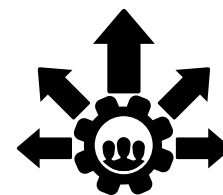


Rental Assistance Demonstration



By Ed Gramlich, Special Advisor,
National Low Income Housing Coalition

Administering agency: HUD's Office of
Multifamily Housing Programs

Year program started: 2012

Number of persons/households served: Initially
60,000 public housing units, expanded to
185,000 units in FY15; 22,000 private, HUD-
assisted multifamily units

FY15 funding: \$0

See also: *Public Housing, Project-Based Rental
Assistance, Project-Based Vouchers, 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) program; the second pertains to the Rent Supplement (Rent Supp) program, Rental Assistance Program (RAP), as well as the Mod Rehab program.

HISTORY

Congress authorized RAD through the FY12 HUD appropriations act. HUD published PIH Notice 2012-32 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 from September 30, 2013 to December 31, 2014. The FY15 appropriations act made several changes that are explained in the rest of this article.

PROGRAM SUMMARY

The intent of RAD is to help preserve and improve low income housing by enabling 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.

First component. The first component allows up to 60,000 units of public housing and 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 FY15 appropriations act raised the cap on the number of public housing and Mod Rehab units that can be converted from 60,000 to 185,000 units. As requested by the administration, the FY15 appropriations act also extended the deadline for PHAs to apply for RAD conversion to September 30, 2018. In addition, projects assisted under the McKinney-Vento Single Room Occupancy program may now apply for RAD conversion.

HUD reported 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 those 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. As of October 31, 2014, HUD reported that 7,340 public housing units and 242 Mod Rehab units received final approval, another 51,422 public housing units and 736 Mod Rehab units had preliminary approval, and 120,404 units were on the waiting list.

Second component. The second RAD component initially allowed 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 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. The FY15 appropriations act allows second component projects to convert

to PBRA. It also removed the December 31, 2014, deadline, permanently extending authority under the second component. As of October 31, 2014, more than 14,000 second component units were in the process of being converted, while another 7,662 units completed the conversion process.

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 Funds and Operating Funds a specific development has been receiving is used instead as PBVs 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. **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 PBVs, 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. **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, it 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 five units, whichever is greater, without seeking HUD approval. HUD calls this the “de minimus” exception. Furthermore, RAD does not count against the 5%/five unit de minimus: any unit that has been vacant for two 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 50% 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 assisted with PBV if it is rented 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), which 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. As a result of the FY15 appropriations act, second component projects may now convert to PBRA as well.

Eligible properties are those with contracts that expired or terminated after October 1, 2006. The FY15 appropriations act eliminated the December 31, 2014, deadline, permanently extending the ability to convert under the second component. 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 informed 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. HUD is expected to issue new guidance reflecting the FY15 change allowing conversion to PBRA.

FUNDING

HUD’s FY15 budget proposal to Congress requested approval to lift the first component cap on the

number of public housing units that could undergo RAD conversion, but the FY15 appropriations act limited the first component cap to 185,000 units, enough to cover all units with preliminary approval plus those on the waiting list. The administration also requested \$10 million for targeted expansion of RAD to public housing properties that cannot feasibly convert at existing funding levels and are located in high-poverty neighborhoods. The FY15 appropriations act did not provide for the requested \$10 million.

FORECAST FOR 2015

The administration’s FY16 budget proposal greatly expands RAD and includes an ask of \$50 million (up from \$10 million in FY15) 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 again seeks to completely eliminate the cap on the number of public housing and Mod Rehab units that can be converted under the first component. For the second component of RAD, HUD requests to eliminate the sunset date on converting Rent Supp, Mod Rehab and RAP units into PBRA (in addition to PBV).

TIPS FOR LOCAL SUCCESS

For residents of developments given preliminary or final RAD 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, 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 can include: 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 on the existing waiting list, be sure to re-engage with your PHA now that Congress has raised the cap to cover applications on the waiting list. Seek to get commitments from the PHA and any developers working with the PHA to keep residents fully informed throughout the process. Reports from residents at PHAs that are among the first 60,000 units indicate that PHAs, developers, and local HUD offices do not provide residents with sufficient information. Make sure you fully understand the differences between PBVs and PBRA so that you can influence the option best for you.

WHAT TO SAY TO LEGISLATORS

Ask Members of Congress to ensure that HUD, as required by statute, prepares, conducts, and publishes an assessment of the impact of conversion on public housing residents to ensure that further conversions do not adversely impact residents. Did residents have a genuine role during and after conversion? Were residents evicted just prior to conversion? Was every resident household that wanted to remain after conversion able to remain? 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 RABs? 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

National Housing Law Project's RAD resource webpage, <http://nhlp.org/RAD>

HUD's RAD website, <http://portal.hud.gov/hudportal/HUD?src=/RAD>

HUD's RAD Frequently Asked Questions addresses many detailed issues, http://www.radresource.net/faq_release.cfm