U.S. Department of Housing and Urban Development

Office of Multifamily & Public and Indian Housing

# Rental Assistance Demonstration

## GUIDE TO CHOOSING BETWEEN PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) FOR PUBLIC HOUSING CONVERSIONS

February 27, 2015 (technical correction April 20, 2015)

## I. Introduction

Under the Rental Assistance Demonstration (RAD) program's 1st Component, a public housing authority (PHA) may convert assistance under the public housing program to long-term, project-based Section 8 assistance. A PHA must choose between two forms of project-based Section 8 assistance: Project-Based Vouchers (PBVs) and Project-Based Rental Assistance (PBRA). To assist PHAs in making this decision, this guide compares key requirements between these two forms of project-based Section 8 assistance.

By way of background, this document provides a short summary of the PBV and PBRA programs, followed by a grid comparing key program elements.

## II. The PBV Program

In 1998, the Congress added a new provision to the Section 8 voucher program, allowing PHAs to take a portion of their voucher budget authority and "project-base" that authority.[1] The PBV Program, as it became known, would allow PHAs to sponsor or promote the development of certain "hard" units of low-income housing. In creating this new authority, though, the Congress also established some limits or parameters, including:

- Not more than 20% of a PHA's voucher budget authority may be project-based;
- Not more than 25% of the units in a project may be assisted, excepting single family properties (four or fewer units per structure), units serving elderly/disabled families, or families receiving supportive services; and,
- Each assisted household, after one year, is eligible for the next available voucher (also known as "Choice-Mobility").

As such, the PBVs are administered by the local voucher agency, which enters into a Housing Assistance Payments (HAP) contract with the project owner. The voucher agency receives an Administrative Fee for these PBV units, in the same manner in which it receives an Administrative Fee for other voucher units. With a few exceptions, standard voucher rules apply, including resident eligibility, tenant rent calculations, housing quality standards, rent reasonableness, etc. Because PBVs are part of the voucher program, the voucher agency administers the PBV waiting list (although it is permitted to maintain separate PBV waiting lists for each PBV project). Where the voucher agency also has an "interest" in the PBV project – say, the PHA is part of the ownership structure – the voucher agency must seek a third party to perform the rent reasonableness determination and to conduct the annual Housing Quality Standards (HQS) inspections.

Since the passage of the 1998 legislation, it is estimated that there are now about 80,000 PBV units nationally (or less than 4% of the approximately 2.2 million vouchers that are in circulation). Regulations implementing the PBV program are found at 24 CFR Part 983.

[1] The project-based voucher law was initially enacted in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See section 545 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105–276) approved October 21, 1998) (QHWRA) amending 42 U.S.C. 1437f(o).) See also Section 8(o)(13) of the Housing Act of 1937.

As part of the RAD program, certain special PBV provisions were adopted to facilitate conversion. These include:

- The requirement that not more than 20% of a PHA's voucher budget authority be project-based was waived;
- The 25% income-mixing limitation was raised from 25% to 50%; and
- Various protections for existing residents at the time of conversion are provided, e.g., no "re-screening."

## III. The PBRA Program

The Section 8 Project Based Rental Assistance Program (PBRA) was authorized by Congress in 1974 to provide rental subsidies for eligible tenant families residing in newly constructed, substantially rehabilitated, and existing rental and cooperative apartment projects. Under it, developers (for-profit or non-profit) would build low-income housing and HUD would make up the difference between the HUD-approved rent (Contract Rent) for the assisted unit and the HUD-required rental contribution from eligible tenant families.

The New Construction and Substantial Rehabilitation programs provided rental assistance for the development of newly constructed or substantially rehabilitated privately owned rental housing financed with any type of construction or permanent financing, including applicable FHA Multifamily Mortgage Insurance Programs. Later, the Section 8 Loan Management Set-Aside (LMSA) Program was developed primarily to provide financial assistance in the form of rental subsidies to multifamily properties subject to FHA-insured and HUD-held mortgage loans which were in immediate or potential financial difficulty.

Projects developed under PBRA were often supported at above-market rents. The Project Owner would enter into an Agreement to Enter into a Housing Assistance Payments (AHAP) contract with HUD, which, following acceptable completion of construction, would be replaced with a long-term HAP contract. Essentially, owners/developers were able to leverage private debt and equity through the guaranteed rents from long-term contracts.

