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MEMORANDUM

TO: Affordable Housing and Tenant Advocates
FROM: National Housing Law Project¹
RE: Rental Assistance Demonstration – Long-Term Affordability Restrictions
DATE: July 21, 2015

The purpose of this memorandum is to provide a review and analysis of the long-term affordability provisions of the Rental Assistance Demonstration (RAD) program. Pursuant to RAD, 185,000 units of federally-subsidized public housing are being leveraged in the private market. Appropriate monitoring and regulation of the new ownership entities will be necessary to help ensure the long-term affordability of the converted former public housing units.

Summary

RAD involves the permanent conversion of public housing units to either Project Based Vouchers (PBV) or Project Based Rental Assistance (PBRA). There are five key documents² that contain long-term renewable use and affordability protections for both the project and tenants in converted units:

- Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552 (2011) (RAD Statute)
- Notice PIH-2012-32 (HA), REV-2 (RAD Notice)
- RAD Use Agreement, HUD Form 52625 (Use Agreement)
- RAD Rider to the Section 8 Project-based Voucher Housing Assistance Contract for New Construction or Rehabilitated Housing, HUD Form 52621 (PBV HAP Contract)

¹ Thanks are due to Daniel Felix, a former Columbia Law Fellow at NHLP, for his work on this memo. Questions or comments may be directed to James Grow, Deputy Director, or Stephen Knight, Supervising Attorney.

² These documents and other contracts and closing documents can be found at <http://www.radresource.net/closing.cfm>. Other important RAD documents include: Lender Rider to PBRA, Lender Rider to PBV, Lender Rider to Use Agreement, Rider to Use Agreement Relating to Foreclosure, PBRA HAP Contract Rider for LIHTC Transactions, and PBV HAP Contract Rider for LIHTC Transactions.

- Housing Assistance Payments Contract Parts I and II, Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Project-Based Section 8, HUD Forms 52620 and 52618 (PBRA HAP Contract)

As detailed below, the RAD statute requires long-term renewable use and affordability restrictions for assisted units, and other provisions operate to ensure the long-term affordability of converted units. The first is the mandatory contract renewal clause requiring HUD to offer and the owner to renew the PBV or PBRA contracts. Further protections result from social ownership requirements – the development must be owned by a public entity or a nonprofit, or by a for-profit entity only if the housing authority retains a strong interest in the property. Of course, these substantial protections are not absolute guarantees; affordability could be compromised by Congress’s failure to provide adequate Section 8 funding or by termination of HAP contracts by HUD or the contract administrator. Additional risks include unremedied breaches of critical contracts, policies or laws, or unforeseen circumstances that motivate HUD to use legally-conferred discretion to relax or release certain requirements or use agreements.

To date, HUD has provided much thoughtful implementing guidance for RAD.³ However, questions still remain regarding long-term affordability and tenant protections under worst case scenarios, including how HUD will exercise its discretion.

Ownership or Control of the Converted Units

Under RAD, with one significant exception, initial ownership or control of the converted units must be by a public or nonprofit entity.⁴ Public or nonprofit ownership is likely to be more committed to long-term affordability of the housing and can more readily be held publicly accountable.⁵ Ownership by a for-profit entity is permitted to facilitate the use of tax credits, but only if the PHA preserves an interest in the property as approved by HUD.⁶ This interest should usually include either a long-term ground lease on the land

³ Department of Housing and Urban Development (HUD), Rental Assistance Demonstration – Final Implementation, Revision 2, Notice PIH-2012-32 (HA), REV-2 (June 15, 2015), Sec. 1.10 (hereinafter “RAD Notice”).

⁴ Pub. L. No. 112-55, div. C, tit. II, 125 Stat. 552, 675 (2011) (“RAD Statute”) (“the Secretary shall require ownership or control of assisted units by a public or nonprofit entity except as determined by the Secretary to be necessary....”). The RAD statute authorizes the Secretary to “establish the requirements for converted assistance under the demonstration through contracts, use agreements, regulations, or other means...” *Id.*

⁵ However, note that public accountability could be compromised by a PHA’s disposition of the property to a nonprofit entity, or a nonprofit-controlled tax credit entity, because nonprofit corporations are rarely subject to the public disclosure and open meetings laws that govern public agencies, and the accountability of their directors may be inferior to that of a PHA board.

