

# Rental Assistance Demonstration

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**Administering Agency:** HUD's Office of Multifamily Housing Programs, Office of Recapitalization (Recap)

**Year Started:** 2012

**Number of Persons/Households Served:**

Initially, 60,000 public housing units were allowed to convert, and this was expanded to 185,000 units in FY15, 225,000 units in FY17, and 455,000 units in FY18. The first component of the Rental Assistance Demonstration (RAD) involves public housing. As of November 22, 2021, 153,488 public housing units were converted, 57,970 units had preliminary approvals (CHAPs), and 128,849 units were in reserve (as part of a large "portfolio" of units to be converted over time). The second RAD component involves private, HUD-assisted housing. As of November 22, 2021, 38,400 units were converted, 11,470 were expecting conversion, and 1,800 were undergoing conversion.

**Funding:** To date, RAD has received no appropriated funds.

**See Also:** For related information, refer to the *Public Housing*, *Project-Based Rental Assistance*, *Project-Based Vouchers*, and *Public Housing Agency Plan* sections of this guide.

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), Rental Assistance Program (RAP), McKinney-Vento Single Room Occupancy (SRO), and Section 202 Supportive Housing for the Elderly Project - Rental

Assistance Contract (PRAC) programs, as well as the Mod Rehab Program.

## HISTORY

Throughout 2010 and 2011, HUD consulted with public housing resident leaders through the Resident Engagement Group (REG). HUD sought to create a demonstration program that would bring in non-federal resources to address insufficient Congressional funding for the public housing Capital Fund. HUD also wanted to avoid the many harmful effects the HOPE VI program had on residents. Over time, HUD presented three proposals to the REG, and each time the REG would point out a resident-oriented problem. In response, HUD went back to the drawing board to present a modified proposal. The final proposal, the Rental Assistance Demonstration (RAD), addressed all of the REG's concerns.

Congress authorized RAD through the "FY12 HUD Appropriations Act" to help preserve and improve low-income housing. HUD published PIH Notice 2012-32 implementing RAD on July 26, 2012. A set of revisions were made on July 2, 2013, with technical corrections on February 4, 2014, and significant revisions on June 15, 2015 and again on January 12, 2017 (Notice PIH-2012-32/H-2017-03 REV3). Still more significant revisions were published on September 5, 2019 ([Notice H-2019-09/PIH-2019-23 REV4](#)). HUD issued [Notice H 2016-17/PIH 2016-17](#) on November 10, 2016, providing guidance regarding fair housing and civil rights as well as resident relocation statutory and regulatory requirements under RAD.

The "FY14 Appropriations Act" extended the time for second component conversions to December 31, 2014, from September 30, 2013, and the "FY15 Appropriations Act" removed the second component deadline altogether. The "FY15 Appropriations Act" raised the number of public housing units that could convert under the first component from 60,000 to 185,000 and extended the first component deadline to September 30,

2018. The “FY15 Appropriations Act” made several other changes that are explained in the rest of this article. The “FY17 Appropriations Act” further raised the cap to 225,000 units by September 30, 2020. The “FY18 Appropriations Act” continued to raise the demonstration’s cap to 455,000 unit with a deadline of September 30, 2024.

## PROGRAM SUMMARY

The intent of RAD is to help preserve and improve HUD-assisted 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. RAD does not provide any new federal funds for public housing. There are no RAD regulations, but RAD conversions must comply with a formal RAD Notice, PIH Notice 2012-32. The current Notice is [H-2019-09/PIH 2019-23 \(REV4\)](#).

### Key Features of the First Component

Since the “FY18 Appropriations Act,” up to 455,000 units of public housing and Mod Rehab Program units are allowed 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, 2024. Because the “FY18 Appropriations Act” expanded the number of units that could be converted far beyond the FY17 cap of 225,000 units, HUD eliminated the RAD wait list.

This article will focus on the public housing first component. However, a brief presentation of the key features of the second component precedes a deeper discussion of the first component.

