

RAD Resident Issues: A Basic Overview




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June 17, 2014

HOUSING JUSTICE



National Housing Law Project

What we will cover today

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- Overview of RAD Process for conversion of PH units to PBV or PBRA
 - RAD also covers conversion of legacy (orphan programs) to PBV, which will not be covered, today
- Focusing on resident rights under RAD
- Noting differences between resident rights for conversions to PBV as compared to PBRA
- Other RAD issues of concern to residents that may not may not be addressed in RAD
- Noting difference from current PBV and PBRA rules as well as a comparison with PH rules

Purpose of RAD

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- Address the fact that an estimated 10,000 units of public housing were being lost each year in part because they were obsolete
- There is a national back log of capital needs and deferred maintenance for public housing of \$ 27-30 billion.
 - Some PHAs have local data on the back log. E.g. SF deferred capital improvements is estimated to be \$270 million
- To establish a more stable funding platform for the properties and attract additional funding
- To preserve the property for the long-term

Background on RAD

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- Nationally between 2009 and 2011 several attempts were made to draft legislation for a program similar to RAD
 - Program had multiple names i.e., TRA, PETRA and RAD
 - Multiple HUD drafts and several by Congressman Keith Ellison, (D MN)
 - Secretary Donovan convened several meetings with stakeholders, including two meetings with residents and principal HUD staff, who also participated in several webinars
 - ✦ NHLP organized the resident meetings; HJN members also participated
- Residents raised many concerns, many of which were addressed in final legislation and program rules

Residents and others raised initial concerns, which RAD addressed

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- Resident rights
 - Continued occupancy thus no rescreening; no permanent displacement due to conversion
 - Relocation rights and right to return
 - Public housing “Lease and Grievance” rights
- Residents right to participation & consultation
- Residents right to organize, recognition & funding
- Choice-Mobility
- Jobs and self-sufficiency
- Long term affordability and public ownership
 - Rents set at affordable levels and based upon resident income
- Additional HUD funding to make the program work

Why is this information important?

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- Resident support is important to the success of RAD
 - BUT: Residents are leery of change
 - Residents know of the negative outcomes for some families due to HOPE VI or demolition and disposition activities
- Residents have rights which should not be ignored
- These rights ought to be included in local documents, such as PHA Plans, Administrative Plans, Resident leases, ground leases(?) and other documents(?)
 - Enforceability is an issue

Overview of RAD Process

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- Two components: PH & Mod Rehab; legacy (orphan)
- PH and Mod. Rehab.
 - 60,000 units (more?); until 2015; *voluntary*; no new \$
- Applications may be received up to 9/30/15
 - Initially competitive, now first-come first-serve & a waiting list
- PHA applies, HUD issues CHAP & sets Milestones
 - 30 days Lender Engagement; 60 days Amend PHA Plan & choice of PBV or PBRA; 90 days HA cert. of due diligence by lender; 150 days HA cert. applied for financing; 180 days financing plan; 210 days HUD issues RCC; 360 days closing; completion of rehab 12-18 months from closing
 - ✦ Dates may change with HUD approval and HUD may revoke

Application for RAD

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- Information, for example on
 - Choice to convert to PBV or PBRA;
 - De minimis reduction in units
 - Current capital needs
 - Current vacancy rate and bad debt rate at property
 - Projected relocation cost with an explanation
 - Whether LIHTC financing is anticipated
- Attachments: Board approval, financing letter, mixed financing affidavit, Choice-Mobility letter
- HUD accepts application and issues a CHAP, which may modify timelines and set other conditions?

What rules apply to RAD?

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- **Layers of legal authorities:**
 - RAD rules: such as PIH Notice 2013-32 REV; HUD RAD website and HUD FAQs
 - HUD forms and documents: HA Application; CHAP; Use Agreement
 - Federal statutes and regulations applicable to PVB, 24 CFR 983, and PBRA 24 CFR 880, as modified by RAD
 - Section 8 HAP PBRA contract as modified by RAD & PBV HAP contract and RAD rider and resident lease or lease addendum
 - PHA Administrative Plan PHA Plan & 5 Year and Annual Plans
 - Other: Fair Housing, Title VI (AFFH), § 504, LEP, VAWA, HUD Relocation guidance (URA); Section 3 and LIHTC (?)
 - RAD grants HUD broad waiver authority

Comparison of Resident Rights: PH and RAD PBV

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Public Housing

- Eligibility 80% of AMI
- Targeted 40% to 30% of AMI
- Rent = 30% of adj. income
- Grievance Proc'd for most actions/inactions by PHA
- Good cause eviction+
- Notice and Grievance
- Publically owned

