



1663 Mission St., Suite 460
San Francisco, CA 94103
(415) 546-7000; Fax: (415) 546-7007

October 11, 2017

Dr. Benjamin S. Carson, Sr., M.D.
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Concerns with the Rental Assistance Demonstration (RAD) Program

Dear Secretary Carson:

The National Housing Law Project (NHLP) writes to express concerns with the implementation and expansion of the Rental Assistance Demonstration (RAD) program and its impact on both low-income families and the nation's affordable housing stock.

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing the rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services attorneys and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders, many of whom practice in jurisdictions that have converted properties to RAD, are in the processing of converting properties to RAD, or wish to convert properties to RAD.

We support the goal of the RAD program to preserve affordable housing and address the \$49 billion backlog of public housing capital needs, but we are troubled that the RAD program has nearly quadrupled in size over the last five years without any evaluation of its impact on tenants. The program has significant implementation challenges that have had drastic consequences for residents and the long-term preservation of affordable housing. These challenges are not limited to a few select owners or housing authorities, but are reflective of problems facing RAD conversions across the country and result from limited guidance and oversight in the program.

RAD cannot be a complete substitute for adequate funding of the public housing program, and it must be adequately implemented, monitored, and evaluated before further expansion occurs. HUD must take a more proactive role to enforce tenants' rights and prevent the loss of affordable housing.

Defining Success in the RAD Program

We urge HUD to reconsider how it defines the success of the RAD program. Currently, HUD claims that the RAD program has been successful because of (1) the number of RAD properties that have officially converted, (2) a reduction in HUD's processing times between RAD application and closing, and (3) the amount of money "leveraged" for construction investments. While these may be important indicators of success, they lack clarity and do not consider the impact of the RAD program on low-income tenants, the quality of the rehabilitated RAD-converted housing, or the future preservation of the property as affordable housing. The latest HUD-commissioned [RAD evaluation \(conducted by Econometrica, Inc.\)](#) focused only on the amount of funding leveraged by the RAD program. By the report's own admission, it did not look at the impacts of the RAD program on tenants. In fact, the report made several troubling findings that impact tenants, including:

- PHAs often sought to use RAD as an opportunity to remove their properties from the statutory and regulatory control of the public housing program, and
- PHAs are not necessarily proposing their neediest projects for RAD conversion and may be choosing the projects with the least amount of capital needs to convert the properties more quickly to RAD.

We remain concerned about these findings, among others, because a key purpose of the RAD program is to "preserve and improve public housing properties and address the \$26 billion dollar [in 2011] nationwide backlog of deferred maintenance." According to HUD, there have been many successful "on-paper" RAD conversions that have not proposed any rehabilitation or construction at the property. This is likely an indication that RAD is being used to change the regulatory framework for the property, but not actually address deferred maintenance. HUD must develop comprehensive criteria to assess whether PHAs are adequately assessing and addressing the physical needs of the RAD-converting property. The end result for tenants may be the same physical conditions but fewer rights. In addition, HUD must develop measures to assess the impact of RAD on low-income families and the long-term affordability of the property, before determining that any one RAD conversion, or the program in its entirety, is a success.

Impact of the RAD Program on Low-Income Tenants

NHLP works closely with legal services attorneys and tenant advocates across the country who report problems with the local implementation of the RAD program. The current challenges in RAD conversions often detrimentally impact low-income tenants. We highlight the most common implementation issues below and urge HUD to consider broad policy changes to prevent their future occurrence.

A. Transparency Before, During, and After the RAD Conversion

Tenants and advocates are routinely denied access to documents and plans related to RAD conversions, or are not provided the information in a timely manner. This creates a barrier to effective engagement in the RAD conversion and limits oversight of the program.

In order to effectively understand local RAD conversion plans and ensure enforcement of tenants' rights, advocates often need access to key RAD conversion documents, including:

- The PHA's RAD application sent to HUD,
- Front-end civil rights reviews by HUD identifying any potential fair housing or civil rights concerns,
- RAD tenant relocation plans, and
- Post-conversion findings of noncompliance by HUD.

