

Repositioning of Public Housing

Ed Gramlich, Senior Advisor, NLIHC

Administering Agency: HUD's Office of Public and Indian Housing (PIH)

Year Started: The term “repositioning” was introduced November 13, 2018, although components have been available for many years.

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

HUD's Office of Public and Indian Housing (PIH) [sent a letter](#) to public housing agency (PHA) executive directors dated November 13, 2018. The term “repositioning” was used to describe HUD's intent to remove itself from public housing program administration. HUD's immediate goal was to “reposition” 105,000 public housing units before September 30, 2019.

Because Congress has failed to provide adequate appropriations for the public housing Capital Fund for many years, there is about a \$70 billion backlog in capital needs. HUD points to that backlog as the reason to provide PHAs with “additional flexibilities” so that PHAs can “reposition” public housing. Unfortunately, the Trump Administration proposed zeroing out money for the public housing Capital Fund in FY20 and FY21. Nevertheless, Congress approved \$2.9 billion for the Capital Fund for FY21 (as of the date Advocates' Guide was published). It is likely that the in coming Biden Administration will more favorably view the Capital Fund. It remains to be seen how a Biden Administration will address public housing repositioning.

Public housing can be “repositioned” via:

1. The Rental Assistance Demonstration (RAD)
2. Demolishing or disposing of (selling) public housing (Section 18)
3. Voluntary conversion of public housing to vouchers (Section 22)

While these are already available to PHAs,

repositioning is meant to make things easier. Each strategy is discussed below.

RENTAL ASSISTANCE DEMONSTRATION (RAD)

Beginnings

Throughout 2010 and 2011, HUD consulted with public housing resident leaders through the Resident Engagement Group (REG) to bring in non-federal resources to compensate for insufficient congressional funding of the public housing Capital Fund. HUD also wanted to avoid the many harmful effects of the HOPE VI program. 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 the creation of RAD as part of the fiscal year 2012 HUD appropriations act to help preserve and improve low-income housing. RAD does not provide any new federal funds for public housing and there are no RAD regulations, but RAD conversions must comply with formal RAD Notices, PIH Notice 2012-32 – updated currently by [H-2019-09/PIH 2019-23 \(REV4\)](#) and the relocation Notice [Notice H 2016-17/PIH-2016-17](#).

What is RAD?

RAD allows PHAs to convert public housing units to either Project-Based Vouchers (PBVs) or to Project-Based Rental Assistance (PBRA). Both are forms of project-based Section 8 rental contracts. At first only 60,000 units would be converted under the “demonstration,” but without demonstrating that RAD was realizing the resident protections won by the Resident Engagement Group, Congress approved increases to the cap three times. Currently, 455,000 public housing units are being converted to PBVs or PBRAs. Both the Obama and Trump

Administrations have sought to remove the cap and allow all public housing units to convert to RAD. So far, the cap remains at 455,000 units. Once converted under RAD, the amount of public housing Capital Fund and Operating Fund formerly received by a specific development is used instead as PBV or PBRA.

PBVs are Housing Choice Vouchers tied to specific buildings; they do not move with tenants like regular “tenant-based” vouchers. If public housing units are converted to PBV, the initial contract must be for 15 years (20 years for projects pre-approved in 2017) and must always be renewed. PIH continues to oversee the units and most of the current PBV rules (24 CFR 983) apply. If units are converted to PBRA, the initial contract must be for 20 years, must always be renewed, and HUD’s Office of Multifamily Programs takes over monitoring. Most of the current PBRA rules (24 CFR 880 to 886) apply.

More details are in the Rental Assistance Demonstration section of this guide.

Might Converting Some Public Housing to Section 8 Be Desirable?

Converting some public housing to Section 8 might be helpful since Congress continues to underfund public housing, resulting in deteriorating buildings and the loss of units through demolition. Congress is more likely to provide adequate funding for existing Section 8 contracts than for public housing, and if a long-term rental assistance contract is tied to a property, private institutions may be more willing to lend money for critical building repairs. 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.

What Are the Resident Protections that the REG Secured in RAD?