### Key Features of the Second Component

The second RAD component allows owners of properties previously assisted through the Rent Supplement (Rent Supp), Rental Assistance Program (RAP), Moderate Rehabilitation (Mod Rehab), McKinney-Vento Single Room Occupancy (SRO), and Section 202 Supportive Housing for the Elderly PRAC programs to convert to long-term Section 8 contracts—either project-

based vouchers (PBVs) or project-based rental assistance (PBRA). There was no limit to the number of units that could be converted under the second component and there was no competitive selection process for it. The “FY15 Appropriations Act” permanently extended the ability to convert under the second component. The “FY15 Appropriations Act” also allowed projects assisted under the McKinney-Vento Single Room Occupancy (SRO) program to apply for RAD conversion. The “FY18 Appropriations Act” added the Section 202 Supportive Housing for the Elderly PRAC program. All 249 Rent Supp properties (with 13,670 units) closed at the end of 2018 and all 106 RAP properties (with 14,462 units) closed at the end of January 2020. As of November 18, 2021, 201 Section 8 Mod Rehabs or Mod Rehab SROs were expecting conversion, and 41 were undergoing conversion.

Owners of properties with program contracts that have not expired or terminated can enter into a 20-year PBV housing assistance payment (HAP) contract with a public housing agency (PHA) or enter into a 20-year PBRA HAP contract administered by HUD’s Office of Multifamily Housing Programs. Owners with contracts that have already expired or terminated and whose residents started receiving tenant protection vouchers (TPVs) on or after October 1, 2006 can only enter into a 20-year PBV HAP contract with a PHA (before April, 2017, PBV contracts had a maximum term of 15 years).

Owners had to notify residents of an intent to convert, follow resident participation, and adhere to the resident protection provisions as described below pertaining to the first component.

### Summary 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 the 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 (PBV). 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 20 years (prior to April 2017 the minimum was 15 years and the maximum was 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 (24 CFR part 983) 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 (24 CFR parts 880 to 886) would apply.

As of November 23, 2021, 1,259 projects with 122,014 units will be converting to or have converted to PBV and 731 projects with 89,294 units will be converting to or have converted to PBRA.

Voluntarily converting some public housing to Section 8 might be good because Congress continues to underfund public housing. That underfunding leads to deteriorating buildings and the loss of units through demolition. HUD has estimated that 10,000 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 (whether PBV or PBRA) than for public housing. Therefore, some units that were public housing before conversion are more likely to remain available and affordable to people with extremely low and very low incomes because of the long-term Section 8 contract.

## Resident Protections and Rights

Both the language in the statute and the Notice implementing the statute include all the protections sought by the Resident Engagement Group. However, it is up to residents to try to get HUD, PHAs, developers, and owners to comply. Some of the protections and rights for residents include (others are described later):

- 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.
- Tenant 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, solely due to conversion is phased in over three to five years.
- Rescreening: Current residents cannot be rescreened when they return if they were temporarily relocated while their development was rehabilitated or if their development was demolished and new units were built.
- Right to Return: Residents temporarily relocated while their development was rehabilitated or if their development was demolished and new units were built 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 this statutory requirement.

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.

## RESIDENT INVOLVEMENT

### Resident Notices and Meetings

Before submitting a RAD application to HUD, a 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. Since January 2017, as outlined in [Notice H 2016-17/PIH 2016-17](#), the form of notice must be a written RAD Information Notice (RIN) that indicates, among other things:

- The PHA's intention to convert the units through RAD;
- A general description of the conversion (rehab, new construction, etc.);
- Resident relocation protections if relocation is involved; and
- Residents' rights under RAD (including the right to remain in the project after conversion, the right to return to the project if there is temporary relocation, the right to relocation benefits, and the right to not be re-screened upon returning).

In addition, a General Information Notice (GIN) must be provided informing each resident about "Uniform Relocation Act" (URA) protections if URA is triggered.

