




The Housing Conference
2017
AUGUST 21-22, 2017, BOSTON, MA

PBV and RAD PBV Best Practices

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Why RAD PBV?

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Rental Assistance Demonstration (RAD) Program

- Authorized by Congress in 2012
- HUD's solution to meeting the large and growing capital improvement needs of aging public housing stock
- Preserves projects funded under HUD's "legacy" programs:
 - Rental Supplement, Rental Assistance Payment, and Moderate Rehabilitation
- Properties "convert" to Project Based Section 8 contracts and can leverage private capital – typically debt and equity – in order to finance the property's rehabilitation or replacement needs.

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Benefits of RAD PBV

- Allows the PHA to leverage private financing to rehabilitate the units
- Rents are more aligned with the housing market
- PHA continues to receive administrative fee
- Low-income housing is maintained for families in need

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RAD Updates

Notice PIH 2012-32, REV-3
Notice PIH 2016-17

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RAD Notice – Revision 3 1/19/17

- Many changes to the upfront application process and funding flexibilities.
- Eliminated the cap on the number of project-based voucher units at a project
- Revised the requirements regarding information provided to residents and PHA responses to resident comments at properties undergoing conversion
- Extending the prohibition on re-screening to current public housing households that will reside in non-RAD PBV or non-RAD PBRA units in projects that contain RAD PBV or RAD PBRA units to facilitate the right to return to the assisted property

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RAD Notice – Revision 3 1/19/17

- Consolidating the selection priority categories for new applications into “high investment applications” and “all other applications” (subject to public comment)
- Making an entire contiguous HOPE VI project that was developed in phases eligible, as long as the earliest phase is greater than ten years old (subject to public comment)
- Correcting rent phase-ins for residents who may experience a rent increase as a result of conversion

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RAD Notice – Revision 3

- Providing greater detail on the acceptable forms in which a public or non-profit can demonstrate ownership or control
- Providing guidance on owners’ responsibilities to treat lead-based paint hazards in the context of a RAD conversion
- Encouraging PHAs and their partners to grant current workers whose employment positions may be eliminated during conversion the right of first refusal for new employment openings for which they are qualified

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RAD 2nd Component Changes

- Eliminating the cap on the number of PBV units at a project
- Permitting Mod Rehab conversions to PBRA to convert at comparable market rents, up to 110 percent of fair market rent (FMR)
- For Mod Rehab SRO conversions, authorizing the use of the efficiency FMR for SRO units, rather than 75 percent of the efficiency FMR, which is the existing SRO standard
- Other changes to RAD PBRA conversions

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Fair Housing and Relocation RAD Notice PIH 2016-17

- Clearly outlining the requirements for fair housing and relocation reviews
- Providing guidance on what documents to submit and when to submit them
- Offering tools such as a comprehensive checklist to help stakeholders prepare submissions when relocation is required

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HOTMA Changes to PBV

Federal Register
1/18/2017 and
7/14/2017

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Housing Opportunities Through Modernization Act (HOTMA)

- January 18, 2017: *Implementation of Various Section 8 Voucher Provisions* published in the Federal Register
 - First half deals with HQS
 - Second half with PBV
- Notice made provisions effective, but HUD was also seeking comments

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New! Fed Reg Notice 7/14/17

- Corrections to various sections of the 1/18/17 Federal Register Notice
 - Changes indicated in orange

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Effective Date

- Effective date of the notice is April 18, 2017
- Key question: When was the PBV HAP contract signed?
 - "Pre-HOTMA" and "Post-HOTMA" projects

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PHA-Owned

- PHA, its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located
- Including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest
- Unit in a project owned by the PHA, or
- Owned by an entity wholly controlled by the PHA, or
- Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing or general partner
 - Definition of "controlling interest" amended in new notice



Units Owned by the PHA

- PHA must have ownership interest in the building itself, not simply the land
- If units are no longer considered PHA-owned, PHA must get opinion from legal counsel and keep in the PHA's files
- If project becomes PHA-owned, must identify a HUD-approved independent entity within 30 days of the change
- If project is not PHA-owned but the PHA has an interest, HUD may review rent determination

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Why does this matter?

