



NATIONAL LOW INCOME HOUSING COALITION

THE RENTAL ASSISTANCE DEMONSTRATION – RAD

Key Features For Public Housing Residents

Ed Gramlich
National Low Income Housing Coalition
Modified, September 2019

RAD is just that...a “demonstration” project

Public Housing Authorities (PHAs) may voluntarily apply for HUD approval.

To do what?

To convert public housing units to one of two types of long-term, Project-Based Section 8 rental assistance contracts.

Up to 455,000 public housing units could be converted under the demonstration.

(When first authorized, only 60,000 units could be converted. HUD continues to request Congressional approval to convert all public housing units.)

There is no new money.

A PHA could choose to convert public housing units to either:

1. Housing Choice Vouchers that are tied to specific buildings.

That is, vouchers that are “project-based”, so are called “Project-Based Vouchers” (PBVs).

HUD’s Office of Public and Indian Housing (PIH) continues to oversee the units.

Most of the current PBV rules would apply (part 983 rules).

or

2. Project-Based Rental Assistance (PBRA).

HUD’s Office of Multifamily Programs would take over monitoring.

Most of the current PBRA rules would apply (part 880 rules).

The amount of Public Housing Capital Fund and Operating Fund a specific development has been receiving is used instead as PBV or PBRA.

What are the rules for RAD?

Congress created the Rental Assistance *Demonstration* in the 2012 Appropriations Act.

There are no RAD “regulations”.

Instead, RAD is governed by a HUD Notice. There have been four versions since 2012.

The latest (September 5, 2019) is Notice H-2019-9/PIH-2019-23, and called REV-4.

Residents will want to learn whether their PHA is considering RAD

Congress continues raising the cap on the number of public housing units that can be converted from 60,000 to 185,000, to 225,000, and starting in fiscal year 2018 up to 455,000 units.

Congress has again extended the deadline for apply to use RAD, now until September 30, 2024.

The Administration is interested in eliminating the cap on the number of public housing units that can convert under RAD.

At the application stage there is no requirement to notify the Resident Advisory Board (RAB), Resident Councils, other resident organizations, residents in general, or the broader community. So, you must always be asking whether your PHA is applying or has applied.

Ask your PHA if it has sent in a “letter of interest”.

- Which development(s) are being considered for conversion?
- Do you agree with the buildings being considered?
- Are there other developments you think should be considered instead?
- Do you agree if a PHA applies to convert all of its developments?
- Do you even agree that conversion is appropriate?
- Does the PHA expect to convert to PBV or PBRA?
- Do you prefer PBV or PBRA?

Why might converting some public housing to Section 8 be OK, or even good?

Congress continues to underfund public housing.

This leads to deteriorating buildings and the loss of units through demolition.

HUD estimates that 10,000 public housing units are lost each year.

Congress is more likely to provide adequate funding for existing Section 8 contracts than for public housing.

RAD allows a PHA to obtain outside resources to make repairs, for example bank loans and Low-Income Housing Tax Credit equity (LIHTC).

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.
(A 20-year Section 8 contract is a relatively reliable stream of revenue.)

Therefore, some units that were public housing before conversion will remain available and affordable to people with extremely low and very low incomes because of the long-term Section 8 contract.

What is “long-term”?

If convert to PBV:

- Initial contract is for 15 years (but could be up to 20 years).
 - As of April 2017 the contract can be up to 20 years (HOTMA).
- Owner must renew each contract and Use Agreement must be renewed.

If convert to PBRA:

- Initial contract is for 20 years.
- Owner must renew each contract and Use Agreement must be renewed.

Can current residents of converting developments be displaced?

“The permanent involuntary displacement of residents may not occur as a result of a project’s conversion of assistance...”

If a household does not want to transition to PBV or PBRA, they may move to other standard public housing owned by the PHA... if an appropriate unit is available.

Notice to residents and required meetings

Before submitting a RAD application to HUD, the PHA must:

1. Notify residents and resident organizations of the projects 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 the units through RAD
 - A general description of the conversion (rehab, new construction, etc)
 - Resident relocation protections if relocation is involved
 - Residents' rights under RAD (see page 7).
 - A General Information Notice (GIN) must be provided informing each resident about Uniform Relocation Act (URA) protections if URA is triggered.
 - The PHA is not required to notify the Resident Advisory Board (RAB) or residents of other developments – just the development(s) slated for conversion.
2. 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 (see page 7),
 - Explain whether:
 - A change in the number of units or unit sizes could make it difficult for a household to re-occupy the property,
 - Units that have been vacant for more than 24 months will be demolished,
 - The PHA plans to partner with another entity that will have an ownership interest in the project,
 - RAD transfers the PBV or PBRA to another property, meaning residents would have to permanently move to another location.
 - After these meetings the PHA must write responses to residents' comments.