Both the language in the appropriations act and HUD’s formal rules for RAD include all the protections sought by the REG. However, it is up to residents to try to get HUD, PHAs, developers, and owners to comply.

Displacement. Permanent involuntary displacement of current residents cannot take place. 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.

Right to Return. Residents temporarily relocated while rehabilitation is conducted have a right to return.

Rescreening. Current residents cannot be rescreened.

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) due to conversion is phased in over three to five years.

Good Cause Eviction. An owner must renew a resident’s lease unless there is “good cause” not to.

Grievance Process. The RAD statute requires tenants to have the grievance and lease termination rights described under Section 6 of the “Housing Act of 1937.” For instance, PHAs must notify a resident of the 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.

Other Resident-Oriented Provisions the REG Secured in RAD

The \$25 per Unit for Tenant Participation Remains. Whether a property is converted to PBV or PBRA, the owner must provide \$25 per unit annually for resident participation. Of this amount, at least \$15 per unit must be provided to any “legitimate resident organization” to be used for resident education, organizing around tenancy issues, or training activities. The PHA may use the remaining \$10 per unit for resident participation activities.

Resident Participation Rights. Residents have the right to establish and operate a resident organization. If a property is converted to PBRA, then the current Section 8 Multifamily program’s “Section 245” resident participation provisions

apply.

If a property is converted to PBV, instead of using public housing's "Section 964" provisions, the RAD Notice requires resident participation provisions similar to those of Section 245 used by the Section 8 Multifamily program. For example, PHAs must recognize legitimate resident organizations and allow residents to 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 an owner's request to increase rent, reduce utility allowances, or make major capital additions.

One-for-One Replacement. Although the RAD Notice does not use the term "one-for-one replacement," HUD's informal material describes one-for-one replacement. However, there are exceptions. PHAs can reduce the number of assisted units by up to 5% or by five units, whichever is greater, without seeking HUD approval. HUD calls this the "de minimus" exception. However, RAD does not count against the 5%/five unit de minimus: units that have been vacant for two or more years; any reconfigured units, such as combining two efficiency units into a one-bedroom unit; or any units converted to use by social services. Consequently, the loss of units can be greater than 5%.

Two Additional Key Features of RAD

Resident Participation Features. The RAD Notice requires PHAs to provide residents with various information notices and at least four meetings with residents at different stages of the RAD process. Details are presented in the Rental Assistance Demonstration section of this guide.

Temporary or Permanent Relocation. Relocation requirements are described in separate HUD guidance, [Notice H 2016-17/PIH-2016-17](#). Details are presented in the Rental Assistance Demonstration section of this guide.

More RAD information are also on NLIHC's public

housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, particularly [RAD: Key Features for Public Housing Residents \(September 2019\) \(.PDF\)](#)

HUD's RAD website is at: <https://www.hud.gov/RAD>

DEMOLITION/DISPOSITION

Background

Since 1983, HUD has authorized PHAs to apply for permission to demolish or dispose of (sell) public housing units under Section 18 of the Housing Act. In 1995, Congress ended the requirement that PHAs replace, on a one-for-one basis, public housing lost through demolition or disposition. In 2016, HUD reported a net loss of more than 139,000 public housing units due to demolition or disposition since 2000, not including all of the public housing units lost as a result of HOPE VI.

A PHA must apply to HUD's [Special Applications Center \(SAC\)](#) to demolish or dispose of public housing. The application must certify that the PHA has described the demolition or disposition in its Annual PHA Plan and that the description in the application is identical. Advocates should challenge an application that is significantly different. PHAs should not re-rent units when they turn over while HUD is considering an application. The information in this article is primarily from the regulations [24 CFR 970](#).

In 2018, the Trump Administration eliminated a 2012 [Notice PIH 2012-07](#) that included modest improvements suggested by advocates. The 2012 Notice served as a reminder to residents, the public, and PHAs of PHAs' obligations to resident involvement and the role of the PHA Plan regarding demolition/disposition. The replacement, [Notice PIH 2018-04](#), downplays the role of resident consultation to make it easier to demolish public housing.

