


# RAD Basics for Tenant & Community Advocates

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NATIONAL HOUSING LAW PROJECT

HOUSING JUSTICE

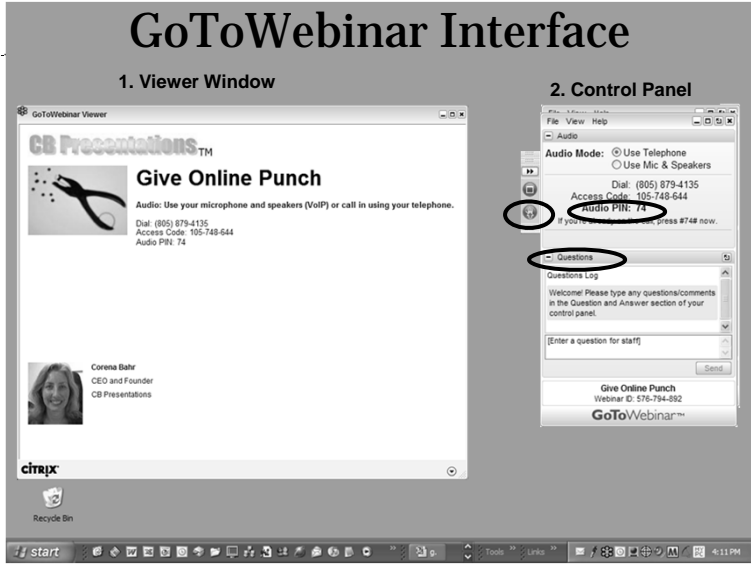


National Housing Law Project

## GoToWebinar Interface

1. Viewer Window

2. Control Panel



The screenshot displays the GoToWebinar interface. On the left is the 'Viewer Window' showing a presentation slide titled 'Give Online Punch' by Corena Bahr, CEO and Founder of CB Presentations. The slide includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. On the right is the 'Control Panel' with options for 'Audio Mode' (Use Telephone or Use Mic & Speakers), dialing information, and a 'Questions' section. Red circles highlight the microphone icon and the 'Audio PIN: 74' field in the control panel. The Windows taskbar at the bottom shows the time as 4:11 PM.

## What we will cover today: Basics

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- For advocates & residents new to RAD, where PHA has applied, been accepted or expressed interest
- Overview of RAD Process for conversion of PH units to project-based Section 8 (PBV or PBRA)
  - Second component of RAD covers conversions of Rent Supp, 236 Rap and Mod Rehab, *not* covered today
- Resident rights under RAD, including differences between current PH rules and conversions to PBV or PBRA
- Long-term affordability & public vs other ownership
- Other issues of concern to residents

## Purpose of RAD

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- Respond to substantial annual loss (est. 10,000 units) of public housing from deterioration, etc. & huge backlog of capital needs/deferred maintenance
- To preserve hard units for long term by establishing a more stable funding platform that supports \$\$ for rehab/repair
- POLL QUESTION

## Key Features

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- Voluntary conversion of PH funding to Section 8, either Project-Based Vouchers (PBV) or Project-Based Rental Assistance (PBRA)
- **Note:** No new funds
  - Capped at level of current PH operating and capital funds
  - Constrains level of rehab
  - Other funds may be used, e.g. CDBG, HOME &/or PH reserves, LIHTC or local \$\$
- Required process and tenant protections specified in statute and HUD Notice
- Initial cap 60,000 units; Congress raising to 185,000 units (effectively, all on Wait List) & extends date

## RAD Policy

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- Resident Engagement process raised many concerns – most addressed in final statute and HUD guidance
- Resident rights
  - Continued occupancy → no rescreening; no permanent displacement due to conversion
  - Relocation rights and right to return
  - “Lease and Grievance” rights
  - Right to participation & consultation
  - Right to organize, to recognition & funding
- Choice-Mobility
- Jobs & self-sufficiency
- Continued & long-term affordability & public ownership
- Additional HUD funding to make the program work (not addressed)

## Making the Most of RAD

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- Resident rights and long-term affordability protections require full implementation and advocacy oversight: considerable PHA discretion on vital details
- Rehab needs and plan
- Often more detail is required
- Include rights and protections in local documents, such as PHA Plans, Administrative Plans, resident leases, ground leases(?) and other documents(?)
  - Enforceability will be a significant issue