In addition, failure to provide the documents results in advocates having to commit significant resources to preparing and submitting FOIA requests (and state public records act requests, as applicable) for basic information regarding a particular RAD conversion. FOIA requests can be costly, including search costs ranging from \$21 to \$75 an hour and an additional fee for copies. Although these requests are subject to a fee waiver pursuant to 40 C.F.R. 2.107, the waiver is routinely denied, resulting in high costs to already under-resourced legal aid offices plus lengthy waits for documents that are needed immediately for effective representation. Consequently, tenants are unable to make informed choices and exercise their rights.

Regarding post-conversion transparency, HUD has only recently committed to collecting data from 90 randomly selected RAD-converted properties to “to conduct preliminary compliance reviews of completed RAD conversions to better carry out oversight of relocation and verify construction activity.” While we are encouraged by this initial step by HUD, it remains unclear what factors specifically HUD will be reviewing and whether this information will be publicly accessible. Since the RAD program was created five years ago, HUD has not proactively collected any data from RAD-converted properties to ensure compliance with federal law, regulations, and RAD-specific rights. HUD should make this data available and, in addition, address how it plans to proactively monitor the rest of the 225,000 RAD units nationwide.

B. Tenant Education of RAD Conversion Plans

Prior to submitting a RAD application, a housing authority is required to conduct at least two meetings with residents and provide an opportunity for comment. HUD requires that these meetings include a discussion of, at a minimum:

- whether the conversion will include a transfer of assistance,
- plans to partner with an entity other than an affiliate or instrumentality of the PHA if such partner will have a general partner or managing member ownership interest in the proposed project owner,
- changes in the number or configuration of assisted units or any other change that may impact a household's ability to re-occupy the property following repairs or construction,
- a *de minimis* reduction of units which had been vacant for more than 24 months at the time of RAD application, and
- the scope of work.

The RAD Notice (HUD Notice 2012-32, REV-3) requires that the PHA also have one additional meeting before HUD executes the HAP contract. Therefore, HUD only requires three meetings with residents between the time that the PHA is considering RAD and the time the property officially converts under RAD. Based on our experience and the experience of our partners, three meetings is entirely inadequate to explain the changes that residents will experience as the property converts, and to discuss the often complex options presented at the time of conversion.

In some cases, PHAs include only the information that is required by HUD, which leaves out important topics including temporary tenant relocation, whether the conversion will be to project-based vouchers or project-based rental assistance, how the PHA plans to maintain an interest in the property after the RAD conversion, and key tenant rights provided by the RAD program (i.e. right to remain, grievance procedures, prohibition on re-screening existing tenants). In other cases, PHAs do not even present the minimum amount of information as required by law. In either case, advocates nationwide report that resident meetings fail to capture the true impact of the RAD conversion on residents and their families.

Advocates also report accessibility issues with respect to the tenant engagement meetings. We have seen PHAs host meetings during work hours or at inconvenient times for residents, at hard-to-reach locations off-site, and in violation of applicable civil rights and language translation requirements.

HUD must take stronger action to ensure that these meetings educate residents before allowing the RAD conversion to proceed. HUD should (1) carefully review tenant comments and the PHA's responses, which PHAs are required to submit to HUD, (2) require more than three tenant meetings prior to a HUD conversion and (3) educate PHAs about the importance of having effective meetings that are accessible, informative, and provide an adequate opportunity for tenant participation.

C. Tenant Relocation

Often a RAD conversion involves temporary relocation of tenants to allow for construction or repair of the property. PHAs are required to participate in a planning process and take specific steps to minimize the adverse impact of relocation on tenants. This includes: 1) tenant relocation assistance; 2) certain relocation notices; 3) relocation advisory services; and 4) decent, safe, and sanitary temporary housing allocated on a non-discriminatory basis. The HUD RAD Fair Housing and Relocation Notice (HUD Notice 2016-17) also requires a written relocation plan if temporary relocation is anticipated to last more than 12 months and strongly encourages a written relocation plan for temporary relocation anticipated to last less than 12 months.

Despite these clear mandates, inadequate relocation policies are commonplace. NHLP and its local partners have seen the following problematic tenant relocation practices with respect to RAD:

- PHAs and owners failing to provide tenants with adequate notice as required by law (30- or 90-day notices).
- PHAs and owners failing to provide the required relocation advisory services. Specifically, some PHAs and owners simply provided a list of subsidized housing in the community, without meeting with residents individually to assess their needs and identify specific units and landlords who will accommodate the temporarily relocated tenants.
- PHAs and owners failing to create adequate written relocation plans, or failing to comply with their own written relocation plans.
- Owners failing to provide the same alternative housing options to similarly situated tenants, and situations where the temporary housing provided is uninhabitable or an inadequate size for the family, in violation of the Uniform Relocation Act and RAD requirements.

