New RAD Guidance Released by HUD


On July 3, 2018, HUD published a notice in the Federal Register, Docket No. FR-6105-N-01, “Rental Assistance Demonstration: Implementation of Certain Fiscal Year (FY) 2018 Appropriations Act Provisions” (the “2018 Appropriations Act Notice”), which implements legislation raising the RAD cap to 455,000 units. The 2018 Appropriations Act Notice also extends the application deadline, allows conversions to set initial rents based on FY16 and/or FY18 funding levels (as described below), and provides notice to PHAs that submitted letters of intent to be on the RAD waiting list of next steps. The 2018 Appropriations Act Notice is effective July 3, 2018.

The Supplemental Guidance

The Supplemental Guidance makes several changes to provisions in Notice PIH 2012-32, REV-3:

- **Rent Bundling:** PHAs are now permitted to rent-bundle subsidy from any non-RAD Project-Based Voucher (“non-RAD PBV”) project to the Project-Based Voucher (“PBV”) contract provided through RAD. In order to be eligible to rent bundle between non-RAD PBV units and RAD PBV units, the HAP contract for the donor property must be executed prior to or simultaneous with the RAD HAP contract and the HAP contract for the donor property must have a remaining contract term at least as long as the RAD HAP contract. The Supplemental Guidance Notice does not appear to require that the non-RAD PBV project be located on the same site as or be otherwise related to the RAD PBV project. However, PHAs should note that once properties bundle rents using this provision, the non-RAD PBV donor property will be unable to seek rent increases in excess of the OCAF-adjusted rent levels, unlike other PBV projects.

- **Utility Allowances:** PHAs may now establish site-specific utility allowances for their RAD PBV projects. Instead of requiring PHAs to use their standard Housing Choice Voucher Utility Allowance, HUD will allow PBV projects to calculate a site-specific utility allowance based on a utility analysis conducted in accordance with Housing Notice 2015-04. If a project includes a...
combination of non-RAD PBV and RAD PBV units, it may still be eligible for a site-specific utility allowance but this will require a waiver from HUD in order to establish a site-specific utility allowance schedule for both the non-RAD PBV and the RAD PBV units.

- **Utility Savings:** The Supplemental Guidance adds new sections iv. and v. to Section 1.6, Paragraph B of Notice PIH 2012-32, REV-3. New subsection 1.6.B.v. entitled “Tenant-Paid Utility Savings” streamlines the ability for PHAs to adjust contract rents based on a portion of utility savings for both PBRA and PBV conversions. Previously, Tenant-Paid Utility Savings were handled differently for PBRA and PBV Conversions. Attachment 1C to Notice PIH 2012-32, REV-3 previously provided: (1) for PBRA Conversions, PHAs could submit their “RAD UA Projections Template” recognizing utility savings and, if the projections are approved by HUD, a portion of the utility savings would be used to adjust contract rents; and (2) for PBV Conversions, a waiver was required in order for a PHA to apply the same adjustment mechanisms allowed for PBRA conversions. The Supplemental Guidance eliminates the waiver requirement for PBV Conversions and provides that the contract rent adjustment mechanism now applies to both PBRA and PBV Conversions.

- **Developer Fee:** When the Contract Administrator agrees to adopt an admissions preference for either homeless applicants referred through the local Continuum of Care and/or at least 25% of the property’s units will be filled by individuals exiting permanent supportive housing, HUD will permit a 25% increase in the allowable developer fee, up to the limits of the LIHTC allocating agency. In order to be eligible for this additional 25%, the PHA or project owner must have an agreement with the local Continuum of Care, there must be a need for affordable housing of these populations, and this preference must remain in effect through the term of the HAP contract. The Supplemental Guidance does not provide further guidance regarding permanent supportive housing projects that are not Continuum of Care projects.

- **Section 18 and RAD:** The Supplemental Guidance provides that if a project will be converting through RAD and also submitting a Section 18 application, HUD may disapprove the conversion if HUD determines that the conversion “undermines the unit replacement requirements of the RAD program.” In addition, for projects subject to both Section 18 and RAD, HUD has essentially waived the relocation requirements of 24 CFR part 970 and will require RAD requirements to apply to all residents regardless of whether they reside in a RAD unit or a Section 18 unit including relocation, right to return, and meeting and notice requirements.

- **Small Public Housing Authorities:** For small PHAs with less than fifty public housing units, HUD has streamlined the RAD conversion requirements for small PHAs that plan to remove all of the public housing units under an ACC. However, small PHAs should note that, unless otherwise approved by HUD, the Supplemental Guidance requires that annual replacement reserve
deposits equal or exceed $500 per unit. Note also that small PHAs interested in converting their public housing units may want to review HUD’s Demolition/Disposition Notice, PIH 2018-04, to determine whether a RAD conversion or Demolition/Disposition would be in the PHA’s best interest.

**The 2018 Appropriations Act Notice**

The 2018 Appropriations Act Notice also makes several changes to the First Component RAD Program:

- **RAD Cap and RAD Applications**: The RAD cap is increased from 255,000 units to 455,000 units and the deadline to submit RAD applications has been extended to September 30, 2024.

- **RAD Initial Rents – Projects Converting after January 1, 2019**: Projects converting after January 1, 2019 will receive rents calculated at the FY 18 levels. These rent levels will be published once the final public housing operating subsidy obligation is made for FY18.

- **RAD Initial Rents – Projects Converting between July 3, 2018 and December 31, 2018**: Projects converting between now and December 31, 2018 will be eligible to receive rents based on FY 18 Capital Fund and FY16 Operating Fund levels. For most PHAs, this results in an increase in the rents for which their projects are eligible. PHAs interested in receiving these modified initial rents should reach out to their Transaction Managers. While some PHAs may wish to delay RAD conversions until after January 1, 2019, when the full FY18 rents are available, we note that the FY16 and FY18 Operating Fund levels remained relatively stable (FY16 Operating Fund appropriations were $4.5 billion and FY18 Operating Fund appropriations were $4.55 billion) and that most of the increase in FY18 RAD rents results from the FY18 increase in the public housing Capital Fund.

- **RAD Projects on the Waiting List**: PHAs that submitted a Letter of Intent to get on the RAD waiting list are now required to submit a full application. Applications are due by September 4, 2018 and can be found here. As a reminder, PHAs must distribute the RAD Information Notice (“RIN”) to residents and hold at least two (2) resident meetings prior to submitting their RAD applications. Failure to submit an application by September 4, 2018 will result in forfeiture of the PHA’s position on the waiting list.

- **Multi-Phase RAD Awards**: If a PHA has received a multi-phase RAD award, it may request an extension from HUD until September 30, 2024 to complete the final phase of its project. If a multi-phase award was received after March 22, 2018, the PHA will automatically have until September 30, 2024 to complete all conversions.