If your development is chosen for conversion, *next page*

If your development is chosen for conversion

1. 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.
 - Prepare comprehensive written responses to comments made by residents at this meeting.

The Concept Call is new starting 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 review.
 - 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.
2. 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.
 3. 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
 - Any anticipated relocation
 - Opportunities to and procedures for residents to exercise the RAD “choice mobility” option (see page 13)

Additional RAD meetings

More meetings with residents are required to discuss any substantial changes in a conversion plan. A substantial change could include:

- A substantial change in the proposed scope of the work,
- A material change in utility allowances
- Any of the items in #2 on the previous page

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 next page).

All meetings “should” be conducted in a place and time to foster resident participation.

All communications and meetings must be accessible, *next page*

All communications and meetings must be accessible

The 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 doesn't have to take place until about five months after preliminary approval.

HUD considers RAD conversion a "Significant Amendment" to the PHA Plan

This is good. A Significant Amendment to the PHA Plan requires:

- Resident Advisory Board (RAB) involvement,
- PHA-wide notice,
- Broad public outreach, and
- A public hearing.

However, HUD does not require a Significant Amendment process to begin until the RAD conversion application process is too far along.

- A PHA only has to have the Significant Amendment completed in time for a PHA to submit its RAD Financing Plan.
 - The RAD Financing Plan must include a letter from HUD approving the Significant Amendment.
 - A Financing Plan is a document sent to HUD showing that a PHA has buttoned down all the necessary financing.
- Financing Plans are ***due six months after*** HUD has issued a "CHAP" – a preliminary approval for RAD conversion.

By this time a PHA will have invested too much effort to respond to resident and community input. Decisions about whether to apply for RAD conversion, and if so which developments should be converted, ought to be discussed as a Significant Amendment by ***all*** PHA residents and the surrounding community ***before*** a RAD application is sent to HUD – not close to the time when a PHA has all of its financing and construction plans approved and is ready to get started with the RAD conversion.

A RAD conversion Significant Amendment must:

- Describe the units to be converted, including:
 - number of units,
 - bedroom distribution of units, and
 - type of units (eg family, elderly, disabled, etc.).
- Indicate any change in the number of units or bedroom distribution of units.
- Indicate any change in policies regarding eligibility, admission, selection, and occupancy of units.

Basic resident rights for both PBV and PBRA

Displacement

Permanent involuntary displacement of current residents may not occur as a result of a project's conversion.

If a household does not want to transition to PBV or PBRA, they may move to other public housing if a unit is available.

Right to Return

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

Rescreening

Current residents cannot be rescreened.

Good Cause Eviction

Owner must renew a resident's lease, unless there is "good cause" not to.

Tenant Rent

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

Any rent increase of 10% or \$25 per month (whichever is greater) solely due to conversion is phased in over three to five years.

PBRA and the PHA Plan and RAB

Properties converted to PBRA are no longer required to meet PHA Plan requirements.

PBRA residents can no longer be on the RAB, be a PHA commissioner, or be on a jurisdiction-wide resident council – unless the PHA voluntarily agrees.

\$25 per unit for tenant participation

Whether a property is converted to PBV or PBRA, the owner must provide \$25 per unit annually for resident participation.

At least \$15 per unit must be provided to "the legitimate resident organization" to be used for resident education, organizing around tenancy issues, and training activities.

If there isn't a legitimate resident organization, residents and owners are encouraged to form one.

Resident participation provisions

Residents have the right to establish and operate a resident organization.

If converted to PBRA, then the current Multifamily program's participation provisions apply, the so-called "Section 245" provisions.

If converted to PBV, instead of using public housing's so-called "Section 964" provisions, residents have participation provisions similar to those of "Section 245".

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

- Owner must recognize "legitimate resident organizations".
- A "legitimate resident organization" is one that:
 - Is established by residents
 - Is representative of a development's residents
 - Is completely independent of the owner
 - Meets regularly
 - Operates democratically
- Owners must allow residents and resident organizers to assist residents in establishing and operating resident organizations.
- A resident organizer is a resident or non-resident, but is not an employee or representative of the owner.

