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Maintaining Compliance in Public Housing Conversions

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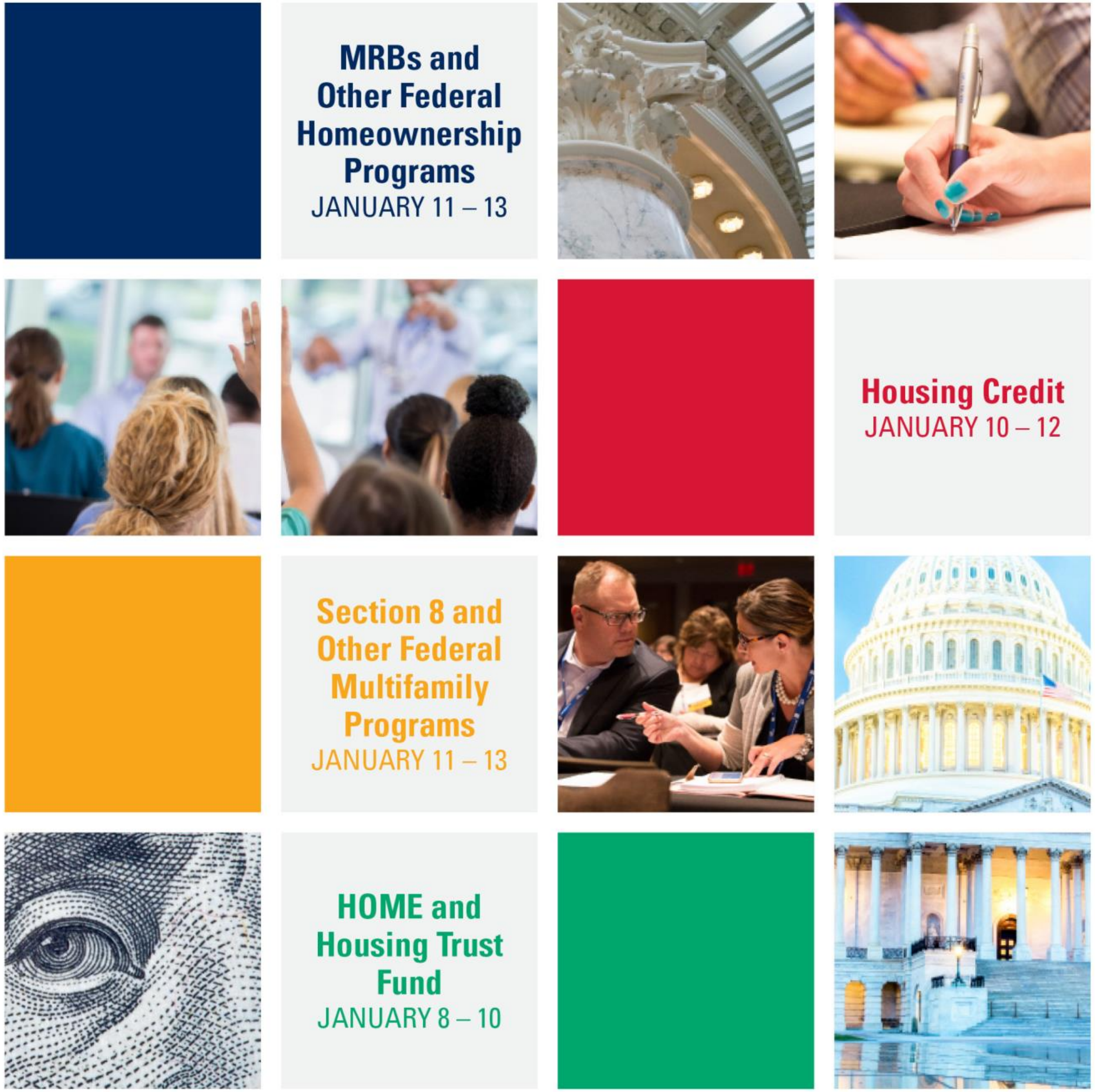
NCSHA National Council of State Housing Agencies



Speakers

- Sheryl Putnam
  - Senior Director of Professional Services
  - Nan McKay & Associates

- Heather Sievers
  - Trainer/Consultant
  - Nan McKay & Associates

Agenda

- Overview of repositioning options including Rental Assistance Demonstration (RAD), Section 18 demolition/disposition
- Tenant eligibility requirements
- Rent setting and adjustment rules
- Over income families

A word of caution…

- We are compliance experts, not development experts
- This session will not focus on development
- We will focus on compliance during and after conversion
- In other words, this session gives an overview of programs and then discusses what happens after a PHA has decided to reposition its public housing

What is repositioning?

