RENO&CAVANAUGH PLLC

RAD Collaborative

CLPHA
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October 4, 2019

Office of Public and Indian Housing – RAD Program
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 2000
Washington, DC 20410

Re: Comments related to Notice H-2019-09 PIH-2019-23 (HA): Rental Assistance Demonstration – Final Implementation, Revision 4

To Whom it May Concern:

The Council of Large Public Housing Authorities ("CLPHA"), the RAD Collaborative, and Reno & Cavanaugh, PLLC ("Reno & Cavanaugh") are pleased to submit comments on the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice.

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of more than seventy large public housing authorities ("PHAs") own and manage nearly half of the nation's public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low income households.

The RAD Collaborative, organized by CLPHA with the support of the National Equity Fund ("NEF"), HAI Group, Reno & Cavanaugh, and CF Housing Group, consists of interested Public Housing Authorities and their partners using the Rental Assistance Demonstration ("RAD") to preserve and revitalize their public housing properties. Through an open system, the RAD Collaborative facilitates communication, information sharing and productive relationships among Housing Authorities, their residents and development and financing partners, advisors and transactional service providers, local government, policy makers and other stakeholders working to implement RAD across the country.

Reno & Cavanaugh represents hundreds of PHAs throughout the country and has been working with clients on public housing development and operations issues since its inception. Reno & Cavanaugh was founded in 1977, and over the past three decades, the firm has developed a national practice that encompasses the entire real estate, affordable housing and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh's original goal of

providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

On behalf of CLPHA, the RAD Collaborative, and Reno & Cavanaugh, we thank you for the opportunity to comment on the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice (the "Notice"). We appreciate HUD's efforts to simplify RAD and provide additional flexibility to PHAs seeking to utilize the RAD program. Although we have provided detailed comments below, we believe the Notice will be very helpful to PHAs and other RAD program participants. We applaud HUD for addressing these critical implementation issues so that PHAs and other practitioners can continue to build upon the success of the RAD program and we encourage HUD to consider our additional comments and continue to streamline RAD requirements for the benefit of PHAs, practitioners, and residents.

At HUD's request, we offer the following comments on changes in project eligibility and selection criteria.

Project Eligibility –

Removing restrictions on certain HOPE VI properties that are under 10 years old (formerly, Section 1.3.H)

We recognize and appreciate the added flexibility that HUD is willing to provide to HOPE VI projects looking to convert through RAD. While once needed to ensure sufficient RAD availability for aging public housing developments, because Congress has continued to raise the RAD cap on Component One units, the prior requirement that HOPE VI projects either have a Date of Funding Availability ("DOFA") date of greater than ten (10) years prior to the date of RAD application, demonstrate financial distress, or constitute the only remaining public housing units, is no longer necessary. Accordingly, we agree with HUD's decision to remove restrictions on certain HOPE VI properties that are under ten years old, allowing such to convert through RAD on the same terms and conditions as any other public housing property.

Selection Criteria –

Eliminating the selection of applications based on previously established "Priority Categories" (Section 1.11)

We appreciate the efforts that HUD has made to streamline and simplify the waiting list process for PHAs and continue to support HUD for requiring only a signed letter of interest for a PHA to be added to the RAD Waiting List. That said, while we recognize the many benefits for those who choose to develop through RAD in designated Opportunity Zones and would encourage PHAs and others to do so, we think the provision that would allow properties located in designated Opportunity Zones to be selected from a RAD Waiting List "prior to all other properties" is an arbitrary distinction that should be removed. While we recognize the role of the

White House Opportunity and Revitalization Council in removing barriers to revitalization efforts in Opportunity Zones, the fact that nearly one-third of RAD units are already located in Opportunity Zones shows that projects located in Opportunity Zones are already converting through RAD without need for such a preference.[1] In its efforts to remove barriers to revitalization in Opportunity Zones, we would encourage HUD to explore ways to streamline and simplify the FHEO site and neighborhood standards process, as such can present an obstacle to new development. That said, we are pleased by the simplified approach to waiting list administration that HUD has taken by generally relying on date and time to select public housing projects from the RAD waiting list and would encourage HUD to treat all projects applying for RAD by the same standards, whether located in an Opportunity Zone or not. In the alternative, we would recommend HUD also include Qualified Census Tracts ("QCTs") and Difficult Development Areas ("DDAs") in the same preference category as Opportunity Zones.

In addition to the aforementioned concerns, we offer the following comments as they relate to RAD implementation and practice under the Notice:

Definitions – Affordable Housing Purposes: We respectfully request HUD's reconsideration of our comments previously submitted in connection with PIH 2012-32, REV 3. The definition of "Affordable Housing Purposes" in the Notice restricts such to housing serving families with incomes of 80% or less of Area Median Income ("AMI"). We believe that in the RAD context "affordable housing" should also encompass workforce housing, which includes families slightly above that range, and we urge HUD to consider a less restrictive definition that would enable the use of proceeds to develop workforce housing in connection with low-income housing. Further, we think HUD should allow local PHAs to determine their own definitions of "Affordable Housing Purposes" based on locally-determined criteria, subject with their State's public housing enabling act.

