



RAD FAIR HOUSING, CIVIL RIGHTS AND RELOCATION NOTICE

11/17/16



OVERVIEW



- **Notice divided into two major parts:**
- **Fair Housing and Civil Rights**
 - Focus is on providing clarity regarding existing fair housing and civil rights obligations and how they impact RAD transactions
 - The requirements are not new
 - The PHA remains primarily responsible for civil rights compliance
- **Relocation**
 - Additional resident protections
 - Streamlines and facilitates implementation of relocation
 - Clarifies relocation requirements



FAIR HOUSING AND CIVIL RIGHTS – OVERVIEW



- **Generally Applicable Requirements**
 - Overview of applicable fair housing and civil rights law
 - Affirmatively Furthering Fair Housing (AFFH)
 - Accessibility of the Program
 - Accessibility of the Property
- **Specific Application of Requirements to RAD**
 - Eligibility Review for Participation in RAD
 - PHA Site Selection and Certification
- **Front End Civil Rights Reviews**
 - A HUD risk-based analysis
 - Guidance to help PHAs avoid civil rights problems
- **Affirmative Fair Housing Marketing Plan**



AFFIRMATIVELY FURTHERING FAIR HOUSING



- **Independent of RAD, HUD recipients, including PHAs, must take actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination**
- **PHAs must periodically conduct an Assessment of Fair Housing (AFH) as required by the Affirmatively Furthering Fair Housing (AFFH) rule**
- **PHAs must ensure that their activities in connection with a RAD conversion are consistent with their AFH and other planning documents**



PROGRAM AND PROPERTY ACCESSIBILITY

- **Civil rights laws regarding program and property accessibility apply:**
 - Limited English Proficiency
 - Communication for persons with disabilities
 - Accessible meeting facilities in the most integrated setting
 - Planning for accessibility at all stages of the process
 - Reasonable accommodations
 - Physical changes to the property, including to temporary relocation housing





PHA'S SITE SELECTION



- **The PHA must perform its own analysis of the site selection criteria**
- **Conversions to PBV are governed by:**
 - For all properties, 24 CFR 983.57(a) through (c), excluding (b)(1) and (c)(2)
 - For existing buildings, also 24 CFR 983.57(d)
 - For new construction, also 24 CFR 983.57(e)
- **Conversions to PBRA are governed by the RAD Notice Appendix III**
- **Some site selection decisions are subject to HUD front-end civil rights review under the RAD Notice issued June 2015**



PHA'S SITE SELECTION (CONTINUED)



- **PHA's analysis must also review accessibility for persons with disabilities in order to comply with Section 504 of the ADA**
 - Site features that would impede access to and movement within the site;
 - Building features and barriers to access by members of the public; and
 - Lack of accessible transit or para-transit and accessible public sidewalks and accessible transportation stops
- **PHA must identify areas of non-compliance and include a proposal (reflected in the Financing Plan) for remediation of the barriers in order to achieve compliance with Section 504**
- **The PHA Certification tells HUD what will be done**



FRONT-END CIVIL RIGHTS REVIEWS



- **The RAD Notice identifies the following activities that require HUD front-end civil rights review:**
 - Site Selection
 - New construction in areas of minority concentration
 - Transfers of Assistance
 - Changes in Unit Mix or Occupancy
 - Reduction in total number of units
 - Changes in unit configuration
 - Changes to serve a different population post-conversion
 - Certain Other Actions
 - Resident relocation anticipated to be in excess of 12 months
 - New construction/substantial alteration per Section 504
 - Conversions involving a property subject to a VCA, Consent Decree or Settlement Agreement
 - Conversions where HUD has identified a potential civil rights concern



PROCESS FOR FRONT-END CIVIL RIGHTS REVIEW



- **Submission**

- Developing a new RAD Fair Housing, Civil Rights and Relocation Checklist to walk participants through key questions and what information to submit
- New Checklist will be subject to Paperwork Reduction Act (PRA) approval before HUD can require its use
- Until replaced, the current RAD FHEO Accessibility and Relocation Plan Checklist, templates on RAD Resource Desk, and other supporting documentation, will continue to be accepted

