

Resident Participation in Federally Subsidized Housing

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Subsidized housing residents have important personal perspectives about the impact of established and emerging subsidized housing policies on their homes and communities. Consequently, they also have good ideas about how their housing developments should be managed. Resident participation in all aspects of housing management is critical to the long-term success of federal housing programs.

HUD has three major programs that provide rent subsidies to approximately 4.4 million households nationwide. These programs are the public housing program, private multifamily HUD-assisted rent programs, and the Section 8 Housing Choice Voucher Program. Each program has its own set of challenges and opportunities related to resident participation.

PUBLIC HOUSING

Administering agency: HUD's Office of Public and Indian Housing

Year started: 1986 for public housing tenant participation, 1998 for Resident Advisory Boards

Population targeted: Residents of public housing

See also: For related information, refer to the *Public Housing*, *Public Housing Agency Plan*, and *Rental Assistance Demonstration* sections of this guide.

There are a number of HUD policies that help support the participation of all public housing residents in public housing agency (PHA) decision making.

PHA Plan Process

Opportunities for resident participation exist in the annual and five-year planning processes, collectively called the PHA Plan, required by the "Quality Housing and Work Responsibility Act of 1998" (QHWRA). Many PHAs only have minimal

PHA Plan resident engagement requirements, but the process does open the door for residents and other community members to interact and influence PHA decisions.

For larger PHAs (referred to as Non-Qualified PHAs), the PHA must conduct reasonable outreach to encourage broad public participation in the PHA Plan process. It must invite public comment regarding a proposed PHA Plan and conduct a public hearing to discuss it, whether it is a 5-Year Plan or an Annual Plan. With smaller PHAs (called Qualified PHAs), the public hearing applies to the 5-Year Plan and each year there must still be a public hearing to discuss any changes to the PHA's goals, objectives, or policies even though they do not submit an Annual Plan. Hearings must be held a location convenient to PHA residents.

At least 45 days before a public hearing:

- Non-Qualified PHAs must make the proposed PHA Plan, required attachments, and other relevant information available for public inspection at the PHA's main office during normal business hours.
- Qualified PHAs must make information relevant to any changes in goals, objectives, or policies available for public inspection at the PHA's main office during normal business hours.

The regulations for the PHA Plan process are at Part 903 of Title 24 of the Code of Federal Regulations (24 CFR Part 903). For more, see *Public Housing Agency Plan* in Chapter 7 of this guide.

Resident Advisory Boards

QHWRA created Resident Advisory Boards (RABs) to ensure that public housing and voucher-assisted households can meaningfully participate in the PHA Plan process. Each PHA must have a RAB consisting of residents elected to reflect and represent the population served

by the PHA. Where residents with Housing Choice Vouchers make up at least 20% of all assisted households served by the PHA, voucher households must have reasonable representation on the RAB.

The basic role of the RAB is to make recommendations and assist in other ways with drafting the PHA Plan and any significant amendments. By law, PHAs must provide RABs with reasonable resources to enable them to function effectively and independently of the housing agency. Regulations regarding RABs are in the PHA Plan regulations, Part 903.

Part 964 Resident Participation Regulations

A federal rule provides public housing residents with the right to organize and elect a resident council to represent their interests. This regulation, 24 CFR Part 964, spells out residents' rights to participate in all aspects of public housing development operations. Residents must be allowed to be actively involved in a PHA's decision-making process and to give advice on matters such as maintenance, modernization, resident screening and selection, and recreation. The rule defines the obligation of HUD and PHAs to support resident participation activities through training and other activities.

A resident council is a group of residents representing the interests of the residents and the properties they live in. Some resident councils are made up of members from just one property, so a PHA could have a number of resident councils. Other resident councils, known as jurisdiction-wide councils, are made up of members from many properties. A resident council is different from a RAB because the official role of a RAB is limited to helping shape the PHA Plan. Resident councils can select members to represent them on the RAB.