Identity of Interest (IOI): The Notice adds the term "Identity of Interest," meaning "two parties having closely related operations or other activities." However, commonality of control is not necessarily a concern provided the parties deal with one another as if at arms-length. Identity of interest generally means parties under the same control, with closely related business operations or other activities such that it gives rise to a reasonable presumption that the parties have other than an arms-length association. Typically, these relationships are defined and provided context in legal documents. HUD's addition of the similar but different concept of "closely related operations" is impracticably vague. How related is closely related? How does a PHA or owner know if it has disclosed all covered relationships? We would encourage HUD to review existing HUD definitions of Identity of Interest to provide this clarity, including but not limited to the definition provided in the Federal Housing Administration Section 232 Handbook.

[1] *See* https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_144.

Capital Needs Assessment (Section 1.4.A.1): Overall, this section provides much appreciated flexibility, allowing PHAs to use third-party CNAs in several circumstances. We do question, though, why the spreadsheet is required for new construction financed with 4% but not for similarly situated 9% transactions, especially considering that 4% transactions typically undergo enhanced third-party scrutiny from issuers and from underwriters/bond purchasers.

Transfers of Assistance – Transfers at Conversion (Section 1.4.A.12.a): When, and under what conditions, HUD will remove an existing Declaration of Trust or Declaration of Restrictive Covenants with respect to a Transfer of Assistance from a former public housing property has been a source of confusion for many public housing authorities, and we appreciate HUD's efforts to document its policies that are already being implemented regarding this issue. That said, we continue to object to HUD's requirement that the former public housing project retain its existing Declaration of Trust or record an alternative restrictive covenant unless sold at fair market value. When RAD units are located on the same former public housing site, HUD releases its Declaration of Trust in exchange for a RAD Use Agreement at the project's financial closing. We disagree with the distinction that HUD attempts to make between RAD units located on-site and RAD units located off-site. Unlike a Section 18 demolition or disposition, where HUD imposes similar requirements but otherwise risks a decrease in the total number of affordable units through a below-market sale, RAD requires the one-for-one replacement of public housing units and requires a recorded RAD Use Agreement to ensure continued affordability. Whether it is recorded on the same or a different parcel of land should be irrelevant to HUD's decision to release the Declaration of Trust or Declaration of Restrictive Covenants. Accordingly, HUD ought to treat former public housing sites in transfer of assistance situations the same as other former public housing sites in RAD by releasing the Declaration of Trust requirements at closing in exchange for a recorded RAD Use Agreement.

In addition, we object to HUD's inclusion of the requirement that a "PHA…annually report to its board regarding the use of the property (including any use for Affordable Housing Purposes) and any proposed sale of the property…and annually report to its board the net income generated from the property, the proceeds of any sale of the property, and the use of such funds for Affordable Housing Purposes." A relationship between a PHA and its Board is an internal governance matter that ought to be established by state and local law and assessed by individual PHAs. HUD should entrust individual PHAs to determine which items ought to be reported to their Board and the frequency with which to do so.

Transfers of Assistance – Transfers After Conversion (Section 1.4.A.12.b): While we appreciate HUD's efforts to include additional guidance in the Notice about transfers following conversion, which are increasing in popularity among Component One RAD projects, the additional information HUD has provided in the Notice largely recites existing requirements under choice mobility and the Housing Opportunities through Modernization Act ("HOTMA"), and provides limited utility for practitioners looking to effectuate a post-conversion Transfer of

Assistance. For example, it has been unclear which requests will be processed by the Recap Office and which requests will be processed by other HUD offices, if existing RAD HAP contracts remain in effect or should be terminated with new HAP contracts executed in their place, and whether existing RAD waivers will continue to apply to existing RAD families (e.g., no rescreening). We would be happy to work with HUD to further identify and develop this type of guidance for PHAs and other practitioners.

RAD Use Agreement (Section 1.4.A.13): HUD's relocated section on the RAD Use Agreement continues to require that the Agreement "[b]e recorded in a superior position to all other liens on the property...". We would recommend HUD issue a technical correction and revise this sentence to read that the RAD Use Agreement must "[b]e recorded in a superior position or otherwise senior to all other liens on the property…". Because many mixed-finance public housing projects already have pre-existing debt recorded against the property, it is not always feasible to record the RAD Use Agreement in a superior position to all other liens. However, it is both possible and has been permissible to subordinate pre-existing debt to the RAD Use Agreement. We do not believe that HUD intends to exclude the ability to subordinate pre-existing debt and would encourage HUD to modify this section on the RAD Use Agreement to reflect the same.