After a RIN is issued, the PHA must conduct at least two meetings with residents of projects proposed for conversion. Since January 2017, at these meetings the PHA must:

- Discuss conversion plans;

- Give residents a chance to comment;
- Describe all RAD resident rights (including the right to remain in the project after conversion, the right to return to the project if there is temporary relocation, the right to relocation benefits, and the right to not be re-screened upon returning); and
- Explain:
  - Any change in the number of units or unit sizes or any other change that might make it difficult for a household to re-occupy the property;
  - Any units that have been vacant for more than 24 months will be demolished (see "One-for-One Replacement" below);
  - Any plans to partner with an entity other than an affiliate or instrumentality of the PHA, and if so, whether such a partner will have a general partner or managing member ownership interest in the proposed project owner; and
  - Any transfer of assistance to another property, meaning residents would have to permanently move to another location.

After these meetings the PHA must write responses to residents' comments.

After a RAD application has received preliminary HUD approval, called a "CHAP" (Commitment to enter into a Housing Assistance Payment contract) but before the PHA requests a "Concept Call" with HUD, the PHA must have at least one meeting with residents to discuss updated conversion plans and ask for feedback regarding the proposed improvements. The PHA must prepare comprehensive written responses to comments made by residents at this meeting.

The Concept Call is relatively new, first required after September 5, 2019. It requires a PHA to request a call with HUD before submitting a "Financing Plan," to show that the plan is far enough along for HUD to review it. A Financing Plan is a document demonstrating that the project can be physically and financially sustained for the term of the Section 8 Housing Assistance Payment (HAP) contract.

After the Concept Call and before submitting a Financing Plan, a PHA must have at least one more meeting with residents to discuss updated conversion plans and the anticipated Financing Plan. The PHA must prepare comprehensive written responses to comments made by residents at this meeting.

After HUD has issued a RAD Conversion Commitment (RCC), the PHA must notify residents that the RAD has been approved. The notice must include: the anticipated timing of the conversion; the anticipated duration of the rehab or new construction; the revised terms of the lease and house rules (allowable and prohibited activities in housing units and common areas listed in an attachment to a lease); any anticipated relocation; and opportunities to and procedures for residents to exercise the RAD “choice mobility” option (discussed below).

More meetings with residents are required to discuss any substantial change to the conversion plans, including:

- A substantial change in the scope of work;
- A substantial change in utility allowances;
- A change in the number of units or unit sizes of assisted units or any other change that might make it difficult for a household to re-occupy the property;
- Any units that have been vacant for more than 24 months that will be demolished (see “One-for-One Replacement” below);
- Plans to partner with an entity other than an affiliate or instrumentality of the PHA, and if so, whether such a partner will have a general partner or managing member ownership interest in the proposed project owner; and
- The introduction or abandonment of a transfer of assistance to another property or a major change in the location to which assistance would be transferred.

A PHA must carry out the PHA Plan Significant Amendment process 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).

All meetings “should” be conducted in a place and at a time that fosters resident participation.

All communications and meetings must be accessible. At a minimum, a 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 below), which does not have to take place until about five months after preliminary approval.

### **Significant Amendment to the PHA Plan**

RAD conversion is a Significant Amendment to a PHA Plan (see the “PHA Plan” article in Chapter 7 of this *Advocates’ Guide*). A RAD conversion Significant Amendment must describe the units to be converted, including the number of units, the number of units by bedroom size, 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 units with different numbers of bedrooms, as well as any change in policies regarding eligibility, admission, selection, and occupancy of units.

However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as five months after HUD has issued a preliminary approval (CHAP) for RAD conversion of a specific development. The Significant Amendment process starts too late because when submitting the required RAD Financing Plan HUD requires a PHA to have a letter from HUD approving a Significant Amendment. A Financing Plan is a document submitted to HUD demonstrating that a 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.

