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

Re: Docket No. FR 5630-N-08: "Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component — Public Housing Conversions: Solicitation of Comment"

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the solicitation of comment for Notice PIH 2016-17, "Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements Applicable to RAD First Component — Public Housing Conversions" issued on November 10, 2016.

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing the rights of low-income tenants and homeowners; and increasing housing opportunities for protected classes. Our organization provides technical assistance and policy support on a range of housing issues to legal services attorneys and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,000 community-level housing advocates and tenant leaders, many of whom practice in jurisdictions that have converted properties to RAD, are in the processing of converting properties to RAD, or wish to convert properties to RAD. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. Meaningful tenant involvement is fundamental to all affordable and public housing decisions, and the following comments draw upon NHLP and HJN's extensive experience working for decades with advocates, residents, and public housing authorities (PHAs).

RAD allows public housing, Mod Rehab, Rent Supp, and RAP properties the opportunity to enter into long-term Section 8 contracts in order facilitate the financing of necessary

improvements. Participating PHAs and property owners are required to meet certain fair housing, civil rights, and relocation requirements before completing the RAD conversion. These fair housing and relocation requirements draw upon many other existing legal authorities that are also applicable outside of the RAD context. These legal authorities are applicable throughout the RAD conversion, from the initial planning discussion to after the RAD closing.

Ensuring that housing authorities and owners have met the important existing fair housing, civil rights, and relocation requirements are a critical part of ensuring the accessibility of housing for all, long-term affordability, and tenant protections that are required by the RAD program and other legal authorities.

We would like to commend HUD on the release and thoughtfulness of this guidance. There are many positive improvements that result from this guidance, especially related to relocation requirements. There are also several areas where we hope HUD will clarify and improve upon. Our comments described below seek to ensure that the RAD fair housing, civil rights, and relocation requirements include the strongest long-term affordability protections, are used as key tools for tenant education and participation, and are publicly accessible for enforcement and transparency purposes.

### ***I. Fair Housing and Civil Rights***

On page 23, HUD states that “[t]he site selection information should be provided to HUD no later than ninety (90) days following the issuance of the CHAP or, if the CHAP has already been issued as of the publication of this Notice, within ninety (90) days following publication of this Notice.” HUD should further clarify what exact information is included in “site selection information” that HUD is requesting and a description of why those sites were selected.

Additionally, in the event of a change in plans for the converting project that would require a front-end review of the site selection standards and a potential new site, tenants should be immediately notified of that change and be given the option to change their selection for temporary or permanent relocation assistance, object to the changed conversion plans, and provide an opportunity for additional resident comments (beyond the additional meeting required by Notice PIH 2012-32, REV-2).

On page 32, HUD should further specify and refine its criteria when it will consider there to be “high private and public investment in retail, commercial, or housing development that has occurred or will imminently occur in the area” such that HUD will allow there to be new construction in areas of minority concentration pursuant to the second stated exception (when a site is located in a “revitalizing area”).

On page 33, HUD should further define “accessibility” and how it will assess the accessibility of the proposed site for persons who experience disabilities and the ability of the RAD conversion to remediate accessibility concerns.

On page 36, HUD should include that the front-end civil rights review for conversions of assistance in which the construction schedule indicates that relocation is likely to exceed 12 months will also focus on whether the relocation will have a discriminatory *effect* on members of protected classes. This would help to clarify and align this section with the Fair Housing Act and the other front-end civil rights reviews for RAD transactions involving reductions in the total number of units, changes in bedroom distribution, occupancy type, etc.

On page 38, HUD should further clarify what action(s) HUD will take if the project owner markets or leases any unit not occupied by a household exercising its right to remain in or return to the RAD-converted project prior to approval of the Affirmative Fair Housing Marketing Plan. This potential action is especially important given that HUD approval of the Affirmative Fair Housing Marketing Plan is not a condition to closing of the RAD conversion. We remain concerned about HUD's ongoing oversight and the enforceability of requirements after the RAD closing date.

