

Rental Assistance Demonstration

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Administering agency: HUD's Office of
Multifamily Housing Programs

Year program started: 2012

Number of persons/households served: Initially 60,000 public housing units were allowed to convert, expanded to 185,000 units in FY15 and 225,000 units in FY16; and 23,000 private, HUD-assisted multifamily units as of May 2017.

FY17 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 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). 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.

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.

Key Features of the First Component. The first component initially allowed 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 could now apply for RAD conversion.

On December 9, 2015, HUD announced that RAD reached its 185,000 unit limit, having given preliminary approval for 185,000 public housing units, the maximum allowed by Congress, to convert to either project-based vouchers (PBV) or to PBRA. At that time HUD had a waiting list of 10,946 public housing units that could be considered for RAD conversion if some of the projects with preliminary approval were withdrawn or revoked.

The FY17 appropriations act further raised the cap on the number of units that could be converted under RAD to 225,000 and extended the application deadline to September 30, 2020. As of October 1, 2017, there were 58,651 units on the waitlist.

This *Advocates' Guide* 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. 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 permanently extended the ability to convert under the second component. As of May 2017, there were 23,000 private, HUD-assisted multifamily units that had completed conversion.

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 RAD component initially allowed Rent Supp, RAP, as well as Mod Rehab projects to convert tenant protection vouchers (TPVs) to PBVs if a property's contract expired or terminated due to mortgage prepayment after October 1, 2006, or before December 31, 2014.

The FY15 appropriations act eliminated the December 31, 2014, deadline, permanently extending the ability to convert under the second component. The FY15 appropriations act allowed properties with contracts that have not expired or terminated to convert to PBRA or PBV.

Owners must notify residents of an intent to convert TPVs. There must be a briefing to inform residents about the differences between PBVs, PBRAs, 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 or a PBRA. Residents must have an opportunity to comment at the briefing.

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 the public housing Capital Fund and Operating Fund 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. Project-based vouchers. 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. Project-based rental assistance. 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. That underfunding 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 that could be a for-profit.

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. This improvement has the potential to address concern expressed by many residents – that

their public housing homes could be privatized after RAD conversion.

- A public or nonprofit entity must:
 - Hold fee simple interest in the real property.
 - 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.
 - And as of January 19, 2017 due to the REV 3 Notice:
 - 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 an LLC and hold certain control rights approved by HUD.
- 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, being the sole general partner or managing member.
 - The PHA retaining fee ownership and leasing the real estate to the LIHTC entity as part of a long-term ground lease.
 - The PHA retaining 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.
 - The PHA entering 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.

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, 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, that is solely due to conversion is phased in over the course of 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 this statutory requirement.

Resident Involvement

Resident Meetings. 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. The January 19, 2017, REV 3

Notice required the meetings to describe:

- The scope of work;
- Any change in the number or configuration of assisted units or any other change that might impact a household's ability to re-occupy the property;
- Any “de minimus” reduction of units which have been vacant for more than 24 months (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;
- Any transfer of assistance to another property.

In addition, before the two resident meetings, the REV 3 Notice requires PHAs to issue a RAD Information Notice (RIN) to inform residents of projects that are proposed to be converted of their rights.

Once there is preliminary HUD approval (called a “CHAP”), the PHA must hold at least one more meeting with those residents. The January 19, 2017 REV 3 Notice adds that this meeting must be held before the PHA submits a Financing Plan (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). Additional meetings with residents must discuss any material change in the calculation of utility allowances and any substantial change to the conversion plans, including:

- A substantial change in the scope of work;
- Change in the number or configuration of assisted units or any other change that might impact a household's ability to re-occupy the property;
- De minimus reduction of units that have been vacant for more than 24 months (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;
- Introduction or abandonment of a transfer of assistance to another property, or material

change in the location to which assistance would be transferred.

Significant Amendment to the PHA Plan. RAD conversion is a “Significant Amendment” to the PHA Plan. However, HUD does not require a Significant Amendment process to begin until late in the conversion process, which could be as late as six months after HUD has issued a preliminary approval for RAD conversion of a specific development [called a Commitment to enter into a Housing Assistance Payment contract (CHAP)]. This is because HUD requires a PHA to have a letter from HUD approving a Significant Amendment when submitting a RAD *Financing Plan*. A 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. 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.

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.

\$25 Per Unit for Resident Participation. Whether a property is converted to PBV or PBRA, each year the 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. The 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, PIH Notice 2012-32 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 2012-32 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 5 units, whichever is greater, without seeking HUD approval. HUD calls this the "de minimus" exception. Furthermore, RAD does not count against the 5%/5 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. In other words, any household living in a development at the time of RAD conversion 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 (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 50% to 100% elderly.

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.

Regarding relocation provisions, there are a number of new features, several of which are 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 temporary relocation anticipated to exceed 12 months;

- PHAs to provide residents with a RIN before a RAD application is submitted in order to ensure that residents are informed of potential project plans and of their rights in connection with RAD;
- Project owners to provide a notification of Return to the Covered Project; and,
- PHAs to maintain detailed data regarding each household that will be relocated, with key dates of notices and moves.

