

December 9, 2016

Rental Assistance Demonstration Program Office  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, DC 20410

Re: Comments related to H 2016-17/PIH 2016-17 (HA): Rental Assistance Demonstration (“RAD”) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.

Dear Colleagues:

On behalf of Reno & Cavanaugh PLLC, the Council of Large Public Housing Authorities (CLPHA), and the RAD Collaborative, thank you for the opportunity to comment on the RAD Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions (the “Notice”). We appreciate the additional clarity and substantive changes the Notice makes to the application of fair housing and civil rights requirements to RAD transactions and the resident relocation process. We further appreciate that many of the concerns expressed in our previous comments to HUD on these issues have been addressed, either fully or in part, as referenced below. Though we have detailed our remaining concerns below, overall, we believe the Notice will be very helpful to PHAs and other RAD program participants. We applaud HUD for addressing these critical implementation issues so that public housing authorities (“PHAs”) and other practitioners can continue to build upon the success of the RAD program and we encourage HUD to consider our additional comments and continue to streamline RAD requirements for the benefit of practitioners and residents.

#### **1. Fair Housing and Civil Rights Requirements**

- **Timing of Site Selection Reviews:** We appreciate HUD providing PHAs with the opportunity to submit site selection information early in the redevelopment process, including prior to submission of a LIHTC application, provided that it is received no later than 90 days after the issuance of the CHAP. HUD has indicated that this should not delay the Financing Plan submission and approval process and that HUD will implement procedures to ensure approvals are made in a timely manner. We urge HUD to ensure that this commitment to a timely review is kept so that the additional review process does not delay closings. RAD’s transfer of assistance provision can be an effective way to provide expanded housing options in neighborhoods of opportunity for residents currently confined to undesirable locations. However, we encourage HUD to devise an expedited process for reviewing off-site property acquisitions so as not to constrain a PHA’s ability to move quickly in strong markets offering enhanced opportunities.

- Area of Minority Concentration: The Notice states that the analysis of an area of minority concentration will utilize census tracts to approximate the area of the site, but that HUD may be willing to consider alternative proposed geographies when presented with strong evidence that this would be more appropriate. For example, possible alternative geographies may be considered when natural or manmade barriers divide what would otherwise be adjacent tracts, when a site is situated on the edge of a census tract, when the population of the census tract will be heavily altered due to the size of the Converting Project, or when a local community's common understanding of their neighborhood dictates a different boundary.

Given the many limitations presented by the political boundaries PHAs operate within, we strongly encourage HUD to expand the use of such alternative approaches when determining the housing market area. We reiterate our prior concern that without these alternatives, the HUD standards too heavily rely upon a mechanistic comparison of the levels of minority concentration in a Census Tract ("CT") or Metropolitan Statistical Area ("MSA"). As the state-authorized operating jurisdictions of nearly all PHAs do not align with the country's various MSAs, the mechanical application of a CT-MSA comparative test will be unlikely to facilitate conversions of assistance under RAD that PHAs have authority to undertake. It may even inhibit or block many RAD new construction and transfer of assistance transactions that could create new and better housing options for public housing residents.

Because RAD is charged with demonstrating ways that existing public housing can be recapitalized and preserved, it is our position that on-site and adjacent-site replacement housing ought to be exempt from Site and Neighborhood Standards ("S&NS") reviews – regardless of whether preserving such housing requires only rehabilitation (which is currently allowed) or whether such preservation requires the full replacement of obsolete stock with new construction. On-site replacement housing is often the most economically-feasible approach and the option most desired by residents, compared to developing off-site or attempting to effectively renovate obsolete physical structures – especially given that RAD itself involves repurposing existing HUD funding without contributing additional amounts.

Further, because PHAs jurisdictions are limited by political boundaries, S&NS for RAD transfers of assistance should not be strictly drawn from HUD multifamily program practices (e.g., PBRA and Section 8(b)(b)), in which multifamily owners are able to transfer assistance in a much larger market area. As private actors, such owners do not have jurisdictional restrictions in selecting sites. HUD should look to previous public housing practices such as the Part 905 Mixed-Finance regulations as an example of how a reasonable S&NS can be tailored to specific PHA circumstances. In principle, any adaption of current standards should align "housing market area" with the PHA's legal jurisdiction rather than an arbitrary boundary such as CTs or MSAs that the PHA has no jurisdictional authority to operate within. This limitation is consistent with HUD Notice H-81-2, which speaks to a "jurisdiction" rather than CT or MSA.

- Exceptions to Prohibition on Construction in Areas of Minority Concentration: We have previously expressed our concern that under RAD, HUD seemed to be redefining and narrowing the two allowed exceptions in ways that do not align with current practice in PBV and PBRA. We are pleased that in the new Notice, HUD has provided clarification and made these exceptions somewhat easier to work with, although we do have a few remaining concerns:
  - Presumption of Sufficient Comparable Opportunities: Under the Notice, there are now two circumstances in which, absent contrary information, HUD will presume sufficient comparable opportunities exist: (1) when at least 50% of comparable hard units in the PHA's portfolio, including PBV developments using the PHA's subsidy, are outside areas of minority concentration; and (2) when the PHA's RAD conversions stemming from a single property will result in the creation of as many similarly affordable housing units outside areas of minority concentration as are constructed on the original public housing site. We believe these presumptions will be helpful and note that the end result is similar to that which is permitted for mixed-finance public housing under existing rules. We also urge HUD to be flexible in defining the term "opportunities". However, one problematic element of this presumption is the expectation that a PHA would be able to provide evidence of 90% of the financing (including tax credits) for multiple phases at the time of the first phase's construction. Tax credits – both competitive and bond allocations – are allocated with short time limits for beginning construction. They cannot be saved for two years while phases I and II are constructed.

