



RAD Notice Revision 4

Section 1: Public Housing conversion

September 19, 2019

BACKGROUND

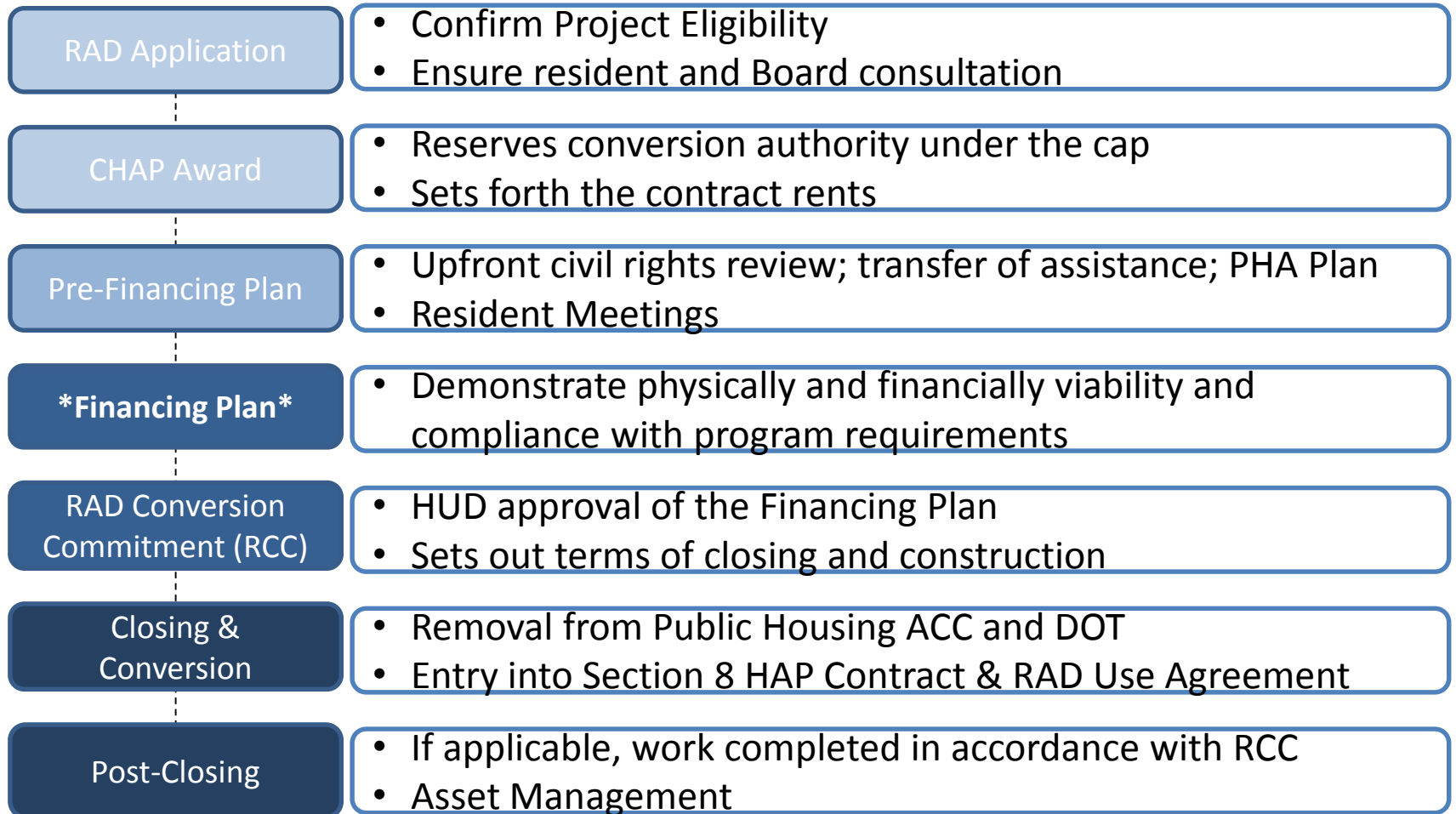
RAD Notice

- Housing 2019-09/PIH 2019-23 (“RAD Notice Rev 4”) published September 5th, 2019
- Supersedes all prior RAD notices, including Supplemental Notices
- Four Sections
 1. Public Housing conversions
 2. Mod Rehab/SRO conversions
 3. Rent Supplement and Rental Assistance Payment conversions
 4. 202 Project Rental Assistance Contract (PRAC) conversions
New!