RAD/Project-based Voucher

- Eligibility 50% of AMI
- Targeting 75% to 30% of AMI (of all V units)
- Rent = 30% of adj. income
- Grievance Proc'd for most actions by PHA and/or O
- Good cause eviction +
- Notice and Grievance
- Public, nonprofit, for profit
- Mobility (1 year)

Comparison of resident rights: PH and PBRA

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Public Housing

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- Notice and Grievance
- Publically owned

RAD/PBRA

- Eligibility 50% of AMI
- Targeted 40% to 30% of AMI (by property)
- Rent = 30% of adj. income
- Grievance Proc'd for most action by Owner
- Good cause eviction +
- Notice and Grievance
- Public, Nonprofit, for prof
- Mobility (2 years)

RAD: Rights for All Current Converting Residents

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- No rescreening for any purpose; current residents grandfathered for conditions that occurred prior to conversion
 - Includes no rescreening under one-strike rules
- No permanent displacement due conversion
 - LIHTC over-income issue (BUT: “right to remain”)
- RAD conversion “shall not be the basis for termination of assistance or eviction of any tenant family”
- If displaced, “right to return”
 - Issue of family members who are not on the lease?

RAD: Resident Rents

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- Rent includes a reasonable allowance for resident paid utilities
 - O uses PHA allowance? Adequate? Will rehab affect UA?
- Rent will continue to be based upon 30% of adjusted family income, 10% of gross or minimum rent
- 3 or 5 year phase in for rent increases due to conversion
 - ✦ If Greater of \$25 or 10% of the amount of increase
 - ✦ Phased in over 3 year (1/3 each year); 5 year (1/5 each year)
 - ✦ Rent may increase b/c flat rent; pro-rata rent households; other?
 - Rules must be in place at the time of conversion & not changed
 - Special rules for EID for converting PH residents

Rent issues for PBV and PBRA

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- Minimum rent: PH & PBV up to \$50; PBRA \$25
- Over-housed pay income-based rent after conversion
 - Could have been a PBV issue
- Annual and interim income recertification
 - By HA if PBV; By Owner if PBRA
 - If LIHTC owner also must determine income

Issue for PBV if LIHTC, Owner must also determine income; PBRA Owner will do both; Determine if there are PH residents in category for which rents will increase due to conversion

Grievance Rights: RAD PBV Residents

(RAD shall at minimum, maintain the same rights as Section 6 of USHA)

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- For any dispute regarding Owner action in accord with the lease or PHA action in accord with RAD PBV requirements that adversely affect residents rights, obligations, welfare, or status.
 - Includes e.g. challenges to rent, damage charges, denial of adding a member to resident family or evictions
 - Does not include PHA or Owner inaction
- Right to informal hearing as per 982.555
 - PHA (CA) 982.555 rules continue to apply; PHA (CA) performs for all reasons set forth in 982.555 and elsewhere
 - Owner performs for all other reasons
 - ✦ O must give notice to residents and provide opportunity for hearing prior to eviction

Grievance Rights: RAD PBV, con't

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- Not for class grievances or disputes between residents and not for policy resolution
- Right must be in O's lease and Administrative Plan
 - Procedure could be PHA grievance?
- Hearing procedures must be outlined in Admin Plan
- *Issues: Not a two step process; does not cover inaction; What does "PHA (as owner)" mean? Some ambiguity re what process must be provided by Owner; even if hearing must track 982.555 procedures, they may be meaningless b/c lack of impartiality; not in addendum thus local advocacy*

Grievance Rights: RAD PBRA

(RAD shall at minimum maintain the same rights as Section 6 of USHA)

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- Grievance Process
 - Notice of specific grounds of proposed adverse action plus right to an informal hearing with PHA (as owner)
 - Informal hearing with *impartial* member of PHA (as owner) *staff* within reasonable period of time
 - Opportunity to be represented, question witnesses, examine regs. and evidence replied upon by O, may be recorded, decision stating grounds and evidence relied upon
 - O bound by decision, except if matter exceeds authority or contrary to law; O must tell resident if O says not bound!
- HAP contract owner agrees to comply

Grievance Rights: RAD PBRA

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- *Issues: Grievance Procedure right part of House Rules (addendum?); PHA (as owner); no mention of right in lease to notice to examine documents pre hearing or trial; no waiver for health and safety or class grievance?*
- Right to informal hearing procedures re: citizenship or eligible immigration status
 - Rights for PBV and PBRA