Additionally, we have seen PHAs and owners misjudge the need for temporary relocation, resulting in the loss of heating during extreme winter months, tenants living without windows, inoperable elevators, lack of plumbing, and significant construction dust and debris within tenants' units. Such occurrences

put the health and safety of the residents at risk and fail to ensure that tenants are living in decent, safe, and sanitary units. At the very least, HUD should collect relocation data about the property conditions and number of returning tenants for all RAD-converted properties nationwide so it can assess the impact of the RAD program on low-income tenants.

D. Tenant Organizing

Federal statutes and HUD guidance give RAD tenants the right to “establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.” Federal regulations also provide that tenants and non-tenant tenant organizers have the right to engage in tenant organizing activities related to establishing or operating a tenant organization, such as distributing leaflets, contacting residents, and convening regularly scheduled resident organization meetings. While such rights already exist for tenants in PBRA properties, the RAD Notice explicitly extends these rights to RAD PBV tenants. Additionally, RAD tenants have the right to receive \$25 per occupied unit per year from the owner for tenant participation activities. At least \$15 per occupied unit per year must be provided to the “legitimate resident organization” at the property.

Owners of RAD properties frequently interfere with tenant organizing activities. We have heard of many instances where PHAs and owners have explicitly impeded or prohibited tenant organizing efforts, including:

- Interfering with the distribution of leaflets;
- Interfering with meetings and elections (including demanding that the property manager attend tenant organization meetings);
- Threatening to have non-tenant tenant organizers arrested for organizing tenants; and
- Failing to give tenant organizations the funds that should be made available to them.

RAD conversions create a critical need for tenant organizing so tenants can better understand the impact of the RAD conversion, hold the owner accountable to federal law and RAD requirements, and assist in planning for temporary tenant relocation and other important issues. HUD must take appropriate steps to prevent these egregious practices from continuing.

E. Tenant Re-Screening

When properties are converted through RAD, current households cannot be subject to re-screening, income eligibility determinations, or income targeting. Current households must be grandfathered in for conditions that occurred prior to conversion, but are subject to any ongoing eligibility requirements for actions that occur after conversion.

Despite these clear protections, RAD tenants are routinely re-screened at the time of conversion for income, criminal history, credit, and other requirements, especially in properties that will be utilizing low-income housing tax credits. For example, tenants have been expressly told that they are “over-income” for a RAD-converted building or that they will only be “grandfathered in” for a finite amount of time. This has resulted in evictions and monetary buy-out packages that force tenants to move from the property, despite their right to remain after conversion. Additionally, advocates have had to

challenge PHA proposals that seek to: rescreen temporarily relocated tenants for activity that occurred prior to conversion; terminate temporarily relocated tenants' leases for alleged lease violations that occur during temporary relocation but have no formal, official judicial determination; and rescreen all tenants who are moving back in after the property has been rebuilt or rehabilitated.

Without adequate HUD oversight or enforcement, the burden has fallen upon local tenants and their advocates to ensure that RAD tenants are not unlawfully denied access to, or evicted from, their housing. HUD should more proactively monitor RAD-converting properties nationwide and collect data about tenants' right to return and whether that right is being impeded by local RAD policies.

F. Long-Term Preservation

The preservation of affordable housing is the fundamental goal of the RAD program. The RAD Notice generally requires one-for-one unit replacement, but provides for exceptions that result in the loss of units during conversion, including: (1) if the unit has been vacant for more than 24 months at the time of RAD application, and (2) if reducing the total unit number will allow the PHA to more effectively or efficiently serve assisted households through either reconfiguring apartments (e.g., converting efficiency units to one-bedroom units) or facilitating social service delivery.

These exceptions are at odds with the goals of the RAD program. First, the reason a unit is vacant for more than two years is often because it is in need of rehabilitation. Permitting PHAs to eliminate these units allows PHAs to leave habitability issues unaddressed, while reducing the overall number of affordable housing units in local communities. Additionally, the second exception is vague and does not set any standards or factors that the PHA must meet when avoiding its one-for-one replacement obligation. HUD should eliminate these exceptions and provide more oversight of the unit replacement process to meet the RAD program's goals.