Highlights

- Standardize resident rights when RAD is mixed with non-RAD PBV
- Greater flexibility for PHAs converting “portfolios” of public housing, by streamlining the “Portfolio” and “Multiphase” awards
- Some new rent flexibilities for certain conversions in Opportunity Zones and improved use of RAD and Section 18
- Creates abilities for PHAs to partner together to find mutually beneficial arrangements that facilitate stronger RAD conversions
- Introduces “Concept Call” prior to Financing Plan submission

Recap: RAD Conversion Process



PROGRAM REQUIREMENTS

Eligibility and Application

- Eliminates “priority categories.”
- If a waiting list arises, establishes a preference for properties in Opportunity Zones
- Eliminates restrictions on HOPE VI properties under 10 years old
- Minimizes application requirements – *already implemented*

There is no class of properties in good standing with HUD that is ineligible or that would currently be deprioritized

Portfolio Awards

- Expands timing flexibility for PHAs converting a self-defined “portfolio” of properties, while creating a simpler structure
- A PHA can reserve conversion authority under the 455,000 unit cap (and the applicable RAD rents at the time of submission) for a portfolio of properties by providing HUD:
 - the total number of units to be converted and
 - RAD Applications for the lesser of four projects or 25% of the units identified in the portfolio
- To retain its Portfolio Award, a PHA must close, on average starting one year after the issuance of the first CHAP, either two projects per year or 25% of the units identified in the portfolio per year
 - HUD will monitor closings, rather than RAD applications

Portfolio Awards

- All multiphase and portfolio awards convert to new portfolio awards immediately
 - PHA must close on average, starting one year from Sep 5th, 2019, either two projects per year or 25% of the units identified in the portfolio per year
- “Multiphase” award concept is eliminated
 - Units for multiphase redevelopment are instead reserved through the portfolio award
 - Each phase completed will count towards minimum unit/project closing requirements
- Final applications are still due by September 30, 2024

PHAs will have more flexibility in completing the conversion of multiple projects/phases

RAD Rent “Base Year”

- Initial Contract rents under RAD are calculated based on public housing Operating Fund and Capital Fund appropriations
- CHAPs and Portfolio Awards lock in the “RAD Rent Base Year” based on time of award. *(PHAs can request to update the rents as new rents become available)*
- HUD has periodically updated that RAD Rents based on Fiscal Year appropriations for the Operating Fund and Capital Fund. Rev 4 establishes biennial (every two years) frequency of RAD rent “Base Year” updates

RAD Rent Base Years and OCAFs based on Award Date

Awards made between	RAD Rent Base Year	Year in which an OCAF adjustment is first applied to CHAP
1/1/19 – 12/31/20	FY 18	2019
1/1/21-12/31/22	FY 20	2021
1/1/23 – 12/31/24	FY 22	2023

Contract Rent Setting

Provides for up to \$100 PUM rent bump for PBRA conversions that:

- Involve new construction or substantial rehab (construction, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Cost);
- Are within a designated Opportunity Zone; and
- Where it is necessary for the viability of the conversion

Recap will post processing guidance including:

- How to request a conditional CHAP amendment that can be used to support lender/investor underwriting
- How HUD will assess whether the increased rents are necessary for the viability of the conversion

CHAP Milestone

- **All Financing Plans due within 270 days of CHAP.**
- Extensions permitted, contingent on reasonable justification
- If extension exceeds 6 months, PHA must hold or show evidence of an additional resident meeting

Resident Meetings

- PHAs and partners should maintain regular communication with residents throughout the conversion process in order to describe conversion plans, solicit feedback, and ensure residents understand the impacts
- Rev 4 expands the minimum required resident meeting:
 - 2 before RAD application
 - 2 before Financing Plan
 - 1 before concept call
 - 1 between concept call and FP
 - Additional meetings for significant changes to project plans or for extensions in excess of 6 months

Fair Housing and Civil Rights Notice

- Prior versions of the RAD Notice contained fair housing and civil rights review requirements that preceded the publication of the “RAD Fair Housing, Civil Rights, and Relocation Notice” (Housing/PIH Notice 2016-17, published November 10, 2016)
- The “RAD Fair Housing, Civil Rights, and Relocation Notice” contains much more thorough information regarding upfront civil rights reviews than the language in the RAD Notice.
- To eliminate duplication and potential conflict, Rev 4 removes language regarding requirements (i.e., upfront reviews) and instead refers readers to the “RAD Fair Housing, Civil Rights, and Relocation Notice”

The removal of this language does not modify any of the requirements contained in the RAD Fair Housing, Civil Rights, and Relocation Notice.