Overview

What is public housing?

- Project-based assistance operated by Public Housing Authorities (PHAs)
  - Sometimes called Section 9 or ACC units or LIPH
- Operated/funded through an Annual Contributions Contract (ACC) with HUD

How is public housing funded?

Operating subsidy and tenant rents are the two largest sources of income

Operating Funds (Op-Fund)

- Calculated by HUD to cover a portion of ongoing costs to operate developments
- Congress has not fully funded the total eligibility levels in years – proration

Capital Funds (Cap Fund)

- Funding source for development, financing, and modernization and management improvements based on factors like # of bedrooms, location, age of units, etc.

What is repositioning?

- “Repositioning” public housing means converting units from public housing to long-term Section 8 rental assistance
- This is completely voluntary and up to the PHA
  - Doing nothing is a choice
  - Public housing is not going away

What is repositioning?

- Converting to Section 8 preserves affordability through either a project-based or tenant-based subsidy
  - Housing Choice Vouchers (HCV)
  - Project Based Vouchers (PBV)
  - Project-based rental assistance (PBRA)

What is repositioning?

- Once these units are converted, they are no longer public housing
  - New Section 8 funding platform
  - New policies, procedures, forms, processes, software
  - Staff training

Why is repositioning happening?

- Back in 2010, conservative estimates said there was $26 billion in backlog of capital needs for public housing
- Leverage other resources to address the capital needs of public housing
- Helps preserve affordable housing for families

What's the goal?

- Improve physical condition and modernize aging properties
- Stabilize financial performance and long-term operations
- Complete substantial rehab of deteriorated properties
- Demolish and redevelop distressed/obsolete properties
- Transfer assistance to other neighborhoods
- Thin densities and mix incomes
- Support neighborhoods of opportunities

How do LIHTCs fit in?

- Many of these developments also receive LIHTCs at the same time
- Sometimes this is a PHA's first tax credit deal
- Often, the PHA underestimates the level of effort it takes to do a tax credit lease up at the same time as a public housing repositioning

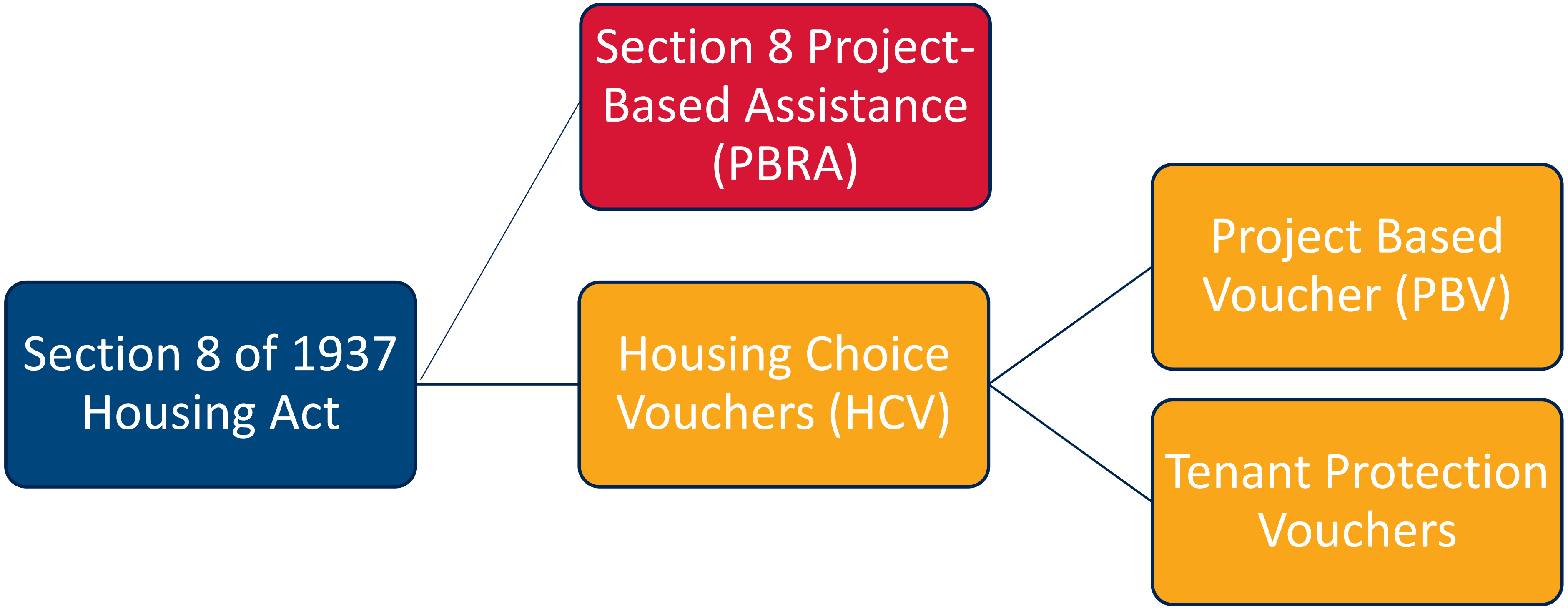
What is Section 8?