In addition, the Trump Administration withdrew proposed regulation changes drafted in 2014 that would have reinforced the modest improvements in the 2012 Notice and required PHAs to submit

more detailed justifications for demolition or disposition. All of this was a part of the Trump Administration’s goal of “repositioning” 105,000 public housing units before September 2019.

Resident Participation

A PHA must prepare a demo/dispo application “in consultation” with tenants and any tenant organization at a project, as well as with any PHA-wide tenant organization and the Resident Advisory Board (RAB). The application ([form HUD-52860](#)) must include any written comments made by residents, resident organizations, or the RAB and indicate in writing how the PHA responded to comments. HUD can deny an application if tenants, resident councils, or RABs were not consulted, so residents should challenge an application if they were not consulted or if the “consultation” was grossly inadequate.

Demolition Applications

Is the Public Housing Obsolete? PHAs must certify that a development is “obsolete,” either physically or in terms of location, and therefore no longer suitable as housing.

Physically obsolete means that there are structural deficiencies that cannot be corrected at a reasonable cost. Structural deficiencies include settlement of floors, severe erosion, and deficiencies in major systems such as the plumbing, electrical, heating and cooling, roofs, doors, and windows. “Reasonable” cost is defined as less than 62.5% of total development costs for buildings with elevators and 57.14% for other buildings. To show that a development is physically obsolete, a PHA must submit a detailed scope of work that should describe the major systems needing repair or replacement, the need to remove lead-based paint or asbestos hazards, or the need to make accessibility improvements (the last sentence is based on [Notice PIH 2018-04](#)).

An obsolete location means that the surrounding neighborhood is too deteriorated or has shifted from residential to commercial or industrial use. It can also mean environmental conditions make it unsuitable for residents.

“Other factors” can also be considered, like things that “seriously affect the marketability or usefulness” of the development.

“De Minimus” Demolition. PHAs don’t have to apply to HUD to demolish fewer than five units or 5% of all units over a five-year period. The units being demolished must either be beyond repair or make room for services such as a childcare facility, laundry, or community center.

Disposition Applications

A PHA must certify that keeping the development is not in the best interest of residents or the PHA for one of three reasons:

1. Conditions in the surrounding area, such as commercial or industrial activity, have a negative impact on the health and safety of residents or have a negative impact on the PHA’s operation of the project. A negative impact on the PHA’s operation of a project could mean a lack of demand for the units. If so, the PHA would have to show high long-term vacancy rates due to factors such as declining population in the area or due to the property being located in an isolated area cut off from transportation and access to community amenities such as stores and schools. This example of a negative impact is from [Notice PIH 2018-04](#).
2. Sale or transfer of the property will allow the PHA to buy, develop, or rehab other properties that can be more efficiently operated as low-income housing. For example, the replacement units should be energy efficient; in better locations for transportation, jobs, or schools; or reduce racial or ethnic concentrations of poverty.
3. Sale of the property is “appropriate” for reasons consistent with the PHA’s goals, the PHA Plan, and the purpose of the “Public Housing Act” (a vague option). [Notice PIH 2018-04](#) provides five examples: units are obsolete (echoing the Demolition rule), the PHA has 50 or fewer public housing units, the public housing is scattered across multiple locations, the replacement units are on site and have improved efficiency because they

are newly constructed, modernized, or a RAD conversion that has 75% of the units converted under RAD and up to 25% of the units converted to vouchers via Section 18 (see the Rental Assistance Demonstration section of this guide).

Resident Relocation Provisions

The demolition or disposition application must have a relocation plan that states:

- Demolition or disposition cannot start until all residents are relocated.
- Residents will receive 90 days' advance notice before being relocated.
- Each household must be offered comparable housing that meets housing quality standards (HQS) and that is in an area that is not less desirable.
- Residents' actual relocation expenses will be reimbursed (but the "Uniform Relocation Act," URA, does not apply).