- If units are PHA-owned, independent entity:
 - Agrees on initial and renewal terms of HAP contract
 - Reviews selection of units
 - Determines initial rent
 - Re-determines rents
 - Performs HQS inspections

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Cap on Authorized Units

- PHA may project-base up to 20% of its authorized units instead of budget authority
 - Still need to make sure there's budget authority available regardless of whether there are vouchers available

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Additional 10%

- May project-base an additional 10% if:
 - House individuals and families that meet definition of homeless under McKinney-Vento
 - House families that include a veteran
 - Provide supportive housing to persons with disabilities or elderly persons
 - Units located in a census tract with a poverty rate of 20% or less
 - Cap is *greater of 25 units or 40% of units in the project*

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Units Not Subject to 20% Cap

- HUD-VASH PBV set-aside
- RAD units
- Units first under HAP contract on or after 4/18/17 and in the 5 years prior to PHA issuing RFP/selected project, the units either:
 - Received PH Cap/Op funds, PBRA, Section 202/811, Rent Supp, or RAP; or
 - Subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Section 202/811
 - *Flexible Subsidy Program (section 201)*

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Units Not Subject to 20% Cap or Project Cap

- Newly constructed units developed under PBV are excluded if they qualify as *replacement housing*
 - Unit being replaced must have received HUD assistance/rent restriction like previous slide
 - Newly constructed unit is located on the same site as the unit it is replacing

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Units Not Subject to 20% Cap or Project Cap

- And one of the primary purposes of developing new units is to replace existing affordable units as evidenced by:
 - Former residents getting a selection preference for first occupancy, OR
 - Prior to demo, project was specifically identified as replacement housing as part of documented plan for redevelopment

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Units Not Subject to 20% Cap or Project Cap

- Unit size and configuration may differ in both new construction and rehab
- Total number of assisted units may differ
- However, project cap applies to the original project
 - Ex: Old 236 project had 40 units and new PBV project will have 50 units
 - Project cap is counted on 40 units
 - Remaining 10 PBV would have to qualify for one of the exception categories for the project cap and count toward program cap

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Submitting Information to HUD

- No later than 14 calendar days prior RFP/making selection, PHA must submit to HUD field office:
 - Total units authorized under ACC for the PHA (excluding units excluded from cap)
 - Including special purpose vouchers and PBV units excluded from the total, if applicable
 - Current # of units committed to PBV (excluding units excluded from cap)
 - Including units currently under PBV HAP or AHAP or covered by notice of proposal selection and PBV units excluded from the total, if applicable
 - # of units to which PHA is proposing to attach PBV

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Cap on Assistance at the Project

- PHA may not project-base more than the greater of 25 units or 25% of total units in project
- Old language: 25 units
- Example: 60-unit project
 - 25% is 15 units (old rules)
 - Under new rules, may attach PBV to 25 units

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Exceptions to the Cap

- Units exclusively for elderly families
- Units for households eligible for supportive services available to all families receiving PBV at the project
 - Do not have to accept or receive services
- Project is located in a census tract with a poverty rate of 20% or less



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Old vs New Excepted Units

Old

(i) "Excepted units" means units in a multifamily project that are specifically made available for qualifying families.

(ii) "Qualifying families" means:

(A) Elderly and/or disabled families; and/or

New

Units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:

(1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).