- **New Timing Expectations**

- Site selection and related issues must be submitted within 90 days of CHAP
- Change in occupancy, unit configuration, etc., submitted later
- Front-end review approvals must be complete before submission of the Financing Plan



SITE SELECTION RULES - NEW CONSTRUCTION

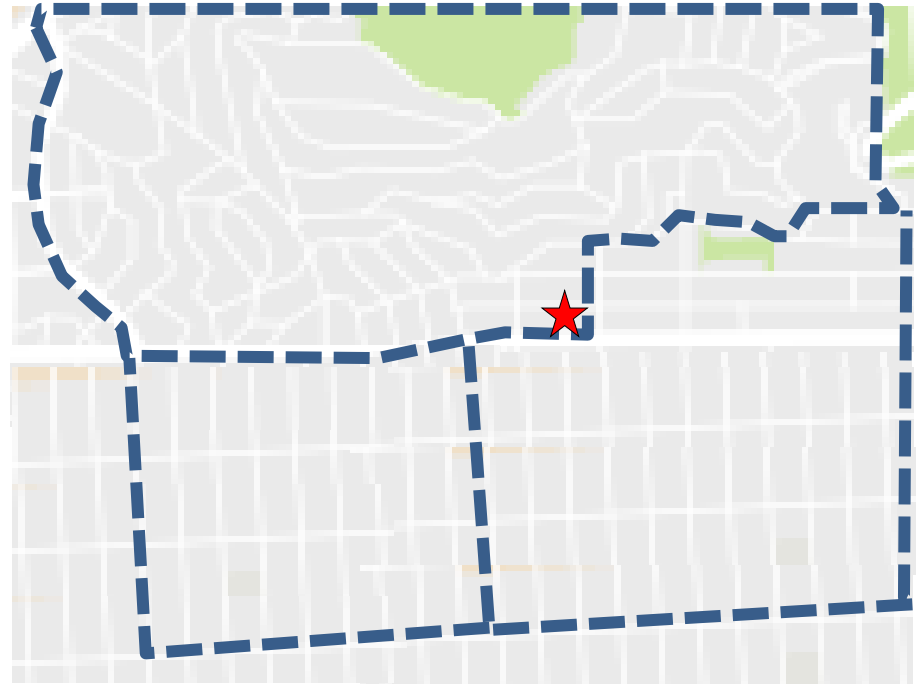


- **Applicable Rule: New construction in an area of minority concentration is permitted only if either:**
 - Sufficient comparable housing opportunities for minority families exist outside areas of minority concentration, or
 - Project is necessary to meet an overriding housing need
- **The analysis compares the “housing market area” with the “area of the site”**
- **The Metro- or Micropolitan Statistical Area is generally the “housing market area”**
- **If the site is not in a Metro- or Micropolitan Statistical Area, the housing market area is the larger of the county or the PHA’s service area**

AREA OF THE SITE



- **Minority concentration test can't be formulaic.**
- **Census tract can be a starting place for determining the "area of the site," but other geographies may be more appropriate.**



- **Illustration – Imagine 3 census tracts. The grid streets are predominantly minority, low-income and high density in the plains. The curved streets are predominantly white, upper-income, low-density hillside lots.**



NEW CONSTRUCTION FRONT-END REVIEW



- PHA must conduct its own complete analysis
- HUD's front-end review is determined by risk factors
- PHA must submit detailed information about exceptions if:
 - The PHA self-identifies the site as minority concentrated;
 - The census tract meets identified minority concentration parameters; or
 - The census tract of the site together with adjacent tracts, analyzed as a whole, meet the parameters.
 - Risk parameters look at whether a particular minority group or the total percentage of minority persons is at least 20 percentage points higher than in the housing market as a whole

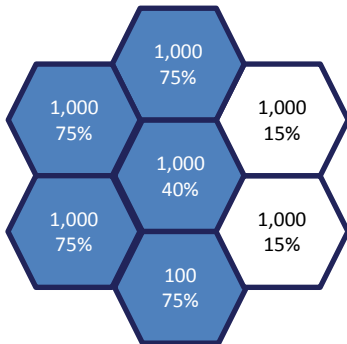


ILLUSTRATION



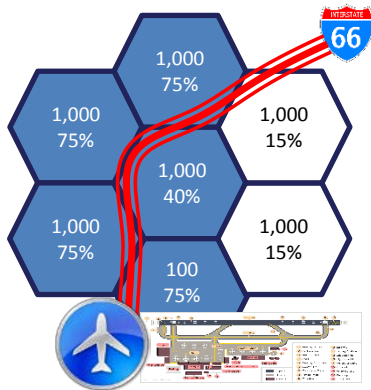
Census Tract
1,000 people
400 (40%) minority

vs.