PHA Partnerships

Provides for increased flexibility for **PHAs to partner** and find mutually beneficial exchanges of resources and/or capacity in order to broaden the viability of public housing conversions

PHAs can exchange resources, subject to a mutual agreement to be approved by HUD, without forming a consortium and without consolidation

PHA Partnerships

New Flexibilities Extended to PHA Partnerships in Rev 4

- Contribute Public housing funds as development source
- Trade-in RHF/DDTF to increase rents
- Rent bundling
- Transfer available land under DOT
- Propose other partnership arrangements

Ways PHAs were Already Able to Partner

- Select another PHA to administer PBV contract
- Transfer assistance outside of PHA's jurisdiction
- Provide development guarantees
- Serve as developer
- Serve as management agent
- Transfer or consolidate HCV program

Concept Call

- Prior to submitting a Financing Plan a PHA must request a “**Concept Call**” with HUD via the RAD Resource Desk
- On the Concept Call the PHA will describe the conversion plan and demonstrate that the plans are sufficiently advanced to warrant review by HUD.
- HUD will subsequently invite the PHA to submit a Financing Plan
- HUD will fully implement Concept Call for any Financing Plan submitted on or after October 7, 2019
- *Concept Call checklist on Resource Desk forthcoming*
- *Training will be announced shortly*

Capital Needs Assessment

- Eliminates the requirement to submit a Utility Consumption Baseline
- For transactions using 9% LIHTC or new construction or for properties that have been newly constructed or that have used 9% LIHTC in last 5 years:
 - Prior RAD Notices has already exempted the Narrative (rehab needs)
 - Rev 4 exempts CNA financial model/reserve analysis as long as initial annual deposit to the replacement reserve (ADRR) will be at least \$450
 - PHA could still justify a lower amount with a CNA

Environmental Review

- All Part 50 reviews must be submitted through HEROS
- For conversions with no rehab, allows for Part 50 “tiered” review: HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review for:
 - Coastal protection
 - Flood insurance and flood plain management
 - Contamination
- Radon testing now required
 - Part 50 – follow the MAP guide
 - Part 58 – if rehab, PHA must provide a statement that the RE examined radon or submit a Radon Report

RAD and Section 18

- Allows for joint processing of RAD + Section 18 disposition of last 50 units (i.e., RAD/Section 18 “Close-out” Blend)
 - the PHA must be converting sufficient units under RAD that would result in the PHA having 50 or fewer units and the units being converted through RAD must be in the same project (e.g., a high-rise or group of properties that are managed as one project) as units being removed through Section 18.
 - *Example: A PHA with a 80 unit high-rise converts 30 units through RAD and takes 50 units through Section 18*
 - Procedurally, this will mimic the existing process for RAD/Section 18 blends where submissions all occur via RAD and the Resource Desk

RAD and Section 18

- Describes process for switching from RAD to SAC application (Section 18, Streamlined Voluntary Conversion, etc) or SAC Application to RAD
- Requires applicability of RAD relocation rights (including right of return and URA) to Section 18 units when units will be replaced with project-based assistance

Subsidy Layering Review

- Extends exemption from subsidy layering review if the PHA will have 50 or fewer units after RAD conversion and has begun Section 18 process (currently, SLR only exempt for PHA's last project)
- Confirms that Recap completes Subsidy Layering Review (SLR) if non-RAD PBV is at the project

Financing Plan

- Require Identity of Interest (IOI) disclosure within development team
- Prohibits use of public housing funds as hard debt

RAD and non-RAD PBV

In order to facilitate the uniform treatment of residents at a converting property with non-RAD PBV, extends all RAD resident rights to non-RAD PBV residents

- Prohibition against rescreening
- Right of return & URA benefits
- Resident rent “phase-in”
- Continued participation in ROSS/FSS/Jobs Plus/EID
- Resident participation rights and funding
- Termination Notification
- Grievance procedures
- “Choice-mobility” (*previously available*)

Given the purpose of using PBV to preserve publicly assisted properties, Rev 4 also extends waiver of compliance with PBV poverty deconcentration goals for the non-RAD PBV units

Resident Notification Prior to Closing

Rev 4 enhances detail on resident notification required following issuance of the RCC

- Anticipated timing of conversion
- Anticipated duration of rehab/construction, if applicable
- Terms of lease/house rules
- Anticipated relocation
- Opportunities and procedures for exercising Choice-Mobility

PHA must communicate its policy regarding phase-in of any tenant-rent increases to affected residents.

Resident Rights

Choice-Mobility in PBRA conversions.

