



## 24 CFR Parts 880, 888, 903, 905, 964, 970, and 983

[Docket No. FR-6361-N-01]

### **Rental Assistance Demonstration: Supplemental Guidance on Revised RAD Notice**

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

**ACTION:** Announcement of changes to the Rental Assistance Demonstration.

**SUMMARY:** The Rental Assistance Demonstration (RAD) provides the opportunity to test the conversion of assistance of public housing properties and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. This document announces the posting of a supplement to the most current notice (Revised RAD Notice Revision 4, H-2019-09/PIH-2019-23 (HA)). As provided by the RAD Statute, this document addresses the requirement that RAD may proceed after publication of notice of its terms in the *Federal Register*. This document summarizes the key changes made to the H-2019-09/PIH-2019-23 (HA) through the RAD Supplemental Notice 4B, H-2023-08/PIH-2023-19 (HA). This document also meets the RAD statutory requirement to publish waivers and alternative requirements at least 10 days before effect, while this does not prevent the demonstration, as modified, from proceeding immediately.

**DATES:** The RAD Supplemental Notice 4B, H-2023-08/PIH-2023-19(HA) other than those items listed as new statutory or regulatory waivers or alternative requirements specified in this document, 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]**.

**ADDRESSES:** Interested persons are invited to submit questions or comments electronically to [rad@hud.gov](mailto:rad@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** William A. Lavy, Director of Program Administration, Office of Recapitalization, Office of Multifamily Programs, Department of

Housing and Urban Development, 451 Seventh Street SW, Room 6230, Washington, DC 20410; telephone 202-402-2465. (This is not a toll-free number.) HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. To assure a timely response, please direct written requests for further information electronically to the email address [rad@hud.gov](mailto:rad@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Originally authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122-55, approved November 18, 2011) (2012 Appropriations Act) and later amended, RAD allows for the conversion of assistance of public housing properties, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), Mod Rehab Single Room Occupancy (SRO), Section 202 Project Rental Assistance Contract (202 PRAC), and Section 811 Project Rental Assistance Contract (811 PRAC) programs (collectively, “covered programs”) to long-term, renewable assistance under Section 8.<sup>1</sup> The most recent version of the RAD notice is H-2019-09/PIH-2019-23 (HA), located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09hsgn.pdf>.

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

The following highlights key changes to RAD that are included in the RAD Supplemental Notice (the Notice):

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<sup>1</sup> The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, approved December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, approved May 5, 2017), the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, approved March 23, 2018), and the Consolidated Appropriations Act, 2022 (Pub. L. 117-103, approved March 15, 2022). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to collectively as the “RAD Statute” in this document.

1. RAD for PRAC Initial Contract Rent Setting. The Consolidated Appropriations Acts, 2022 and 2023, each provided \$6 million to support preservation transactions of housing for the elderly originally developed with a Section 202 Capital Advance and assisted with a Project Rental Assistance Contract (PRAC). HUD is implementing this provision of the Consolidated Appropriations Acts, 2022 and 2023 in Section I of the Notice by allowing additional rent-setting flexibilities to promote and incentivize projects where the conversion supports long-term preservation by enhancing climate resiliency, energy and water efficiency, and the design of housing appropriate for the elderly to age-in-place. It further implements waiver authority provided in the Consolidated Appropriations Acts, 2022 and 2023 to ensure the continuation of resident services previously provided at Section 202 PRAC properties that are converting through RAD and to avoid reductions in rental revenue at such properties.

2. Resident Engagement. Section II of the Notice amends the Resident Engagement requirements for PHAs to ensure that the residents are better informed and engaged in the RAD conversion process and that HUD can adequately monitor resident engagement. The Notice enhances the descriptions of resident engagement that must be submitted with the RAD application and modifies the resident meeting requirements to provide for more frequent and meaningful updates to residents.

3. Energy Efficiency and Climate Resilience. Section III of the Notice amends the RAD Notice, Rev-4 to raise the minimum energy efficiency standards applicable to new construction activities by reference to updated energy codes incorporating higher, cost-effective standards and requires PHAs to participate in climate resilience planning.

4. Harmonizing Radon Policies in RAD Conversions. Section IV of the Notice amends the RAD Notice, Rev-4 to ensure that all projects converting assistance under RAD are evaluated for radon. RAD Notice, Rev-4 introduced requirements for radon testing for properties converting under RAD but exempted certain scenarios from the requirement. It also inadvertently omitted Mod Rehab conversions from the requirement. HUD's subsequent

amendments to Chapter 9 of the MAP Guide further narrowed the exempted scenarios. Through the Notice, HUD is eliminating the remaining exemptions, subjecting all Converting Projects to radon testing requirements.

5. Treatment of Zero-HAP families. Section V of the Notice amends the treatment of families whose total tenant payment (TTP) exceeds the Gross Rent on the RAD HAP Contract including families present at the time of conversion and families newly admitted to the property after conversion.

6. Faircloth-to-RAD Developments. Section VI and Section II of the Notice make changes to the RAD Notice, Rev-4 in order to support PHAs that are developing public housing units to replace public housing units previously removed from the PHA's portfolio. PHAs can secure a conditional pre-completion approval to convert newly developed public housing units to a long-term Section 8 contract through RAD following completion of the public housing development process. The changes make it simpler for PHAs to reserve RAD conversion authority, allow PHAs to utilize HAP reserves in order to augment RAD rents for such units at conversion, and set forth alternative resident notification procedures that a PHA may employ.

