

## **Summary of the Rental Assistance Demonstration (RAD) Program and Concerns Regarding the Proposed Notice**

As part of the 2012 appropriations bill for the Department of Housing and Urban Development (HUD),<sup>1</sup> Congress enacted the Rental Assistance Demonstration (RAD) program. HUD has issued a Notice for comment to implement RAD.<sup>2</sup> The following summarizes the legislation and the proposed rule and highlights in [ ] below some concerns.

There are two basic parts of RAD.

- The first is to allow on a competitive basis up to 60,000 units of public housing and Section 8 moderate rehabilitation rental housing to convert to either project-based vouchers (PBVs) or project-based rental assistance (PBRA).
- The second part allows owners of projects funded under the Rent Supplement, Rental Assistance Payment and Moderate Rehabilitation programs to convert available tenant protection vouchers to PBVs.

The key elements of RAD regarding public housing conversions include:

1. Application process. By application which must be approved by HUD, a PHA may voluntarily convert public housing units to a PBV contract or to a PBRA contract. The HUD Notice anticipates two application periods. The first one will be competitive and applications must be submitted within a 30 day period some time after the Notice becomes final. During this phase, approval of applications will be limited to one development per PHA. The second period will be ongoing and applications will be considered on a first come first serve basis until September 30, 2015 or 60,000 units have been converted, whichever is sooner
2. Current residents of units converted from public housing are protected. RAD does not permit eviction, termination or rescreening due to the conversion. Current tenants are not to be considered new applicants for any purpose, including targeting.
3. For converted public housing properties, the following conditions apply:
  - a. Priority of public ownership and restrictions on for-profit ownership. There is a priority for ownership of the converted property by a capable public entity or capable non public entity. [Notice should state that a capable tenant organization or other capable nonprofit have priority over any other capable non-public entity.] RAD authorizes ownership by a for-profit owner in limited circumstances to facilitate the use of tax credits, so long as the PHA preserves an interest in the property. [The Notice must be clear as to what steps the PHA must take to preserve public interests, such as requiring a ground lease, active involvement in management and first right of refusal upon sale of the property.]

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<sup>1</sup> H.R. REP. NO. 112-284, 157 CONG. REC. H7433, H7465 (2011) (Conf. Rep.).

<sup>2</sup> PIH Notice 2012-18 (March 8, 2012)

- b. HUD shall require long-term renewable use restrictions and affordability restrictions. To fulfill this objective, HUD must offer (subject to funding availability) and the owner must accept renewal of the subsidy contract. The Notice provides that the Use Agreement will be in first position, so as to survive foreclosure and/or bankruptcy.
  - c. Transfer of RAD Contract. The Notice permits the contract to be transferred to other units at the time of conversion or later. [The Notice must provide that any transfers must be very limited and subject to all of the requirements regarding long term affordability, public ownership and resident and public comment.]
  - d. Grievance Hearing and Other Tenant Rights. Tenants of converted units shall, at a minimum, maintain their rights to informal hearings, grievance procedures, and adequate notices of and good cause for eviction. The Notice currently limits the grievance procedure to eviction actions. [The Notice needs to state more clearly the elements of the grievance hearing, including providing that it is a two step process and applies to PHA and owner action and inaction. It's application should not be limited to evictions only.]
  - e. Recognition of resident organizations and \$25/unit/year. The Notice states that the owner of the converted property must recognize the resident organization. In addition resident organizations shall receive the \$25/unit/year funding. [The Notice must be clearer that resident organizations are eligible for the full \$25 not limit eligibility to \$15/unit/year. Also the Notice should spell out in greater detail the responsibility of the PHA to engage with the residents in a give and take discussion and not resort to a process without substance.]
4. 50% limitation on conversions to PBV. The Notice allows conversions to PBV for 100% of the units if the units are for the elderly and/or disabled. If the development is a family development the conversion may be for 100% of the units if supportive services are also provided. If there are no supportive services, the conversion may only be for 50% of the units. [This proposal is not workable and should be changed to permit conversion to 100% PBV units in all situations.]
  5. The Notice supports mobility. It also proposes a good-cause exemption for up to 10% of all units nationwide converted to RAD. HUD would consider request for good-cause exemption from PHAs that administer both vouchers and public housing but have more than one-third of their vouchers set aside for veterans and homeless applicants. If HUD awards RAD to a development within such a PHA, that development would have no choice mobility. [Such a PHA must still provide for some mobility for current and future residents.]
  6. Notice and comment for residents and the public. The Notice provides that the PHA must hold three meetings with residents of the affected development and the proposal to convert is a substantial amendment to the PHA Annual Plan. [These provisions do not go far enough. The amendment to the PHA annual plan must be prior to the submission of an application and the converted units must be subject to the Annual Plan after conversion, if converted to either PBV or PBRA. There is a need for broad notice and participation by the residents and the public in any decision to convert a public housing development]

7. Funding for technical assistance for residents. The Notice does not provide or identify any funds for technical assistance for residents. [HUD should also make funds available to provide technical assistance to residents so they may understand the RAD proposals and their options.]
8. Funding for RAD. Congress did not appropriate any new funds for RAD or increase the available vouchers to be used in conjunction with RAD. In order to effectively implement RAD, HUD should seek funding for RAD and more vouchers.
9. One for one replacement. The Notice permits conversion with a loss of de minimis number of units, defined as 5% or 5 units, whichever is greater. It also allows for a loss of additional units in certain situations. [The Notice should not permit a loss of additional units without imposing a one for one replacement requirement and the obligation to comply with of Section 18, the public housing demolition disposition statute.]
10. Evaluation. HUD is required to assess and publish findings regarding the impact of the conversion on the preservation and improvement of public housing, the amount of private sector funds leveraged and the effect of conversion on tenants. [The HUD Notice does not address how the evaluations shall occur and it should.]

RAD's key elements regarding conversions of rent supplement, Section 236 Rental Assistance Program (RAP) and Section 8 Moderate Rehabilitation units (also known as the orphan programs) include:

1. For FY 2012 and FY 2013, RAD allows orphan properties that lost their rental assistance after October 1, 2006, to convert the available tenant protection vouchers to the PBV program.
2. Consultation with Tenants. Before the conversion to PBVs may occur, the residents must be consulted and the administering PHA must agree to the conversion. The HUD Notice creates a standard that at least 50% of the residents must agree to the conversion. [This provision as well as Limited English Proficiency and notice accessible to tenants with disabilities ought to apply to conversions of public housing.]
3. The 50% rule. The 50% rule mentioned above should not apply to the orphan programs.