

Rental Assistance Demonstration (RAD) Program: Legal Hot Topics

1. Overview of Legal Submission Process

- a. Current Processing Timelines
 - i. Pre-financing Plan: Environmental Review, FHEO, etc
 - ii. RCC: Submit legal documents within short time after receiving RCC
 1. Always check special conditions (Section 28 of RCC)
 - iii. Closing approval: HUD executes Partial Release and other documents
- b. Documents: reviewed by PHA, HUD, lender and investors
 - i. RAD form documents (Use Agreement, Partial Release, certifications)
 - ii. PBRA-specific documents (HAP, Model Lease, HUD 2530, etc)
 - iii. PBV-specific documents (HAP, RAD and PBV Tenant Addenda, etc)
 - iv. Releases of prior EPC and CFFP debt (coordinate with HUD and prior lenders)

2. RAD Right to Return and Relocation

- a. General RAD Right to Return
 - i. RAD prohibits the permanent, involuntary relocation of residents as a result of conversion
 - ii. Residents may not be re-screened upon conversion
 - iii. Over-housed residents have the right to return to similarly sized unit until an appropriately-sized unit becomes available
 - iv. Temporarily relocated residents retain the right to return to the project once it has been completed
 - v. PHAs cannot pressure residents to relinquish their right to return or accept permanent relocation assistance and payments
 - vi. PHAs must comply with RAD relocation requirements described in the RAD Relocation Notice ([PIH Notice 2014-17](#))
- b. Relocation Planning
 - i. PHAs must undertake a planning process that complies with the Uniform Relocation Act (URA) to minimize the adverse impact of relocation. Also must honor RAD right to return.
 - ii. If proposed plans for a project would preclude a resident from returning to the RAD project, the resident must be given an opportunity to comment and/or object to such plans
 1. If the resident objects to such plans, the PHA must alter the project plans to accommodate the resident
 2. If a resident agrees to such plans, the PHA must:
 - a. secure informed, written consent from the resident to URA receive permanent relocation assistance and payments, and
 - b. acknowledge that acceptance of URA assistance terminates the right to return to the project
 - iii. PHAs must provide residents with information on the right to return, potential relocation, and temporary and permanent housing options at least 30 days before decisions required

- iv. PHAs must keep documentation of relocation compliance (not a formal submission to HUD, but the information is subject to HUD audit and review)
- c. Normal fair housing and programmatic requirements apply
 - i. Effective communication for persons with disabilities
 - ii. Accessible Meeting Facilities for Persons with Disabilities
 - iii. Meaningful access for persons with limited English proficiency (LEP)
 - iv. Comparable housing for persons with disabilities
 - v. Advisory services
- d. Public Housing Program Compliance
 - i. public housing resident provisions remain in effect until the execution of the new PBV or PBRA Housing Assistance Payment (HAP) contract
 - ii. PHA actions are still governed by the ACOP or HCV Admin Plan
 - iii. Termination of lease
- e. RAD Relocation Plan: Not explicitly required by HUD, but strongly encouraged. HUD has suggested the following stages of RAD relocation:
 - i. Prior to submission of RAD application: determine potential need for relocation
 - 1. Meet with residents to discuss plans, communicate right to return, and solicit feedback
 - 2. Provide General Information Notice (GIN) to residents
 - 3. Survey residents to prepare Relocation Plan and relocation process cost estimate
 - ii. After receipt of the Commitment to Enter into a HAP Contract (CHAP) Award
 - 1. Prepare Significant Amendment to PHA Plan
 - 2. Assess and refine need for relocation
 - 3. Develop a Relocation Plan
 - 4. Identify relocation housing options
 - iii. Preparing Financing Plan
 - 1. Budget for relocation expenses
 - 2. Submit FHEO Accessibility & Relocation checklist
 - iv. Receipt of RAD Conversion Commitment (RCC)
 - 1. Send RAD Notice of Relocation
 - 2. Send Notice of Intent to Acquire (ie, early relocation) only with written HUD approval
 - 3. Meet with residents to describe approved conversion plans and discuss required relocation
 - v. Closing/RAD conversion
 - 1. Generally, resident relocation should not begin until after the date of closing/conversion of assistance under RAD
 - 2. PHAs seeking to move residents prior to closing must receive prior written approval from HUD as described in the RAD Relocation Notice
 - 3. Exceptions to limit on pre-closing relocations for certain reasonable accommodations, election to receive HCV when tenant is at the top of HCV waiting list, etc.
- f. Relocation Assistance
 - i. Temporary relocation: resident will be relocated less than one year