⁶ *Id.* (“the Secretary . . . may allow ownership to be transferred to a for-profit entity to facilitate the use of tax credits only if the public housing agency preserves its interest in the property in a manner approved by the Secretary....”). HUD interprets this to permit ownership by a for-profit at initial conversion and thereafter. For-profit ownership is not limited to events following foreclosure, bankruptcy, or termination and transfer of assistance for material violations or substantial default. See RAD Notice, *supra* note 3, Sec. 1.4.A.11.

and/or a position as managing general partner in any tax credit entity.⁷ For example, through a ground lease a PHA may require that the underlying land be restricted to use as affordable housing for low-income persons, so that any improvements on the site would be restricted accordingly.

The primary mechanisms for implementing the RAD statute and HUD RAD Notice are the affordability provisions contained in the Use Agreement and HAP contracts.

Use Agreement Superior to Other Liens

The Use Agreement between the owner (often the PHA or an affiliate) and HUD generally requires use of the property for the benefit of lower-income families by restricting the use of the HAP-assisted units, as well as by restricting the use of the property if the HAP is terminated for default.⁸ The Use Agreement is expressly enforceable against current and future owners by HUD, tenants, and applicants for occupancy within the property.⁹

Key to the Use Agreement's long-term enforcement is its required superior position as the first lien on the property. The Notice requires recordation of the Use Agreement superior to other liens,¹⁰ so it survives and is binding on all current and future owners, unless released by HUD.¹¹ Because the Use Agreement is superior to other liens,¹² future lenders and investors are on notice of its requirements, including its affordability provisions. The Use Agreement obligates future owners to comply with its affordability requirements, even in the event of HAP contract termination or default, foreclosure, bankruptcy, or transfer of control.

The RAD Use Agreement shares the same term as the 15 or 20-year initial term of the PBV or PBRA HAP contract, "unless otherwise approved by HUD."¹³ The Use Agreement automatically renews upon each extension of the HAP contract and remains in effect during any renewal term.¹⁴ In the case of abatement or termination of the HAP contract, the Use Agreement will remain in effect "for the term the HAP contract would

⁷ RAD Notice, *supra* note 3, 1.4.A.11. HUD's latest revision of this guidance includes other criteria that could, if approved by HUD, also preserve the PHA's interest in the property, including being given control or over significant aspects of operations. *Id.*

⁸ Upon HAP contract termination for breach or non-compliance, the Use Agreement mandates only that "rents must not exceed 30% of 80% of median income..." HUD, RAD Use Agreement, HUD Form 52625, ¶ 3, available at <http://portal.hud.gov/hudportal/HUD?src=/RAD/application-materials>.

⁹ *Id.*, ¶ 9.

¹⁰ RAD Notice, *supra* note 3, Secs. 1.6(B)(4)(a) & 1.7(A)(4)(a); Use Agreement, *supra* note 8, at 1.

¹¹ Use Agreement, *supra* note 8, ¶ 7. Currently, there is no guidance regarding factors that HUD will use to release the owner from the obligations.

¹² The HUD Office of the General Counsel may allow exceptions to the requirement that the Use Agreement be recorded in first position. See HUD, Overview of the RAD Closing Process for Public Housing Authorities 16 (Dec. 19, 2013), available at

<http://www.radresource.net/output.cfm?id=closingppt>.

¹³ Use Agreement, *supra* note 8, at 1 and ¶ 2.

¹⁴ *Id.*

have run, absent the abatement or termination.”¹⁵ As a result, the Use Agreement extends commensurately with the HAP, absent a HUD termination.

However, where the HAP contract is terminated by HUD or an administrator for breach, the Use Agreement requires only that new tenants have incomes at or below 80 percent of AMI at admission and rents must not exceed 30% of 80% of AMI for an appropriate sized unit.¹⁶ This weak restriction contrasts sharply with the 30% of actual tenant income standard applicable to public housing and Section 8, is virtually meaningless because rents do not generally reach that level in most rental housing markets, and is waivable.¹⁷

Thus, the Use Agreement depends primarily upon the existence of the HAP contract for its vitality.