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. Rather than engage all PHA residents before an application for RAD conversion is submitted, the public engagement process is only required to take place close to the time when a PHA has all of its financing and construction plans approved and is ready to proceed. At this point, comments from the RAB, other residents, or nearby community members are not likely to have any effect.

### **\$25 Per Unit for Resident Participation**

Whether a property is converted to PBV or PBRA, each year a PHA must provide \$25 per occupied unit at the property for resident participation; of this amount, 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. A PHA may use the remaining \$10 per unit for resident participation activities; however, some PHAs distribute the entire \$25 per unit to the resident organization.

### **Resident Organizing**

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, the Notice requires resident participation provisions similar to those of Section 245. For example, PHAs/owners 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 on site, 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 the Notice 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% or 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%.

A PHA must demonstrate that any reduction of units better serves residents; will not result in involuntary permanent displacement; and will not discriminate. If a PHA proposes changes that will result in, for example, fewer three-bedroom units, the PHA must demonstrate that it will not result in involuntary displacement or discrimination.

### **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. 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 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 after two years if one is available. A PHA could limit Choice-Mobility moves in a PBRA property to one-third of the PHA's turnover vouchers, or to 15% of the assisted units in a property.

### **Relocations and Civil Rights Review Guidance**

HUD issued [Notice H 2016-17/PIH 2016-17](#) on November 10, 2016, providing guidance regarding fair housing and civil rights as well as resident relocation statutory and regulatory requirements under RAD.

### **Relocation Provisions**

Regarding relocation provisions, there were a number of new features, several in response to advocates. The Notice requires PHAs or project owners to prepare a written relocation plan for all transactions that involve permanent relocation or that involve temporary relocation expected to be more than 12 months.

### **NOTICES**

For any temporary or permanent relocation, residents must receive a RAD Information Notice (RIN) before the first required resident meetings to tell residents that the PHA intends to convert through RAD, and to describe project plans (such as new construction or rehabilitation) and residents' rights under RAD (see discussion earlier in this article). In addition, residents must receive a General Information Notice (GIN) within 30 days after a CHAP is issued. The GIN must inform residents that they might be displaced, and if so that they will receive relocation assistance and 90 days' advance notice before having to move. Owners must provide a Notification of Return to the Covered Project indicating: a date or estimated date of return, whether the PHA or some other entity will be responsible for managing the return, that out-of-pocket expenses will be covered, that the PHA or another entity will give residents 90 days' advance notice of return, and options available to

residents who decide not to return.

### **TEMPORARY RELOCATION**

For moves within the same building or complex, or for moves elsewhere for **one year or less**, a PHA must give residents 30 days' notice and reimburse residents for out-of-pocket expenses.

If temporary relocation is expected to be for **more than one year**, a PHA must give residents 90 days' notice and offer residents the choice of temporary housing and reimbursement for out-of-pocket expenses related to the temporary relocation, or permanent relocation assistance and payments at "Uniform Relocation Act" levels. Residents must have at least 30 days to decide between permanent and temporary relocation assistance. A PHA cannot use any tactics to pressure residents to give up their right to return or to accept permanent relocation assistance and payments.

PHAs must maintain a "Resident Log" that tracks resident status through to completion of rehabilitation or new construction, including re-occupancy after relocation. The Resident Log must have detailed data regarding each household that will be relocated, including the address of temporary housing and key dates of notices and moves. Unfortunately, HUD will not make a redacted or aggregate summary of the Resident Log available to advocates wishing to monitor the relocation process.

### **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, a PHA must obtain informed written consent from the resident that also confirms that the resident agrees to end the right to return and that confirms that the resident understands permanent relocation assistance and payments will be provided consistent with the "Uniform Relocation Act." Replacement housing options for

residents who voluntarily relocate permanently include providing other public housing, a project-based voucher, a regular tenant-based voucher, and homeownership housing.

