

FLASH ALERT

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HUD Publishes Fourth Revision to RAD Notice

A fourth revision to the RAD notice has been published by HUD, officially known as PIH 2019-23. As this is being written it is not yet available on the PIH notice web page, but can be found here: www.hud.gov/rad

Major changes include the following:

1. Extends all resident rights to households that will reside in non-RAD Project Based Voucher (PBV) units placed in a converted public housing project, in order to facilitate the standard protection of residents (see Section 1.6)
2. Increases resident notice requirements to improve communication with residents throughout the conversion process (see Section 1.8)
3. Establishes a mechanism for public housing agencies (PHAs) to enter into partnerships in order to pool resources or capacity with each other so as to effectively convert properties through RAD (see Section 1.5.L.)
4. Allows limited rent increases for public housing conversions to Project Based Rental Assistance (PBRA) contracts in certain scenarios, including in designated Opportunity Zones (see Section 1.7.A.5)
5. Modifies the requirements for portfolio awards to provide PHAs greater flexibility in staging the conversion of their properties (see Section 1.9.C.)
6. Streamlines Capital Needs Assessment (CNA) requirements to eliminate the submission of the CNA Tool when certain conditions have been met (see Section 1.5.A.)

7. Introduces a "Concept Call" so that PHAs can receive confirmation that project plans are sufficiently advanced to submit a Financing Plan (see Section 1.12.C.)
8. Prohibits PHAs from entering debt into the Earned Income Verification "Debts Owed" module purely as a result of the 50058 End of Participations that is required to be submitted into Public and Indian Housing Information Center (PIC) as part of the conversion (see Section 1.13.B)
9. Broadens the use of "tiered" environmental reviews so that streamlined submissions are needed for certain 24 CFR Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions (see Attachment 1A)
10. Establishes policy that RAD rents will be updated every two years and the updated rents will be applied to new awards issued after those established dates (see Attachment 1C)
11. Establishes a priority for "Section 3" employment and other economic opportunities for residents of public housing or Section 8 assisted housing (see Section 1.4.A.18.)

The following additional changes are subject to Notice and Comment because they impact eligibility and selection criteria (see below):

1. Removing restrictions on certain HOPE VI properties that are under 10 years old
2. Eliminating the selection of applications based on previously established "Priority Categories" so that HUD reviews applications on a first-come, first serve basis. In the event that a waiting list forms, this establishes the priority selection of applications for properties located in designated Opportunity Zones.

Augmenting Contract Rents

One area that is integral for a PHA to focus on is maximizing contract rents. Some of the strategies require action by PHAs – such as the new one offered in the RAD notice regarding Opportunity Zones. In other words, if you don't ask for it, it may not be included.

In addition, note the opportunity to increase Contract Rents for any utility allowance reductions due to energy savings from RAD Rehab (see below).

Shown below are some items that can be used to augment Contract Rents. These may be found on page 75 of the RAD Notice.

"5. Initial Contract Rent Setting. No additional or incremental funding is associated with this Demonstration. Consequently, HUD is specifying alternative requirements for section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, and for section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the "project account." HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. All RAD applications, including applications for Portfolio Awards, will have initial contract rents based on their "RAD rent base year," described in Attachment 1C. PHAs have additional discretion in establishing initial contract rents using the following flexibility:

- A. MTW Fungibility. MTW agencies may use their MTW funds to set the initial contract rents higher than the normally applicable contract rent cap that is based on the project's public housing subsidy. In addition to the rent cap described below, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. Any use of MTW funding flexibilities in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in Notice PIH 2013-02, or successor Notice. If an MTW agency converts a project to PBRA and uses this flexibility to increase their initial contract rents, HUD will reduce the agency's public housing subsidy by the additional amount (in addition to any funding modifications that would occur as a result of the conversion absent the rent increase) required to fund the PBRA HAP (see Attachment 1C). HUD will limit the number of projects an MTW agency may convert to PBRA if the PHA does not have sufficient public housing subsidy to convert into PBRA assistance.

B. **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The PHA could bundle the two projects such that the initial contract rents for both projects will be \$550. This use, which HUD refers to as "bundled" rents, can occur under the following scenarios:

- i. When a PHA is converting two or more properties within its public housing portfolio. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract
- ii. When PHAs have formed a Partnership in accordance with Section 1.5.M and are bundling rents between two or more converting projects. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract

Please note that per Section 1.13.B.5, regardless of the initial contract rents for the RAD HAP Contract, including as modified by this provision, in the year of conversion the Covered Project will only be assisted by the Operating and Capital Funds obligated to the PHA for that project.

- C. **Future Replacement Housing Factor (RHF) or Demolition Disposition Transition Funding (DDTF).**⁴⁵ PHAs that are scheduled to receive ongoing RHF or DDTF funding (funds that have not been awarded and, with HUD permission, funds that have been awarded but not yet disbursed) may choose to forgo any ongoing RHF or DDTF grants for the purpose of offsetting an increase to the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may offset increased RAD rent.
- D. **Tenant Paid Utility Savings.** When conversion will result in the reduction of one or more utility components (e.g., gas, water & sewer, electric) used to establish the Utility Allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail. The Utility Allowance shall be recalculated based on actual consumption within a reasonable period following completion of the work.

- E. **New Construction or Substantial Rehab.** For any transaction that is proposed in its Financing Plan to undertake new construction or substantial rehabilitation in a designated Opportunity Zone, HUD may provide up to a \$100 per unit per month (PUM) increase to the RAD rents, subject to the availability of funds and such conditions as HUD may impose. For purposes of this subparagraph, new construction or substantial rehabilitation is defined as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Costs as published by HUD for a given market area. Funds for this purpose shall be allocated on a first-come, first served basis, subject to the availability of funds, based on the time of the request (communicated through the submission of a complete and acceptable Financing Plan), where the PHA demonstrates it is necessary for the viability of the transaction.⁴⁶

Notwithstanding HUD's calculation or the above-mentioned flexibilities, initial contract rents will be capped at 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when HUD's calculation of contract rents exceeds 120 percent of the FMR but where the PHA believes that such rents are below the comparable market rent, the PHA may request an exception under which the project may receive rents in excess of 120 percent of the FMR but not in excess of the lower of comparable market rents or 150 percent of FMR. HUD will grant such a request only when HUD determines that a Rent Comparability Study (RCS), which the PHA must procure and pay for, establishes that rents are below comparable market rents. Any such determination will be made by HUD in its sole and absolute discretion. Where initial contract rents are at or below 120 percent of the FMR, no RCS is required."

See the [RAD Notice PIH 2019-23](#) for more details.

Repositioning Strategies

In addition, remember that RAD is only one of several available repositioning strategies. The following are some other options:

- ▶ Section 32 Homeownership
- ▶ Section 18 Demolition & Disposition
- ▶ RAD/Section 18 Blends
- ▶ Voluntary Conversion (including Streamlined Voluntary Conversion), i.e., Section 22
- ▶ Required Conversion (250 or more units with 10% vacancy), i.e., Section 33

There are PIH Notices and other resources regarding some of these that should be considered in addition to RAD. Stay tuned for future publications, where we will be discussing general repositioning and provide more details.

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