## Comparison of Resident Rights: PH and RAD PBV

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### Public Housing

- Eligibility 80% of AMI
- Targeted 40% to 30% of AMI (of all admissions)
- Rent = 30% of adj. income
- Grievance Proc'd for most actions & *inactions* by PHA
- Good cause eviction +
- Notice and Grievance
- Publically owned
- No mobility
- No req'mts re mixing family types

### RAD/PBV

- Eligibility 50% of AMI; current PH residents grandfathered in
- Targeting 75% to those at 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/and termination of V +
- Notice and Grievance
- Public, nonprofit, or for profit
- Mobility (after 1 year)
- 100% PBV-if 50% are excepted\*

## Comparison of resident rights: PH and RAD PBRA

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### Public Housing

- Eligibility 80% of AMI
- Targeted 40% to those w/ 30% of AMI (all admis.)
- Rent = 30% of adj. income
- Grievance Procedure for most PHA action & *inaction*
- Good cause eviction+
- Notice and Grievance
- Publically owned
- No mobility

### RAD/PBRA

- Eligibility 50% of AMI
- Targeted 40% to those w/30% of AMI (by proj)
- Rent = 30% of adj. income
- Grievance Procedure for most action by Owner
- Good cause eviction +
- Notice and Grievance
- Public, Non- or For-profit
- Mobility (after 2 years)

## Overview of RAD Process: PHA's Application

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- **Application provides information on, for example:**
  - Choice to convert to PBV or PBRA;
  - Any *de minimis* reduction in number of units
  - Number of units & BR sizes of converted vs. existing units
  - Current capital needs
  - Current vacancy rate and bad debt rate at property
  - Projected relocation cost with explanation
  - Whether LIHTC financing is anticipated
  - Proposed operating expenses and income, how reliable?
  - Tenant rent and utility allowances
- **Attachments: Board approval, financing letter, mixed financing affidavit, Choice-Mobility letter**

## Overview of RAD Process: HUD Approval

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- HUD accepts appl'n & issues a CHAP or assigns it to Wait List
- 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 for demo & new construction completion?
    - ✦ Dates may change with HUD approval & HUD may revoke award
    - ✦ Check/get Letters from HUD to PHA

## 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, HUD FAQs; PIH Relocation Notice H 2014-09
  - HUD forms and documents: HA Application; CHAP; Use Agreement and Rider
  - Federal statutes and regulations applicable to PBV, 24 CFR 983, and PBRA, 24 CFR 880, as modified by RAD (2013-32)
  - Section 8 HAP PBRA contract modified by RAD; PBV HAP contract plus RAD rider & RAD resident lease addendum
  - PHA Administrative Plan PHA Plan & 5 Year and Annual Plans
  - Other: Fair Housing (AFFH) & Title VI, 504, LEP, VAWA, HUD Relocation guidance (URA); Section 3 and LIHTC (?)
  - RAD grants HUD broad statutory waiver authority

## Resident Notice & Comment on Proposed RAD Conversion

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- **Prior to PHA's 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
  - Meetings may be portfolio wide!
- **More meetings could be negotiated or otherwise provided locally**

## Resident Notice & Comment on Proposed RAD Conversion

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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
  - Importance of application review to see if there are changes
- **LEP and rules re: access by persons with disabilities apply**

## Resident Notice & Comment After HUD Approval

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- **PHA must amend Annual PHA Plan**
  - 90 days after CHAP; May be done earlier or modified by HUD
- **PHA must also have one more meeting with residents prior to signing Section 8 HAP contract**
  - May be late in the game, month prior to conversion
- **Additional meeting if substantial change in plans**
- **Post-conversion (closing) resident participation rules will vary depending on whether conversion is to PBV or PBRA**
  - LEP and access by persons with disabilities?
  - Resident Commissioner

## Resident Participation Post-Conversion: RAD/PBV

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



## Resident Participation Post-Conversion: RAD PBRA

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- **Right to notice and comment**
  - Re: actions under 24 CFR 245, requiring HUD approval
- **PHA Plan & Administrative Plan no longer applies**
  - BUT Mobility features & selection for should be in Admin. Plan
- **HAP contract has provisions when HA is Contract Administrator on issues such as applicant rights and utility allowances (BUT no 3PB rights)**
- **PBRA residents cannot be “resident commissioners”**
  