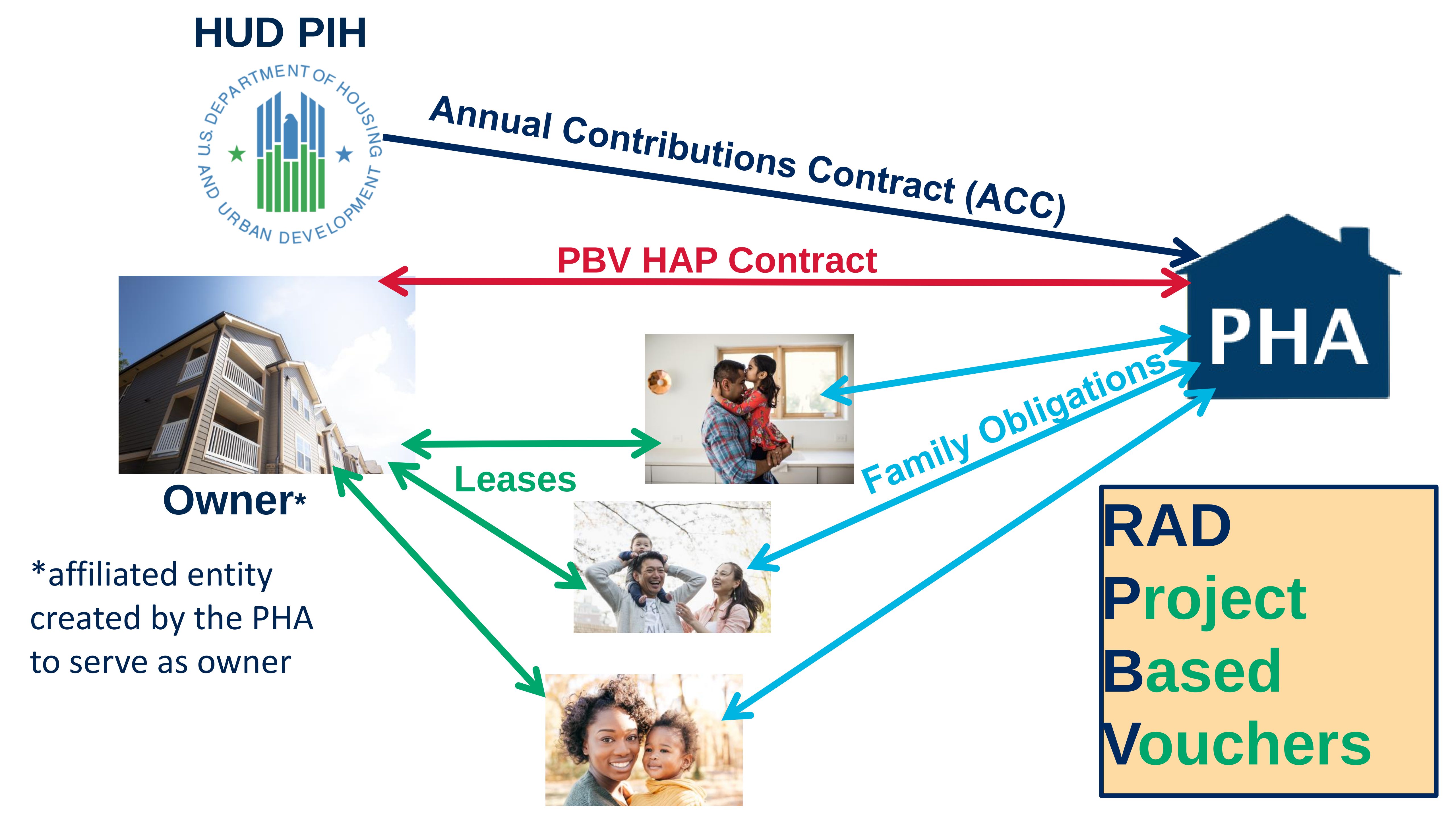
Overview of programs

What is Section 8?

- Section 8 of the 1937 Housing Act refers to a few different programs
  - Housing Choice Vouchers (HCV)
    - With special purpose vouchers including VASH, NED, FUP, Mainstream, etc.
  - Project Based Vouchers (PBV)
  - Project-based rental assistance (PBRA)

What is Section 8?




HUD PIH
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Annual Contributions Contract (ACC)
PBV HAP Contract
PHA
Owner*
Leases
Family Obligations
*affiliated entity created by the PHA to serve as owner
RAD
Project
Based
Vouchers

HUD Multifamily

HAP Contract

Compliance Monitoring

Multifamily Regional Centers

PHA

Leases

RAD
Project
Based
Rental
Assistance

Repositioning Strategies

Overview of RAD and Section 18

Rental Assistance Demonstration (RAD) Program

Demolition/Disposition (Section 18)

RAD/Section 18 Blend

Streamlined Voluntary Conversion (Section 22)

Homeownership Program (Section 32)

What is RAD?

- Converts public housing to long-term project-based Section 8 with either:
  - Project Based Vouchers (PBVs)
    - HUD Public and Indian Housing (PIH)
  - Project-based rental assistance (PBRA)
    - HUD Office of Multifamily Housing
    - RAD is the only option that allows conversion to PBRA

Key Components of RAD

- PHA applies through the RAD Resource Desk
- HAP contracts are renewed in perpetuity
- Predictable contract rents to start based on current funding and rents adjusted by Operating Cost Adjustment Factor (OCAF) annually
  - i.e., predictable rents that will trend upward

Key Components of RAD

- Resident right to return
- No re-screening/eligibility determination of residents upon conversion
- Some public housing rights continue
  - Compliance for Section 8 under RAD is slightly different than standard programs