In total, approximately 1.2 million low-income households are being served under the PBRA program. As the original contracts have expired (or are expiring), three key events have happened:

- First, some owners have decided to "opt-out." In most all instances, when an owner opt-outs the tenants are issued tenant protection vouchers, or TPVs.

- Second, beginning in/around FY2000, HUD stopped issuing fully-funded long-term contracts. Instead, long-term renewal contracts have been "subject to annual appropriations."

- Third, there has been a push to set rents at market, which could mean either lowering above-market rents (mark down to market) or raising below-market rents (mark up to market).

PBRA units are administered by HUD's Office of Housing, with the HAP oversight functions contracted to Performance-Based Contract Administrators (PBCAs). (Under RAD, the Department has decided to administer these contracts directly, at least for the near future.)

The PBRA program consists of "Old Regulation" and "New Regulation" Section 8 contracts.[2] Principally, the "Old Regulation" contracts did not have restrictions on dividends (cash flow). Under RAD, the Department decided to treat the units converted to PBRA as "Old Regulation" contracts, i.e., there is no restriction on cash flow.[3]

## IV. Program Comparisons

The table that follows compares the PBV program with the PBRA program against key programmatic requirements, e.g., rent-setting, income-mixing, Choice-Mobility, etc. Again, this comparison is provided simply as a means of assisting PHAs in deciding, under RAD, whether to convert to PBV or PBRA.

[2] "Old Regulation contracts" include those where HUD issued the "notification of selection" before November 5, 1979 for the Section 8 New Construction Program or before February 20, 1980 for the Substantial Rehabilitation Program and should have Housing Assistance Payments (HAP) contracts that do not contain restrictions as described in existing 24 CFR Parts 880 and 881. Properties that submitted an "initial application" before February 29, 1980 to a State Agency are considered old regulation projects and should have HAP contracts that do not contain restrictions as described in existing 24 CFR Part 883.

[3] See PIH Notice 2012-32, REV-1, July 2, 2013, Section 1.7, second paragraph as well as footnote 35.

## COMPARISON OF PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

| **Program Requirement** | **Project Based Vouchers (PBVs)** | **Project Based Rental Assistance (PBRA)** |
|---|---|---|
| **I. General Provisions** | | |
| **Congressional Appropriations** | As a subcomponent of the Housing Choice Voucher (HCV) program, PBVs are subject to annual appropriations as approved by Congress and allocated by HUD through each PHA's Annual Contributions Contract. If Congress provides less than full funding for the HCV program, then PHAs administering HCV programs are faced with decisions regarding how best to absorb the impact of these cuts.<br><br>If, in the event of insufficient funding, a voucher agency determines that it must terminate the contract, it must comply with the provisions of 24 CFR 983.205(c); however, the RAD Use Agreement would continue for what would have been the remaining term of the HAP contract. | PBRA HAP contract renewals are subject to annual appropriations as approved by Congress. To date, HUD has never failed to renew a PBRA contract. This record has been upheld even in years when HUD did not have enough funding to renew PBRA contracts for a full 12-month period.[4] |
| **Income Mixing** | Under RAD, up to 50% of the units in a project may be assisted, excepting single-family homes (four or fewer units per building) or units serving elderly/disabled families or families receiving supportive services.<br><br>Note: For existing public housing tenants, assistance may not be terminated if services are declined. | No limit on percentage of PBRA units in a project (i.e., can be 100% assisted). |
| **II. Contracts and Rents** | | |
| **Initial Contract Term** | The initial contract term must be for at least 15 years but the voucher agency may increase it up to 20 years. The voucher agency may also automatically extend the contract for another 15 years. | 20 year initial term. |
| **Contract Renewal** | Mandatory. Upon contract expiration, administering agency offers, and PHA accepts, contract renewal. | Mandatory. Upon contract expiration, HUD offers, and PHA accepts, contract renewal. |

[4] During years where Congress has failed to appropriate sufficient funds to fully renew all PBRA contracts, it has allowed HUD instead to reduce the number of months of renewal funding to just the amount needed to extend the renewal into the next fiscal year.