- **POLL QUESTION**

## RAD: Can Current Residents Lose Their Homes or Be Required to Move?

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- **RAD conversion “shall not be the basis for . . . termination of assistance or eviction of any tenant family” (Statute)**
- **No rescreening for any purpose (one-strike; prior debts?); current residents grandfathered for pre-conversion events**
- **No permanent displacement due to conversion**
  - PHA can relocate Ts within project for under or overoccupancy
  - HA cannot pressure T into relinquishing RTR
  - Temporary relocation OK, “right to return” (next slide)
  - LIHTC over-income issue (BUT: “right to remain”)

## Relocation: PIH 2014-17, H 2014-09

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- **Most RAD relocation will be temporary < 12 mos.**
  - Usually limited repairs and rehab
  - Decent safe and sanitary w/ reasonable cost of 2-way moves
  - Admin Plan may provide priority for relocation voucher
  - **Right to return;** T may waive & end HA obligation
  - If temporary becomes >12 mos, T can choose permanent URA benefits or temp. relo for an agreed-to period and RTR
- **Permanent relocation > 12 mo.= agreed to + URA**
  - Cannot be pressured to accepting perm. relo. & paym't
  - Must be offered at least one comparable replacement unit
    - ✦ To other PH or HCV or maybe replacement housing payment;
    - + Moving expenses; + Give up RTR

## Relocation

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- **Relocation is a bigger issue, if**
  - Rental assistance transferred to other units
  - Demolition (see later slides) or substantial rehabilitation
- **Relocation plan developed locally, what will it say?**
  - See PIH Relocation Notice for contents of plan
  - Relocation plan does not have to be in writing!
  - Who is responsible for relocation costs? New owner b/c part of the financing plan/cost of conversion; PHA?
- **HUD Accessibility and Relocation Plan Check list**
  - Details only if relo. for more than 60 days; includes cert of compliance with URA & no invol. perm. relocation, duty to update if circmst. change; Submitted by PHA to HUD

## RAD: Resident Rents

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- Rent will continue to be based upon 30% of adjusted income, 10% of gross or minimum rent; still annual and interim recertifications
  - if PBRA, by owner; if PBV, by HA, plus if also LIHTC, owner annual cert. of tenant income
- BUT actual T rents may change due to varying program req'ts e.g, min. rents, utility allowances
- Rent may also increase because T had prior PH flat rent, pro-rata rent, etc.; special rules for Ts w/Earned Income Disregard (EID)
- 3 or 5-year phase-in for rent increases due to conversion that are > \$25 or 10% of prior rent

## Lease Provisions & Grievance Procedures

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- RAD statute states that “tenants shall at a minimum, maintain the same rights . . . . as those provided under Section 6 of USHA”
- PH tenants’ current rights:
  - Good cause for eviction; notice provisions for eviction: 10 days for non-payment, 30-days in all cases other than H&S and non-payment; and right to examine docs. or records directly related prior to hearing or trial
    - ✦ RAD rules do not address right to examine docs. or records
  - Grievance procedure: two step and for HA action and *inaction*
    - ✦ HUD RAD rules do NOT provide either
  - Plus years of locally negotiated rights

## Lease Provisions & Grievance Procedures

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- **RAD implementation of Lease and Grievance Proc'd**
  - Req'ts vary for PBV and PBRA; NOT consistent with RAD statute; Key provisions NOT in tenant leases
- **Good cause eviction, OK**
  - See current PBV lease addendum and PBRA model lease
- **Administrative hearing**
  - Very murky: Hearing procedures not clear or weaker than current PH grievance; PBRA in house rules or addendum
  - Hearing officer may be staff of Owner
- **10-day NP of rent notice: PBV, OK; PBRA, not in lease, also missing the 30-day for all other reasons**

## 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: Require termination for other reasons**
  - E.g., evicted for serious lease violation; fails to submit required docs; certain ineligible students; meth. production
- **HA may terminate for other HUD-allowed reasons per PBV rules (what will local rules say?)**
- **24 CFR 982.555 applies for hearing procedure**