Eviction: RAD PBV

(RAD shall at a minimum maintain the same rights as Section 6)

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- For good cause only—as provided for in current PBV lease addendum
 - Serious or repeated violation of a term of lease
 - Violation of federal, state or local law
 - Other good cause
 - RAD adds: After conversion good cause includes
 - ✦ For 50% of family units, failure to complete w/out good cause supportive services req'mt. EXCEPTION for converting residents, will this exception get into lease?
 - ✦ Household no longer eligible for the housing
 - ✦ RAD HAP Rider: Requires lease renewal; amend PBV lease?
- *Issue: Protections in O or HUD lease addendum?*

Notice for eviction: RAD PBV

(RAD shall at a minimum maintain the same rights as Section 6)

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- Notice Period
 - 14 days notice for nonpayment of rent
 - Reasonable period of time if health and safety of other residents or staff or persons residing in immediate vicinity; SFHA policy 3-day notice
 - 30 days in any other case unless shorter period of time according to State or local law
 - Included in RAD HAP Rider; required to be in lease and Admin Plan, but will it be?
- *Issues: Section 6 says lease shall inform of right to examine docs. or regs. directly related to the eviction or termination; will HUD amend form lease re notice & required renewal?*

Eviction: RAD PBRA

(RAD shall at a minimum maintain the same rights as Section 6)

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- 24 CFR 880.607 & Multifamily HUD Model Lease
 - Good cause: material non comply w/lease, state law, includes failure to timely provide income info. & repeated minor violat.
- RAD Notice provisions
 - 14 days for non payment of rent
 - A reasonable period not to exceed 30 days if health and safety threatened or any drug related or if felony conviction
 - Include as part of House Rules, see HUD Addendum in PIH Notice; RAD PBRA HAP says O must comply with 1.7B.6a
- *Issues: 14 day notice not required in lease (House Rules addendum!); nothing in lease re: access to documents pre grievance/trial; notice not to exceed 30 days in all other situations missing*

Termination of the resident's PBV

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- RAD rules: HA must terminate a resident's PBV
 - If resident is no longer eligible for the PBV program
 - ✦ For Elderly/Disabled: if H of H no longer elderly and/or disabled
 - If resident in family property does not participate in supportive services; **Exception** for converting residents
- PBV rules: Requires termination for other reasons
 - No longer eligible; evicted for serious lease violation; fails to submit doc's (consent forms and citizenship or eligible non-citizen status); enrolled in institution of higher learning and does not meet eligibility req'mts.; meth. production
- HA may terminate for other HUD allowed reasons as provided for in PBV rules

Termination of the resident's PBV

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- Resident has a right to grievance hearing if HA terminates PBV
- 24 CFR 982.555 applies

Termination of subsidy: PBRA

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- Rules generally applicable to PB Section 8 apply
 - See Model lease; HUD Handbook 4350.3
 - Owner may increase tenant share of rent for failure to timely report income or for falsely reporting income
 - Specific notice provisions apply
 - Owner authorized to terminate subsidy for other reasons(?)

Choice Mobility: RAD PBV

(Most RAD residents may move with a voucher)

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- Later of one year after HAP is signed or one year of residency, PBV resident may request and HA must give the family priority to receive next available HC Voucher for use at another property of his/her choosing. (RAD rules similar to current PBV rules)
 - Waiting list most likely as few vouchers will be available
 - PBV remains with the property
 - Resident must request to move with Voucher before terminating lease with Owner
 - *Issue: How will HA manage HCV waiting list and coordinate with current HCV wait list priorities? Will there be project specific waiting lists? What if HA has no voucher program?*

Choice-Mobility: PBRA

(Most RAD residents may move with a voucher)

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- Later of 24 months after HAP is signed or 24 months after move-in, HA required to provide the option
 - HA may restrict number of available Vouchers, number from any one development, etc.
- HUD may grant a good-cause exemption for C-M requirements for no more than 10% of all units nationwide in demonstration, priority to HAs
 - With no voucher program or
 - 1/3 of Vouchers are set aside for Veterans or homeless
- Details should be in Annual Plan and Administrative Plan, including waiting list, preferences, etc.