More demo/dispo information is also on NLIHC's public housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, particularly "Demolition and Disposition," <https://nlihc.org/sites/default/files/inline-files/REV4%20Demolition-Dispostition%20Handout.pdf>

HUD's demo/disp webpage is at: https://www.hud.gov/program_offices/public_indian_housing/centers/sac/demo_dispo

VOLUNTARY CONVERSION TO VOUCHERS

A PHA may convert any public housing development to vouchers under Section 22 of the "Housing Act of 1937." Voluntary conversion is a two-step process. First a PHA must send HUD a "conversion assessment" and then it must send a "conversion plan." A special HUD office is in charge, the Special Applications Center, SAC. The regulations for voluntary conversions are 24 CFR 972.

Section 33 is about "required" conversions of public housing that has high vacancy rates and

would be too expensive to repair over the long run. This section does not discuss Section 33 required conversions because it is not a part of repositioning.

Conversion Assessment

The first step a PHA must take to voluntarily convert public housing to vouchers is to conduct an assessment that is sent to HUD as part of a PHA's next Annual PHA Plan, except for two categories of PHAs:

- So-called "Qualified PHAs" do not have to submit a conversion assessment with their PHA Plan but they do eventually have to submit one to HUD. These are PHAs with 550 or fewer public housing units and/or vouchers combined. There are about 2,700 Qualified PHAs. PIH maintains an ongoing list of Qualified PHAs.
- As of April 1, 2019, so-called "small PHAs" – those with fewer than 250 public units that want to convert all their units – do not have to conduct an assessment. See Notice PIH 2019-05.

For the remaining PHAs, their conversion assessment must address five factors:

- 1. Cost.** What is the cost of providing vouchers compared to the cost of keeping units as public housing for the remainder of the property's useful life?
- 2. Market Value.** What is the market value before rehabilitation if kept as public housing compared to conversion to vouchers and what is the market value after rehabilitation if kept as public housing compared to conversion to vouchers?
- 3. Rental Market Conditions.** Will residents be able to use a voucher? A PHA must consider:
 - a. The availability of decent, safe, and sanitary homes renting at or less than the PHA's voucher payment standard.
 - b. The recent rate of households' ability to rent a home with a voucher. Many landlords will not accept a voucher.
 - c. Residents' characteristics that

might affect their ability to find and use a voucher; for example, homes accessible to people with a disability, or availability of homes large enough for families.

4. Neighborhood Impact. How would conversion impact the availability of affordable housing in the neighborhood and what effect would conversion have on the concentration of poverty in the neighborhood?

5. Future Use of the Property. How will the property be used after conversion?

THREE CONDITIONS FOR HUD APPROVAL OF CONVERSION ASSESSMENT

The assessment must show that converting to vouchers:

1. Will not cost more than continuing to use the development as public housing.
2. Will principally benefit the residents, the PHA, and the community. The PHA must consider the availability of landlords willing to accept vouchers, as well as access to schools, jobs, and transportation. The PHA must hold at least one public meeting with residents and the resident council, at which the PHA explains the regulations and provides draft copies of the conversion assessment. Residents must be given time to submit comments. The assessment sent to HUD must summarize residents' comments and the PHA's responses.
3. Will not have a harmful impact on the availability of affordable housing.

Conversion Plan

The second step is for the PHA to prepare a conversion plan that has six parts:

1. Description of the conversion and future use of the property.
2. Analysis of the impact on the community.
3. Explanation showing how the conversion plan is consistent with the assessment.
4. Summary of resident comments during plan

development and the PHA's response.

5. Explanation of how the conversion assessment met the three conditions needed for HUD approval (as listed above).
6. Relocation plan that:
 - a. Indicates the number of households to be relocated by bedroom size and by the number of accessible units.
 - b. Lists relocation resources needed, including:
 - i. The number of vouchers the PHA will request from HUD. HUD will give the PHA priority for "tenant protection vouchers" (see the Tenant Protection Vouchers section of this guide).
 - ii. Public housing units available elsewhere.
 - iii. The amount of money needed to pay residents' relocation costs.
 - c. Includes a relocation schedule.
 - d. Provides for a written notice to residents at least 90 days before displacement. The notice must inform residents that:
 - i. The development will no longer be used as public housing and that they might be displaced.
 - ii. They will be offered comparable housing that could have tenant-based or project-based assistance, or other housing assisted by the PHA.
 - iii. The replacement housing offered will be affordable, decent, safe, and sanitary, and chosen by the household to the extent possible.
 - iv. If residents will be assisted with vouchers, the vouchers will be available at least 90 days before displacement.
 - v. Relocation and/or mobility counselling might be provided.