## Termination of Subsidy: PBRA

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- **Rules generally applicable to PB Section 8 apply**
  - See Model lease Form HUD 90105a; HUD Handbook 4350.3
  - Owner may increase tenant share of rent to full contract amount for failure to timely report income or interim increases of \$200 in income, or to provide required recertification information or for falsely reporting income
  - Specific notice provisions apply

## Right to Organize

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- **Similar to protections at 24 CFR 245**
  - Right to establish & operate RO to address tenant issues
  - Owner must recognize “legitimate RO” & reasonably consider concerns raised
  - Protected activities include leafleting, contacting residents, use of bulletin boards, meetings independent of management
  - Use of available space for meetings
  - Must allow organizers to assist residents to Organize
- **Issues for current PH Resident Organizations**
  - PH tenants partial to 964 regs
  - Issues for city-wide RO
  - Current resident organizations with MOUs

## Resident Organization Funding

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

## Choice Mobility

(RAD residents may move with a voucher)

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- One year (if PBV) or two years (if PBRA) after HAP or residency, upon request HA must give next “*available*” Voucher (issue of next available may not be settled)
  - PBRA: HA may restrict # of Vouchers offered or # from any one development, etc.
- HUD may grant a good-cause exemption from Choice Mobility req’ts for <10% of all RAD units nationwide, with priority to those PHAs w/o V program or with 1/3 set-aside for veterans or homeless
  - PBV or PBRA remains with property thus moving V is HCV
- →Delay for families already on Voucher waiting list
- Reconciliation with Annual and Admin Plans?

## Other Issues of Concern

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- Long-term affordability
- Ownership: Public vs private non-profit or for profit
- Possible loss of units
- Quality of Units
- Section 3
- Waiting lists for converted properties
- Other issues

## Long-Term Affordability: PBV & PBRA HAPs

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- RAD goal is long-term affordability, but gaps
- Mechanisms are HAP Contract, Use Agreement and other req'd transactional documents (riders, etc.)
- Initial HAP contract:
  - PBV 15-20 years; PBRA 20 years
  - HAP contract keeps rents affordable at 30% of adj. income
  - **HA or HUD must offer to renew subject to approps & O must accept renewals (addressing O opt-out risk)**
  - PBRA HAP survives foreclosure or transfer (2.20)
  - HUD approval gen'lly to reduce # of PBV units (pre- and post-conversion, but PBV and PBRA contracts differ)
  - HUD consent req'd to transfer HAP or property (per UA too)
  - PBV transfer of HAP or property includes sale, assignment, foreclosure or transfer in bankruptcy

## Long-Term Affordability: PBV & PBRA

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- **Protections in the event of foreclosure, bankruptcy and default:**
  - RAD Statute: New ownership first offered to a capable public entity & then to a capable private entity
  - Per Use Agreement, upon HAP default, HUD may transfer HAP 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, see Use Agreement?

## Long-Term Affordability: Use Agreement

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- Superior to all other liens; binding until HUD releases
- Automatically renews when HAP contract is renewed
- Continues to apply even if HAP contract terminated (unless HUD says no (para 2)), for any rem. term of HAP contract
- Other key ingredients:
  - Requires HUD consent to transfer or encumber property
  - If default, HUD **may** transfer HAP to another entity; new owner assumes duties
  - If HAP termin. for O breach, rent restr'n = only @30% of 80% AMI
  - Enforceable by eligible Ts & applicants



## Long-Term Affordability: Gaps

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- Discretion: HUD or PHA can terminate HAP during its term for Owner breach
- Foreclosure of mortgage:
  - Lender rider controls actions of lender & purchaser (requiring HUD approval of custodians and eventual owner), so that HAP will be assumed unless HUD directs otherwise
- Thus, biggest risk is HUD discretion to terminate HAP (& any constraints)
- Appropriations risk (different for PBV vs. PBRA)