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

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

Owners must allow residents and resident organizers to:

- Distribute leaflets in lobbies and common areas, and place leaflets at or under residents' doors, as well as post information on bulletin boards.
- Contact residents and conduct door-to-door surveys.
- Help residents participate in the organization's activities.
- Hold regular meetings on site. Management staff may not attend unless invited.
- Respond to the owner's request to:
 - increase rent;
 - change from project-paid utilities to tenant-paid utilities;
 - reduce utility allowances;
 - convert residential units to non-residential units;
 - make major capital additions;
 - prepay loans.

Grievance process and termination notice

The RAD statute requires tenants of converted properties to have the same grievance and lease termination rights they had under Section 6 of the Housing Act of 1937.

However, HUD has not adequately implemented this statutory requirement.

The National Housing Law Project notes that 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.

Termination of Rental Subsidy

Converted properties must follow the PBV and PBRA rules regarding notification and termination of the rental subsidy.

RAD also specifies written notice of lease termination:

- 14 days for nonpayment of rent;
- 30 days if other tenants' health and safety is threatened;
- 30 days for any drug-related or violent crime activity;
- 30 days for a felony conviction.

One-for-One Replacement

Although the HUD Notice (which is like the regulation for RAD) does not use the term “one-for-one replacement”, HUD’s informal material says there will be one-for-one replacement.

Exceptions

PHAs can reduce the number of assisted units by up to 5% or 5 units, whichever is greater, without seeking HUD approval (known as “Section 18”).

HUD calls this the “de minimus” exception.

RAD does not count against the 5%/5 unit de minimus:

- Any unit that has been vacant for 2 or more years.
- Any reconfigured units, such as efficiency units made into one-bedroom units.
- Any units converted to use for social services.

So, the loss of units can be greater than 5%.

A PHA must demonstrate that any reduction of units:

- better serves residents;
- will not result in involuntary permanent displacement; and,
- will not discriminate.

Change in unit configuration

If a PHA proposes changes that will result in, for example, fewer 3-bedroom units, the PHA must demonstrate that it will not result in:

- involuntary displacement or
- discrimination.

What if there is temporary or permanent relocation?

Detailed relocation provisions are in a Notice H 2016-17/PIH 2016-17 from 2016.

Relocation Plan

PHAs or owners must prepare a written relocation plan if permanent relocation is expected or if temporary relocation is expected to be greater than 12 months.

RIN

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 rehab or new construction),
 - Relocation protections if there will be temporary relocation, and
 - Resident rights under RAD.

GIN

Residents must receive a General Information Notice (GIN) within 30 days after a CHAP is issued, informing residents that:

- They might be displaced,
- And if so that they will have relocation assistance and 90 days' advance notice before having to move.

Notification of Return to the Covered Project

Owners must provide a Notification of Return to the Covered Project indicating:

- A date or estimated date of return,
- The PHA or other entity responsible for managing the return,
- Out-of-pocket expenses will be covered,
- The PHA or other entity will give residents 90 days' advance notice of return, and
- Options if a resident decides not to return.

Resident Log

PHAs must maintain a "Resident Log" that tracks resident status through to completion of rehab or new construction, including re-occupancy after relocation.

- The Resident Log must have detailed data regarding each household that will be relocated, with key dates of notices and moves and the address of temporary housing.
- HUD will not make the Resident Log public.

What if there is temporary or permanent relocation? *continues*

What if there is temporary or permanent relocation? *continued*

Temporary Relocation

One Year or Less

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

More than One Year

If temporary relocation is expected to be for **more than one year**, the 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.

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:

- The PHA must obtain informed, written consent from the resident that also:
- Confirms that the resident agrees to end the right to return.
- Confirms that the resident understands permanent relocation assistance and payments consistent with the Uniform Relocation Act will be provided.

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

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 new September 2019 Notice (REV-4) elaborated on the earlier notices:

1. Pre-development conversion costs remain subject to regular Section 3 public housing provisions.
2. 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 HOME or CDBG) is subject to the Section 3 provisions for housing and community development activities (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 employees, painters, grounds crews etc.

Choice Mobility

PHAs must provide all residents of converted units with the option to move with a regular Housing Choice Voucher (HCV).

