



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5630-N-09]**

**Rental Assistance Demonstration: Revised Program Notice**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice

**SUMMARY:** On July 26, 2012, HUD announced through notice in the Federal Register the implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. The July 26, 2012, Federal Register notice also announced the availability of the program notice (PIH 2012-32), providing program instruction on HUD's website. On July 2, 2013, HUD issued a revised program notice (PIH 2012-32, REV-1). On April 26, 2015, HUD issued a further revised program notice (PIH 2012-32, REV-2). This Federal Register notice announces further revisions to RAD and solicits public comment on changed eligibility and selection criteria. It also announces the posting of a further revised program notice (Revised Program Notice, PIH 2012-32/H 2017-03, REV-3). As provided by the RAD Statute, this notice addresses the requirement that the demonstration may proceed after publication of notice of its terms in the Federal Register. This notice summarizes the key changes made to PIH 2012-32/H 2017-03, REV-3. This notice also meets the RAD statutory requirement to publish at least 10 days before they may take effect, waivers and alternative requirements authorized by the statute, which does not prevent the demonstration, as modified, from proceeding immediately.

**DATES:** Comment Due Date: [**insert date that is 30 days after date of publication in the FEDERAL REGISTER**].

Effective Dates: The Revised Program Notice, PIH 2012-32/H 2017-03, REV-3, other than those items listed as subject to notice and comment or new statutory or regulatory waivers or alternative requirements specified in this notice, is effective [**insert date of publication in the FEDERAL REGISTER**].

The new statutory and regulatory waivers and alternative requirements are effective [**insert date that is 10 days after date of publication in the FEDERAL REGISTER**].

The items listed as subject to notice and comment will be effective upon [**insert date that is 30 days after date of publication in the FEDERAL REGISTER**]. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

**ADDRESSES:** Interested persons are invited to submit comments electronically to rad@hud.gov no later than the comment due date.

**FOR FURTHER INFORMATION CONTACT:** To assure a timely response, please direct requests for further information electronically to the email address rad@hud.gov. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program; Department of Housing and Urban Development; 451 7th Street SW, Room 2000; Washington, DC 20410.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122-55, signed November 18, 2011) (2012 Appropriations Act), allows for the

conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), and Mod Rehab Single Room Occupancy (SRO) programs (collectively, “covered programs”) to long-term, renewable assistance under Section 8.<sup>1</sup> The most recent version of the RAD program notice is PIH 2012-32, REV-2, located at [https://portal.hud.gov/hudportal/documents/huddoc?id=PIHNotice\\_2012-32\\_062015.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=PIHNotice_2012-32_062015.pdf).

## **II. Key Changes made to RAD**

The following highlights key changes to the RAD program that are included in the Revised Program Notice:

### First Component (Public Housing Conversions)

1. Creating a new way in which public housing agencies (PHAs) can increase their RAD rents by relinquishing existing balances of replacement housing factor (RHF) funds or demolition and disposition transition funding (DDTF) (see section 1.5.A).

2. Eliminating the cap on the number of project-based voucher (PBV) units at a project (see section 1.6.A.2).

3. Improving the quality of information that must be provided to residents of properties undergoing conversion and requiring that PHAs submit responses to resident comments in connection with meetings held following the issuance of the Commitment to enter into a Housing Assistance Payments Contract (CHAP) (see section 1.8).

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<sup>1</sup> The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113-76, signed January 17, 2014) (2014 Appropriations Act), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235, signed December 16, 2014) (2015 Appropriations Act), and the Consolidated Appropriations Act, 2016 (Pub. L. 114-113, signed December 18, 2015) (2016 Appropriations Act). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD Statute in this notice.

4. Extending the prohibition on re-screening to current public housing households that will reside in non-RAD PBV or non-RAD project-based rental assistance (PBRA) units placed in a project that contain RAD PBV or RAD PBRA units so as to facilitate the right to return to the assisted property (see sections 1.6.C.1 and 1.7.B.1).