## Ownership of the Property: PBV & PBRA

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- Public or non-profit = “public”
- If LIHTC, owned by Limited Liability Corporation
  - For-profit investors invest equity and get the LIHTC; they care about compliance with tax code
  - Major decisions (e.g., bankruptcy, sale and/or default) will involve them
  - General partner/manager may be non-profit developer, which may be independent or wholly owned by HA
    - ✦ General Partner makes the day to day operational decisions and/or may hire a management company
    - ✦ Specific terms crucial (e.g., re ouster)
  - If for-profit O, HA must retain “sufficient interest” in property
    - ✦ E.g., Ground lease; seller take-back financing; right of first refusal for sale (but some tools/terms may be very ineffective)

## Ownership and Control of the Property

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- **Transfer to non-profit or LLC may have consequences for responsiveness to Ts:**
  - Access to information: public records act coverage?
  - Open meetings and transparent decision-making
  - Political accountability
  - PHA Plan? (PBV yes; PBRA no, & limited notice & comment)
- **Enforcement of tenant and applicant rights**
  - HAP Contracts bar third party enforcement (TPB) rights
  - Use Agreement enforceable but terms may be insufficient
  - RAD protections in statute, notice and contracts, creating ?? re judicial enforcement under § 1983, APA or state law vehicles

## Loss of Units:

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- **Section 18 (demo/dispo statute) does not apply unless there is more than a *de minimis* loss of units**
  - De minimis = 5% of units with CHAPs or 5 units
- **De minimis loss of units does not apply to**
  - Units vacant for 24 months
  - If will allow more effective/efficient service for Ts through reconfiguration/repurposing of Us to facilitate service delivery
  - Such units not eligible for tenant protection vouchers
- **If demo/dispo not de minimis must get § 18 approval prior to submission of Financing Plan**
  - HA can convert part of development & demo part, if approved
  - Substantial changes need: Annual Plan & HUD OK

## Can All Units Receive Rental Assistance?

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- Yes, if PBRA
- If PBV, Yes, BUT if not 100% senior/disabled, 50% of new non-senior/disabled households must receive supportive services
  - PBV rules apply; supportive services defined in Admin Plan
  - Current converting residents can't be evicted for failure to participate; but new admittees after conversion can be evicted by O or terminated by HA
  - No HUD-required "supportive services" for 100% senior/disabled PBV properties or for any PBRA

## Housing Quality?

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- Rehab not required
- RAD Physical Conditions Assessment (RPCA)
  - Submitted with Financing Plan (180 days)
  - Immediate, short and long term needs (Critical address immediately)
- Initial HQS
  - PBV: O may certify that units will meet HQS no later than completion of initial repairs, QRG, 3.4.3
  - PBRA: O may request to postpone initial inspection to after rehab. FAQ
- Owner may receive Rehab Assistance Payments
  - For vacant units during rehab if units assisted prior to conversion
  - Term and amount in HAP Contract

## 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*; NOT management and maintenance as with current PH
- **Enforcement**
  - Prior non-enforcement of Section 3; thresholds?

## Admission Waiting List: PBV and PBRA

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- **Rules differ depending upon if HA maintains a central waiting list for public housing or has 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-based, only need to contact applicants if transferring HAP to another neighborhood and interested applicants get priority by date and time**

## Admission Waiting List: PBV and PBRA

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- If PBV, HA maintains waiting list and refers new applicants to Owner in accord with 983.251(c)
- If PBRA, Owner maintains waiting list in accordance with 24 CFR 880.603
  - O must comply w/HUD and HA regs (if HA is CA); Hbk 4350.3
- Effective communication must comply with rules regarding persons with disabilities and LEP
- POLL QUESTION

## Other issues of concern for residents

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- **Prior debt policy**
  - Is this an issue locally? 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? (esp. DV)
  - For PBRA, esp. for DV, for other applicants?
- **Designating developments elderly and/or disabled**

## 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. Hdbk. 4350.3, ¶ 3-23 (if O offers smaller unit and T declines, O may charge T market rent)
  - PBV: If converting tenant overhoused, should be moved to right-sized unit, but may continue to be overhoused until such unit becomes available. QRG 5.4

## Questions?

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## Resources

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- NHLP RAD webpage: <http://nhlp.org/RAD>
- HUD RAD webpage:  
<http://portal.hud.gov/hudportal/HUD?src=/RAD>
- HJN RAD list-serve and working group under construction
- Contact NHLP for help: [jgrow@nhlp.org](mailto:jgrow@nhlp.org)