Relocation

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- RAD prohibits involuntary displacement
- Most relocation will be temporary
 - Must comply with HUD relocation guidance
- Any relocated tenant has the right to return
- Relocation may be a larger issue if rental assistance transferred to other units
- Relocation plans?
- HUD Accessibility and Relocation Plan Check list
 - Includes certification of compliance with URA.
 - Submitted by PHA

Relocation, Con't

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- HUD guidance
 - Temporary relocation housing must be decent, safe, and sanitary
 - Reimbursed for reasonable out-of-pocket expenses
 - Moving expenses and increased housing expenses
- Estimated relocation costs are listed in RAD applications and in financing plans
- New Owner is responsible for relocation costs

HUD RAD Rules:

Resident Organization: (245 rules)

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- Residents have the right to establish and operate a RO to address issues relating to property & tenancy
- The Owner must recognize legitimate RO & give reasonable consideration to concerns raised
- There is a list of protected activities, such as leafleting, contacting residents, use of bulletin boards, convening meetings independent of management
- O must allow the use of available space for meetings
- O must allow resident organizers to assist residents to organize, canvassing exception (accomp by res.)

HUD RAD Rules: Resident Organization Funding

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- O must provide \$25/occupied unit/year for resident participation, of which at least \$15/occupied/year shall be provided to legitimate resident organization
 - Income from other sources? (laundry and vending machines?)
- Funds must be used for *resident education, organizing around tenancy issues and training activities*
- O is encouraged to actively engage residents in the absence of RO
 - O must make \$25/15 funds available
 - Residents must request in writing funds for organizing; O approves

Resident Organizations: Public Housing (Governed by 24 CFR 964)

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- 964 rules are unique. PH residents are partial to them
- Important facts to know
 - Are there local organizations by development?
 - Are there city-wide resident organizations?
 - Do current ROs receive funding from HA and have MOUs with HA
 - ✦ Big issue if the City-wide gets funds from HA, how will that be handled under RAD b/c funds go to individual owners?
- What is the capacity and interest of ROs?
- Are there groups of residents who want to organize or who want to challenging the recognized ROs?

Resident Services: RAD PBV

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- Resident services requirement does not apply to 100% elderly/disabled properties
- RAD: Requirements for *family* units that are 100% PBV
 - 50% of households must receive supportive services
- PBV rules:
 - Supportive services must be defined in HA Admin Plan
 - One member of family must receive one qualifying service
 - At lease up, the family & HA sign a statement of family responsibility, includes family's participation service program
 - HA monitors compliance

Supportive Services: RAD PBV, con't

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- Current converting residents cannot be evicted for failure to participate; but new admitees after conversion can be evicted by owner or terminated by HA
 - RAD PH Program Application, form HUD 5260, Section 8 Operating Expenses has a line re: supportive services
- *Issues: What will Admin Plan say about supportive services? How will HA and owner coordinate supportive services obligations?*

RAD: Section 3 Employment and Contracting Obligations

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- Section 3 requires recipients of HUD funds to provide
 - Employment and training to low-income residents (ranked priority if residents of the property, other properties or the neighborhood & SMSA)
 - ✦ 30% of all new hires
 - Contracting with Section 3 businesses for 10% of all construction contracts and 3% of other contracts (\$thresholds)
- RAD applies Section 3 to work
 - Construction or rehab and identified in the Financing Plan
- *Issue: Will HUD and/or HA monitor & enforce? Historically HUD & HAs have ignored; Residents care about this issue; PH Section 3 covers management & maintenance*

Resident Participation Opportunities in Setting Initial RAD Policies

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- **Prior to submission of RAD Application**
 - HA must notify residents and legitimate ROs of intent
 - HA must conduct at least 2 meetings with residents of properties and prepare & submit to HUD comprehensive written response to comments received on proposed conversion
- **After selection one more meeting with residents prior to signing HAP**

Resident Participation Opportunities in Setting Initial RAD Policies

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- If substantial change in plans, an additional meeting is required
 - Substantial change includes, transfer of assistance or ownership; change in number of assisted units; substantial change in scope of work, change in eligibility or preferences for admission
- LEP and access by persons with disabilities apply

Resident Participation/Engagement to Set RAD Policies Post Conversion: RAD PBV

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- PHA Plan process continues after conversion
 - RAB and PBV residents?
- Changes to the Administrative Plan requires HA Board approval
 - PBV polices are included in Administrative Plan
- HA Board must approve the operating budget annually
- PBV residents continue to be eligible to be a Tenant Commissioner

Issue: How will RAD PBV residents be incorporated into RAB?

