

Now & Next

Affordable Housing Alert

January 21, 2025

HUD makes changes to RAD public housing conversions with supplemental notice

By Kathie Soroka, Deborah VanAmerongen, and Meghan Altidor

New RAD guidance provides a mixed bag of changes—it includes some welcome updates but imposes OCAF-only rent adjustments on all units in RAD/Section 18 blends and Part 50 HEROS environmental review in all public housing conversions.



What's the impact?

- RAD/Section 18 blends will use one combined RAD HAP contract.
- All units in RAD/Section 18 blend transactions will be limited to annual OCAF increases instead of normal annual PBV rent adjustments tied to FMR increases.
- A waiver process will be established to provide rent adjustments through an alternative operating cost factor in "extraordinary circumstances."
- All RAD public housing conversions are now subject to Part 50 environmental review by HUD rather than Part 58 review by a local responsible entity.

HUD released a long-anticipated supplemental notice to the Rental Assistance Demonstration (RAD) program on January 16, 2025 ([H-2025-01 / PIH-2025-03, Rev 4-C](#)) (Supplemental Notice 4C).

RAD/Section 18 rents limited to OCAF-only adjustments

Under Supplemental Notice 4C, RAD/Section 18 blends will utilize one combined RAD HAP contract in public housing RAD conversions.

RAD/Section 18 blends are a tool intended to boost RAD rents and facilitate underwriting. While RAD rent levels in public housing conversions typically hover around 80% of the HUD-established Fair Market Rent (FMR), Section 18 units are eligible for Tenant Protection Vouchers (TPVs), which can be project-based at the contract administrator's payment standard, typically 110% FMR. RAD/Section 18 blends combine RAD and Section 18 rent setting rules, and HUD recently increased the percentage of units eligible for Section 18 in RAD/Section 18 blends (see "[HUD boosts RAD rents with changes to RAD/Section 18 blends](#)," and [HUD Notice PIH-2024-40 \(HA\)](#)).

Previously, RAD/Section 18 blends resulted in two HAP contracts: a RAD HAP contract that followed RAD rules and a normal Project-Based Voucher (PBV) HAP contract for the Section 18 units that followed normal PBV rules. Now, all units will be combined into one RAD HAP Contract. The rents on the new contract will be "blended" based upon the unit-weighted average contract rent by bedroom size. This Notice also provides a new option, allowing RAD/Section 18 blends to opt for Project-Based Rental Assistance (PBRA) rather than PBV, which can be beneficial in some circumstances.

In addition to creating administrative efficiencies through the combination of previously separate contracts with different rules for rent setting into one HAP, this change provides at least two other benefits. Under normal PBV rules, units must pass Housing Quality Standards (HQS) to be placed on a contract, and since these rules applied to PBVs created through Section 18 conversions, public housing agencies (PHAs) and their partners were having to do intermediate work to get units into compliance with HQS prior to closing. While HUD had provided some flexibility around this issue in the past couple of years, these were not universally adopted by PHAs and this consolidated contract approach will alleviate this issue. In addition, previously, only units on the RAD HAP were eligible for RAD Rehab Assistance Payments, which provide subsidy for units that have to be vacated during the period of rehabilitation; now all of the units in the project will be eligible.

However, combining into one RAD HAP contract means all RAD/Section 18 blend units are subject to RAD's rent adjustment rules, limiting annual increases to the HUD-determined Operating Cost Adjustment Factor (OCAF). Previously, the Section 18 units subject to a PBV HAP followed normal PBV rent adjustments, which in most cases permitted greater increases commensurate with FMR increases. This change could mean financial trouble for RAD transactions down the road, as rents may not be able to keep up with expenses. We know that

many early RAD projects that converted before the RAD/Section 18 blend tool was established and have all contract rents tied to OCAF only are struggling to keep up with rising costs. This change could similarly burden many more RAD public housing transactions going forward.

Waiver process established to seek alternative to OCAF

As mentioned above, many early adopters of RAD in public housing conversions who converted before RAD/Section 18 blends were developed have been struggling to keep up with rising expenses. It had been widely hoped that this notice would establish a different operating cost adjustment factor as an alternative to OCAF for RAD transactions.

While this notice stops short of establishing an alternative operating cost adjustment factor, it does establish the framework for some projects to seek such an alternative. HUD refers to projects in “extraordinary circumstances,” which is not defined. HUD is working to develop further guidance on the process and requirements for seeking this waiver, which will be critical to understanding the benefit of this change.

Part 50/HEROS review required for all public housing conversions

Another big change is the new requirement that environmental review for all public housing conversions follow 24 CFR Part 50 (Part 50). Part 50 review is conducted by HUD through the HUD Environmental Review Online System (HEROS). Previously, certain transactions were subject to alternative environmental review under 24 CFR Part 58 (Part 58). Part 58 review is conducted by a local Responsible Entity (RE). While the substantive requirements of both reviews are intended to be identical, Part 58 reviews can, in certain circumstances, be accomplished in less time and be more nimble.

Under this notice, multi-phase transactions should submit Part 50/HEROS review for all phases at the first phase submission. While not framed as a change in policy, this has not necessarily been the practice previously and may impose additional costs and delays.

This notice also clarifies that the recent Federal Flood Risk Management Standard (FRMS) [floodplain guidance](#) is applicable to RAD transactions.

Other significant changes

In addition to the major changes reviewed above, Supplemental Notice 4C makes a number of additional updates, including:

- / The notice clarifies guidance on contract renewals after the initial term. PBV contracts are subject to renewal and rent adjustment after 20 years. The implications for PBV projects with

15-year contracts is unclear. PBRA contracts are subject to renewal and rent setting under any applicable renewal option pursuant to the Multifamily Assisted Housing Reform and Affordability Act (MAHRAA).

- / If a project previously converted with a PBV for Section 18 units and a PBRA contract for the RAD units, the owner can apply to add those PBV units to the PBRA contract. HUD will have to develop guidance on submitting this type of request for approval.
- / Tenant leases are coming under stricter scrutiny and the notice requires leases to include reasonable, plain language provisions that don't conflict with RAD provisions. In practice, this may cause hiccups when state agencies require certain lease riders in connection with low-income housing tax credits (LIHTCs) or other programs.
- / Projects without LIHTCs or commercial debt must establish an operating reserve equal to six months of stabilized operating expenses.
- / In projects without hard debt payments, the operating expense ratio, calculated as all operating expenses and replacement reserve deposits divided by gross potential income, cannot exceed 80%.
- / In PBV transactions, Contract Administrators (CAs) are now required to confirm that the project is making annual replacement reserve deposits and may require audited financial statements.
- / As required by previous HUD guidance, landlords must give 30-days' notice for eviction because of nonpayment of rent.

RAD opportunities

Our [Affordable Housing Team](#) will continue to track the development and implementation of these changes. We are available to advise how our clients can continue to access and apply RAD opportunities.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Kathie Soroka](#)

212.940.3736

ksoroka@nixonpeabody.com

[Deborah VanAmerongen](#)

212.940.3054

dvanamerongen@nixonpeabody.com

[Meghan Altidor](#)

212.940.3021

maltidor@nixonpeabody.com