Additionally, HUD requires PHAs to maintain an interest in the RAD-converting property that will be owned by a for-profit entity and utilizes low-income housing tax credits. In the RAD Notice, HUD states that the PHA can maintain an interest in the property after the RAD conversion via the following methods:

- The PHA, or an affiliate under its sole control, is the general partner or managing member;
- The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
- The PHA retains control over the leasing of the Covered Project, such as exclusively maintaining and administering the waiting list for the Covered Project, including performing eligibility determinations complying with the PHA Plan;
- The PHA enters into a Control Agreement by which the PHA retains consent rights over certain acts of the Project Owner (including, for example, disposition of the Covered Project, leasing, selecting the management agent, setting the operating budget and making withdrawals from the reserves) and retains certain rights over the Covered Project, such as administering the waiting list; or
- Other means that HUD finds acceptable, in its sole discretion.

Only the first two methods will preserve the long-term affordability of the property. The other methods

fail to retain meaningful long-term oversight of for-profit owners. PHAs that maintain an interest using the other methods will lack sufficient oversight over the property, likely resulting in a departure from the accountability inherent to the public housing program.

The preservation of the quality of the housing stock is also a concern to tenants and housing advocates. In some RAD conversions, newly rehabilitated and rebuilt housing has significant safety and maintenance needs a short time after the RAD conversion. This is usually due to poor workmanship and mismanagement, as well as inadequate preliminary assessments of the scope of work needed for the property. This creates significant impacts on the health and safety of the residents. Accordingly, HUD must adopt procedures to prevent these issues.

G. Resident Leases and House Rules

Tenants in RAD-converted properties are bound by new leases and house rules, which are required to be effective as of the date of the HAP Contract. All RAD PBRA properties must use the required HUD PBRA Model Lease, and both RAD PBV and PBRA properties must include required language about lease termination notification and grievance procedures. A key protection that is required to be included in the lease and implemented in practice is that tenants cannot be evicted unless there is good cause to do so.

However, some owners have failed to adopt appropriate lease provisions, such as termination and grievance procedure language, require that tenants sign new leases that become effective as of the effective date of the HAP Contract, and provide copies of the new lease and house rules to tenants. Owners have also attempted to evict tenants without good cause and with notices that fail to give a sufficient reason for termination.

Despite the requirements in the RAD Notice, HUD has failed to collect house rules from owners during the conversion process. As a result, tenants and advocates report that owners and PHAs are adopting house rules that are unreasonable and infringe upon tenants' civil rights. HUD should collect and review house rules for all RAD-converting properties in order to properly oversee the RAD program and prevent illegal and unreasonable house rules from going into effect.

H. Resident Grievance Procedures

Pursuant to the RAD authorization statute, RAD tenants are entitled to the same rights that they possessed in the public housing program, including the right to a grievance procedure to dispute any action or inaction by the owner. As noted above, the RAD house rules also must contain specific language about tenants' grievance procedure rights.

Despite these important mandates, numerous tenants have been denied their right to a grievance procedure. Owners have routinely failed to include references to the grievance procedure in the house rules. As a result, owners have evicted, and attempted to evict, tenants without access to, or notice of their right to, a grievance procedure. While our network has attempted to intervene in these cases, access to a legal services attorney is not always possible, given geographic and resource constraints. HUD must take the necessary steps to ensure that RAD tenants do not continue to be deprived of their legal right to basic due process.

I. Fair Housing and Civil Rights

As reiterated in HUD Notice 2016-17, RAD properties remain subject to fair housing and civil rights laws, including the Fair Housing Act, Section 504, the Americans with Disabilities Act (ADA), and the Violence Against Women Act (VAWA). Additionally, RAD properties must comply with the 1964 Civil Rights Act which provides that Limited English Proficient (LEP) persons be provided with translation services so they can have meaningful access to housing programs.

We have seen explicit violations of fair housing and civil rights laws in many different contexts. Such incidents include express familial status discrimination, failure to provide reasonable accommodations to tenants with disabilities, and failure to provide translation services to LEP individuals. Other examples include concentrating disability-accessible units in RAD properties and failing to adopt emergency transfer plans which allow survivors of domestic violence to move rapidly to escape life-threatening situations. HUD must take appropriate steps to educate owners of their civil rights obligations and enforce federal law.