### **Fair Housing and Civil Rights Provisions**

Notice H 2016-17/PIH 2016-17 provides:

- An outline of conditions under which HUD will conduct a front-end review to determine whether a site is in an area of minority concentration relative to the site's housing market area,
- Guidance on the concepts of "area of minority concentration" and "housing market area" that are reviewed when determining whether a site is in an area of minority concentration, and
- Information about what HUD will consider and what PHAs should provide evidence of in order for a proposed site to meet exceptions that permit new construction in an area of minority concentration. This includes:
  - An explanation of the presumptions necessary for meeting the "sufficient comparable opportunities" exception, and
  - A description of the factors that HUD may consider in evaluating the "overriding housing needs" exception.

### **Who Will Own the Converted Properties?**

Many residents worry about their developments becoming "privatized." Theoretically, this potential problem is covered by the RAD statute requiring ownership or control by a public or nonprofit entity. However, legal services attorneys worry that there could be loopholes. Legal services attorneys recommend that if a PHA does not directly keep ownership that it at least has a long-term ground lease ensuring direct control.

The June 15, 2015, revision of the RAD Notice (PIH-2012-32 REV-2) refined the meaning of "ownership and control" of post-conversion projects.

For conversions that do not involve the Low-Income Housing Tax Credit (LIHTC), a public or nonprofit entity must meet one of the following:

- Hold fee simple interest in the real property (holding title to the land and any improvements, such as buildings).
- Have direct or indirect legal authority to direct the financial and legal interests of the project owner (through a contract, partnership share or agreement of an equity partnership, voting rights, or other means).
- Own 51% or more of the general partner interests in a limited partnership, or own 51% or more of the managing member interests in an LLC.

As of January 19, 2017, due to the REV 3 Notice the following options were added:

- Lease the ground to a project owner.
- Own a lesser percentage of the general partner or managing member interests and hold certain control rights approved by HUD.
- Own 51% or more of all ownership interests in a limited partnership or LLC and hold certain control rights approved by HUD.

HUD may allow ownership of a project to be transferred to a 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, leasing 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 wait list for the project, including performing eligibility determinations that comply with the PHA Plan.
- 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 retaining certain rights over the project, such as administering the waiting list.

Whether or not the property is owned by a LIHTC entity, the National Housing Law Project asserts that only two options will preserve the long-term affordability of a property:

- 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 through a long-term ground lease.

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 that could be a for-profit.

### Limits on PBVs per Development

For projects that closed after January 19, 2017, there is no limit on the number of PBVs that can be attached to a property.

For projects that closed before changes were made on January 19, 2017, 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.

For those pre-2017 RAD projects, a public housing household whose development was converted cannot be involuntarily displaced as a result of this 50% cap. In other words, any household living in development at the time of RAD conversion (pre-2017) that does not meet one of the exception criteria (e.g., elderly, disabled, supportive service) and does not want to move, cannot be terminated from PBV and cannot be required to move, even if they cause the development to exceed the 50% PBV + exception unit cap. However, once one of those original households (non-elderly, non-disabled, non-supportive services) leaves, causing the property

to exceed the 50% PBV + exception unit cap, that unit can only be assisted with PBV if it is rented to a household that meets one of the three exception categories (elderly, disabled, or supportive services). 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 50% to 100% elderly.

### Mixing RAD and “Section 18” Disposition

A new provision was added on July 3, 2018 through [Notice PIH 2018-04](#) and added to the RAD Notice REV-4 (September 5, 2019). Up to 25% of the public housing units at a RAD project may be “disposed” (sold or transferred) under Option (c) of the “Section 18” Disposition regulations options: the disposition is in the “best interest of residents and the PHA.” This is termed the “RAD/Section 18 Blend.” (For more about Section 18 disposition, see the “Repositioning of Public Housing” entry in this chapter of the *Advocates’ Guide*.)

Yet another provision was added through [Notice PIH 2021-07 on January 19, 2021](#) without public input. The percentage of units eligible for disposition within a RAD project as a result of [Notice PIH 2021-07](#) can now be based on the “hard construction costs” of a proposed rehabilitation or new construction. Hard construction costs include overhead and profit, payment and performance bonds, and “general requirements.”