1. Temporary housing must be decent, safe, and sanitary
 2. Resident must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses include moving expenses and increased housing costs during the temporary relocation
 3. Must give residents at least 30 days notice before move is required
 - ii. Permanent relocation: resident will be relocated more than one year
 1. Replacement housing must be decent, safe, and sanitary
 2. Use HUD URA forms to document calculation and payment of Replacement Housing Payment (RHP) and any Housing of Last Resort
 3. Note that HUD forms haven't been updated to reflect Congress' changes to RHP limits—now \$7,200 for rental housing
 - iii. If resident will be relocated for more than a year, the PHA must offer the resident the choice of:
 1. Permanent relocation assistance and payments at URA levels (90 days notice to move is required); resident waives right to return to completed RAD project; or
 2. Temporary relocation assistance
 3. The PHA must give the resident at least 30 days to decide between permanent and temporary relocation assistance (if applicable)
- g. Special Situations
 - i. Residents with incomes over the LIHTC limits –must be provided the right to return
 - ii. Residents who fail to comply with lease during temporary relocation—evolving area of HUD guidance
 - iii. Over-housed residents. Can be right-sized upon RAD conversion but also can be over-housed if that is the only way to meet the right to return requirements
 - iv. Creation of vacancies in anticipation of RAD. Allowed if created in conformance with an authority's PHA Plan, the Plan was properly adopted, and the vacancies were created in accordance with all PIH rules, regulations, and policies
 - v. HVC preferences for RAD relocation. Allowable if the procedures for such preferences were properly adopted in the agency's PHA Plan, written occupancy policies, and Section 8 Administrative Plan
 - vi. Incentives –evolving area of HUD guidance - incentive payments paid from non-federal funds may be allowed to create additional relocation options for residents; some of these incentives may be associated with declining the right to return but HUD guidance isn't clear
 1. PHAs must maintain documentation that residents who opt for incentive payments also received the counseling, moving assistance, rent differential payments, or any other payments and assistance that would be required for relocated residents under RAD and URA
 2. Offer and acceptance of an incentive payment must be made in writing help to demonstrate that residents' decisions were fully informed and voluntary
 3. A written offer should inform the resident of the relative benefits of

accepting the incentive versus any alternatives, and residents must have sufficient time to consider the incentive as well as the alternatives

4. Any incentive payments made to a resident to relinquish the right to return would not alter the 30 days required under RAD to give residents time to consider the relinquishment of their right to return and the requirement to retain appropriate documentation

3. Site and Neighborhood Standards

- a. Site selection requirements at 24 CFR § 983.57 apply to RAD PBV conversions
- b. Site selection requirements at Appendix III of RAD Notice apply to RAD PBRA conversions
- c. Site selection must be consistent with the requirements of:
 - i. the Fair Housing Act, Title VI of the Civil Rights Act of 1964 including implementing regulations at 24 CFR § 1.4(b)(3),
 - ii. Section 504 of the Rehabilitation Act of 1973 including implementing regulations at 24 CFR § 8.4(b)(5)
- d. Up Front Review. HUD will conduct a front-end civil rights review for conversions of assistance that involve new construction that is located in an area of minority concentration (whether on the existing public housing site or on a new site) to determine whether it meets one of the conditions that would allow for new construction in an area of minority concentration
- e. New Construction in Areas of Minority Concentration. Under its Site and Neighborhood Standards, HUD may approve new construction in an area of minority concentration if:
 - i. the new construction is located in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a revitalizing area) or
 - ii. There are sufficient comparable housing opportunities in areas outside of minority concentration.
 - iii. Factors:
 1. whether the locality has a demonstrated commitment to revitalization that includes or is in addition to the RAD conversion
 2. whether the neighborhood shows signs of revitalizing, through indicators such as declining census tract poverty rates, low or declining violent crime rates or evidence of increased educational opportunity, or
 3. whether there is high private and public investment in retail, commercial or housing development that is already occurring or will imminently occur in the area.
 4. PHA must receive prior written approval confirming that HUD has accepted the certification and supporting documentation prior to entering into binding commitments for new construction. A determination that a site fails to meet these requirements will be grounds for disapproval of a Financing Plan

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