**Census Tract plus
Adjacent Tracts**
6,100 people
3,025 (50%) minority

vs.



**Strong Evidence for
An Alternative
Geography?**
3,100 people
775 (25%) minority

vs.

**Housing
Market Area**
24% minority

But what if there's
Strong Evidence for
an Alternative
Housing Market?
Consult with HUD.



SUFFICIENT COMP. OPPORTUNITIES EXCEPTION



- **Assess overall availability of housing choices, looking at the extent to which 7 factors are present:**
 - Significant number of assisted units are available outside areas of minority concentration (“AMCs”);
 - Significant integration of assisted projects constructed or rehabilitated in the past 10 years;
 - Racially integrated neighborhoods in the locality;
 - Programs assist minority families to find housing outside AMCs;
 - Minority families have benefited from local activities undertaken to expand choice outside AMCs;
 - Significant proportion of minority households has been successful in finding housing in non-minority areas under tenant-based assistance programs; and
 - Comparable housing opportunities have been made available outside AMCs through other programs.



SUFFICIENT COMP. OPPORTUNITIES (CONTINUED)



- **Absent information to the contrary, HUD will presume that the sufficient comparable opportunities exception has been met if either:**
 - At least 50% of the comparable hard units in the PHA's portfolio, including PBV developments using the PHA's subsidy, are outside areas of minority concentration; or
 - The PHA's RAD conversions stemming from a single property will result in the creation of as many similarly affordable housing units outside areas of minority concentration as are constructed on the original public housing site.



ILLUSTRATION – SAME NUMBER OF UNITS

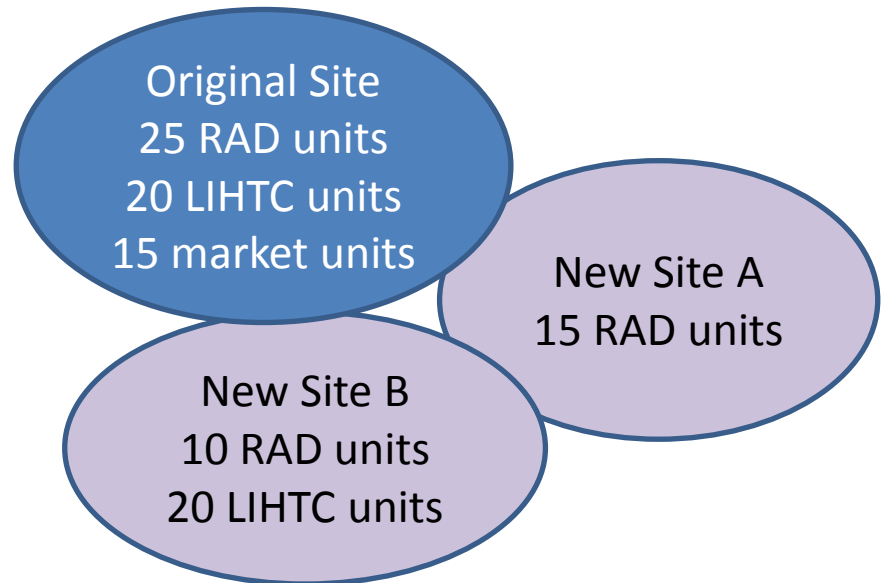


- Before – 50 PH units in a minority concentrated area
- After – 25 RAD units and 25 LIHTC units on the original (minority concentrated) site and also on the non-minority-concentrated sites