Old vs New Excepted Units

<p>Old →</p>	<ul style="list-style-type: none"> ▪ "To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered." 	<p>(2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit).</p>	<p>← New</p>
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Excepted Units

- Projects under "old" rules continue to use former exceptions unless PHA and owner mutually agree to change the HAP-C
 - HAP contracts signed prior to 4/18/17
 - Example: Could make supportive services that were mandatory optional, but may not stop offering supportive services altogether

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Excepted Units

- PHA and owner may not agree to change HAP contract if it would jeopardize an assisted family's eligibility for continued occupancy
 - Ex: Excepted units in project are for disabled and changing would mean those units were no longer eligible unless the owner makes supportive services available

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Supportive Services

- PHA may not require participation as a condition of living in the unit
 - But family must be eligible to receive the supportive services
 - Supportive services must be offered to the family

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Supportive Services

- PHA may not rely solely on a supportive service program that would require the family to engage in the services once enrolled, such as FSS, for the unit to qualify for the supportive services exception
 - In other words, offer FSS and something else

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Supportive Services

- If a family chooses to participate in a supportive service and completes the objective, the unit continues to be eligible as long as the family lives there

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Supportive Services

- If a family becomes ineligible for any reason other than successfully completing the objective, the unit will no longer be considered excepted
- This means family is ineligible for ALL supportive services made available

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Excepted Units

- The PHA may:
 - Reduce the number of excepted units
 - Substitute the unit for a non-excepted unit
 - Temporarily remove the unit from the HAP contract and provide the family with a tenant-based voucher

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Excepted Units

- Example:
 - Family signs up for FSS but later drops out
 - Unit continues to be an excepted unit if the family is eligible for any non-FSS supportive services

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HAP Contract Initial Term

- PHAs with PBV HAP contracts effective prior to 4/18/2017 – 15 years was the maximum initial term
- HOTMA revised maximum initial term to 20 years for:
 - "New" PBV HAP contracts effective on or after 4/18/2017 or
 - "Old" contracts still in initial term where PHA and owner agree

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HAP Contract Extension

- For both– can extend any time during the contract for additional 20 years
 - At the time of initial execution or any time before expiration of the contract
 - Can't wait for contract to expire
 - 40 years maximum length
 - Subject to availability of funding and 20% cap

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HAP Contract Expiration

- When HAP-C terminates, expires, or is not extended, family living at the property entitled to tenant-based voucher
- Family must be given option to use their voucher to remain in their unit if the unit complies with program requirements and rent reasonableness

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HAP Contract Expiration

- Family is not a new admission to HCV
- Family is not subject to eligibility requirements
- 40% rule does not apply
- Family pays additional amount if the unit rent exceeds the payment standard

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HAP Contract Expiration

- Family has right to remain at project as long as units are used for rental housing and are eligible for HCV
- Owner may not terminate tenancy except for serious or repeated lease violation or other good cause
- If owner fails to give 1-year notice, must allow family to stay in units during notice period with no increase in tenant rent
 - HCV assistance doesn't start until notice period ends

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Addition of Units

- PHA and owner may amend contract to add units to existing HAP contract without fulfilling selection requirements
 - Regardless of when HAPC was signed
 - Limit to first 3 years no longer applies
 - Still subject to program and project cap
 - Must submit info to FO prior to adding units
 - Must detail intent to add units in admin plan

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Property Selection

- Current regulations allow PHAs to select units without competition if:
 - Within the last 3 years there was a competitive selection of proposals for housing assisted under federal, state, or local government housing assistance, community development, or supportive services
 - And the selection did not consider PBVs

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Property Selection

- May attach PBVs to projects in which PHA has ownership interest or control without following competitive process if:
 - PHA is engaged in an initiative to improve, develop, or replace a public housing property or site
 - Rehabilitation or construction with a minimum of \$25,000 per unit in hard costs
 - Or replacement of the project or site with existing housing that substantially complies with housing quality standards

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Don't Get Confused

- This does not mean all PHA-owned units may be selected non-competitively
 - List of changes earlier in the rule makes it sound that way but this only applies in these specific situations

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VASH & FUP

- PHA may now project-base HUD-VASH and FUP vouchers without additional HUD approval
 - VASH: Must consult with partner VAMC to ensure VAMC will continue to provide supportive services
 - FUP: May limit to one category of FUP-eligible families such as FUP youth
- Still subject to authorized units cap