Most PHAs are required to provide \$25 per occupied unit per year from their annual operating budget to pay for resident participation activities. A minimum of \$15 per unit per year must be distributed to resident councils to fund activities such as training and organizing. Up to \$10 per unit per year may be used by the PHA for

resident participation activities. On August 23, 2013, HUD issued Notice PIH 2013-21 providing guidance on the use of tenant participation funds.

Resident Commissioners

The law also requires every PHA, with a few exceptions, to have at least one person on its governing board who is either a public housing or voucher resident. HUD's rule regarding the appointment of resident commissioners, at Part 964, states that residents on boards should be treated no differently than non-residents.

Resident Opportunities and Self-Sufficiency Program

HUD's Resident Opportunities and Self-Sufficiency (ROSS) Program is designed to help public housing residents become more self-sufficient by linking them to supportive services and resident empowerment activities. It is also intended to help elderly and disabled public housing residents remain in place. Competitive grants under the ROSS program can be awarded to PHAs, resident councils, resident organizations, and other entities. ROSS funds have been appropriated annually by Congress, followed by a Notice of Funding Availability (NOFA) from HUD inviting eligible applicants to compete for the funds. Twenty-five percent of ROSS grants have been set aside for formally recognized resident councils, but few ever apply for it. For FY16, FY17, FY18, and FY19, Congress appropriated \$35 million for ROSS; \$10 million less than FY15, and \$15 million less than FY12 and earlier.

RENTAL ASSISTANCE DEMONSTRATION

The Rental Assistance Demonstration (RAD) allows 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. The public housing component allows up to 455,000 units of public housing to compete for permission to convert their existing public housing capital and operating fund assistance to project-based Housing Choice Vouchers (PBVs) or to Section

8 project-based rental assistance (PBRA) by September 30, 2024.

Before submitting a RAD application to HUD, the PHA must notify residents and resident organizations of a project proposed for conversion. The notice (since January 2017) must be a written RAD Information Notice (RIN) that indicates, among other things:

- The PHA's intention to convert units through RAD;
- A general description of the conversion (for example whether there will be rehabilitation or new construction);
- Resident relocation protections if relocation is involved; and
- All of the resident rights provided by the RAD statute (such as the right to remain, right to return if there is temporary relocation, and no rescreening upon return).

The PHA is not required to notify the RAB or residents of other developments.

After a RIN is issued, the PHA must conduct at least two meetings with residents of the selected project(s). Since January 2017, at these meetings the PHA must discuss conversion plans, give residents a chance to comment, and describe all of the RAD resident rights. The PHA must also explain whether there will be:

- Any change in the number of assisted units, change in bedroom sizes, or other change that might impact a household's ability to re-occupy the property.
- Any reduction of units that have been vacant for more than 24 months.
- Plans to partner with an entity other than an affiliate of the PHA, and if so, whether that partner will have an ownership interest.

After a RAD application has received preliminary HUD approval (called a CHAP) 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 provide comprehensive written

responses to comments made by residents at this meeting.

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 provide 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 conversion has been approved. The notice must include the anticipated timing of the conversion, the anticipated duration of rehab or new construction, the revised term of the lease and house rules, and whether relocation is anticipated.

More meetings with residents are required to discuss any substantial changes in a conversion plan.

See the RAD entry in Chapter 4 of this guide for more details.

RAD is a Significant Amendment

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 five months after HUD has issued a preliminary approval for RAD conversion of a specific development, by which time the PHA has secured all necessary private financing. 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.

Resident Organizations Continue to Receive \$25 Per Unit

Whether a property is converted to PBV or PBRA, each year the PHA must provide \$25 per occupied unit at the property for tenant 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. 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.

Residents' Right to Organize

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; these are the Section 245 provisions (see Privately Owned, HUD-Assisted Multifamily Housing (Project-Based Section 8 Rental Assistance below). If a property is converted to PBV, instead of using Public Housing's Section 964 provisions (see Part 964 Resident Participation Regulations above), RAD 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.

