

# PRESERVATION WORKING GROUP

April 23, 2012

Via Regulations.gov

Re: Docket No. FR-5630-N-01, "Rental Assistance Demonstration—Partial Implementation and Request for Comments"— published at 77 FR 14029 (3/8/12)

To Whom It May Concern:

On behalf of the Preservation Working Group, we greatly appreciate the opportunity to comment on PIH-2012-18 Notice, the Rental Assistance Demonstration Implementation. The Preservation Working Group (PWG) is made up of housing owners, developers, tenant associations and state and local housing agencies dedicated to the preservation of multifamily housing for low-income families. We fully support the intended goals of the Demonstration and our comments are aimed at Section II and III of the Notice.

PWG has worked closely with both Congress and HUD to craft policies to ensure that properties with expiring use restrictions or rental assistance contracts remain a viable housing option for low-income tenants. PWG provided HUD comments earlier this year providing suggestions for the implementation of the Demonstration as it relates to the conversion of Tenant Protection Vouchers (TPVs) to Project-Based Vouchers (PBVs) in order to preserve Rent Supplement, Rental Assistance Payment and Section 8 Moderate Rehab properties. In response to the specific policies proposed in HUD Notice PIH 2012-18, the comments below focus on ensuring that the maximum numbers of units are preserved while still serving tenants' and communities' interests.

**1) All properties that convert to Project-Based Voucher assistance under any section of the Notice should be able to project-base 100% of all existing and eligible units.**

Although the fundamental purpose of RAD is to preserve affordable housing units, the Notice places a presumptive 50% cap on the number of units in a family property that can be assisted by project-based vouchers (PBVs) after conversion. While the legislative language allows HUD to waive or alter the PBV program's ordinary Income Mixing Requirement in 8(o)(13)(D), HUD's 50% cap frustrates the fundamental preservation goal of the RAD program, including the special authority added by Congress to preserve Mod Rehab, Rent Supp and RAP units, and will make it more difficult or infeasible for these properties to access private debt and equity essential for preservation, and contradicts other provisions in the Notice.

Other portions of the RAD Notice (Sections 1.6(2) and 2.3.4) mandate that a PHA and owners may only reduce the number of units assisted by a de minimis amount. Although public housing and many Mod Rehab, Rent Supp and RAP properties are fully or mostly assisted, the proposed 50% cap would lead to a substantial reduction in the number of project-based units preserved in these properties. Further, although the Housing and Economic Recovery Act of 2008 makes it easier to use LIHTC for Section 8 Moderate Rehab properties that are changing ownership as part of a preservation plan, LIHTC investors

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have concluded that only buildings that have 100% project-based Section 8 assistance qualify for the exemption to the IRS anti-churning rule. Imposing the 50% cap would ultimately make it more difficult to utilize Low-Income Housing Tax Credits in these properties for rehabilitation, thereby risking one of the main resources available for improving properties and neighborhoods.

As a result of the 50% cap policy laid out in the Notice, the distribution of the two types of assistance would be further complicated by requiring owners to identify not only which unit would receive project-based vouchers, but which *families* would be receiving project-based voucher assistance and tenant-based assistance.

In addition, HUD's proposed policy would exclude vacant units at the time of application to be included in a PBV contract. This undermines the intent of the language crafted by Congress to utilize the project-based voucher program as a preservation tool for Rent Supp and RAP properties. HUD should allow project-basing for any units in the development that were assisted before the conversion.

The 50% cap would lead to harmful results for tenants, owners and local communities where dedicated units of affordable rental housing are scarce. HUD should allow 100% assistance to properties that have owner and tenant support to convert to PBVs under this Notice.

**2) HUD should allow a Section-8 Moderate Rehab owner wishing to convert under this Notice to work with a PHA that is willing and able to assist with the conversion.**

Sections 2.3.1(A) and 2.4.1 require owners applying to convert Moderate Rehab projects to PBVs to secure the consent of the PHA currently administering the Moderate Rehab HAP contract. This apparently assumes that all PHAs currently administering Moderate Rehab HAP contracts also operate PBV programs and have capacity to support the mobility component of the PBV program. Because this assumption is not universally true, Mod Rehab projects located in the jurisdictions of PHAs without PBV programs, or that do not wish to make their program available to a particular property, are effectively excluded from participating in RAD.

HUD's Notice elsewhere recognizes and appropriately addresses this problem. For converting Rent Supp and RAP properties, Section 3.6.2 directs the HUD PH Field Office Director to determine the appropriate PHA to administer the PBVs according to established criteria which include jurisdiction and PHA administrative capacity. If the local PHA declines to participate in the conversion, the HUD PH Field Office Director is directed to make a reasonable effort to find a PHA willing to enter into a PBV contract with the owner. Similarly, PIH Notice 2012-19 allows the HUD Field Office to take steps to identify a PHA that will agree to administer the PBV contract in cases where the local PHA declines to participate.

A consistent HUD policy would include a similar requirement under Section II of the Notice should the local PHA decline to participate in the conversion.

**3) HUD should modify the tenant notification requirements in order to better inform all tenants of affected properties.**

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Section 3.6.1(B) lays out the Resident Notification and Comment requirements for owners of Rent Supp and RAP properties that are applying for conversion. The Notice would require owners to notify, by letter, only those households that might be eligible to receive a project-based voucher. However, because the Notice also properly mandates that an owner post the letter in three prominent locations at the site, this may cause confusion to residents whose units are not eligible for conversion. HUD should change the Notice to require owners to provide all tenants of a building the information and the opportunity to comment on the proposed change that may affect future affordability at their building. In addition, HUD should change the Notice so that the owner would provide notice to any resident organization that meets HUD standards under 24 CFR Part 245.

**4) Both Rent Supp and RAP units receiving vouchers due to an eligibility event under Section 8(t) should also be eligible for conversion to PBVs**

Section III of the Notice states that only the units that are assisted under the rental assistance contract are eligible for conversion from tenant protection vouchers to PBVs. The Notice provides an exception for “preservation-eligible” RAP properties, where prepayment of the underlying mortgage would result in an eligibility event under Section 8(t), qualifying all income-eligible residents in the property for Enhanced Vouchers. In such cases, the owner may count all units occupied by income-eligible households in the count of units proposed for the PBV conversion.

However, there are many Rent Supp properties (with non-FHA insured mortgages) that are similarly “preservation-eligible,” i.e., where prepayment would result in an eligibility even under Section 8(t). As a matter of parity, HUD should clarify the Notice to ensure that such Rent Supp properties qualify for the same exception when taking into account the number of units eligible for conversion under Section III of the Notice.

We are generally supportive of the goals of the Rental Housing Demonstration and appreciate the opportunity to comment on the implementation of this housing preservation initiative. We look forward to the final Notice.

Sincerely,

Hilary Swab  
On behalf of the Preservation Working Group