- For high-cost areas, defined as those where Hard Construction Costs exceed 120% of the national average, a PHA may convert up to **80%** of the units in a RAD project to PBVs under Section 18.
- If hard construction costs are equal to or greater than 90% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to **60%** of the units in a RAD project to PBVs under Section 18.

- If hard construction costs are equal to or greater than 60% but less than 90% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to **40%** of the units in a RAD project to PBVs under Section 18.
- If hard construction costs are equal to or greater than 30% but less than 60% of Housing Construction Costs published by HUD for the given market area, a PHA may convert up to **20%** of the units in a RAD project to PBVs under Section 18.

*Notice PIH 2021-07* also provides that Small PHAs, those with 250 or fewer public housing units, may convert up to **80%** of the units in a RAD project to PBVs under Section 18. However, to be eligible for the Small PHA blend, a PHA must submit a feasible repositioning plan that removes all of a PHA’s public housing Annual Contributions Contract (ACC) units, reflecting that the PHA will not develop additional public housing units under otherwise available Faircloth authority, and will not transfer that Faircloth authority to another PHA.

The Faircloth Amendment to the “Housing Act of 1937” states that HUD cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units a PHA owned, assisted, or operated as of October 1, 1999.

Units in a RAD/Section 18 property must be substantially rehabbed or be newly constructed. The PHA must show that disposition is necessary to so that all the units in a development can use PBVs. HUD will provide Tenant Protection Vouchers that will convert to PBVs for these units.

A PHA may not provide different relocation rights and benefits to residents of a project on the basis of whether they live in a RAD unit or a Section 18 unit. All RAD resident protection provisions must apply to residents of Section 18 units, including: resident notice and meeting requirements, right to return, no rescreening, no denial based on income eligibility or income targeting, relocation assistance, grievance and lease provisions, right

to establish and operate a resident organization, and \$25 per unit to be used for resident participation activities. These protections are most clearly laid out in “[RAD-Section 18 \(75/25\) Blend FAQs](#),” see FAQs #7, #8, and #9 on page 9.

HUD will not approve a RAD conversion that would include disposition under Section 18 regulations option (b) or (c) if the Section 18 units would not be replaced one-for-one. Option (b) is disposition that will allow a PHA to buy, rehab, or build other properties that will be “more efficient or effective”.

The PBV HAP contract may be renewed as many times as necessary in order to keep the PBV units in the RAD project affordable.

### **Section 3 Applies**

Section 3 preferences for resident training, employment, and contracting opportunities have always been required until a public housing development had completed RAD conversion.

The September 2019 Notice (REV-4) elaborated on the earlier notices by stating that pre-development conversion costs remain subject to regular Section 3 public housing provisions. After RAD Closing (which takes place before final conversion), any housing rehabilitation or new construction that is not funded by a HUD program (such as HUD’s HOME or CDBG programs) is subject to the Section 3 provisions for housing and community development activities (meaning priority to low-income residents in the project’s neighborhood) except that first priority for employment and other economic opportunities must be given to residents of public housing or Section 8-assisted housing.

RAD continues to avoid extending RAD employment opportunities after conversion for PHA staff who had performed various tasks at the public housing development, such a central office employee, painters, grounds crews, etc.

## **OTHER KEY FEATURES IN REV 4**

### **Projects Needing Significant Renovations No Longer Prioritized**

Notice REV4 deleted the priority categories for

approving RAD applications. Instead, HUD will accept applications on a first-come, first-served basis. This formalizes actual HUD practice in which HUD approved RAD applications that entailed little or no rehabilitation for 27% of completed RAD conversions and 36% of projects undergoing rehabilitation, according to the [Government Accountability Office](#). The original intent of RAD was to address Congress' underfunding of public housing capital needs that resulted in accelerated deterioration of properties. The appropriations act establishing RAD stated that the purpose is to "preserve and improve" public housing. The initial RAD Notice and each subsequent revision reiterated this intent and added that the goal is to "address immediate and long-term capital needs."