Before



After





OVERRIDING HOUSING NEED EXCEPTION



- Regulations define overriding housing need with 2 examples
- **Example #1: Integral part of a “local strategy for the preservation or restoration of the immediate neighborhood”**
 - Defined area subject to an official, current and achievable plan
 - Project conforms to the goals and objectives of the plan
 - Notice identifies factors to consider in evaluating the plan
- **Example #2: Located in a “revitalizing area”**
 - Signs of revitalization through indicators such as poverty rates, violent crime rates, opportunity, incomes, homeownership or employment; or
 - High private investment
- **Discrimination—such as community opposition—does not create an overriding housing need. These exceptions can’t be used to avoid the obligation to provide housing choice.**



TRANSFER OF ASSISTANCE FRONT-END REVIEW



- **PHA must conduct its own complete analysis**
- **HUD's front-end review of a transfer of assistance to an existing building considers:**
 - Accessibility for persons with disabilities;
 - Ability to remediate accessibility concerns;
 - Relative concentration of minority persons in the origin and destination areas (considering a census tract comparison and a census tract plus adjacent census tracts comparison)
 - Whether the site selection has the purpose or effect of discrimination
- **Transfer of Assistance to a new construction site is subject to front-end review for both new construction and transfer of assistance as described above**



UNIT MIX/OCCUPANCY FRONT-END REVIEW



- **HUD's review of changed unit count and unit mix focuses on:**
 - Reduction in number of 2-, 3- and 4 or more bedroom units
 - Reduction in number of UFAS accessible units
 - Increase in mobility accessible units beyond 10% of the units in the project or 1 unit, whichever is greater
 - Increase in vision and hearing accessible units beyond 4% of units in the project or 1 unit, whichever is greater
- **HUD also reviews the introduction of new admissions preferences that would alter occupancy (such as a family property converted to an elderly property)**
- **Any change in unit mix or occupancy type must be consistent with the demand for affordable housing in the area**



OTHER FRONT-END REVIEWS



- For conversions in which relocation is likely to exceed 12 months, HUD's front-end review will consider evidence of discrimination which may be revealed in the Checklist data
- For New Construction or Substantial Alteration as defined in Section 504 of the Rehabilitation Act of 1973, HUD's review will focus on confirming the provision of required accessible units (generally 5% and 2%) and that the PHA is applying the appropriate accessibility standards
- For conversions subject to a Voluntary Compliance Agreement, Conciliation Agreement, Consent Decree or Settlement Agreement, and for conversions where HUD has identified a potential civil rights concern, HUD's review will vary on a case by case basis



AFHMP REQUIREMENTS



- **Affirmative Fair Housing Marketing Plan (AFHMP) is still required for PBRA conversions**
- **AFHMP must be submitted for HUD approval with the Financing Plan**
- **NEW – Approval of AFHMP is no longer a condition for Closing, but...**
 - ... the Project Owner cannot market or lease any unit not leased pursuant to the right to return without prior AFHMP approval
 - Marketing includes soliciting and accepting applications or developing a waiting list



NEW REQUIREMENTS AND CHANGES



- **New Requirements - Process:**

- Once PRA is complete, PHAs will be required to use the new Checklist to submit materials

- **Changed Requirements - Timing:**

- Earlier submission of site selection materials and other front-end civil rights review materials
- Front-end civil rights review approvals required for submission of financing plan (not just required by closing)
- Approval of AFHMP required for marketing, not closing

- **Clarity and Transparency – Underlying Policy:**

- Explanation of requirements and factors considered
- Description of risk-based analyses and presumptions HUD will use to determine when to review PHA's activities
- No change in underlying rules or in PHA's responsibility for civil rights compliance



RELOCATION - OVERVIEW



- **Major topic areas in which requirements have been clarified, resident protections have been increased or relocation implementation has been stream-lined are:**
 - Right to Return
 - Relocation Planning and Types of Moves
 - Notices
 - Initiation of Relocation
 - Record-keeping and
 - Alternative Housing Options
- **Notice also clarifies the applicability of certain HCV and Public Housing rules**