Resident Participation/Engagement for Post Conversion: PBRA

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- Right to notice and comment
 - Re: actions under 24 CFR 245, requiring HUD approval
 - Increases in rent, conversion to resident paid utilities, reduction in utility allowances, major capital additions (not capital improvements) and prepayment of loans
- HA Plan process and Administrative Plan no longer applies to property after conversion
 - If initial rehab does not follow plans what rights do residents have?
 - Mobility features & selection for should be in Admin. Plan
- HA as CA (Local rules re: hearings & public notice?)
- PBRA residents cannot be “resident commissioners”

Other issues of concern

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Other issues of concern for residents

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- **Prior debt policy**

- Is this an issue? How will it be addressed? HA repayment agreements with residents; forgiven?
- How will HA collect after conversion, respond to defaults if they occur?
- If PBV, HA may terminate for failure to pay debt
- What if PBRA, how will HA collect after conversion?

- **Transfer policies**

- Does HA have a policy for public housing.
- What will the policy be for PBV units? (exp. DV)
- For PBRA, esp. for DV, for other applicants?

Issue: Can or must these policies be negotiated prior to conversion?

Other issues of concern for residents

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- House rules
 - PBV included in Admin Plan? PBRA?
- Security deposit
 - PBV: HA sets policy within limits; PBRA see Section 8 rules
- Overcrowded and underoccupied units
 - PBRA: HAP contract: when CA determines unit not appropriate, O agrees to correct in accord. w/ 24 CFR 880.605
 - PBV: Policy must be in Admin. Plan; (if household offered alternative affordable housing and refuses may be terminated)
 - *Remember* household continues to pay 30% and contract rent not affected, how do these directives interact?

Long Term Affordability: PBV & PBRA

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- **Initial HAP contract:**
 - PBV: for 15-20 years; PBRA 20 years
 - HA or HUD must offer to renew subject to appro. & O must accept renewals
 - HAP contract keeps rents affordable at 30% of adj. income
 - HUD approval to reduce the number of PBV units (pre and post conversion); PBRA pre conversion, but post contract is reduced
- **HUD Release needed to transfer the assistance or property**
 - Use Agreement (HUD and enforceable by resid and applicants); PBV HAP para. 21a.1; PBRA HAP addendum, para 21

PBV & PBRA: Long Term Affordability

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- Protections in the event of foreclosure, bankruptcy and default.
 - New ownership first offered to a capable public entity & then to a capable private entity
 - Use Agreement in the event of HAP default HUD may transfer assistance to another entity
 - PBV HAP contract, para. 21, transfer requiring HA (CA)approval includes sale, foreclosure, bankruptcy
 - HAP contract will continue in effect PBRA para 2.20(f); PBV?

PBV & PBRA: Long Term Affordability

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- Use Agreement
 - Superior to all other liens
 - Automatically renews when HAP contract is renewed
 - Continues to apply even if HAP contract abated or cancelled
 - ✦ For the period of the HAP contract
 - HUD may transfer PBV or PBRA to another entity in the event of a HAP default and new owner shall assume obligations of Use Agreement

Ownership of the Property: PBV & PBRA

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- Public or non-profit
- If LIHTC, owned by Limited Liability Corporation
 - For-profit investors invest the funds and get the LIHTC and they care about compliance with tax code
 - Some major decisions such as bankruptcy, sale and/or default will be made by or involve the investors
 - General partner/manager may be non-profit developer, which may be independent or wholly owned by HA
 - ✦ General Partner makes the day to day management decisions and/or may hire a management company
 - If to for-profit, PHA must retain sufficient interest in property
 - ✦ Eg., Ground lease; seller take back financing; right of first refusal for sale

Waiting List: PBV and PBRA

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- Rules differ depending upon if HA maintains a central waiting list for public housing or have site-based waiting lists for the converting properties
- If Central
 - HA must notify applicants on the Central waiting list of placement on property's initial wait list (in a manner deemed best by HA)
 - Add those interested applicants to the waiting list with date and time of original application
- If site base, only need to contact applicants if transferring HAP to another neighborhood and interested applicants get priority by date and time

Waiting List: PBV and PBRA

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- HA maintains PBV waiting list and refers new applicants to PBV units in accord with 983.251(c)
- If PBRA, Owner maintains waiting list in accordance with 24 CFR 880.603
- Effective communication must be in accordance with rules regarding persons with disabilities and LEP ru

Loss of Units:

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- Section 18 does not apply unless there is more than a de minimis loss of units
- De minimis loss of units does not include
 - Vacant for 24 months
 - If will allow more effective or efficient service for residents through reconfiguration, or repurposing to facilitate social service delivery
 - Such units not eligible for tenant protection vouchers
- Whether HA plans loss of units is set forth in Application and Financing Plan. Any change requires change to Annual Plan.

Questions?

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