

## **RAD Notice Q&A Webinar: December 15, 2016**

Question 1: If a PHA already has received CHAPS for RAD projects, how should the required notices under Section 6.6 related to relocation be implemented?

Answer: HUD recognizes that there has been a lot of confusion over the implementation and the applicability of the new notice to projects already in the pipeline. The way HUD approaches an analysis of whether a project is governed by the new Notice and/or what portions of the new Notice apply is to take a snapshot of where the project was on November 10, 2016, when the new Notice was published, and to apply the new Notice from that point forward. Example 1 – If you submitted a financing plan before November 10th, the project will not need to go back and issue a RIN because the project is past that stage. However, HUD will expect that same project to have issued GINs in accordance with the previous Relocation Notice. Example 2 – If a deal has not yet gone to RCC but the PHA wishes to relocate tenants prior to closing (and has not issued any relocation notices), the PHA's issuance of relocation notices would be governed by the new Notice. This means that a PHA could issue a NOIA without requesting HUD permission as long as the PHA reasonably expects to be within 90 days of RCC issuance. Note that you could also issue a relocation notice at the same time (this assumes the transaction is involved in an acquisition). As a result of the confusion, HUD is considering the addition of an FAQ on this topic to clear up concerns.

Question 2: A PHA is interested in learning more about relocation similarities and differences between RAD and other HUD programs (i.e., Section 18).

Answer: While a good question, there is not an easy answer because RAD has its own unique relocation requirements. The RAD relocation requirements are not necessarily applicable to other HUD programs or projects. The RAD Relocation Notices present a hybrid between both URA requirements and RAD requirements. Note that RAD has adopted some URA-like requirements.

Question 3: A project is requiring families be relocated temporarily; may they ask for a resident's legal status?

Answer: PHAs and others should be cautious and mindful when relocating families to ensure that they do not violate any fair housing provisions. HUD advises against asking directly about a family's legal status or citizenship status. Instead, HUD suggests that the project could consider

asking whether everyone in the household is on the family composition, which would be a permissible question.

Question 4: The PHA has some residents who are not in good standing and do not have a payment plan. If the PHA is in the process of evicting these residents, but the resident is not yet formally evicted, is the family entitled to be relocated?

Answer: If the family is not yet evicted, the family is entitled to be relocated. Though a court date may be set, that does not preclude the PHA from its obligation to relocate the family. However, the reality is that the family may be evicted from either temporary housing or their permanent voucher unit for failing to comply with obligations. When transferring families from public housing to the voucher program, PHAs are encouraged to include an exhibit, rider, or addendum to the family's lease that outlines the fact that the family owes money or is currently on a payment plan. Once a property undergoes a RAD conversion, the family is no longer obligated by the public housing lease as these are new leases and, therefore, it is as if it is a "new" tenant. Everything that happened in the family's public housing portfolio may not transfer over, and, especially when going to court, the PHA will want to ensure that all documents are in order.

Question 5: Is it possible to get information about which PHAs have requested to be guided under the prior RAD relocation notice?

Answer: This information is not currently available online. However, to date, no one has requested to be guided by the past RAD Notice. HUD believes this is because the new Notice fills in a lot of the wholes and answers a lot of the questions that were not addressed under the old notice. The new Notice also streamlines the procedures required and reduces the number of HUD requests that a PHA must make in order to act.

Question 6: Is HUD considering issuing similar RAD guidance for Component 2?

Answer: HUD does not presently plan to issue a similar notice governing Component 2; however, HUD will consider this.

Question 7: How can a family be evicted from a temporary unit?

Answer: A family may be evicted from a temporary unit; however, in order to do so, the PHA ought to outline this in its Admin plan and ought to work with their legal counsel to build a file. In theory, if the cause for eviction preexists the family's movement into temporary housing, the

PHA should be able to make the case for eviction as public housing tenants remain public housing tenants until the RAD conversion. This means that PHAs and their tenants are governed by the PIH rules and regulations, not RAD regulations, until the time of the RAD conversion. However, if a PHA wishes to evict someone, the PHA should consult with their legal counsel to explore what options might be available.

Question 8: What are the minimum and maximum relocation costs that each family is entitled to?

Answer: There is no real minimum or maximum relocation cost. In the case of temporary relocation, the PHA is required to do whatever is necessary to relocate people either permanently or temporarily. The PHA is required to cover moving payments, increased housing costs, and reasonable out of pocket expenses, among others. Though the URA has statutory replacement housing payment cost maximums, these really aren't a maximum payment because once the replacement housing payment cost exceeds the statutory maximum, it goes into last resort housing which is unlimited. If you see a URA statutory maximum, it's not a hardline maximum – it can and should be exceeded if required under last resort housing. Therefore, there's no per se maximum relocation cost. Additionally, the new Notice provides for alternative housing options which may include not only the required relocation payment but might also include additional payments.

Question 9: If a project already has a CHAP, must the project also issue a RIN?

Answer: The RIN goes out prior to the first of the two required tenant meetings. If a project is at the point where it's having the two tenant meetings already, the project should have issued a GIN under the old notice because it is past the point of needing to issue a RIN.

Question 10: Is the 30-day relocation notice also a notice to vacate the unit?