CORE PROTECTIONS



- **Protection of Residents is a Core Principle of RAD**
- **Permanent Involuntary Relocation is prohibited.**
 - Note that terms are used differently under RAD than under the URA.
- **NEW – Clearer Definition of Eligibility for Protection**
 - Legally on the lease
 - Has submitted an application to be added to an existing lease
 - Otherwise in lawful occupancy
 - At the time of the CHAP or any time between issuance of the CHAP and conversion
- **Eligibility for protection under this Notice is different from eligibility under the URA or Section 104(d)**



RIGHT TO RETURN



- **NEW** – Detail regarding the parameters of the previously established Right to Return
- **Multi-Phase Conversion**
 - Generally, the Right to Return is to the same phase
 - Multiple phases can be treated as one if the improvements are occurring simultaneously
- **Transfers of Assistance**
 - Generally, the Right to Return is to the destination site
 - If the distance to the destination site is significant, the PHA must:
 - Offer the right to return to the RAD unit at the destination site, and
 - Offer to accommodate the resident in an assisted unit (PH, Section 8 or HCV) within a reasonable distance of the original community



RIGHT TO RETURN (CONTINUED)



- **A unit satisfies the right to return requirement if:**
 - The resident would not be under-housed; or
 - The unit provides the same major features as the original unit
- **Examples:**

Pre-Conversion	Post-Conversion	Explanation
1 person, 3-bedrooms	1 person, 1-bedroom	Not under-housed. The household moves to a right-size unit.
1 person, 3-bedrooms	1 person, 3-bedrooms	Not under-housed. The PHA should look to right-size the unit, but the right of return takes precedence over right-sizing.
7 people, 3-bedrooms	7 people, 3-bedrooms	Unit provides the same major features (e.g., the number of bedrooms) as the original unit. Family size grew during tenancy. The PHA should look for a larger unit to house the family, but the PHA is not required to add a larger unit to the project to satisfy the right to return.



RELOCATION PLANNING



- **NEW – Relocation Plans are required for all relocations anticipated to last more than one year.**
 - Recommended in all other cases.
- **Notice promotes clarity and rigor regarding the types of moves and what requirements apply in each situation**
 - Moves within the same building or complex of buildings
 - Temporary relocation lasting one year or less
 - Temporary relocation anticipated to last one year or less, but which extends beyond one year
 - Temporary relocations expected to last more than one year
 - Permanent moves in connection with a transfer of assistance
 - Voluntary permanent relocation
- **Residents' costs must be covered in all cases, but URA-level payments and assistance apply in only some cases**



NEW RELOCATION NOTICES



- **Two new notification requirements**
- **Changes to the timing and content of existing notices**
- **NEW – RAD Information Notice (RIN)**
 - Provides useful information at very beginning of RAD process, including information about residents' rights
 - Sent by PHA to all residents of the Converting Project, whether or not relocation is anticipated
 - Sent prior to the 1st of the 2 required pre-application resident meetings
- **NEW – Notification of Return**
 - Notification to residents timing of move back to the property
 - In advance of the return by 15% of the duration of temporary relocation or 90 days, whichever is less



OTHER RELOCATION NOTICE CHANGES



- **General Information Notice (GIN)**
 - URA determines when it is required – NEW – not all cases
 - To be sent “as soon as feasible” (30 days after the CHAP) when there will be acquisition, rehab or demolition
 - PHAs may choose to send the GIN with the RIN.
- **Notice of Intent to Acquire (NOIA)**
 - Optional notice when the ownership entity will change
 - HUD consent no longer required to send this Notice
 - No earlier than 90 days before the PHA’s reasonable estimate of the date of submission of the Financing Plan
 - Establishes an earlier resident eligibility benchmark under URA
- **RAD Notice of Relocation**
 - Details the relocation plans for each specific household
 - Can be sent after RCC effective date or issuance of a NOIA, whichever comes first



IMPLEMENTING RELOCATION



- **NEW – No moves before effective date of the RCC**
 - Previously, moves were prohibited before closing, absent special permission from HUD
 - PHAs have more flexibility in timing of relocation and more easily accommodate residents' preferences on timing
 - Construction will be able to commence earlier
- **No involuntary moves before expiration of 30- or 90-day notice period specified in the RAD Notice of Relocation**
 - A resident can request to move early, but not before the RCC