| | | |
|---|---|---|
| **Rent Caps** | Current public housing funding is limited by the lower of (1) reasonable rent or (2) 110% of the ~~payment standard~~ FMR.[5] | Current public housing funding cannot exceed 120% of the FMR, except in the case where current funding is below market, in which case the current funding cannot exceed 150% of FMR, but only if supported by a rent comparability study. |
| **Contract Rent Increases** | OCAF annual adjustments, as published in Federal Register, up to reasonable rent charged by comparable unassisted units in private market. | OCAF annual adjustments. Published annually in Federal Register. |
| **Vacancy Payments** | The voucher agency may provide up to two full months of vacancy payments per 24 CFR 983.352. | The project is eligible for 60 days of vacancy payments pursuant to 24 CFR 880.611. |
| **Rehab Assistance Payments** | Under RAD, unoccupied units undergoing rehab or construction are eligible for Rehab Assistance Payments equal to the subsidy the project received prior to conversion under the Operating Fund and Capital Fund programs. See Section 1.6.B.8 (Section 1.7.A.9 for PBRA) of the RAD Notice. These Rehab Assistance Payments are limited to units eligible for Operating Fund subsidy prior to RAD conversion. | Same. |
| **III. Tenants** | | |
| **Re-Screening of Tenants at time of Conversion** | No re-screening of initial tenants. | Same. |
| **Right to Return for Initial Tenants at Time of Conversion** | Residents have right to return once rehab/new construction is completed. | Same. |
| **Phasing of Rent Increase** | PHA can implement phased rent increase phased over 3- or 5- year period if RAD conversion results in tenant monthly rent increases by more than 10% or $25. | Same. |
| **Resident Participation** | Residents have right to establish and operate resident organization. The project shall also provide $25 per occupied unit annually in resident participation funding. | Same. |
| **Choice Mobility** | Resident right to move with voucher (or other comparable tenant-based rental assistance) after 12 months from occupancy. See 24 CFR 983.260.<br><br>Tenant-based voucher comes from existing voucher supply from PHA, subject to availability. If no tenant-based rental assistance is available, family receives next available opportunity.<br><br>There are no Choice Mobility exceptions in PBV. | Under RAD PBRA contracts, residents have the right to move with tenant-based assistance after the later of 24 months from date of execution of the HAP contract or 24 months after the move-in date.<br><br>HUD allows PHAs to limit the number of Choice-Mobility moves under the PBRA program in two ways:<br><br>• A PHA is not required to provide more than one-third of its turnover vouchers to residents of RAD properties requesting them in any one year; and<br><br>• A PHA can limit Choice-Mobility |

[5] Correction made on April 20, 2015

| | | |
|---|---|---|
| | | moves to no more than 15 percent of assisted units in each RAD property.<br><br>If a PHA invokes either of the above limits on Choice-Mobility, the PHA must establish and maintain a waiting list and place households requesting Choice-Mobility in RAD properties at the top of the waiting list.<br><br>Choice-Mobility applies to all PBRA conversions unless a project has received an exemption. Under PBRA, HUD provides for good cause exemptions for up to 10 percent of all RAD units:<br><br>• PHAs that do not administer a voucher program either directly or through an affiliate.<br><br>• PHAs that have more than one-third of their turnover vouchers set aside for veterans or homeless populations. This preference must be documented by the PHA's board prior to submission of the RAD application. |
| **IV. Other** | | |
| **Program Cap** | Under the PBV program, not more than 20% of a voucher agency's budget authority can be project-based; however, this provision was waived for RAD units. | N/A |
| **REAC Uniform Physical Condition Standards (UPCS) Inspections** | N/A<br>(there are no REAC UPCS inspections in the PBV program unless project has an FHA-insured loan) | Subject to REAC UPCS inspections and protocols. |
| **Management and Occupancy Reviews (MORs)** | N/A<br>(there are no MORs in the PBV program unless project has an FHA-insured loan) | Subject to annual MORs and associated protocols, as administered by the Office of Housing. |
| **REAC Annual Financial Statements (AFS)** | N/A<br>(there are no AFS submissions in the PBV program, unless project has an FHA-insured loan) | Subject to AFS requirements. |
| **Cash Flow** | No restriction. | Same. |