5. Correcting the phase-in of rents for residents who may experience a rent increase as a result of conversion, in order to ensure a more even distribution across years (see sections 1.6.B.3 and 1.7.B.3).

6. Clarifying that a PHA is permitted to receive cash acquisition proceeds in excess of any seller take-back financing and that such proceeds must be used for Affordable Housing Purposes, a newly defined term (see section 1.4.7).

7. Establishing flexibility for requirements related to the Capital Needs Assessments, permitting certain exemptions when the assisted units are a small percentage of the total project (see section 1.4.A.1).

8. Requiring title reports to be submitted with the Financing Plan to avoid delays in closing (see section 1.15, Attachment 1A).

9. Modifying the maximum allowable developer fee, by excluding from the formula for larger transactions any acquisition payments made to the PHA, developer fee, and reserves (see section 1.14).

10. Establishing greater flexibility to underwrite to new loan products that have emerged in the market (see section 1.15, Attachment 2A).

11. Providing greater detail on the acceptable forms in which a public or non-profit entity can demonstrate ownership or control (see section 1.4.A.11).

12. Providing guidance on owners' responsibilities to treat lead-based paint hazards in the context of a RAD conversion (see section 1.4.A.15).

13. Encouraging PHAs and their partners to grant current workers whose employment positions may be eliminated during conversion the right of first refusal for new employment openings for which they are qualified (see section 1.4.A.16).

Second Component (Mod Rehab, Mod Rehab SRO, Rent Supp, RAP Conversions)

1. Eliminating the cap on the number of PBV units at a project (see section 2.5.C).
2. Permitting Mod Rehab conversions to PBRA to convert at comparable market rents, up to 110 percent of fair market rent (FMR) (see sections 2.6.C and D).
3. For Mod Rehab SRO conversions, authorizing the use of the efficiency FMR for SRO units, rather than 75 percent of the efficiency FMR, which is the existing SRO standard (see section 2.7).
4. Allowing all conversions to PBRA to achieve rents between 110 percent and 120 percent of FMR (up to the statutory maximum), if justified by comparable market rents and only in certain circumstances where preservation criteria have been met (see sections 3.6.C and D).
5. For conversions to PBRA, permitting the use of Small Area FMR (SAFMR) in the calculation of contract rent cap, with HUD approval (see sections 2.5 and 2.6).

**III. Changes Subject to Notice and Comment**

The Revised Program Notice makes changes to some of the selection and eligibility criteria for conversions of public housing under the First Component. Pursuant to the RAD Statute, these changes must be made available for public comment before they are effective. Please submit all comments to rad@hud.gov. As indicated above, the following changes will be effective on **[insert date that is 30 days after date of publication in the FEDERAL**

**REGISTER**]. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new notice immediately upon the expiration of the comment period.

The changes subject to notice and comment are:

1. Consolidating the selection priority categories for new applications into two buckets: 1) high investment applications and 2) all other applications (see section 1.11.C).
2. Allowing PHAs to submit a simple letter of interest, rather than an application, when a waiting list has formed. A letter of interest would serve to reserve a project or portfolio's position on the waiting list subject to future submission of a RAD Application (see section 1.9).
3. Making eligible an entire contiguous HOPE VI project that was developed in phases as long as the earliest phase is greater than ten years old (see section 1.3.H).

#### **IV. New Waivers and Alternative Requirements**

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the Federal Register no later than 10 days before the effective date of such notice. Under the Second Component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the 1937 Act).

HUD has previously published its waivers and alternative requirements for RAD, on July 26, 2012 (77 FR 43850), July 2, 2013 (78 FR 39759), and June 26, 2015 (80 FR 36830). This notice only includes waivers and alternative requirements not previously published or that have changed from previous publications. Although waivers or alternative requirements under the Second Component are not subject to a Federal Register publication requirement, the new Second Component waivers and alternative requirements are included in this notice as a matter of convenience.