### **RAD Projects in Opportunity Zones**

HUD will provide extra rent revenue of up to \$100 per unit per month to a public housing project located in an Opportunity Zone that converts to Section 8 project-based rental assistance (PBRA) – not Project-Based Vouchers (PBV) – provided the project needs extra revenue to be financially viable. The RAD conversion must entail either new construction or substantial rehabilitation. HUD will approve requests on a first-come-first-served basis. A HUD [FAQ](#) defines "substantial rehabilitation" and describes how HUD will determine whether an infusion of additional rent revenue is necessary.

## **TWO NEW ITEMS ADDED IN 2021**

### **RAD Complaint Process for Residents**

Recap posted a one-page [RAD Complaint Process](#) for residents of public housing properties undergoing conversion or that have converted under RAD to either the PBV or PBRA programs. The RAD Complain Process document lists suggested contents of a complaint, such as a description of the resident's issues and their desired remedy.

The document also lists steps that Recap staff will take when they receive a complaint, including:

- Communicating with residents to obtain additional information.

- Gathering information from the PHA, property manager, and RAD Transition Manager (the process does not explicitly include talking with legal services or other resident-oriented third parties).
- Determining whether Recap or another HUD office could facilitate communication between residents and the other party.
- Providing residents with a written response that includes actions taken and recommended next steps.

The document states that residents should direct follow-up questions to the [Recap office](#). The complaint process does not include an appeal process if residents are unhappy with Recap's written response, nor does it indicate that Recap will undertake ongoing monitoring to ensure that suggested actions are carried out.

### **Faircloth-to-RAD**

Recap formally announced in April, 2021, a new "Faircloth-to-RAD" option for PHAs to create deeply affordable homes. Faircloth refers to a limit on the number of public housing units a PHA can own, assist, or operate. Recap indicated that many PHAs operate fewer public housing units than their Faircloth limit, meaning that in early 2021, 220,000 units of public housing could be developed. The new Faircloth-to RAD option is designed to establish a long-term, reliable rental subsidy contract to help PHAs and their development partners more readily finance the construction of new deeply affordable units. The latest list of PHAs with available Faircloth units (as of September 30, 2021) is [here](#).

Congress established in 1998 a limit on the number of public housing units the federal government would support. The Faircloth Amendment to the "Housing Act of 1937" prohibits HUD from funding the construction or operation of new public housing units with Capital or Operating funds if construction would result in a net increase in the number of public housing units a PHA owned, assisted, or operated as of October 1, 1999. This is referred to as the "Faircloth Limit," named after Lauch Faircloth, a North Carolina senator who championed the limit.

One reason PHAs with available Faircloth units have been unable to construct new public housing units is because there is no new federal funding for their initial construction. The new option is intended to enable PHAs with Faircloth unit availability to develop public housing units on a temporary basis using HUD's public housing mixed-finance program with pre-approval to convert the property under RAD to a long-term Section 8 contract once construction is complete. By providing early-stage RAD conversion approvals, specifically the revenue certainty and the market-familiarity of a Section 8 contract that these RAD approvals represent, HUD gives lenders and investors the information they need to underwrite the construction of new public housing.

Recap produced a [Faircloth-to-RAD Fact Sheet](#) that listed available Faircloth units by state, and more importantly, PHAs that have more than 1,000 available Faircloth units. Recap also has June 2020 [Faircloth FAQs](#) and a detailed [Faircloth-to-RAD guide](#).

## FUNDING

To date, RAD has not had any appropriated funds.