Mandatory HAP Contract Renewal

Similar to the Use Agreement, the HAP contract enables HUD to regulate an owner through contractual obligations. Unlike the Use Agreement, however, these are not encumbrances to the title. A HAP contract obligates a housing agency to make housing assistance payments to an owner for a specified number of units leased to eligible low-income tenants. As the vehicle for providing rental assistance, the HAP contracts play a central role in ensuring affordability for the property and its tenants.

The key distinguishing feature of RAD HAP contracts is that they are subject to mandatory contract renewal. This is in contrast to ordinary Section 8 HAP contracts, where the owner unilaterally decides whether to renew the contract at expiration. To address the risk that a HAP nonrenewal poses to continued affordability, the RAD statute,¹⁸ RAD Notice,¹⁹ and the PBRA²⁰ and PBV²¹ HAP contracts all require HUD to offer and the owner to accept contract renewal upon the expiration of the initial term and each renewal term.²² There is no stated date (e.g., 40 years) at which this renewal

¹⁵ *Id.* at 1.

¹⁶ *Id.*, ¶ 3.

¹⁷ *Id.* (“in the event Owner is able to demonstrate to HUD’s satisfaction that despite Owner’s good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants ... , or (2) ... otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Owner and HUD.”).

¹⁸ RAD Statute, *supra* note 4, at 675 (“Upon expiration of the initial contract and each renewal contract, the Secretary shall offer and the owner of the property shall accept renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal.”).

¹⁹ RAD Notice, *supra* note 3, Secs. 1.6(B)(2) & 1.7(A)(2).

²⁰ HUD, Housing Assistance Payments Contract Part I, Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Project-Based Section 8, Sec. 1.5 (“PBRA HAP Contract”).

²¹ HUD, Rental Assistance Demonstration (RAD) Rider to the Section 8 Project-based Voucher (PBV) Housing Assistance Payments (HAP) Contract for New Construction or Rehabilitated Housing (Public Housing Conversions; First Component), Sec. 3(f) (revising Sec. 1.e.3. of the HAP Contract).

²² To facilitate long-term or repeated renewals for PBVs, HUD has waived section 8(o)(13)(G) of the Housing Act, which limits contract renewal terms to 15 years, and 24 CFR § 983.205(b), which provides

obligation ends. This obligation furthers the affordability of the converted units by ensuring continued provision of rental assistance, absent a HUD termination, and thereby fulfillment of the purposes of the RAD program and the RAD Use Agreement.

The initial PBV HAP contract term is 15 years,²³ which may be increased up to 20 years,²⁴ and the term is 20 years for PBRA.²⁵

Default, Termination, and Foreclosure – Transfer of Ownership, Assistance and Restrictions

Since RAD requires mandatory contract renewal to protect affordability during normal operations, the primary threat to affordability (aside from a federal funding default) is a termination of the HAP contract by HUD or the contract administrator for owner breach. Although Congress attempted to address this risk by authorizing public control in the event of HAP contract default, termination or transfer of assistance,²⁶ those protections could nevertheless be thwarted by HUD's determination that they are unnecessary or by a HAP contract termination, as explained below.

Ownership Transfers

If HUD determines it necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material or substantial default, the RAD statute requires transfer of ownership to (in the following order): (1) a capable public entity, or (2) a capable non-public entity.²⁷ Transfer to a for-profit entity for use of tax credits is permissible if the PHA preserves its interest in the property, as approved by HUD.²⁸ Any such designated capable entity is subject to the Use Agreement, which prohibits any further transfer or encumbrance of the property without HUD release of covenants.²⁹

In addition to the statutory provisions, HAP contract terms also restrict the ability of owners to transfer either the HAP contract or the underlying property.³⁰ Under these

for an initial 10-year term. RAD Notice, *supra* note 3, Sec. 1.6(B)2. For PBRA's, section 524 of MAHRAA and 24 CFR Part 402 – requiring owner request for renewal – are similarly inapplicable.

²³ RAD Notice, *supra* note 3, Sec. 1.6(B)(1); HUD, RAD Rider to the Section 8 Project Based Voucher Housing Assistance Payments Contract for New Construction or Rehabilitated Housing, Sec. 3(e).