We look forward to providing specific comments and feedback upon the release of the newly revised FHEO RAD Checklist.

## ***II. Relocation***

On page 39, and in Appendix II, HUD identifies many important recommended elements of a relocation plan. Because of the importance of the relocation plan, as reinforced by HUD's recent requirement that PHAs develop written relocation plans for permanent relocation or temporary relocation anticipated to last longer than one year, we strongly urge HUD to *require* these relocation plan elements. It is critical for these relocation plans to comprehensively evaluate and plan in order to minimize the adverse impact of relocation on residents, and we remain concerned about the variety of terms and topics discussed (or not discussed) in RAD relocation plans nationwide.

On page 40, beyond completing a resident survey, HUD should also add that PHAs should seek and implement resident input into the drafting of the relocation plan. This will help to ensure tenant understanding and participation in a relocation process and plan that will drastically impact their day-to-day lives. Additionally, PHAs should be required to provide tenants with the name and contact information of the appropriate PHA staff and/or property owner whom they can contact with questions and concerns during the relocation period.

On page 41, HUD states that “[i]f proposed plans for a Converting Project would preclude a resident from returning to the Covered Project, the resident must be given an opportunity to comment and/or object to such plans.” We strongly encourage HUD to require PHAs to instead obtain the *explicit approval* of tenants who would be precluded from returning, instead of just offering them the opportunity to object. This change would further ensure that affected tenants fully understand their rights, the impact of the RAD conversion, and are able to exercise their statutory right to return to the property if they so wish.

On page 42, HUD should further define how it will determine if the PHA has “employ[ed] any tactics to pressure residents into relinquishing their right to return or accepting alternative housing options.” We strongly support this prohibition, but believe that further clarity is needed to support tenants’ rights and prevent undue influence.

On pages 48 and 50, HUD should also require the RAD Information Notice and RAD Notice of Relocation to identify the dates and location of tenant meetings and who at the PHA and/or new property owner staff tenant can call with questions or concerns.

On page 52 and 53, the URA Notice of Relocation Eligibility and Notification of Return to the Covered Project should also contain the contact information of the person with primary responsibility for managing the resident’s relocation and responding to tenant questions and concerns. The Notification of Return to the Covered Project should also allow for the PHA or project owner to pay directly for all reasonable out-of-pocket expenses incurred in connection with the return relocation, in addition to reimbursements.

On page 53, HUD should also require the Notification of Return to the Covered Project to include information about the reasonable accommodations that have been implemented (or will be implemented prior to) the resident’s return to the RAD-converted property.

On page 53, HUD should clarify *when* the PHA is required to conduct a personal interview with each displaced resident household to determine the relocation needs and preferences of each resident to be displaced.

On page 54, HUD allows PHAs and owners to initiate relocation of tenants once the RAD Conversion Commitment (RCC) is issued. Because the RCC issuance date is often 90 days before conversion, we are very concerned about tenants being relocated before HUD has confirmed that the PHA/ owner has met all of the closing requirements, closed on construction financing, and has completed all closing due diligence. Allowing PHAs and project owners to move tenants before they have met all of HUD’s closing requirements detailed in the RCC effectively limits the strength and usefulness of the RCC and closing requirements. Even if tenants are provided with the required 30- or 90-day notice before such a move, allowing tenants to be moved at any point before the RAD closing date significantly risks losing tenants and will create many negative and challenging consequences for tenants, especially if the financing or other necessary requirements are not finalized or completed. HUD, the PHA, and the owner, cannot guarantee the completion of the closing requirements and financing details until the RAD closing. Therefore, the most appropriate date to begin moving tenants is the RAD closing date.

On page 54, we urge HUD to *require* the PHA or Project Owner to provide written records and documentation via resident logs prior to the issuance of the RAD Conversion Commitment, during the temporary relocation, and at any other appropriate time. Doing so would further ensure that the PHA and Project Owner have provided all of the required notices in a timely manner and the types of resources and information are being provided to tenants.