7. Housing Quality Standards. Section VII of the Notice amends the RAD Notice, Rev-4 to clarify applicability of HQS during the work period for occupied units and adds a certification requirement regarding the condition of the unit prior to the execution of the HAP Contract.

8. RAD/Section 18 Blend Streamlining. Section VIII of the Notice extends additional waivers to non-RAD project-based vouchers (PBVs) at the Converted Project in order to facilitate uniform treatment of residents and units.

### **III. 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), June 26, 2015 (80 FR 36830), January 19, 2017 (82 FR 6615), July 3, 2018 (83 FR 31169), and October 10, 2019 (84 FR 54630). This document only includes waivers and alternative requirements not previously published or that have changed from previous publications. Although waivers and alternative requirements authorized under the Second Component are not subject to a *Federal Register* publication requirement, new Second Component waivers and alternative requirements are included in this document as a matter of convenience.

The new waivers and alternative requirements are:

1. Initial Contract Rent Setting for converting Section 202 PRAC projects. Provisions affected: Initial Section 8 Housing Assistance Payment contract rents shall not exceed 120% of the applicable fair market rents (FMR) less any utility allowances. Waiver: HUD is waiving the limitation under Section 8(c)(1)(A) of the 1937 Act (42 U.S.C. 1437f) on setting initial contract rents no higher than 120% of FMR, less any utility allowances. Alternative requirement: HUD is implementing an alternative requirement permitting initial contract rents be set at the higher of (a) 120% of the applicable FMR (consistent with the requirements of Section 8(c)(1) of the 1937 Act), less any utility allowances, plus the current cost of provision and coordination of services, or (b) the approved PRAC rents, as necessary to ensure the ongoing provision and coordination of services or to avoid a reduction in project subsidy.

2. Treatment of Zero-HAP families. Provisions affected: A PHA may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments. Also, a PHA must remove a unit from the HAP Contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the Gross Rent. Waiver: For RAD PBV units, the provisions of 24 CFR

983.53(c) does not apply in order to provide RAD PBV assistance to residents who were living in the Converting Project prior to conversion. To implement the alternative requirement and allow units where families are receiving no rental assistance remain under contract, HUD is waiving 24 CFR 983.258 and 983.211, as well as the provisions of Section 8(o)(13)(H) of the Act and the regulations at 24 CFR 983.201 as modified by Section 1.6.B.5 of Notice H-2019-09/PIH-2019-23 (HA). Alternative requirements: HUD is implementing alternative requirements that pre-conversion families with a TTP that equals or exceeds Gross Rent who would otherwise qualify for assistance in the unit shall be admitted and allowed to occupy the RAD PBV unit. HUD is also requiring that the units occupied by such families shall be placed on and/or remain under the RAD PBV HAP Contract when TTP equals or exceeds the Gross Rent. These waivers only apply to “new admission families” (i.e., families that were not residents of the Converting Project at the time of conversion) if a PHA requests and receives a waiver for the new admission families in accordance with the requirements of RAD Supplemental Notice 4B, H-2023-08/PIH-2023-19 (HA).

3. Housing Quality Standards. Provisions affected: A unit covered under a HAP Contract must be inspected for compliance with Housing Quality Standards (HQS) before assistance can be paid on behalf of a household, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions. In addition, HAP Contract units must be inspected to ensure compliance with HQS prior to payment of any assistance on behalf of a family. Waiver: HUD is waiving and establishing an alternative requirement to 24 CFR 983.103(b) and section 8(o)(8)(A) of the 1937 Act. Alternative Requirements: When work is occurring under RAD, HUD requires that all units undergo inspection for HQS no later than the date of completion of the work as indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the PHA may rely on the owner’s certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question instead of conducting an initial inspection. During the period of the

work, HQS requirements apply. The PHA must enforce the Project Owner's obligations under this paragraph and conduct inspections when needed, for example in response to tenant complaints or other information coming to its attention, and the owner must correct any deficiencies in accordance with HQS requirements (i.e. no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

#### 4. RAD/Section 18 Blend Streamlining.

a. PBV Percentage Limitation: Provisions affected: A PHA is permitted to project-base up to 20 percent of its authorized housing choice voucher units. Waiver: HUD is waiving the provisions of section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6. Alternative requirements: HUD is establishing an alternative requirement that all PBV units in a Covered Projects that replace former public housing units at the time of conversion at a new location are also excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a PHA.

b. Owner Proposal Selection Procedures: Provisions affected: A PHA must give written public notice of the opportunity to submit site and owner proposals for selection to receive project base vouchers from the Housing Choice Voucher program. Waiver: HUD is waiving the provisions of 24 CFR 983.51. Alternative requirements: HUD is establishing alternative requirements that a RAD PBV HAP contract is never subject to competitive selection requirements.

#### **IV. Program Notice Availability**

The RAD Supplemental Notice 4B (H-2023-08/PIH-2023-19 (HA)) can be found on RAD's website, [www.hud.gov/rad](http://www.hud.gov/rad).

#### **V. Finding of No Significant Impact**

A Finding of No Significant Impact with respect to the environment has been completed 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 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). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

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