²⁴ The increase from the initial 15-year term to 20-year term is dependent upon request of the owner and approval of the Contract Administrator. *Id.*

²⁵ RAD Notice, *supra* note 3, Sec. 1.7(A)(1); PBRA HAP Contract, *supra* note 20, Sec. 1.3(a) (“The Contract...shall run for an initial term of...20...years.”). The Notice states that HUD is waiving section 8(d)(2)(A) of the U.S. Housing Act, which limits contracts to 15 years, and notes that 24 C.F.R. § 880.502 does not apply.

²⁶ S. Rep. No. 112-83, 109 (2011) (“The Committee has included language to establish procedures that will ensure that public housing remains a public asset in the that [sic] event that the project experiences problems, such as default or foreclosure.”).

²⁷ See statutory language set forth in footnote 4; RAD Notice, *supra* note 3, Sec. 1.4.A.11. Apparently, per the statutory text, this requirement that the PHA preserve its interest applies to all LIHTC transactions, including those transfers to “capable [non-public] entities” in the specified distress situations.

²⁸ *Id.*

²⁹ Use Agreement, *supra* note 8, ¶ 7.

³⁰ PBRA transfer includes transfer by owner, in whole or in part; transfer by a party having a substantial interest in the owner, significant change in the ownership of the interest in the owner; and refinancing or restructuring of permanent debt by the owner. HUD, Housing Assistance Payments Contract Part II,

provisions, the owner agrees not to transfer the contract or the project without written approval. The PBRA HAP contract requires approval from HUD,³¹ whereas the PBV HAP contract requires PHA approval “in accordance with HUD requirements.”³² Transfer also includes foreclosure and transfer in bankruptcy.³³ In addition, for PBRA, the HAP contract continues in existence in the event of any disposition of the project and foreclosure, unless HUD approves otherwise.³⁴

Transfers of member interests in ownership entities utilizing Low Income Housing Tax Credits are subject to fewer restrictions, since the title to the property or the RAD requirements are unaffected. Transfer of investor members/partners is not considered a default under the HAP contract or Use Agreement if HUD receives both prior written notice and copies of documents regarding transfer, including “any and all amendments to [o]wner’s organization documents.”³⁵ Apparently, there is no HUD approval requirement for transfers of these interests.

Contract Default

In the event of a default under the HAP contract, HUD may transfer the PBV or PBRA contract and subsidies to another entity,³⁶ along with the Use Agreement, for use at another property. Any new owner must assume the obligations of the Use Agreement and the HAP contract, for itself and successors, “until released by HUD.”³⁷ As discussed below, however, apparently HUD has no affirmative duty upon default to transfer the HAP contract to a new owner or property.

Upon owner default, HAP contract termination is another possible remedy specified by the contract. The entity with the authority to terminate differs between the PBRA and PBV program. Under PBRA, HUD (or its contract administrator) may terminate the HAP

Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Project-Based Section 8, Form 52618, Sec. 2.20(d)(1)(i)-(iv). PBV transfer includes any sale or assignment or transfer of ownership, in any form, of the HAP contract or the property; transfer of any right to receive housing assistance payments; creation of a security interest in the HAP contract or property; foreclosure; and bankruptcy. HUD, Section 8 Project-Based Voucher Program, PBV Housing Assistance Payments Contract Part II, New Construction or Rehabilitation, Form 52530A (as amended by HUD form 52621), Sec. 21(a)(2).

³¹ Form 52618, *supra* note 29, Sec. 2.20(a).

³² Form 52530A, *supra* note 29, Sec. 21.

³³ *Id.*, Secs. 21(a)(2)(D) & 21(a)(2)(E).

³⁴ See Use Agreement, *supra* note 8, at 1; Form 52618, *supra* note 29, Sec. 2.20(f)(2). The PBV HAP contract has no similarly explicit language concerning its survival during foreclosure, but requires PHA consent of any transfer of the property, including by foreclosure. Form 52530A, *supra* note 29, Sec. 21.

³⁵ HUD, LIHTC Rider to Housing Assistance Payments Contract (for PBV RAD conversions from Public Housing), ¶ 3; HUD, LIHTC Rider to Housing Assistance Payments Contract (for PBRA RAD conversions from Public Housing), ¶ 3.