Answer: The 30-day relocation notice is for temporary relocation and says that tenants will not be expected to relocate into their temporary unit until a set time period has expired (i.e., 30 days). However, if the tenant chooses to do so (voluntarily), the tenant may move into a temporary unit before the 30 days have expired. Note though that even if a tenant wishes to move early, no moves are allowed prior to the issuance of the RCC. If the PHA anticipates that permanent relocation will be required or anticipates that relocation will exceed 12 months, the PHA would be required to issue a 90-day notice. Under RAD, residents are also afforded 30 days to make an informed decision whether to accept permanent relocation. As a reminder,

temporary relocation is any relocation lasting 12 months or less. If relocation will be for longer than a year, that is no longer “temporary” relocation.

Question 11: When calculating relocation costs, what items/charges are eligible?

Answer: Whether a moving cost is eligible depends on whether the relocation will be temporary or permanent. HUD recommends that PHAs look to the URA to determine what costs might be eligible in the event of a permanent move. However, HUD also notes that the list contained in the URA is not all-inclusive; agencies may determine other costs are reasonable and necessary for moving. For additional information, PHAs should visit [www.hud.gov/relocation](http://www.hud.gov/relocation). Additional questions regarding relocation should be directed to the appropriate local regional relocation specialists.

Question 12: For clarification, if a project has issued a GIN and a Notice of Nondisplacement, it means no RIN is required. However, may the PHA still issue a NOIA?

Answer: Yes; a NOIA may still be issued as long as the PHA reasonably expects itself to be within 90 days of RCC issuance. As mentioned, the PHA does not need to issue a RIN. Note that HUD has determined a Notice of Nondisplacement is not required for RAD programs and projects (although it remains a semi-universal requirement for most HUD programs and projects). A PHA should be cautious about issuing a Notice of Nondisplacement if any resident will be required to move permanently.

Question 13: If a PHA is transferring residents directly from the public housing project to a new LIHTC PBV site, is the PHA required to provide any additional notices other than the Notice to Vacate?

Answer: For a RAD project, the PHA must issue either a 30-day temporary relocation notice or a 90-day permanent relocation notice. RAD does not contain any additional requirements in terms of notifying residents prior to relocation. However, note that this answer assumes you either issued a GIN under the old notice or a RIN under the new notice

Question 14: As part of RAD relocation, how should the PHA address moves of over-income tenants?

Answer: Per the RAD Notice, a PHA or Project Owner can identify alternative options to offer. HUD hasn't specified exactly what a PHA ought to offer over-income tenants. As a result, if an over-income tenant wishes to move of their own accord, they can. If the move is initiated by the tenant and the tenant wishes to remain in public housing, the PHA can evaluate whether the request can be accommodated and, if so, the PHA may allow for the move pursuant to PIH rules

and regulations. However, if there is an over-income tenant and the PHA is planning a LIHTC transaction (and does not wish to modify its plan to accommodate the over-income household), the PHA must understand that the over-income household has an absolute right to return to the project. Therefore, any incentives the PHA offers must be such that it makes the resident willing to voluntarily relinquish their right to return. Note that the new Notice provides some instructions as to what alternative housing options should look like. Note further that any incentives the PHA chooses to provide to encourage a resident to voluntarily relinquish their right to return are over and above what the resident is entitled to under the URA. Additionally, HUD expects all similarly situated residents to be treated the same way. For example – if you have 6 over-income residents, all 6 residents must be offered the same package of incentives.

Question 15: Can a PHA offer different sets of relocation/moving incentives to over income tenants in LIHTC transactions than those being offered to qualified (non-over-income) households?

Answer: Probably, yes. However, before doing so, HUD recommends that PHAs check with their RAD Transaction Manager for an initial review of the incentive packages. Generally, HUD policy is that similarly situated residents must be treated in the same manner and given the same set of options. Therefore, the expectation is that whatever incentives you offer to one tenant, you must offer to all other similarly situated tenants. However, there is no hard and fast rule on what constitutes “similarly situated” – this is reviewed and determinations are made on a case by case basis. Therefore, it is important that a PHA submit plans to their RAD Transaction Manager for review prior to moving forward.

Question 16: If a family that is over-income is in a property converting to RAD, does the family have to be treated like a permanently displaced person under the URA?

Answer: Generally, yes; the family must be treated like a permanently displaced person under the URA. For individuals voluntarily accepting permanent relocation, RAD has established the URA as the floor. In addition, over and above the URA requirements, there are alternative housing options available. Note, however, that if a family is over-income, the family still has a right to return to the project. That right to return may not be taken away unless it is voluntarily relinquished. The new Notice provides guidance to PHAs looking to make offers to residents. Keep in mind that residents must be given at least 30 days to consider any alternative housing options presented and that, if the resident chooses to relinquish their right to return, it must be done in writing and signed by the head of household.

Question 17: If a resident is temporarily relocated, what happens if the relocation lasts for more than a year?

Answer: If the PHA anticipates that relocation will exceed 12 months, the resident is supposed to be given the opportunity to choose between voluntary permanent relocation or voluntary temporary relocation (regardless of how long the temporary relocation might last). Under the URA, the PHA will pay all increased out of pocket expenses incurred by the resident household during their time of temporary relocation. After 12 months, the resident receives additional rights under the URA, because, once a person has been temporarily relocated for longer than 12 months, they are considered a displaced person under the URA.

Question 18: If a tenant has been relocated for longer than 12 months and the tenant chooses to instead be permanently relocated, does this mean the tenant gives up their right to return?

Answer: Yes. Whenever a tenant chooses permanent relocation, the tenant relinquishes their right to voluntarily return to the property. However, note that this doesn't preclude the tenant from reapplying to live at the converted RAD property at some future point in time; it just means the tenant no longer has a guaranteed right to return to that property.

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