

April 23, 2012

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Rental Assistance Demonstration: Partial Implementation and Request for Comments, 77 F.R. 14029 (March 8, 2012), Notice PIH-2012-18 (HA).

Dear Colleagues,

These comments are submitted on behalf of the fair housing and civil rights groups listed below. Our comments will focus on the choice-mobility provisions of the Notice, with a particular emphasis on Section I (Public Housing Projects).

For millions of Americans, housing choice can provide a crucial pathway out of concentrated poverty, and toward quality schools, jobs, and other aspects of opportunity. Thoughtfully-designed rental assistance programs can help HUD achieve its commitment, as stated in its 2010-2015 Strategic Plan, “to providing access to the opportunities that result from living in homes and neighborhoods that are safe, healthy, affordable, and inclusive,” and to “transform its rental assistance programs into the 21st century with a new business model that creates more flexibility to provide greater choice for renters.”

We commend HUD for keeping its commitment to resident choice and mobility, as set out in the Rental Assistance Demonstration (RAD) Choice-Mobility provisions at §1.8.C.5. However, these choice and mobility elements will require stronger incentives and guidelines if they are to be effective in operation. While the RAD Notice states that “HUD seeks to provide all residents of covered projects with *viable* choice-mobility options” (1.8.C.5)(emphasis added), the current draft of the notice does not do enough to enable tenant choice, or to encourage PHAs to include strong mobility and choice options in their plans. Without additional support, the choice option may not be a viable one for many residents, and HUD may lose the opportunity to evaluate the effectiveness of the choice option in the demonstration.¹ Our comments on specific sections of the RAD Notice are as follows.

¹ The civil rights and fair housing community has consistently advocated for strong choice-mobility provisions in the Rental Assistance Demonstration since the concept was first introduced by HUD more than two years ago. See, e.g., http://prprac.org/pdf/PETRA_housing_mobility_letter_9-2-10.pdf.

Resident eligibility (Section 1.8.C.5, p.32):

The Notice currently states that residents “are eligible to move” upon fulfillment of specified criteria. Because this use of the term “eligible” begs the question whether the tenants in fact have a right to move, HUD should explicitly state this right. In addition, the choice-mobility provision should include a simple administrative enforcement mechanism, so that tenants are able to enforce their mobility rights when necessary.

HUD should also render the eligibility criteria more consistent and accessible. Starting eligibility 24 months after “the later of” the HAP plan or the completion of initial repairs, as the Notice currently provides, has the potential to delay eligibility indefinitely. There is no reason that existing residents should not be able to move immediately, if they have resided in the property for at least one year. (This would be consistent with the criteria of the PBV program.) For tenants new to the property after conversion, a one-to-two year waiting period is reasonable. HUD should eliminate the term “completion of initial repairs identified in the Financing Plan,” which is a vague and indefinite term that is subject to misinterpretation by housing authority administrators.

The “Voucher Cap” and the “Project Cap” (Section 1.8.C.5, p.33):

HUD should restructure the voucher and project “cap” provisions to ensure that choice-mobility is a meaningful component of RAD. As currently written, these caps permit (but do not require) PHAs to place an upward limit on the number of choice-mobility moves in a given year, or within a particular project. However, they fail to specify a minimum number of moves, and they do not require the provision of these moves within a reasonable time period. We recommend amending these paragraphs as follows:

“Voucher Cap: In any year, a PHA would ~~not~~ be required to honor all eligible choice-mobility requests within 60 days of the request, at least to a level of one-third of its turnover vouchers to the residents of covered projects that the PHA owns. The PHA may voluntarily exceed this cap in order to earn and comply with the Choice-Mobility ranking factor described in Section 1.12(D) of this Notice, or for other reasons.”

The “good-cause exemption” from choice-mobility (Section 1.8.C.5, p.33; Section 1.12.F, p.44):

This exemption, which HUD is allowed to apply to 10% of all units in the demonstration, requires limiting criteria. Crucially, such exemptions should not under any circumstances be allowed for family developments in high-poverty neighborhoods. These are the developments where the mobility option is most important, as it provides families with the ability to seek out safe neighborhoods, quality schools, and other services.

Enforceable mobility rights (Section 1.9, pp. 33-34):

Section 1.9, addressing “Resident Participation, Mobility, and Procedural Rights,” states that “HUD strongly supports...strong residential procedural rights.” However, while this section discusses the choice-mobility option (among other requirements), it does not set out any procedure for residents to seek redress from HUD or the PHA if this option is not offered, or is impeded. For this right to be effective there must be some means for the tenant to exercise it. For example, delay or denial of a mobility voucher could be grounds for a grievance hearing (under PBRA) or an informal hearing (under PBV). Alternatively, or in addition, HUD should establish a mechanism to receive such complaints, as part of the monitoring of the RAD demonstration.

Ranking factors (Section 1.8.D, pp. 41-44):

If HUD is serious about promoting choice-mobility in a Section 8 administrative environment that continues to make mobility very difficult, it is essential that the “Ranking Factors” section be enhanced. This section should incentivize strong housing mobility efforts by giving substantial additional ranking points for efforts to enhance mobility, as through mobility counseling programs, landlord outreach and enhanced rents in high opportunity areas, evidence of cooperative agreements among PHAs to streamline or eliminate portability barriers, or financial assistance to remove barriers to relocation in higher opportunity communities. Likewise, additional points should be awarded to PHAs that commit a percentage of choice-mobility vouchers above the annual cap or above the project cap.

Project Based Vouchers; inconsistency between PBVs and PBRA (Section 1.7, p. 23; Section 2.3.5.A.2, p. 106):

We strongly support HUD’s decision to leave in place the existing rules for choice-mobility in Project Based Vouchers (PBVs) as set out in 24 CFR §983.260.

However, the current Notice provides that only 50% of units in a RAD conversion can be eligible for PBVs (with only the limited exceptions permitted under current law), while projects can use 100% of Project Based Rental Assistance (PBRA) units. There is no clear justification for this difference, and the inconsistency is problematic because it creates an incentive for PHA to select PBRA over PBVs. The limit on PBVs in a RAD conversion should be eliminated, to make the choice neutral for PHAs, and to not discourage PHAs from selecting the more generous choice-mobility provisions of PBVs instead of the new PBRA model.

Additionally, it is important that HUD make explicit that its lifting of the general PHA cap on conversions to Project Based Vouchers (usually 25% of units in a development) is restricted to projects selected for the RAD demonstration, and not applicable to other properties in the jurisdiction.

Waiver of site selection standards (Section 2.3.5.A.4, p. 106):

The current Notice's reservation of a "right to waive" civil rights site selection standards is unwarranted: the Rental Assistance Demonstration is not designed as a public housing demolition and replacement program, it is simply a substitution of a different type of subsidy for the existing units. RAD developments should be held to the same civil rights standards as other such developments, including cases where demolition and replacement is contemplated.

Thank you for the opportunity to present these comments.

Sincerely,

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