

PREFERENCES AND DESIGNATIONS UNDER RAD

Preferences and Designations Post RAD Conversion

Only Preferences can be used for housing projects converting under the Rental Assistance Demonstration (RAD) Program because the Section 8 statute does not authorize designations. Further, projects converting under RAD do not retain any housing unit designation, with one exception—Section 202 Supportive Housing for the Elderly operating under a Project Rental Assistance Contract (PRAC). Section 202 PRAC expands the supply of affordable low-income housing for frail elderly and very low-income elderly populations, with supportive services. In accordance with the RAD statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), Section 202 PRAC projects converting assistance under RAD must continue to serve elderly persons, and new admissions must meet the definition of “elderly family” in 24 CFR 5.403. [Revision 4 of the Rental Assistance Demonstration \(RAD\) Notice \(the RAD Notice\)](#) specifically authorizes the conversion of affordable housing for the elderly supported by eligible Section 202 PRACs to Section 8 PBRA or PBV contracts with an Elderly Housing Use Agreement restrictive covenant (Notice H-2019-09 / PIH 2019-23 (HA), Section IV).

RAD Front-End Reviews – Designations and Preferences

RAD conversions that result in the implementation of an admissions preference that would alter the occupancy of the property are subject to a front-end civil rights review by HUD pursuant to the RAD Notice and Section 5.3(A) of the RAD Civil Rights Notice (H2016-17 / PIH 2016-17 (HA)). A PHA must demonstrate that the proposed change in occupancy type is consistent with the demand for affordable housing in its jurisdiction as demonstrated by factors such as the demographics of its current occupancy, the demographics of its waiting list, or a market study. Such preferences, restrictions, or geographic residency preferences must be reflected in a PBRA project’s Affirmative Fair Housing Marketing Plan (AFHMP) or, for a PBV project, the PHA’s Administrative Plan.

RAD Conversions - Occupancy Set Asides in Properties Using Federal Home Loan Bank (FHLB) Affordable Housing Program (AHP) and Low-Income Housing Tax Credit (LIHTC)

Projects undergoing RAD conversion are not permitted to establish or, where previously approved under public housing rules, maintain a designation (*i.e.*, a set-aside of units) for elderly families or for disabled families; unlike the statute governing public housing, the Section 8 statute does not authorize designations. However, certain funding sources, including Federal Home Loan Bank (FHLB) Affordable Housing Program (AHP) and Low-Income Housing Tax Credit (LIHTC) awards under state Qualified Allocation Plans (QAPs), sometimes include occupancy set-aside requirements that can conflict with Section 8 program rules. This conflict may arise when FHLB/AHP or LIHTC funds stipulate that the project must serve a certain population (*i.e.*, elderly, homeless, special needs, veterans *etc.*). (See RAD (REV 4) Notice PIH-2019-23)

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Solution to Address Conflicting Occupancy Rules

An Owner/PHA can typically satisfy FHLB/AHP or LIHTC expectations and requirements relating to occupancy while adhering to Section 8 program requirements by establishing a waiting list preference for some or all the units assisted under the Section 8 contract. Depending on whether the project is converting to Project Based Rental Assistance (PBRA) or Project Based Vouchers (PBV), the Owner/PHA is required to do one of the following, as applicable, before the preference can be implemented:

1. For **PBRA**, the Owner/PHA must include the waiting list preference in the property's Tenant Selection Plan, and the Affirmative Fair Housing Marketing Plan (AFHMP) must support the preference and marketing practices if the Owner/PHA chooses to market the preference. Owners/PHAs who wish to adopt a preference for populations that are not identified in 24 CFR § 5.655(c)(5), for example, a preference for elderly families, must obtain HUD approval from the prospective Multifamily Housing Account Executive (field office) prior to execution of the HAP contract. (H-2019-09 / PIH-1029-23 (HA) p. 91-92) This approval must be secured prior to conversion if the owner intends to implement the preference for new admissions immediately following conversion.
2. For **PBV**, the Owner/PHA may adopt a project-specific waiting list and an admission preference in its Administrative Plan in accordance with 24 CFR 982.207. A PHA must include its tenant selection policies in the Administrative Plan, which must be submitted to the PIH Field Office prior to submission and approval of Financing Plan by the Office of Recapitalization. A PHA may not submit its financing plan unless the tenant selection plan is approved in writing. Furthermore, the front-end FHEO civil rights review does not constitute compliance with all fair housing and civil rights requirements. PBV does not permit designated housing, and housing designation will not carry over as the project's funding is converted through RAD (except for PRAC 202 Elderly housing). Projects designated elderly or disabled or mixed pre-conversion may establish a site-based waiting list and adopt a selection preference reflecting the desired occupancy, or may establish a PBV wide waiting list and institute a preference for the covered project.

An Owner/PHA must comply with the respective requirements for PBRA or PBV conversions to implement a post-conversion preference even if the public housing project had previously received approval (pre-conversion) for a designation (except for PRAC 202 designated housing).

If an Owner/PHA intends for the Covered Project to serve a different population than the one served by the Converting Project (*e.g.*, a converting property that currently serves families but will be subject to an elderly waiting list preference post conversion), HUD will complete a front-end civil rights review prior to the conversion. A change in tenant selection policy, *i.e.*, adoption of waiting list preference, will trigger a FHEO front end civil rights review. FHEO's review is governed by Notice H 2016-17/PIH 2016-17 (HA) ("RAD Civil Rights Notice").

When completing the Concept Call Checklist on the RAD Resource Desk, the Owner/PHA must ensure that the change in occupancy is appropriately reflected on the checklist in order for the "Change in Occupancy" review section to open. When completing the Concept Call Checklist on the RAD Resource Desk, the Owner/PHA must answer "Yes" to the question: "Are you proposing

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to implement a preference on any units that do not already have the exact same preference or designation prior to conversion?” The Owner/PHA will not be invited to submit the Financing Plan until the front-end civil right review is complete and HUD’s Office of Fair Housing and Equal Opportunity (FHOO) has approved of the Owner/PHA submission.

Important: approval of a change in occupancy type through a front-end civil rights review does not create, grant, or implement a preference. The owner must also complete the required steps of the PBRA (Tenant Selection Plan and AFHMP) or PBV (Administrative Plan) program (item 1 or 2 in the above paragraph) and must comply with all fair housing and civil rights obligations.

Lastly, once the transaction has been approved, as a condition of closing, the RAD Conversion Commitment (RCC), HUD’s Office of General Counsel will confirm that the subordination agreement for the FHLB, or other source of funds requiring an occupancy set aside, reflects revised language that eliminates occupancy designations and instead references waiting list preferences so the FHLB (or other source of) funds will be in compliance with Section 8 requirements. Restrictions in funding requirements must be subordinated to the RAD Use Agreement of otherwise released. It is important that the Owner communicate with the investor and/or lender early in the process to ensure that parties understand the subordination of occupancy set aside requirements to the RAD Use Agreement.

Frequently Asked Questions

- 1. Can a Section 8 property resulting from a RAD conversion be designated as elderly?**
No. Occupancy designations are not permitted in Section 8 PBRA or PBV.¹ For example, a Public Housing project with an elderly designation that is converted under RAD cannot continue to restrict occupancy to elderly families after conversion. Once converted, the Covered Project is a Section 8 multifamily project. This is because the Section 8 Statute, unlike the statute governing public housing, does not authorize designations. EXCEPT, designated Elderly Supportive Housing operating under a Section 202 Project Rental Assistance Contract is the only designation that survives the RAD conversion.
- 2. If another funding source requires units be set-aside for a certain population, does that over-ride Section 8 requirements?**
No. Units assisted by a Section 8 contract (whether PBRA or PBV), cannot be designated. However, Owners of Section 8 projects may adopt a waiting list preference for certain applicants to cover some or all assisted units at the Covered Project to satisfy funding requirements.
- 3. How does an Owner/PHA adopt a waiting list preference?**
For PBRA, the Owner/PHA must include the waiting list preference in the Tenant Selection Plan and the preference must be reflected in the marketing activities outlined in the Affirmative Fair Housing Marketing Plan (AFHMP) if the Owner/PHA chooses to market the preference. The AFHMP is submitted to the Multifamily Field Account Executive for