- Choice mobility to receive a tenant-based voucher

What is Section 18 Demo/Dispo?

- Under Section 18 of the Housing Act of 1937, PHA may either demolish or dispose of public housing
- In the past, limited to properties that were physically obsolete, but in 2018 HUD expanded PHA's ability to use it to help reposition public housing to more sustainable platform
  - Despite the name, you can preserve an asset under Section 18
- Apply to HUD's Special Applications Center (SAC)

Common Examples

- Reposition/preserve an existing building to transfer ownership of the building to another entity
  - Removes units from PHA's Annual Contribution Contract (ACC), PIC, and removes the Declaration of Trust (DOT)
  - Rehabilitate with other financing like LIHTCs
  - May add PBVs to achieve affordability
- Dispose of building in the open market and take proceeds to develop new housing

What happens to families?

- Unlike RAD, no protections for in-place families
  - In order to protect in-place families, PHA may request TPVs for currently occupied units
    - This is NEW – used to be units occupied within the last 24 months
  - In-place families need to income-qualify for the TPV under Section 8 rules
- PHA does not necessarily get 100% TPVs – some situations are only eligible for 25% TPVs
  - May use other means to achieve 100% affordability

RAD/Section 18 Blends

- Section 18 may be blended with RAD in the same development
  - 75% of units convert through RAD
    - Either PBV or PBRA
  - 25% through Section 18 with TPVs that become PBVs
- Why do this?
  - Rents may be higher under Section 18 since rents are set via standard PBV rules

RAD rights apply to all units, not just the RAD units

Two separate HAP contracts

One for RAD units (either PBRA or PBV)

One for units removed through Section 18 (PBV)