RECORD KEEPING



- **NEW – PHA required to provide resident log on HUD request**
- **Log is designed to:**
 - Ensure that PHAs keep track of their residents through to project completion and honor the right to return
 - Ensure that PHAs have resident information for review should relocation concerns arise
 - Allow compliance checks on a random sample of conversions
- **Required resident information includes:**
 - Demographic information (ethnicity, disability, age)
 - Unit size, household size and unit address at key milestones
 - Residence status (residency in PH unit, in RAD unit, in temporary relocation unit, etc.) at key milestones
 - Alternative housing options offered
 - Relocation payments and assistance



ALTERNATIVE HOUSING OPTIONS



- **To maximize resident choice, PHAs may offer alternative housing options, such as vouchers, homeownership opportunities, etc.**
- **Residents can still voluntarily decline their right to return**
- **NEW – Notice establishes procedures to ensure residents are protected and their choices are informed and voluntary**
- **NEW – Balances PHA's desire to plan based on the residents' selection with the possibility that a resident may change his or her mind**
- **Alternative housing option offers must be administered fairly among similarly situated residents**



ALTERNATIVE HOUSING OPTIONS (CONTINUED)



- **Ensuring the resident's choice is informed and voluntary**
 - No waiver of rights to RAD, URA or 104(d) relocation assistance
 - Options must be presented in writing, together with a reminder of resident's rights (e.g., to return, to object to plans)
 - PHA must provide advisory services and information on the long-term financial implications of all options
 - Residents must have 30 days to consider their options
 - Option may only be accepted in writing
- **PHA can't ask residents to commit to something far in the future**
 - Must wait until after the NOIA (i.e., roughly 90 days before Financing Plan submission) to secure resident's decision
 - Selection of an alternative housing option is valid for 180 days
 - Resident must re-affirm his or her choice in writing after that



INTERPLAY WITH HCV & PH REQUIREMENTS

- **There has been confusion about how RAD relates to some standard PBV and Public Housing requirements**
- **HCV Waiting List Administration**
 - If a resident rises to the top of the waiting list unrelated to the RAD transaction, the resident can move without the PHA violating RAD rules on early relocation
 - If the PHA wants to use vouchers as a relocation resource, it must modify its Section 8 Administrative Plan to provide preference for relocating residents.
 - PHA can't rescind, or require a household to give back, an HCV, even if it was intended as a temporary relocation resource





INTERPLAY WITH HCV & PH (CONTINUED)



- **Public Housing Transfers Unrelated to RAD**

- If a resident requests a transfer unrelated to RAD (e.g., for reasonable accommodation or pursuant to the Violence Against Women Act), the resident can move without the PHA violating RAD rules on early relocation

- **Public Housing Transfers Related to RAD**

- If a resident requests a transfer to opt-out of RAD, the resident can move without the PHA violating RAD rules on early relocation
- No need to modify PHA's admission and occupancy policy
- PHA must bear the reasonable costs of the transfer



INTERPLAY WITH HCV & PH (CONTINUED)



- **NEW –PHA may use public housing units not part of the RAD conversion as a temporary relocation resource in certain circumstances**
 - PHA should minimize this to ensure availability of units for emergency and VAWA transfers, among other reasons
 - PHAs may leave units vacant anticipating relocation needs only to the extent reasonably necessary to facilitate the work
 - Strong HUD preference that PHAs use units within the Converting Project for relocation needs
 - PIH must approve the proposed structure, for example, to ensure no double-subsidy
- **Right Sizing:**
 - PHA or Project Owner must right-size if there is an available unit
 - Right of return takes precedence



SUMMARY OF RELOCATION CHANGES

- **Defines eligibility for protection more clearly**
- **Specifies what satisfies the right of return**
- **Requires written Relocation Plans for long-term relocation**
- **Adds RAD Information Notice and Notification of Return**
- **Allows earlier relocation after RCC**
- **Requires PHA to maintain resident relocation data**
- **Adds resident protections when PHAs offer residents alternative housing options**
- **Permits use of public housing units for temporary relocation**





WANT TO LEARN MORE?

RAD Notices, application materials, case studies, and additional resources can be found at

www.hud.gov/rad

Email questions to rad@hud.gov