### Forecast for 2022

As in the past, the Biden Administration's FY22 budget request sought \$100 million for targeted expansion of RAD to public housing properties that cannot feasibly convert because their combined public housing capital and operating funds are not enough. HUD estimates that this would enable the conversion of approximately 30,000 units. Neither the House nor the Senate Appropriations Committees proposed such targeted appropriations in FY22 for public housing properties that cannot feasibly convert. The Senate appropriations bill, however, proposed expanding the cap to 500,000 units and extending the time to convert to September 30, 2028, which NLIHC opposes. For RAD/Section 18 Blends, it would allow the Tenant Protection Vouchers issued for Section 18 disposition to be converted to Project-Based Rental Assistance (PBRA). NLIHC has no objection to that provision.

(Currently, Section 18 TPVs can only be converted to PBVs under RAD/Section 18 Blends.

## 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 (RCC), a 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 people applying to live at the property. 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 with RAD projects that are still in process or for those with projects on the Applications Under Review list, seek commitments from the PHA and any developers working with the PHA to keep residents fully informed throughout the process. Reports from residents at PHAs indicate that their PHAs, developers, and local HUD offices do not provide residents with sufficient information. Make sure to fully understand the differences between PBVs and PBRAs so that you can influence the best option for residents.

Contact HUD's Office of Recapitalization with problems; see [https://www.hud.gov/program\\_offices/housing/mfh/hsgmfbus/aboutahp](https://www.hud.gov/program_offices/housing/mfh/hsgmfbus/aboutahp).

## WHAT TO SAY TO LEGISLATORS

Tell Members of Congress not to lift the cap on the number of public housing units that may convert until this “demonstration” has convincingly shown that HUD will rigorously monitor PHA and owner compliance with all tenant protections written into the RAD statute. Ask Members of Congress to ensure that HUD, as required by statute, prepares, conducts, and publishes a detailed assessment of the impact of conversion on public housing residents to ensure that further conversions do not adversely impact residents. Such an assessment should ask whether residents had a genuine role during and after conversion, were evicted just prior to conversion, were able to remain after conversion if that is what they wanted, or were inappropriately re-screened. An assessment should also determine whether Section 6 resident protections, such as grievance procedures, were fully honored and whether residents of converted properties were able to participate on resident councils and RABs. Was 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, 202-662-1530, [www.nlihc.org](http://www.nlihc.org).

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

NLIHC’s RAD: *Key Features for Public Housing Residents*, <https://nlihc.org/sites/default/files/RAD-Outline-Updated-November-2021.pdf>, is on NLIHC’s Public Housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>.

RAD Notice H-2019-09 PIH-2019-23 (REV4), [https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23\\_RAD\\_Notice%20Rev4\\_20190905.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf).

RAD Fair Housing, Civil Rights, and Relocation Notice H 2016-17/PIH 2016-17 [https://www.hud.gov/sites/documents/16-17hsgn\\_16-17pihn.pdf](https://www.hud.gov/sites/documents/16-17hsgn_16-17pihn.pdf).

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

New RAD Complaint Process, [https://www.hud.gov/sites/dfiles/Housing/documents/RAD\\_External\\_Complaint\\_Process\\_2021-09-21.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/RAD_External_Complaint_Process_2021-09-21.pdf).

“RAD-Section 18 (75/25) Blend FAQs,” [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/repositioning/rad\\_section18](https://www.hud.gov/program_offices/public_indian_housing/repositioning/rad_section18).

Notice PIH 2018-04 about RAD/Section 18 Blended Projects, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-04-Demo-Dispo-Notice-12-14-18.pdf>.

Notice PIH 2021-07 on Demolition and Disposition of Public Housing under Section 18, <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-07.pdf>.

The latest list of available Faircloth units is on the PIH “Office of Capital Improvements” webpage, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/capfund](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund).

The Faircloth-to-RAD Fact Sheet is at: [https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth-to-RAD\\_Fact\\_Sheet.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth-to-RAD_Fact_Sheet.pdf).

Faircloth FAQs (June 2020) are at: <https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth%20FAQ%20.pdf>.

A detailed Faircloth-to-RAD guidance document for PHAs is at: [https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth\\_Resource\\_Package.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/Faircloth_Resource_Package.pdf).