- vi. Residents may choose to remain at the property with a voucher if the property is used for housing after the conversion.

Resident Participation

The conversion plan must be sent to HUD as part of a PHA's next Annual PHA Plan within one year after sending the conversion assessment. The conversion plan can be sent as a Significant Amendment to an Annual PHA Plan. A PHA can send the plan and assessment with the same Annual PHA Plan.

In addition to the public participation requirements for the Annual PHA Plan, a PHA must hold at least one meeting about the conversion plan with residents and resident council of the affected development. At the meeting the PHA must explain the regulations and provide draft copies of the conversion plan. In addition, residents must have time to submit comments, and the PHA must summarize resident comments and the PHA's responses.

Conditions Needed for HUD Approval of Conversion Plan

A PHA cannot start converting until HUD approves a conversion plan. Conversion plan approval is separate from HUD approval of an Annual PHA Plan. HUD will provide a PHA with a preliminary response within 90 days. HUD will not approve a conversion plan if the plan is "plainly inconsistent" with the conversion assessment, there is information or data that contradicts the conversion assessment, or the conversion plan is incomplete or fails to meet the requirements of the regulation. Residents should let HUD know if they think that the plan is "plainly inconsistent" with the conversion assessment or if there is information that contradicts the assessment.

More voluntary conversion information is also on NLIHC's public housing webpage, <https://nlihc.org/explore-issues/housing-programs/public-housing>, particularly "Voluntary Conversion of Public Housing to Vouchers," <https://nlihc.org/sites/default/files/REV2%20Voluntary%20Conversion%20Handout.pdf>

HUD's voluntary conversion webpage is at: https://www.hud.gov/program_offices/public_indian_housing/centers/sac/vc

FUNDING

There is no specific funding for RAD, demolition or disposition, or voluntary conversion to vouchers. However, HUD must estimate how much it should request from Congress for Tenant Protection Vouchers for demolition or disposition. The Trump Administration requested but did not receive congressional approval for \$100 million for RAD projects that needed extra funding to make conversion possible, nor was \$30 million granted to pay for demolitions.

FORECAST FOR 2021

It is too soon to know the position the Biden Administration will take regarding aggressive public housing repositioning.

WHAT TO SAY TO LEGISLATORS

Do not raise the number of public housing units that can convert under RAD beyond the current cap of 455,000 units because RAD has yet to demonstrate HUD's ability to monitor and enforce resident protections. Work to reverse the features of Notice PIH 2018-04 that made it far too easy to gain demolition/disposition approval from SAC, especially without more resident involvement. Monitor HUD's repositioning activity to ensure that demolition, disposition, and voluntary conversion of public housing to vouchers is only conducted in ways that truly benefit residents.

FOR MORE INFORMATION

NLIHC, 202-662-1530, <https://nlihc.org>.

NLIHC's public housing webpage, <https://bit.ly/2S0Z3Kn>.

The November 13, 2018 HUD Repositioning Letter, <https://bit.ly/2OMTr0Y>.

HUD's Repositioning webpage, <https://bit.ly/2S4Ur5V>.

HUD's Special Applications Center (SAC) website is at: <https://bit.ly/36JBkCI>.

HUD's RAD website is at: <https://www.hud.gov/rad>

HUD's Demolition/Disposition webpage is at:
<https://bit.ly/2LashVW>

HUD's Voluntary Conversion webpage is at:
<https://bit.ly/3lJSQOm>

RAD Notice H 2019-09/PIH 2019-23, <https://bit.ly/2EumOCS>.

The RAD Relocation Notice H 2016-17/PIH-2016-17, <https://bit.ly/2YZVYvS>.