HOUSING CHOICE VOUCHERS (SECTION 8)

Administering agency: HUD's Office of Public and Indian Housing

Year started: 1998 RABs

Population targeted: Residents with Section 8 Housing Choice Vouchers

See also: *Housing Choice Vouchers* and *Public Housing Agency Plan*

Approximately 2 million households receive tenant-based assistance through the Housing Choice Voucher Program. Housing Choice Voucher households, often referred to as Section 8 voucher households, are among the most difficult residents to organize because they can choose a private place to rent anywhere in the PHA's market and are thus less likely to live close to or have contact with each other. However, the PHA Plan process, and the requirement that voucher households be included on the RAB, offers platforms for organizing voucher households so that they can amplify their influence in the decision making affecting their homes.

Participating in PHA Plan Processes

At the local level, voucher households can play a key role in shaping PHA policies by participating in the annual and five-year PHA Plan processes. PHAs make many policy decisions affecting voucher households, such as setting minimum rents, developing admissions criteria, determining the amount of time a voucher household may search for a unit, giving preferences for people living in the PHA's jurisdiction, as well as creating priorities for allocating newly available vouchers to categories of applicants (for example, homeless individuals, families fleeing domestic violence, working families, or those with limited English-speaking capability).

Participation on Resident Advisory Boards

Voucher households can play an integral role in setting the agenda for local PHAs because the RAB regulations require reasonable

representation of voucher households on the RAB if voucher households comprise at least 20% all households assisted by a PHA.

PRIVATELY OWNED, HUD-ASSISTED MULTIFAMILY HOUSING (PROJECT-BASED SECTION 8 RENTAL ASSISTANCE)

Administering agency: HUD's Office of Multifamily Housing Programs

Year started: 1978, with significant regulatory changes in 2000

Population targeted: Residents of private multifamily HUD-assisted rental developments

See also: *Project-Based Rental Assistance*

Tenants' rights to organize is based on law at 12 USC 1715z-1b and spelled out in regulations at 24 CFR Part 245, Subpart B, which require owners of privately owned, HUD-assisted multifamily housing to recognize tenant organizations. A legitimate tenant organization is one established by tenants that represents all tenants, operates democratically, meets regularly, and is completely independent of owners and management. The regulations recognize the rights of tenants to distribute leaflets, canvass, post notices, and convene meetings without management present and without prior notice or permission from management. Residents can invite outside organizers to assist them. HUD-funded organizers have the right to go into a building without a tenant invitation to help residents organize.

Unlike the Section 964 regulations on Public Housing, the Section 245 regulations do not require a specific structure, written bylaws, or even elections for a tenant association to be "legitimate," as long as the "organic" tests are met: the group meets regularly, operates democratically, represents all tenants, and is completely independent of owners. This allows "early stage" tenant organizing committees to demand recognition as legitimate tenant groups and to claim their right to organize in the face of common resistance or hostility from private owners and managers.

The civil money penalties regulation from 2001 (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants' right to organize. On June 18, 2010, HUD sent a letter to all owners and management agents highlighting key features of Part 245, emphasizing the right of tenants to organize and repeating the list of protected tenant organizing activities. Policy Notice H 2011-29 of October 13, 2011, and Notice H 2012-21 of October 17, 2012, repeated and elaborated on the content of the June 2010 letter, adding civil money penalties that HUD could impose on an owner or manager failing to comply with Part 245. Notice H 2014-12, issued on September 4, 2014, revised Notice H 2011-29 and Notice H 2012-21 by adding a tenant appeals process when a decision by the local HUD office concludes that an owner did not violate the tenant participation regulations or other program obligations.