¹ See 24 C.F.R. 945.103. The only exception to this restriction is Section 202 PRAC properties retain elderly designation after conversion in accordance with the RAD statute.

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approval in preparation of submitting the RAD Financing Plan to the Office of Recapitalization. For further guidance refer to the PBRA Quick Reference Guide: https://www.hud.gov/sites/dfiles/Housing/documents/RAD_PBRA_Quick_Ref_Guide_09-2020.pdf.

For PBV conversions, the Owner/PHA must include the waiting list preference in the Administrative Plan in preparation of submitting the RAD Financing Plan to the Office of Recapitalization. Refer to the PBV Quick Reference Guide: [RAD PBV QUICK REFERENCE GUIDE Feb 2022 \(radresource.net\)](#)

4. Does the front-end civil rights review completed prior to the RAD conversion mean that the preference is approved?

No, the front-end civil rights review is only the first of two parts of the approval process. Any proposed waiting list preferences must be (1) approved through the RAD-FHEO front-end civil rights review; and (2) either included in the AFHMP that is submitted to the Multifamily Field Office prior to the Financing Plan submission for a PBRA conversion or reflected in the PHA's Section 8 Administrative Plan submitted to the PIH field office prior to the Financing Plan for a PBV conversion.

The front-end civil rights review performed by the HUD Field Office during a RAD conversion is required. However, it is only one part of the approval process. The waiting list preference must also be included in the corresponding program plan that is submitted prior to a conversion.

The PBV Quick Reference Guide provides instructions for the PHA to follow when including the waiting list preference in the Administrative Plan in preparation of submitting the plan to the Office of Recapitalization for approval.

To summarize:

1. No designations (other than verified PRAC Section 202 Housing for the Elderly) survive a RAD Conversion, and designations are not available after conversion.
2. When a PHA elects to convert a housing project through RAD to PBV or PBRA assistance, it may establish one or more project-based or PHA-wide waiting list preference(s).
3. Any post-conversion change in population served/occupancy type **must** be reviewed and approved by FHEO through a front-end civil rights review before the owner is invited to submit its financing plan.
4. For PBV assisted projects, all requirements relevant to post-conversion preference(s) must be set forth in the Administrative Plan.
5. For PBRA assisted projects, all requirements relevant to post-conversion preference(s) must be set forth in the Tenant Selection Plan and the Affirmative Fair Housing Marketing Plan.

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Quick Links

RAD PBRA QUICK REFERENCE GUIDE

https://www.hud.gov/sites/dfiles/Housing/documents/RAD_PBRA_Quick_Ref_Guide_09-2020.pdf

RAD PBV QUICK REFERENCE GUIDE

https://www.hud.gov/sites/dfiles/Housing/documents/RAD_PBV_QUICK_REFERENCE_GUIDE_2022.pdf

RAD FAIR HOUSING, CIVIL RIGHTS AND RELOCATION NOTICE

https://www.hud.gov/sites/documents/16-17HSGN_16-17PIHN.PDF

RAD NOTICE REV 4

https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf

REQUIREMENTS FOR DESIGNATION OF PUBLIC HOUSING PROJECTS

[Notice PIH 2005-2](#)

PUBLIC HOUSING OCCUPANCY GUIDEBOOK

https://www.hud.gov/sites/documents/DOC_10760.PDF

MULTIFAMILY OCCUPANCY GUIDEBOOK

[Occupancy Requirements of Subsidized Multifamily Housing Programs \(4350.3\) | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)