³⁶ Use Agreement, *supra* note 8, ¶ 7. HUD may also approve a transfer of the HAP contract and Use Agreement after 10 years from the initial contract (unless transfer is needed sooner as a result of a natural disaster) if the project is economically non-viable, physically obsolete, severely distressed or uninhabitable due to unforeseen circumstances or if the transfer is in the best interest of the project's residents. *Id.* Note that – for what should be truly unusual circumstances – a transfer at the time of initial RAD conversion must also be included as a significant amendment to the PHA's Annual Plan.

³⁷ *Id.*

contract upon default, after following prescribed steps.³⁸ Upon default under the PBV HAP contract, the PHA, as contract administrator, may terminate the HAP contract on any property, including one that is owned by an entity in which it retains an interest.³⁹ Although the PBV program allows a PHA to comprise both signatories to a HAP contract for PHA-owned units,⁴⁰ RAD PBV guidance prohibits the same legal entity from serving as both the contract administrator and the owner, but a PHA may still have an interest in the ownership.⁴¹ Typically, this interest takes the form of a PHA-controlled affiliated nonprofit, a general partner in a partnership or a member of a limited liability company. The contract administrator is usually the same PHA that is converting the property to PBV assistance,⁴² unless the PHA does not operate a voucher program.

Foreclosure and the HAP Contract

In the event of foreclosure under a mortgage secured by a RAD-converted property, HUD has established an arrangement that is apparently intended to ensure that ownership can be transferred to the lender or to another entity that is pre-approved by HUD as a Lender Temporary Custodian (LTC).⁴³ The LTC effectively acts as the new owner of the project for an interim period of: (1) 90 days, or (2) up to 120 days with HUD approval, or (3) longer “as HUD deems reasonably necessary” to find a permanent replacement owner (PRO).⁴⁴ The LTC will be considered the owner of the project pursuant to the HAP contract, permitting continued assistance, unless that status is revoked by HUD.

During this interim period, the LTC is to identify a PRO acceptable to HUD to assume the HAP contract, RAD Use Agreement and other RAD requirements. HUD’s consent is required in order for the HAP assistance to flow to the PRO. Despite these protections to ensure long-term affordability, HUD is not required to continue HAP assistance to the PRO. If the Section 8 contract is terminated, only the default affordability protections of the RAD Use Agreement control. Tenants and applicants are specifically precluded from enforcing the HAP contract.⁴⁵

Resulting Risks to Long-Term Affordability

Despite RAD’s statutory intent to maintain affordability of converted properties, there remain potentially significant risks to long-term affordability. One risk is the insufficiency of appropriated funds, which apparently relieves HUD of the obligation to provide

³⁸ *Id.*

³⁹ *Id.*, Sec. 3.7. HUD also has authority to take enforcement action on a RAD PBV contract where the PHA administrator has failed to do so. *Id.*

⁴⁰ 24 C.F.R. § 983.59 (2015) (in such cases, certain program services must be performed by a HUD-approved independent entity).

⁴¹ HUD, Rental Assistance Demonstration (RAD), Quick Reference Guide for Public Housing Projects Converting to Project-Based Voucher (PBV) Assistance (Oct. 2014), Sec. 2.8.

⁴² *Id.*, Sec. 3.1.1.

⁴³ HUD, Lender Rider to Housing Assistance Payments Contract (for PBV RAD conversions from Public Housing) (“PBV Lender Rider”), Sec. 3; Lender Rider to Housing Assistance Payments Contract (for PBRA RAD conversions from Public Housing) (“PBRA Lender Rider”), Sec. 3.

⁴⁴ PBV Lender Rider, ¶ (3)(c); PBRA Lender Rider, ¶ 3(c).

⁴⁵ Form 52618, *supra* note 29, Sec. 2.22.

renewal funding increments for the contract term⁴⁶ and both parties from the mandatory renewal obligation.⁴⁷ Another primary risk is that, upon HAP contract termination, either by HUD or the contract administrator or as part of foreclosure, there is no *requirement* for continued assistance that keeps the property affordable. Nothing in the HAP contracts or Use Agreement explicitly prevents termination for owner breach⁴⁸ or prevents an involuntary transfer of the property without the HAP contract. Although HUD may exercise its discretion to provide continued rental assistance to new owners in such circumstances, it is not required to do so. Note that other laws may control HUD's actions in terminating certain project-based Section 8 contracts.⁴⁹

Where the HAP contract is terminated, as noted above, new owners or custodians (in the case of foreclosure) are subject only to the Use Agreement's default affordability requirements, which require only rents at 30% of 80% of AMI,⁵⁰ and even that could be released.