On page 55, HUD should also:

- require the PHA and Project Owner to include in the resident log copies of all written materials presented to and/or provided to tenants. This will assist HUD in evaluating the substantive quality and type of information being provided to tenants throughout the RAD conversion, including whether it is necessary for PHAs and Project Owners to provide additional educational materials prior to the RAD closing;
- further clarify what the “moved out” designation means and require PHAs and Project Owners to describe *why* that household has moved out prior to RAD conversion; and
- require the household’s relevant unit address, unit size, and household size at the time of *all* resident meetings, not just the first resident meeting.

On page 54 and 56, HUD should clarify when PHAs and Project Owners will consider residents to be “similarly situated” so that they may be given the same offer of alternative housing options. HUD should clarify that this language refers to how the RAD conversion will impact residents, and thus are similarly situated *because of the RAD conversion*, not similarly situated in comparison to Section 8 voucher holders generally. Such a clarification would recognize the unique situation that RAD-converting residents are in in order to support their relocation rights and assistance.

On page 54 and 58, HUD states that any monetary element associated with the alternative housing option shall be completely distinct from and in addition to any required RAD, URA, or Section 104(d) relocation payments, and no funds administered by HUD may be used to pay for any monetary elements associated with the alternative housing option other than Required Relocation Payments. HUD then states that any money element associated with the alternative housing option other than required relocation payments must be the same amount offered to all similarly situated persons. HUD should clarify that housing authorities can continue to offer payments towards security deposits for tenants who accept Housing Choice Vouchers for temporary relocation. This assistance is critical for many tenants who are not otherwise able to pay these security deposits and reflects the fact that it is fairly common for private owners to insist on security deposits for Section 8 tenancies that are reflective of the full contract rent, not just the tenant share.

On page 57, in footnote 93, HUD should again reiterate that the PHA and Project Owner cannot employ any tactics to pressure residents into relinquishing their right to return or accepting alternative housing options.

On page 63, HUD should clarify that if a resident has signed an out-of-court or in-court agreement in an eviction (i.e. as the resolution at the informal settlement stage of a grievance or as part of a court agreement) which would permit the tenant to remain in occupancy as long as there is compliance, and there has been no final adverse court action demonstrating a breach, this will *not* be regarded as an eviction that would lead to a denial of assistance or a termination of the resident’s RAD rights. Additionally, HUD should clarify that, as is described in 24 C.F.R. Part 982, if the resident has a remaining balance owed to the PHA at the time of RAD conversion, this balance can be carried over after the RAD conversion if the participant enters into an appropriate repayment agreement as a condition of participation.

### *III. Other Comments*

Although this fair housing, civil rights, and relocation guidance is limited to RAD Component 1 conversions, we strongly recommend that HUD expand the applicability of this notice to include RAD Component 2 conversions (or, in the alternative, issue separate, but similar, fair housing, civil rights, and relocation guidance for Component 2 conversions). Many of the issues and challenges that this notice seeks to clarify and improve protections for tenants are encountered in Component 2 conversions as well. Expanding this guidance, or issuing separate guidance, would greatly improve the transparency and proactive enforceability of the applicable fair housing, civil rights, and relocation legal authorities. We also hope that RAD Component 2 guidance would provide similar increased protections and requirements for tenants who are temporarily relocated as part of the conversion and subsequent rehabilitation.

HUD should also clarify what types of action it will take when a housing authority or owner fails to comply with the requirements of this notice when there is not separate liability under the applicable legal authority, both before the RAD closing as well as after the RAD closing. We remain concerned about HUD's ongoing oversight and the enforceability of requirements after the RAD closing date.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Jessica Cassella ([jcassella@nhlp.org](mailto:jcassella@nhlp.org)) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,

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*On behalf of the Housing Justice Network:*

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