considering which RAD applications should receive a CHAP. First priority is for properties that are physically or functionally obsolete that a PHA proposes to fully or partially demolish and then construct new units. Second priority is for applications that are part of a comprehensive neighborhood revitalization plan. (pages 86-87)

Significant Amendment to the PHA Plan

The Notice continues to state that RAD conversion is considered a “Significant Amendment” to the PHA Plan. A Significant Amendment requires all of the PHA’s residents, as well as the community in general, to be notified of a major change and have an opportunity to comment during a public hearing. NLIHC and other advocates submitted comments about the Significant Amendment process in the RAD Notice originally proposed in 2012 (see *Memo*, [4/6/12](#)). That proposed Notice required a Significant Amendment too late in the RAD process, two months after HUD had already given preliminary approval for project conversion (known as a CHAP, Commitment to enter into a Housing Assistance Payment Contract). By this time a PHA will have invested too much effort to be responsive to resident and community input.

The revised Notice states that the RAD Financing Plan must include a letter from HUD approving the Significant Amendment. The Financing Plan is a document submitted to HUD demonstrating that the PHA has secured all necessary private financing needed to sustain the project for the term of the HAP contract. Financing Plans are due six months after HUD has issued a CHAP. Rather than engage all PHA residents before an application for RAD conversion is submitted, the public engagement process under the new Notice is now only required to take place even later in the RAD process.

When NLIHC asked about the change during a HUD webinar, HUD stated that Significant Amendments submitted two months after a CHAP was issued often did not have enough information to be meaningful; HUD said that Significant Amendments tied to Financing Plans would be complete. NLIHC acknowledges that completeness is important, however, HUD continues to fail to address the more fundamental issue. Decisions regarding 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 an application is submitted – not close to the time when a PHA has all of its financing and construction plans approved and is ready to proceed.

HUD will be holding live Question and Answer sessions on Friday afternoons, check the RAD website for dates and access information.

Notice PIH 2012-32 REV-2 is at

http://portal.hud.gov/hudportal/documents/huddoc?id=PIHNotice_2012-32_062015.pdf

Webinar materials explaining the REV-2 changes are on HUD’s RAD website at

<http://www.radresource.net/webinars.cfm>

Basic information about RAD prior to REV-2 is on page 4-21 of NLIHC’s 2015 *Advocates’ Guide*, http://nlihc.org/sites/default/files/Sec4.07_Public-Housing-Rental-Assistance_2015.pdf