

HUD Issues Supplemental Guidance to Update Rental Assistance Demonstration (RAD) Program

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On July 27, 2023, HUD issued [Rental Assistance Demonstration – Supplemental Notice 4B \(H-2023-08/PIH 2023-19\)](#) (the “Notice”) to enact various changes to the RAD program. The changes summarized below may be of particular interest to you:

Increased Flexibility in RAD for PRAC Initial Contract Rent Setting

The Notice indicates that HUD is using funding provided under the Consolidated Appropriations Act of 2022 and the Consolidated Appropriations Act of 2023 (a total of \$12 million) to support preservation transactions under RAD for properties originally developed with a Section 202 Capital Advance and assisted with a Project Rental Assistance Contract (PRAC). The Notice removes the 120% of FMR cap for initial rents that are set based on PRAC rents. However, the 120% of FMR cap remains if the owner is increasing the contract rents above the approved PRAC rents. Furthermore, the Notice permits the use of Small Area FMRs – which generally allows for increased rents in higher cost neighborhoods—upon request of the owner.

Under the Notice, HUD may increase the PRAC rent prior to conversion on transactions undertaking debt-financed new construction or rehabilitation where the owner shows it will enhance climate resiliency, energy and water efficiency, and/or design for elderly residents to age in place. Potential rent increases are as follows:

- Up to \$250 rent increase per unit per month for transactions that will undertake new construction or substantial rehabilitation in excess of 60% of HUD’s applicable Housing Construction Costs.
- Up to \$100 rent increase per unit per month for rehabilitation in excess of 30% of HUD’s applicable Housing Construction Costs.

HUD will also increase contract rent by a portion of the utility savings when a RAD conversion leads to a demonstrated decrease in utility costs. In cases where the utilities are tenant-paid, HUD will implement a contract rent increase by 75% of the approved reduction in Utility Allowance.

Going forward, contract rents will be adjusted by an OCAF at each anniversary of the HAP Contract, subject to availability of appropriations, and such rent adjustments will no longer be limited by the higher of 120% of FMR/Small Area FMR or market rents.

Resident Engagement for Public Housing RAD Conversions

The Notice provides new guidance on resident engagement during the process of a public housing RAD conversion. For instance, a PHA must take various steps prior to submitting an application for conversion, including (i) providing resident organizations with written notice of intent to convert under RAD; (ii) providing a RAD Information Notice (RIN) to residents informing them of the PHA's intent to pursue a conversion, their rights regarding the proposed conversion (regardless of whether relocation is contemplated), a description of the conversion plans, and HUD contact information. The PHA must then conduct no less than two meetings with residents to describe the proposed plan and allow for resident comments. The Notice further details what is required of PHAs during such meetings, as well as additional resident engagement requirements for Faircloth-to-RAD conversions.

Energy Efficiency and Climate Resilience

The Notice strengthens requirements for energy efficiency and climate resilience. Of note:

- Where PHAs were previously “strongly encouraged” to use components that improve indoor air quality and/or reduce overall environmental impact, the Notice provides that where a capital needs assessment indicates that such improvements would come at little or no cost premium, the PHA “shall” use such components consistent with principles and best practices of the green building industry.
- For new construction, the Notice provides updated conservation standards and “strongly encourages” the adoption of “net-zero and net-zero ready” construction.
- PHAs are required to specifically address climate resilience by analyzing likely climate hazard risk and identifying how the proposed scope of work addresses or mitigates identified climate hazard risks. PHAs must also create a property-wide disaster plan, including an evacuation plan accounting for the needs of persons with disabilities.
- Pending promulgation of applicable regulations, for all new construction, all building mechanicals and residential units must be set at a height no less than the greater of the 500-year floodplain or two feet above the 100-year floodplain.

Radon Testing

Under the Notice, all Converting Projects will be subject to radon-testing, eliminating certain prior exceptions.

Treatment of Zero-HAP families

The Notice sets forth new guidance related to the treatment of so-called “zero-HAP” residents – i.e., residents who were living in a project prior to conversion and whose total tenant payment equals or exceeds the gross payment on a PBV HAP Contract.

Faircloth-to-RAD Developments

Updates under the Notice provide additional guidance for PHAs seeking pre-completion approval to convert new public housing units under their Faircloth limits. It also provides flexibility under certain conditions for non-MTW PHAs to use existing HAP reserve funds to set initial contract rents higher than the contract rent set forth in the Notice of Anticipated RAD Rent.

RAD/Section 18 Blends

The Notice provides certain new guidance/waivers relating to non-RAD PBVs, including the calculation of Section 18 vouchers available in high-cost areas, exempting non-RAD PBVs put in place as part of RAD conversion from a PHA's PBV program cap, and providing for uniform treatment of residents and units in a Covered Project.

Should you have any questions about this KH Housing Alert, please contact Adam Norlander at anorlander@kleinhornig.com or (202) 926-3410.

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