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## **THE RENTAL ASSISTANCE DEMONSTRATION – RAD**

### **Key Features For Public Housing Residents**

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#### **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 60,000 public housing units could be converted under the demonstration.

(HUD requested Congressional approval to convert 150,000 units, but so far Congress has not. So, the potential success of applications sent after January 1, 2014 is uncertain.)

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.

## **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).
- PHA must renew each contract.

If PBRA:

- Initial contract is for 20 years.
- PHA must renew each contract.

## **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.

## **Residents will want to learn whether their PHA is considering 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.

PHAs have until September 30, 2015 to apply, or until 60,000 units have converted.

### **Ask your PHA if it is putting an application together**

- 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?

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

This is good, however HUD does not require a Significant Amendment process to begin until two months after HUD has already given basic approval of the RAD conversion plan for a specific development (this is called a CHAP).

That means Resident Advisory Board (RAB) involvement, 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:
  - number of bedrooms,
  - bedroom distribution of units, and
  - type of units (eg family, elderly, 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.
- Indicate any waiting list preferences.

**Residents of developments proposed for conversion do get involved early** *See next page*

## **Residents of developments proposed for conversion do get involved early**

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 RAB or residents of other developments – just the development(s) slated for conversion.

2. Conduct two meetings with those residents to discuss conversion plans and to give those residents a chance to comment.

3. Write responses to those residents' comments.

Once there is preliminary approval (a CHAP), the PHA must hold at least one more meeting with those residents.

These meetings are separate from the Significant Amendment process, which doesn't take place until two months after preliminary approval, which could be three months after an application is sent in.

For more information if your development is chosen, see page 10.

## **Who will own the converted properties?**

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

## **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.

## **One-for-One Replacement**

Although the formal HUD Notice 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%.

## **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.

### Tent Rent:

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

Monthly rent increases of more than the greater of 10% or \$25 solely due to conversion are phased in over three to five years.

### Rescreening:

No rescreening of current residents.

### Right to Return:

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

### Good Cause Eviction:

PHA must renew a resident’s lease, unless there is “good cause” not to.

### 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 PHA must provide \$25 per unit annually for tenant 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 PHAs 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, the Notice requires resident participation provisions similar to those of “Section 245”.

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

- PHAs 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 PHA
  - Meets regularly
  - Operates democratically
- PHAs must allow 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 PHA.

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

*See next page*

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

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

PHAs 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. PHA staff may not attend unless invited.
- Respond to the PHA'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.

### Grievance Process

*For PBRA conversions:*

- PHA must notify a resident of the PHA's reason for a proposed adverse action.
- PHA must notify a resident of the right to an informal hearing with the PHA.
- Resident must have an opportunity for an informal hearing with an "impartial" PHA staffer.
- Resident must have an opportunity to:
  - Be represented by someone of their choice.
  - Ask questions of witnesses.
  - Have others make statements.
  - Examine any regulations and evidence used by the PHA.
  - Copy documents related to the proposed adverse action (at resident's cost).
- PHA must give written decision, in a reasonable period of time, stating the reason for an adverse action.

*PBV conversions:* see next page

## Grievance Process, continued

### *For PBV conversions:*

- PHA must notify a resident of the PHA's reason for a proposed adverse action.
- PHA must notify a resident of the right to an informal hearing with the PHA.
- Resident must have an opportunity for an informal hearing.
- Hearing officer may be anyone chosen by the PHA, but may not be the person (or a subordinate of that person) who originated the proposed adverse action.
- Resident must have an opportunity to:
  - Be represented by someone of their choice.
  - Present evidence.
  - Ask questions of witnesses.
  - Examine any documents used by the PHA to propose adverse action.  
If PHA doesn't provide documents, it can't use them at hearing.
  - Copy documents (at resident's expense).
- PHA must give written decision, in a reasonable period of time, stating the reason for an adverse action.  
Decision must be based on "preponderance of evidence" presented at the hearing.
- Residents have the right to an informal hearing about any PHA action regarding the lease that adversely affects the resident's rights, obligations, welfare, or status.

## 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.



## **What Happens With FSS and ROSS?**

### Family Self-Sufficiency (FSS)

- Current FSS participants remain eligible.
- After RAD conversion residents not enrolled before are no longer eligible.
- Funds already granted for FSS coordinator salaries can be used until fully spent.

### Resident Opportunities and Self-Sufficiency (ROSS)

- Current ROSS grantees can continue until the grant is spent.
- After RAD, residents of the property cannot be served by a future ROSS grant.

## **Section 3 Applies**

The PHA is only obliged to give residents preference for employment and training opportunities tied to initial 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.

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 your development is chosen for conversion – more information**

The PHA must make the documents used to communicate with residents of developments proposed for conversion available either as hard copies or online (RAD does not say both hard copies and online).

The documents include meeting materials and responses to resident comments.

All meetings and materials should be provided so that people with Limited English Proficiency or disabilities can participate.

If there is a substantial change in a conversion plan, the PHA must:

- Carry out the PHA Plan Significant Amendment process with the Resident Advisory Board (RAB), all residents, hold a public hearing, etc.
- Have additional meetings with the residents of the converting property.
- A substantial change includes:
  - A change in the number of assisted units
  - A substantial change in the scope of work
  - A transfer of assistance to a different property or owner
  - A change in the eligibility or preferences for new applicants

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.

## **If the HAP contract is removed for breach of contract**

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

New tenants could have incomes greater than most public housing residents – 80% of area median income (for example, \$57,900 in Chicago for 3-person household).

Rents could be higher – 30% of 80% of area median income (for example, \$17,370 in Chicago for 3-person household).

## **Limits on PBVs per development**

RAD limits 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 the 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 that is 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.