Even though the units are a mix of standard and RAD PBV

Tenant Eligibility Requirements

Income and Student Status

Income Eligibility

RAD PBRA & RAD PBV

In-place families at conversion
- No re-screening
- Income limits do not apply

New admissions after conversion
- Standard income limits apply
- HAP must initially be paid

Section 18 (demo/dispo)

In-place families receiving a TPV
- Must income qualify
- “Continuously assisted” 80% AMI

New admissions
- Standard PBV income limits apply
  - Typically, 50% AMI

LIHTC Issues

- With RAD, family is automatically eligible for Section 8 but may not be eligible for LIHTC
  - or
- With Section 18, the family may be eligible for a TPV but not for LIHTC
- What is the PHA/owner/investor going to do?

Students

- No student rule in public housing
  - Nobody has ever looked at these family's student status
    - What does that mean for LIHTC eligibility?
- Section 8 student rule differs from LIHTC student rule – need to comply with both

Rents

Setting Initial Rents and Rent Adjustments

RAD PBRA Rent Adjustments

- Annually, at HAP contract anniversary, rents are adjusted by HUD's OCAF
- Maximum Rent is the higher of:
  - 140% of FMR – UA
  - Market rent
    - As established by a rent comparability study (RCS) paid for by the property
    - Used to justify rent that exceeds 140% of FMR

RAD PBV Rent Adjustments

- Annually, at HAP contract anniversary, rents are adjusted by HUD's OCAF
  - Optional Excel sheet at RAD Resource Desk
- For PHA-owned units, independent entity must approve rent increases
- Rents are capped by rent reasonableness

Standard PBV Rent Adjustments (Section 18)

- Annually, 60 days prior to the HAP contract anniversary date, owner must request rent increase
- For PHA-owned units, independent entity must approve rent increases
- Rent setting follows standard PBV regulations

Utility Allowances

RAD PBRA

- At closing, use public housing UA
- Actual usage analysis after 12 months occupancy

RAD PBV

- At closing, use public housing UA
- After conversion, may use HCV UA or site-specific UA using H 2015-04
- PHA may request a waiver to use a site-specific UA for both RAD and non-RAD PBV units in same project
- New UA applied at each resident's annual

Standard PBV

- Follows standard PBV rules
- Must use HCV UA

Over Income Families

In RAD PBRA, RAD PBV, and Standard PBV

What does it mean to be “over income”?

- Family’s total tenant payment (TTP) is equal to or greater than the gross rent for the unit

- No HAP is paid to the owner on the family's behalf

RAD Over Income Families

- In RAD PBRA, rules differ from the standard program for all residents, whether in-place and new admissions

- In RAD PBV, rules differ from the standard program for in-place residents only

RAD PBRA Over Income Families

In-place families at conversion

- Resident is still considered Section 8 even if TTP exceeds gross rent
  - Family pays:
    - TTP-UA (no rent cap at contract rent as in standard PBRA); or
    - Lesser of contract rent or applicable LIHTC maximum rent

New admissions after conversion whose income increases during occupancy

- RAD PBRA: follow the same rules as for in-place families
  - HAP restarts if income decreases and the assistance is still available

RAD PBV Over Income Families

In place families at conversion

- Unit is placed on HAP contract even if TTP exceeds gross rent
- Family pays:
  - REV-2: Family's TTP
  - REV-3/REV-4: Lesser of: TTP – UA or applicable LIHTC maximum rent

New admissions after conversion whose income increases during occupancy

- RAD PBV: follow the same rules as standard PBV program
  - HAP <u>does not</u> restart if income decreases

PBV Over Income Rules

- Standard PBV program rules state:
  - After 180 days at zero HAP, assistance terminates
  - Assistance may not be reinstated after termination
    - Family would need to reapply for PBV assistance
    - Family may remain in the unit with no assistance
- Standard PBV rules apply to:
  - Demo/dispo
  - New admissions after conversion whose income increases during occupancy in a RAD PBV unit

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MRBs and Other Federal Homeownership Programs
FEBRUARY 1 – 3

Housing Credit
FEBRUARY 3 – 5

Section 8 and Other Federally Assisted Multifamily Housing
FEBRUARY 8 – 10

HOME and Housing Trust Fund
FEBRUARY 10 – 12

NCSHA
National Council *of* State Housing Agencies