For PBV the regular PBV rule applies:

- After one year of residency, a tenant can request a HCV.
- If a voucher is available, it must be provided.
- If a voucher is not available, the resident gets priority on the waiting list.

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, if one is available, at the later of:

- 2 years from a resident's move-in date; or,
- 2 years from the date a PHA and HUD complete a Section 8 Housing Assistance Payment contract.

For PBRA a PHA could limit Choice-Mobility moves to:

- 1/3 of its turnover vouchers; or
- 15% of the assisted units in a property.

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 the PHA doesn’t directly keep ownership that it at least has a long-term ground lease that ensures direct control.
- Examples of ownership or control in the Notice include the public or nonprofit entity:
 1. Continuing to hold title to the land and any improvements (buildings);
 2. As of January 19, 2017, having a ground lease with the owner (doesn’t say “long term”);
 3. Having direct or indirect legal authority to direct the financial and legal interests of the “project owner” (through a contract, partnership share, agreement of an equity partnership, voting rights, or other means); or,
 4. Having 51% or more interest of the general partner share in a limited partnership; or being the managing member of a limited liability corporation (LLC); or having 51% or more of the membership shares of an LLC.

What about Low Income Housing Tax Credit (LIHTC) properties?

- A LIHTC property may be owned and controlled by a by a for-profit, but only if the PHA preserves “sufficient interest” in the property. (FY18 Appropriations Act now allows a nonprofit to retain an interest.)
- Sufficient interest could include:
 - 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 to the LIHTC entity as part of a long-term ground lease;
 - The PHA retains control over project leasing, for example maintaining and administering the waiting list, and performing eligibility determinations; or,
 - The PHA enters into a Control Agreement allowing the PHA to retain:
 - Certain rights over the project, such as administering the waiting list
 - Consent rights over certain acts of the owner (for example, leasing, selecting the management agent, setting the operating budget, making withdrawals from reserves, and selling the project).
- Legal services attorneys recommend:
 - The PHA or its affiliate is the general partner, and/or
 - The PHA continues to own the land and has a long-term ground lease with the owner.

What if there is foreclosure?

Then ownership or control of the property will go:

First to a public entity.

Second to a “private” entity if there isn’t a public entity.

HUD does not specify if the “private” entity must be a nonprofit; according to HUD’s response to comments, it could be a for-profit.

If the HAP contract is removed for breach of contract

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

New tenants could have incomes greater than most public housing residents – 80% of area median income (for example, \$60,950 in Chicago for 3-person household).

Rents could be higher – 30% of 80% of area median income (for example, \$1,782 per month in Chicago for 3-person household in 2019).

Mixing RAD and “Section 18” Demolition/Disposition, *next page*

Mixing RAD and “Section 18” Disposition

A new provision was added on July 2, 2018 and added to the RAD Notice REV-4 (Sept. 2019).

1. Up to 25% of the public housing units at a RAD project may be “disposed” (sold or transferred) under one of the “Section 18” Disposition regulations options.
 - Option (c) is that disposition is in the “best interest of residents and the PHA”.
 - These units must be substantially rehabbed or be newly constructed.
 - The PHA must show that disposition is necessary to so that all of the units in a development can use PBVs.
 - HUD will provide Tenant Protection Vouchers that will convert to PBVs.
2. 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
 - \$25 per unit to be used for resident participation activities
3. 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”.
4. The PBV HAP contract may be renewed as many times as necessary in order to keep the PBV units in the RAD project affordable.

Limits on PBVs per development

For projects 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 limited to 50%, the number of units in a public housing development that can be converted to PBVs.

Exception Units

The 50% cap can be exceeded if the “exception units” are occupied by:

- An elderly head of household or spouse.
- A disabled head of household or spouse.
- A household with at least one member receiving a supportive service.

However, a public housing household whose development is converted can't be involuntarily displaced as a result of this cap.

If a family in an “exception unit” does not want to participate in a supportive service, the household can't be terminated from PBV.

But, once a household that lived in a public housing unit at the time of RAD conversion leaves a converted “exception unit”, that unit can only be rented with PBV to a household that meets one of the three exception categories (supportive services, elderly, or disabled).

What does the 50% cap mean for a development converted to PBV instead of PBRA?

- Some PHAs might urge half of the households to move to other developments, if available.

But a resident's decision to relocate must be voluntary.

- Some developments might change in character after current residents leave so that the development can continue to get PBVs. For example, a mostly family development might become 100% elderly.