The new waivers and alternative requirements are:

1. Cap on PBV Units in a Project. Provisions affected: Section 8(o)(13)(D) of the Act, and 24 CFR 983.56, 983.257(b), 983.262(a) and (d). Alternative requirements: None. The previously imposed alternative requirements are waived, effectively eliminating any cap on the number of PBV units in a project undergoing conversion.

2. Eligibility and Targeting of Tenants for Initial Occupancy. Provisions affected: 24 CFR 982.201 and 880.603(b). Alternative requirements: Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. Therefore, current households admitted into the PBV program following conversion of assistance at the property were not subject to the application of eligibility criteria for conditions that occurred prior to conversion of assistance but were subject to ongoing eligibility requirement for actions occurring after conversion. Once the grandfathered household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement. Further, so as to facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units. Accordingly, HUD is waiving 24 CFR 982.201 and 880.603(b) for current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units.

3. Total Tenant Payment (TTP). Provisions affected: Section 3(a)(1) of the Act and 24 CFR 983.3 and 880.201. Alternative requirements: If a resident's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 years or 5 years. Eligibility for the phase-in is to be determined at the Initial Certification which occurs at the time the household is converted to PBRA. A phase-in must not be applied after the household's Initial Certification. To implement the phase-in, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 880.201 (definition of "total tenant payment" (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase-in period at three years, five years, or a combination depending on circumstances. For example, a PHA may create a policy that uses a three-year phase-in for smaller increases in rent and a five-year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

The method described below explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section "Calculated Multifamily TTP" refers to the TTP calculated in accordance with regulations at 24 CFR § 5.628 (not capped at Gross Rent) and the "most recently paid TTP" refers to the TTP recorded on the family's most recent HUD Form 50059. If a family in a project converting from Public Housing to PBRA was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1, as illustrated below.

Three-Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33 percent of difference between most recently paid TTP or flat rent and the Calculated Multifamily TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR – 50 percent of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and all subsequent recertifications – Year 3 AR and any IR in Year 3: Full Calculated Multifamily TTP<sup>2</sup>

#### Five-Year Phase-in

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20 percent of difference between most recently paid TTP or flat rent and the Calculated Multifamily TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 25 percent of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 33 percent of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 50 percent of difference between most recently paid TTP and Calculated Multifamily TTP

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<sup>2</sup> For example, where a resident's most recently paid TTP is \$100, but the Calculated PBV TTP is \$200 and remains \$200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of \$100 to \$133. At the second AR, the resident's contribution would increase by 50% of the \$66 differential to the standard TPP, increasing to \$166. At the third AR, the resident's contribution would increase to \$200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

- Year 5 AR and all subsequent recertifications – Full Calculated Multifamily TTP

Please Note: In either the three-year phase-in or the five-year phase-in, once Calculated Multifamily TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full Calculated Multifamily TTP from that point forward.

4. Mod Rehab SRO FMRs. Provision affected: 24 CFR 888.113(f)(2). Alternative requirements: The applicable FMR used for SRO units for initial and re-determined rents will be the zero bedroom (efficiency) FMR. Accordingly, HUD is waiving 24 CFR 888.113(f)(2) for Mod Rehab SRO units.

5. Small Area FMRs for PBRA. Provision affected: 24 CFR 888.113(h). Alternative requirements: Projects converting assistance to PBRA under the Second Component may use a Small Area FMR for initial contract rent setting and when adjusting contract rents. Accordingly, HUD is waiving 24 CFR 888.113(h) for those projects.

## **V. Revised Program Notice Availability**

The Revised Program Notice (PIH 2012-32/H 2017-03, REV-3) can be found on RAD's website, [www.hud.gov/RAD](http://www.hud.gov/RAD).

## **VI. Environmental Review**

A Finding of No Significant Impact with respect to the environment was made in connection with HUD notice PIH 2012-32 issued on March 8, 2012, and in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to the Revised Program Notice and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW, Room 10276; Washington, DC 20410– 0500. Due to security

measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number).

Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: January 12, 2017

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Nani A. Coloretti, Deputy Secretary

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