Further, we appreciate that HUD is willing to consider a "reliable market analysis" in determining comparable opportunities. However, Notice implies that the market analyst and the scope of the analysis must be approved by HUD before work begins. Given HUD's staffing capacity limitations and RAD participants' overall timing constraints, we suggest that clearly identifying the factors to be addressed in a reliable market analysis would be more efficient than case-by-case determinations and, if possible, HUD should work to provide a template that PHAs could use to guide this analysis.

- Overriding Housing Need Exception Analysis: The Notice also provides some welcome clarity on when the Overriding Housing Needs exception applies: (1) when a municipality has an established revitalization plan for the immediate neighborhood and is working toward it, which provides reasons to believe living conditions at a site will change, or (2) a site is located in a "revitalizing area," which requires proof of an "organic" shift in community but not a governmental action, as in (1).

In our recent RAD experiences, offices have applied varied measures relative to the types and levels of investment required to show that a project is located in a neighborhood's

revitalizing area—whether this involves wholly private investment or private and public investment. Similarly, varied measures have been applied to the level(s) of investment that are deemed “significant” as well as whether the RAD site ought to be located within such areas or whether the RAD site had been indicated as a specific activity within a neighborhood revitalization effort. In other instances, information was requested and judgments made as to the pace and progress of re-investments as an indicator of actual revitalization activity (e.g., whether work on a multi-billion dollar, multi-year construction of a new light rail line has sufficiently progressed). Further, in a few cases, the location of a RAD site in a HUD-designated CNI Implementation Grant, Planning Grant or Promise Zone area was not accepted as evidence of underway revitalization activity.

We believe the adjustments made in the Notice will be very helpful, although we offer some additional recommendations since not all worthy new construction and transfer of assistance transactions may readily qualify for either of the two allowed exceptions. Our additional recommendations are below:

- **Allow Safe Harbors.** Establish “safe harbor” exceptions enabling projects to proceed with substantial amounts of state- or locally allocated-resources such as 9% LIHTCs or housing trust fund resources in deference to local revitalization priorities.
- **Accommodate Current Sites.** 100% replacement/new construction housing should be allowed on current or adjacent public housing sites in deference to RAD’s 1-for-1 replacement requirement and to promote project feasibility and financial reasonableness (e.g., reducing unnecessary site acquisition and improvement costs).
- **Extend to Neighborhoods of Opportunity.** Exempt transfers of assistance for public housing replacement housing to be located in defined “neighborhoods of opportunity”, including neighborhoods with CNI awards or Promise Zones.
- **Consider Lack of Feasible Sites.** As other HUD program notices acknowledge, the lack of availability of feasible alternative sites outside of areas of minority concentration is problematic and should be considered as an overriding housing needs exception.

## 2. Relocation Issues

- **Right to Return:** HUD has provided clarity regarding who is entitled to the right to return and which unit they may return to. The Notice also clarifies that the right to return is satisfied if the replacement unit contains the same features (number of bedrooms, bathrooms) as the original unit (“right-sizing”) or the returning resident is not under-housed (meaning they were previously over-housed). We suggest that HUD also include further discussion in the Notice regarding how

Section 8 rules differ from public housing rules with respect to over-housing, which has caused some confusion in RAD deals recently.

- Relocation Timing and Use of HCVs and Public Housing: We very much appreciate that the Notice advances the date on which relocation may begin to the receipt of the RCC and that it also provides clarification about how a PHA may use its Section 8 Housing Choice Voucher program and its other public housing units for RAD relocations. Together, these changes and clarifications address significant timing and implementation problems which RAD practitioners and residents have faced.
- Notices and Communications with Residents: HUD has clearly made efforts to rationalize the various relocation notice requirements and other communications with residents under RAD. As we understand it, the following requirements now apply:
  - The General Information Notice (GIN) is now only required when it is determined that the Uniform Relocation Act (URA) requires it.
  - PHAs are now required to provide a new “RAD Information Notice” (RIN) to residents, informing them of their rights related to RAD regardless of whether relocation is anticipated.
  - For conversions involving acquisition, a PHA may provide a Notice of Intent to Acquire (NOIA) to residents no sooner than 90 days prior to of submission of the Financing Plan, allowing the PHA to send out relocation notices earlier than the PHA otherwise could.
  - PHAs are also now required to issue a new Notification of Return to the Covered Project to provide relocated residents with advance notice and other information regarding their right to return.
  - New procedures are required to ensure residents are making an informed and voluntary choice with regard to alternative housing options in lieu of exercising their right to return to the RAD site, ensuring that all residents have the same information and options presented to them.

Through these requirements, HUD has provided important guidance and clarification in a complex regulatory area. We appreciate that, together with other flexibility the Notice provides, substantive relocation matters should not be as problematic as they have been.

However, we note that overall, the number and scope of notifications and communications with residents living in a RAD development have increased significantly. Leaving aside any increase in regulatory and financial burden on housing providers in complying with these requirements, we are concerned that residents will be confused by the sheer volume of information and the somewhat technical nature of it. We urge HUD to consult with program stakeholders, including

residents, to work on streamlining these communications and to provide standardized, accessible forms or language so that residents understand their rights and options and housing providers have some assurance that they are complying with RAD requirements. We offer our assistance in meeting that goal.

Thank you for the opportunity to provide comments on the Notice. If you have any questions, please do not hesitate to contact us.

Sincerely,



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