Tenant Rent Affordability Under RAD

For almost all tenants, rents under RAD should remain the same as public housing rents, because tenant rent contributions for PBV and PBRA are set under similar rules. As with public housing, the vast majority of tenants will pay 30% of adjusted income for rent, but some will pay a minimum rent, which could differ from the public housing level. Tenants paying flat rent in public housing, however, will likely see a rent increase.

Tenants may also experience a change in rent (either an increase or a decrease) as a result of a change in any applicable utility allowance for tenant-paid utilities, which is credited against their tenant contribution. Some tenant-metered properties will experience a change from the public housing allowance level to that used for PBV or PBRA properties. In some cases, a RAD property may also experience a meter conversion, from an owner-paid master-metered system (common in much public housing) to tenant-metering with utility allowances. This may increase effective tenant rent burdens for some tenants.

⁴⁶ HUD, Housing Assistance Payments Contract Part I, Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Project-Based Section 8, Form 52620, Sec. 1(b).

⁴⁷ *Id.*, Sec. 1.5.

⁴⁸ See, e.g., Form 52618, *supra* note 29, Sec. 2.21(b). Although the provisions recognizing that an executory contract survives foreclosure are helpful (*id.*, Sec. 2.20(f)), they specifically allow HUD to approve otherwise. In any event, tenants and applicants are specifically precluded from enforcing the HAP contract. *Id.*, Sec. 2.22.

⁴⁹ E.g., Pub.L. No. 113-235, div. L, tit. II, General Provisions, Sec. 216 (Dec. 16, 2014) (requiring HUD to maintain project-based Section 8 contracts at or during foreclosure process, and to provide tenant protections prior to abatement or termination on limited grounds), and Sec. 226 (requires HUD to pursue specified enforcement actions for project-based Section 8 (but not PBVs) with failing REAC scores).

⁵⁰ Use Agreement, *supra* note 8, Sec. 3 (new tenants must have incomes at or below 80% of AMI and rents are restricted at 30% of 80% of AMI; HUD also has sole discretion to reduce the percentage of restricted units due to a lack of low-income demand or financial viability); see also RAD Notice, *supra* note 3, Secs. 1.6(B)(4)(c) & 1.7(A)(4)(c).

According to the RAD Notice, certain tenant rent increases due to conversion must be phased in over a three to five year period to cushion any increased rent burden.⁵¹

Ongoing Issues and Questions

Below are issues and/or questions related to long-term affordability under RAD that advocates should consider:

- HUD or the contract administrator has the discretion to terminate the HAP contract for owner breach, and after termination, HUD may release owners from the Use Agreement. There are no guidelines prescribing this discretion.
- The rules are not clear on how tenants will be protected in the event of foreclosure, bankruptcy, transfer of assistance or substantial default. Can the HAP contract and subsidy be quickly transferred to another owner or to another building? If necessary, will current tenants receive tenant protection vouchers and relocation assistance? (The PBRA contract provisions and rules are more explicit and protective of tenants than PBV regarding the provision of replacement housing assistance.)
- Some of the second-revised RAD Notice's ownership and control criteria – such as being given control over significant aspects of daily operations – are different in kind from ground leases and partnership positions, and their scope is unclear.
- The absence of guidelines governing HUD's discretion to approve exceptions to the automatic renewal of Use Agreement terms, as HAP contracts are extended, raises risks to the long-term affordability of a development.

For further information or questions, please contact Stephen Knight at sknight@nhlp.org or Jim Grow at jgrow@nhlp.org.

⁵¹ The phase-in of a rent increase occurs if a tenant's monthly rent increases by more than the greater of \$25 or 10%. RAD Notice, *supra* note 3, Secs. 1.6(C)(4) & 1.7(B)(3). It is not clear whether tenant rent increases due to reductions in the utility allowance are covered by the phase-in requirements.