- incorporates choice-mobility into the resident lease through a new required provision in the house rules;
- Requires maintenance of an agreement between the owner and a voucher agency

Earned Income Verification (EIV) – clarifies that “End of Participation” (EOP) submitted as part of a conversion does not trigger reporting of debts to EIV

Preferences

- Upon conversion, properties cannot be “designated” in the PBRA or PBV programs. Any preferences should be established prior to conversion
 - For PBRA, owner-adopted preferences must be submitted to MF field office prior to conversion
 - For PBV, PHA amends the Section 8 Admin Plan
- Encourages owners with site-based waiting lists to facilitate Emergency Transfers (VAWA) through residency wait-list preferences

Ownership and Control

- Fully aligns standard set of ownership and control requirements whether or not LIHTC is involved. Public or non-profit “sufficient interest” is the same as “control”
- Update to reflect 2018 statutory change

	Pre-Statutory Change	Current Law
At Conversion	Public or non-profit ownership	Public or non-profit ownership
When LIHTC used	Public controlling interest	Public or non-profit controlling interest
Following foreclosure, bankruptcy, or termination & transfer for material violation	Priority for public ownership or control	Priority for public or non-profit ownership or control

Rent Bundling: RAD and non-RAD PBV

- PHAs may “rent bundle” across RAD and non-RAD PBV to shift subsidy in a cost neutral way
- Rev 4 establishes a process for executing the rent bundling in the HAP contracts when non-RAD PBV will first be placed under an Agreement to Enter into a HAP (AHAP)
 - RAD PBV HAP contract will include “Post-Rehab Rents”

Transfer of Assistance:

PHA must describe future use of former public housing site within their Financing Plan and identify treatment of the Declaration of Trust (DOT):

Option 1: Release DOT and replace with alternative Use Agreement

- 20 year term - Property or net income generated from property restricted to Affordable Housing Purposes
- PHA must maintain records of and annually report to board on use of property or income
- Permit future removal of covenant if property is sold and proceeds used for Affordable Housing Purposes or if another affordability covenant (e.g., LIHTC LURA) is placed
 - Office of Recap manages requests for release

Option 2: Maintain the DOT and separately pursue release under Section 18 or Part 200 (retention)

- Property restricted to public housing uses while under DOT
- PHA may use Capital Funds for demolition
- PIH Special Applications Center (SAC) manages request for release

Option 3: Release the DOT for imminent sale at Fair Market Value

- Proceeds must be used for Affordable Housing Purposes

Public Housing Considerations

Faircloth. Prior versions of RAD notice had reduced a PHA's Faircloth Limit by the number of converted units, excluding de minimis units from the Faircloth reduction. Rev 4 clarifies that it is reduced by the number of ACC units removed through RAD (which is already current practice).

Any PHA that wishes to retain those de minimis units under its Faircloth Limit must contact HUD (PIHOCL@hud.gov) within 90 days of publication of the RAD Notice (i.e. by November 4, 2019)

Close-out Costs. Eliminates ability to establish a reserve at converted property to fund PHA close-out costs. PHA should retain public housing funds or use unrestricted funds for this purpose

Section 3 Low Income Hiring

- HUD has always required compliance Section 3 Low-Income hiring and contract for any rehab/construction completed as part of the RAD conversion
- Rev 4 specifies that HUD is applying the regulatory requirements for “Housing and community development assistance” for RAD conversions, except that public housing and section 8 residents receive priority hiring preference
- Affirms that Section 3 reporting should be completed through our post-closing completion certification – already implemented

Completion Certification

- Prior versions of the RAD Notice had required a completion certification for any work required in the RCC
- Rev 4 expands completion certification to conversions with no rehab (with more limited information)
- Guidance on completion available on RAD Resource Desk

Post-closing PBV Administration

Annual Operating Budget Review. Prior versions of RAD Notice had required PHA board to approve operating budget but described no standards for the review. Rev 4 requires board to:

- review operating budget and
- confirm deposits into capital replacement reserve account

OCAF Adjustments. For “PHA-owned” properties (*see Attachment A in Notice PIH 2017-21 for guidance on PHA-owned units*), clarifies that the independent entity that the PHA must secure to perform the rent reasonableness analysis must also determine the contract rent OCAF adjustments.

PBV Zero HAP Residents

- When Total Tenant Payment (TTP) exceed gross rent, normally a unit is not included or removed from a PBV contract.
- Prior RAD Notices already requires an exception for current residents so that their unit remains on the contract regardless of income (though no subsidy is paid)
- Revision 4 allows PHAs to request a waiver to permit the future admission of zero HAP residents for converted properties

Thank You and Questions

For more information visit

www.hud.gov/rad

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(link available at the bottom right of the

www.hud.gov/rad webpage)