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HQS Changes Under HOTMA

- PHAs may execute the HAPC and make payments for units that fail initial HQS inspection if deficiencies are not "life-threatening"
 - Defined in HOTMA and PHA policy
 - Must amend the admin plan to implement
 - Same definition used for all inspections and units

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HQS Changes Under HOTMA

- Owner has 30 days after notification to correct fail items
- HAP must be withheld if unit doesn't pass HQS after 30 days
 - Maximum abatement period determined by policy but cannot exceed 180 days

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HQS Changes Under HOTMA

- PHAs may permit occupancy prior to HQS inspection if unit has passed "alternative inspection" within past 24 months
 - E.g., HOME, tax credit, HUD inspections
 - HUD approval required for other alternatives

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HQS Changes Under HOTMA


- PHAs that adopt these optional policies under HOTMA must notify owners and families
- List of life-threatening deficiencies must be provided to the family
- Must notify HUD at least 30 days before adopting either policy

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Top 6 Things To Know for a High Functioning PBV or RAD PBV program

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LIHTC and RAD PBV –
Who’s rule matters?

Number 2

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LIHTC and RAD PBV

- Many RAD PBV units are coupled with Low Income Tax Credits and other government funding that may have different rules
- The rules may conflict and differ so the PHA should use the most stringent rule that applies
- During RAD PBV conversions, existing families may not be displaced
 - Check the income of existing PH residents paying flat rent before committing to a 100% tax credit deal
 - Family may voluntarily accept other housing options, like a choice mobility voucher, but it can not be mandatory, must be voluntary.

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RAD Relocation Blues

Number 2

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Relocation Matters

- Be sure to follow the notice requirements in PIH 2016-17
- Follow the Uniform Relocation Act (URA)
- Accepting alternate housing is optional not mandatory
- No re-screening of existing PH families is allowed
- Family is allowed to return to the project (even if project is relocated)

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Inspect What You Expect

Number 3

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Housing Quality Standards

- For a RAD conversion, be sure to perform the HQS inspections on or before the date on the RAD Conversion Commitment (RCC)
- For standard PBV, only 20% of the units per building are required to be inspected
 - Keep evidence of the annual/biennial inspection in the project file, not the tenant file!
- SEMAP Indicator #12 – Annual/Biennial HQS inspections does not apply to PBV or RAD PBV
- If you allow alternative inspections, ensure your administrative plan is updated
 - Keep evidence of alternative inspection records in project file
 - Should be received within 5 days of inspection

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Grievances Matter


Number 4

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Tenant Selection Criteria

- Before awarding a PBV contract, ensure you review the owners Tenant Selection Criteria
 - Owner screening criteria must be in compliance with fair housing laws and consistent with improving housing opportunities for low income families
 - Owner screening should not be so restrictive that families referred by the PHA are denied admission
- Make the TSP an attachment to the PBV Contract
- For RAD PBV, ensure the owner has a fair and documented process for conducting informal reviews/grievances

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Choice Mobility

Number 5

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Tenant Based Vouchers

- PBV and RAD PBV tenants are eligible for a tenant based voucher after the initial lease term is fulfilled (12 months)
- Establish criteria in the PHA policy that the tenant be lease compliant to receive a voucher
 - Current in rent
- Establish a waiting list for PBV and RAD PBV families requesting a voucher
 - 75% turnover limit on issuing vouchers only applies to RAD PBV
 - No turnover limit for standard PBV
- Have a policy on what the PHA will do if the voucher expires and the tenant has not located a new unit
 - Will the PHA reissue another voucher right away?
 - Will the family go back on the internal PBV waiting list?

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Monitoring is a Must

Number 6

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Property Reviews

- Establish a property review monitoring system at least biennially to ensure the owner is managing the property in accordance with the stipulations outlined in the HAP Contract
 - Payment of mortgage, property taxes and insurance
 - Review of outstanding work orders and response times
 - Physical replacement needs and maintenance records
 - Reviews by other funding providers such as State Housing Finance Agencies and HOME program administrators
 - Resident complaints and crime rates at the property

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Questions?



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