J. Transfer of Assistance

RAD transfers of assistance allow subsidized housing assistance to be transferred to a property in a different location. Such transfers have enormous impacts on tenants' lives and raise significant fair housing and accessibility concerns. Despite the fact that HUD is required to complete a front-end civil rights review of RAD transfer of assistance conversions, we remain concerned about issues that are not captured by such a review. For example, HUD Notice 2016-17 states that if the transfer of assistance to a new site is a "significant distance" from the converting property, then tenants will have the right to an assisted unit within a reasonable distance of their former public housing residence. We have seen first-hand during RAD conversions how the vagueness of such a requirement negatively impacts tenants' ability to exercise their rights.

In transfers of assistance nationwide, tenants are being told they must move a significant distance away from the public housing property. Such transfers will have a devastating impact on tenants, since they will be moved far from their friends, families, workplaces, churches, schools, and medical providers. HUD should modify its policy on RAD transfers of assistance to better protect tenants, especially as PHAs and owners seek to move tenants away from developing areas of opportunity.

K. Choice Mobility

RAD tenants may exercise choice mobility rights and request tenant-based rental assistance 12 months (PBV) or 24 months (PBRA) after the RAD conversion. Choice mobility allows RAD-converted tenants to be placed at the top of the local PHA's waiting list for tenant-based rental assistance and move to any private market unit where a landlord will accept the assistance.

Unfortunately, we have encountered PHAs who are unfamiliar with choice mobility rights and have not adopted policies and procedures to allow RAD tenants to exercise their choice mobility rights. As a result, PHAs and owners fail to inform residents of these rights. Even when tenants are aware of the right to tenant-based assistance, PHAs and owners present significant barriers to obtaining it. HUD should publish guidance on choice mobility in the RAD program, so that PHAs and owners understand their obligations. In turn, tenants will have better access to choice and mobility post-RAD conversion.

L. Section 3 Enforcement

RAD properties are subject to Section 3 of the Housing and Urban Development Act, which requires that recipients of HUD financial assistance for housing and community development provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. The Section 3 regulations set forth goals and priorities for hiring public housing tenants, homeless individuals, Youthbuild, and other very low-income residents and contracting goals for businesses owned by these individuals. The RAD Notice makes clear that Section 3 applies to all RAD work, including any new construction that is identified as part of the RAD conversion.

Yet, because HUD has consistently failed to enforce Section 3 requirements, the benefits of the Section 3 program have not been realized. RAD conversions present a unique opportunity to enforce Section 3 requirements and to provide job training, employment, and contracting opportunities for local residents and HUD must do more to ensure that PHAs and owners are fulfilling their Section 3 obligations.

M. RAD Component 2

RAD Component 2 tenants, who live in Section 8 Moderate Rehabilitation, Rent Supplement, or Rental Assistance Payment programs converting to project-based vouchers or project-based rental assistance, have very few tenant protections. Unlike Component 1 properties, there is no requirement that RAD Component 2 HAP Contracts be renewed at the end of each term, which puts the long-term preservation of the property at risk. In Component 2, there is no RAD Use Agreement that will be attached to the land title, ensuring long-term affordability of the property in perpetuity. The fair housing and relocation protections described in HUD Notice 2016-17, such as relocation plans, do not apply to Component 2 properties. Component 2 tenants also have no choice mobility rights if they are in RAD PBRA properties. Additionally, there are very few resident education requirements for tenants undergoing a RAD Component 2 conversion. HUD has determined that certain rights, guidance, and procedures were essential and necessary for the Component 1 program. Thus, HUD should do more to ensure similar procedures and rights for Component 2 tenants, where possible.

NHLP and our local partners have experienced many significant challenges related to the implementation and oversight of the RAD program. We strongly urge HUD to take a more proactive approach to ensure that tenants' rights are not violated during the RAD conversion process. Such action and evaluation is especially necessary prior to any further expansion of the RAD program. I can be reached at 415-432-5706 and SRoller@nhlp.org should you wish to talk further about our concerns.

Sincerely,

Shamus Roller, Executive Director, National Housing Law Project

CC: Thomas Davis, HUD, Office of Recapitalization
Celia Carpentier, HUD, Office of Fair Housing and Equal Opportunity
Danielle Garcia, HUD, Office of Fair Housing and Equal Opportunity
William Rudy, HUD, Office of Community Planning and Development