In addition, the relocation section of the Notice:

- Provides enhanced guidance on the right to return requirements, any offers of alternative housing options, and the documentation that must be retained when tenants choose an alternative housing option and decline their right to return; and
- Describes how HUD has administratively implemented the Uniform Relocation Act (URA) requirements and the URA relocation assistance and payments for displaced residents who decline the right to return and instead choose voluntary permanent relocation.

Some of the key provisions pertaining to fair housing and civil rights listed in the introduction of the Notice include:

- An outline of conditions under which HUD will conduct a front-end review to determine whether the 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;
- 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.

Problems Identified by Advocates. In the first years of implementation, NLIHC spoke with local advocates who related problems residents had obtaining basic information about proposed RAD conversions at the required meetings and through Freedom of Information Act requests. Although NLIHC informed key HUD officials about these problems they persisted. As more projects were approved and as early projects began or completed renovation or demolition and construction of new developments, legal services attorneys and tenant organizers reported mounting problems to the National Housing Law Project.

As detailed in an October 11, 2017, letter to HUD Secretary Carson, problems include:

- PHAs routinely deny residents and advocates access to plans and documents related to RAD conversions, or do not provide the information in a timely manner.
- The three required meetings with residents are inadequate to explain the changes that residents will experience as their property converts and are insufficient to discuss the complex options presented at the time of conversion. Sometimes, PHAs do not present the minimum amount of information required by the statute.
- PHAs frequently have inadequate relocation policies. PHAs or owners have failed to: provide residents with adequate notice as required by law; provide the required relocation advisory services; or create adequate written relocation plans or comply with their own written relocation plans. In some situations the temporary housing provided is uninhabitable or an inadequate size for the household.
- PHAs and owners frequently interfere with tenant organizing activities. There are many instances of PHAs and owners explicitly impeding or prohibiting resident organizing efforts.
- Although prohibited by the RAD statute, residents are routinely re-screened at the time of conversion for income, credit history, criminal history, and other requirements, especially at properties that will be using LIHCs.
- Although prohibited by the RAD statute, numerous residents have been denied their right to a grievance procedure. Owners routinely fail to include references to the grievance procedures in the "house rules."

- Explicit violations of fair housing and civil rights laws have been identified, such as familial status discrimination, failure to provide reasonable accommodations to residents with disabilities, and failure to provide translation services to individuals with limited English proficiency.
- In transfers of assistance, residents are told they must move a significant distance away from the public housing property. Such transfers will have a devastating impact on residents because they will be moved far from their friends, families, workplaces, churches, schools, and medical providers.

FUNDING

RAD does not have any appropriated funds. The FY15 and FY16 Appropriations Acts did not include the administration's 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.

FORECAST FOR 2018

The Trump Administration's FY18 budget request sought two RAD changes previously sought by the Obama Administration, that were also included in the House appropriations bill (H.R. 3354.) and in a bill that cleared the Senate Appropriations THUD subcommittee (s. 1655):

- Make Section 202 Project Rental Assistance Contract (PRAC) owners eligible to convert their subsidy stream under RAD.
- Add RAD statutory language to ensure residents' right to continue their tenancy by imposing the first component's prohibition on rescreening or terminating residents when their Rent Supp, RAP, or Mod Rehab developments convert under RAD.

The Trump Administration and the Senate Appropriations THUD subcommittee also proposed three harmful amendments:

- Eliminating the cap on the number of public housing units that could be converted.
- Eliminating the September 30, 2020 deadline for public housing conversions.

- Allowing nonprofits (which are not publicly accountable) to be considered as preserving a public interest when LIHTCs are used for conversion or when there is a foreclosure, bankruptcy, or default (As did H.R. 3354) of an already converted property.

As of the date this *Advocates' Guide* went to press, Congress has not enacted its final FY18 spending bills.

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 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 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 indicate that their PHAs, developers, and local HUD offices do not provide residents with sufficient information. Make sure you fully understand the differences between PBVs and PBRAs so that you can influence the option best for you.

Contact HUD's Office of Recapitalization with problems, 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 of the tenant protections written into the RAD statute. 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, 202-662-1530, www.nlihc.org

NLIHC’s “RAD: Key Features for Public Housing Residents,”

http://nlihc.org/sites/default/files/RAD-Outline_Updated_August-2017.pdf

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

National Housing Law Project’s October 11, 2017, letter to HUD Secretary Carson,

http://nlihc.org/sites/default/files/NHLP_Concerns-with-RAD-Implementation.PDF

National Housing Law Project/American Federation of State, County, and Municipal Employees RAD-Watch.org, <http://www.rad-watch.org>

HUD’s RAD website,

<http://portal.hud.gov/hudportal/HUD?src=/RAD>

HUD’s Office of Recapitalization,

https://www.hud.gov/program_offices/housing/mfh/hsgmfbus/aboutahp