Notice H 2016-05, issued on March 31, 2016, updated the previous notice regarding filing complaints, added to the list of property types that may be assessed a civil money penalty, and clarified that that civil money penalties may be assessed on Project-based Section 8 developments, not just buildings with HUD mortgages. Notice H 2016-05 also elaborated on the responsibility of owners to give priority to meeting spaces that provide physical access to people with disabilities. In addition, when residents have complaints, the notice allowed tenants to reject "mediation" with owners as an option for resolving complaints because many tenants found mediation unproductive; instead tenants may seek a ruling by HUD regarding owner infractions.

Other HUD guidance includes HUD's Model Lease, which is applicable to all HUD tenants, and explicitly refers to the regulations' provisions about the right to organize. HUD's Management Agent Handbook 4381.5 Revision 2 requires owners to recognize tenant unions and specifies management practices that would violate tenants' rights and therefore potentially result in HUD-imposed sanctions.

Resident Rights and Responsibilities is a resident-oriented HUD brochure explaining that tenants have the right to organize free from management harassment or retaliation. This brochure must be made available in appropriate languages and distributed annually to all HUD tenants at lease signing or recertification.

In addition, over the years, Congress and HUD have expanded the formal process for tenant participation in decisions affecting HUD-assisted housing. For example, HUD must notify tenants about a pending auction or sale of their building if it is owned by HUD or is under HUD foreclosure so that tenants can either submit a purchase offer as a nonprofit or limited-equity cooperative or support purchase by others. In addition, when owners choose to go into HUD's Mark-to-Market program, HUD is required to notify tenants prior to a first and second tenant meeting so that tenants can comment on the owner's plans to rehabilitate the building and change the financing.

WHAT TO SAY TO LEGISLATORS

Advocates should speak to their members of Congress and ask them to:

- Fund the public housing ROSS program at \$50 million in FY20.
- Monitor HUD's oversight of PHA and owner compliance with residents' rights when public housing is converted under RAD.
- Reverse HUD's administrative weakening of the PHA Plan and Congress' streamlining of the Plan's requirements for 75% of the nation's PHAs.

FOR MORE INFORMATION

National Alliance of HUD Tenants, 617-522-4523, www.saveourhomes.org.

National Housing Law Project, 415-546-7000, www.nhlp.org.

NLIHC, 202-662-1530, www.nlihc.org.

24 CFR Part 964, *Tenant Participation and Tenant Organizing in Public Housing Regulations*, <https://www.gpo.gov/fdsys/pkg/CFR-2018-title24-vol4/pdf/CFR-2018-title24-vol4-part964.pdf>.

24 CFR Part 903, *Public Housing Agency Plans Regulations*, <https://www.gpo.gov/fdsys/pkg/CFR-2018-title24-vol4/pdf/CFR-2018-title24-vol4-part903.pdf>.

24 CFR Part 245, *Tenant Participation in Multifamily Housing Projects*, <https://www.gpo.gov/fdsys/pkg/CFR-2018-title24-vol2/pdf/CFR-2018-title24-vol2-part245.pdf>.

HUD Resident Rights and Responsibilities brochure: English, https://www.hud.gov/sites/documents/DOC_12162.pdf.

Other languages, https://www.hud.gov/program_offices/fair_housing_equal_opp/17lep (scroll down to Multifamily section)

Notice PIH 2013-21, *Guidance on the use of Tenant Participation Funds*, <https://bit.ly/2qMmrAj>.

Notice H 2014-12, *Implementation of Tenant Participation Requirements in Accordance with 24 CFR Part 245*, <http://portal.hud.gov/hudportal/documents/huddoc?id=14-12hsgn.pdf>.

Notice H 2016-05, *Revision of Tenant Participation Requirements in accordance with 24 CFR Part 245*, <https://portal.hud.gov/hudportal/documents/huddoc?id=16-05hsgn.pdf>.

Rental Assistance Demonstration (RAD) Implementation Notice –REV4, <https://bit.ly/2shSyrT>.

RAD Fair Housing, Civil Rights, and Relocation Notice 2016-17, https://www.hud.gov/sites/documents/16-17hsgn_16-17pihn.pdf.