Section 3 of the Housing and Urban Development Act of 1968 (Section 1.4.A.15): We appreciate the additional clarity that HUD has provided regarding the application of Section 3 of the Housing and Urban Development Act of 1968 ("Section 3") to Component One RAD Conversions; however, we have concerns that the Notice includes provisions of HUD's proposed rule on "Enhancing and Streamlining the Implementation of 'Section 3' Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses" (84 FR 13177) as if they are already final regulatory requirements. Our understanding is that comments to the proposed rule are still undergoing review by HUD and the proposed rule is not yet final. For example, the Notice states "the receipt of Section 8 rental assistance does not, in itself, trigger the applicability of Section 3." While we would prefer this to be the case, this is a feature of HUD's proposed rule on Section 3, and is not reflective of HUD's current Section 3 regulations in effect, which classify Section 8 assistance as housing and community development assistance.[2] In addition, while we support efforts to increase employment opportunities given to residents of PHA-subsidized housing, the requirement that, with some exceptions, projects provide a first priority for employment and other economic opportunities to public housing or Section 8 assisted housing residents is an aspect of HUD's proposed public housing "Targeted Section 3 Worker" definition and is neither a statutory nor regulatory Section 3 requirement. Attempts to implement this priority through the Notice instead of the rulemaking process invites confusion into a requirement that many already see as overly complex and difficult to administer. While a developer or other contractor may have access to an

[2] *See* 24 CFR 135.3(a)(2); *see also* 84 FR 13177 (stating, "The Section 8 programs were never included in the Section 3 statute and will not be covered in this proposed rule despite being included in the current Section 3 rule.").

employee's address, they would have no way of independently knowing whether the address is subsidized through a Section 8 voucher or through Section 9. If HUD wishes to change the Section 3 requirements, HUD should look to the regulatory rulemaking process to do so, not the RAD Notice.

Lead-Based Paint Hazards (Section 1.4.A.16): We respectfully resubmit comments previously provided to HUD in connection with PIH 2012-32, REV 3 on this section, which read as follows. We fully support the enforcement of existing regulations and requirements designed to abate lead-based paint hazards. However, the language HUD uses in describing these regulations and requirements is confusing, and includes some but not all requirements (most notably, it does not note that elderly/disabled housing and single-room occupancy units are exempt in accordance with the 24 CFR Part 35.115 regulations). In its place, we encourage HUD to use simpler but still complete "Lead Based Paint Requirements" language used in other contexts. One example follows.[3]

- When providing housing assistance funding for purchase, lease, support services, operation, or work that may disturb painted surfaces, of pre-1978 housing, [PHAs] must comply with the lead-based paint evaluation and hazard reduction requirements of HUD's lead-based paint rules (Lead Disclosure; and Lead Safe Housing (24 CFR part 35)), and EPA's lead-based paint rules (e.g., Repair, Renovation and Painting; Pre-Renovation Education; and Lead Training and Certification (40 CFR part 745)).

This Notice of Funding Availability ("NOFA") language imports the same lead-based paint requirements that HUD currently describes in the Notice, but, we believe, does so in a more clear and concise manner.

Current PHA Employees (Section 1.4.A.17): As stated in our prior comments to HUD on PIH 2012-32, REV 3, we continue to support efforts made by PHAs to work with developers, property managers, and others to find employment for current PHA employees whose positions may be eliminated or altered as a result of the RAD conversion. However, this is fundamentally a local government matter, so we believe the Notice should be silent on this point and defer to PHAs and their partners based on local needs and plans.

Public Housing Capital and Operating Program Funds (Section1.4.B.2): HUD is requiring that any loan of public housing funds to a RAD project be contributed "except in extraordinary circumstances. . . as a 'soft' second mortgage payable from cash flow." However, the insertion of this provision raises three practical concerns for may RAD projects. First, "extraordinary circumstances" is a very high threshold for determining when it is appropriate for public housing funds to be contributed as a "hard" or "mandatory debt service" loan. There are

[3] *See*, 2015 Notice of Funding Availability for the Self-Help Homeownership Opportunity Program (SHOP), FR-5009-N-19; *see also*, 2016 Notice of Funding Availability for the Capacity Building for Community Development and Affordable Housing Grants (Section 4), FR-6000-N-07.

circumstances, such as 9% LIHTC transactions with minimal or no conventional debt (i.e. hard debt), where a PHA may seek to structure a loan of public housing funds as hard debt to ensure compliance with LIHTC requirements (e.g. limiting cash flow distributions to prevent taxable income). Further, limiting loans of public housing funds to soft loans, except in extraordinary circumstances, effectively limits a PHA's ability to creatively structure transactions to maximize resource utilization and private investment. Second, HUD's interest in whether loans of public housing funds are structured as "soft" or "hard" debt should be limited given the inclusion in Section 1.5.A of the Notice that any repayment of such loan is restricted to Affordable Housing Purposes. HUD is simultaneously limiting PHAs ability to structure feasible transactions with economic returns and the use of any such returns. Third, requiring a loan of public housing funds to be a "second mortgage" unnecessarily limits the priority of loans in a RAD transaction. In practice loans of public housing funds may be third, fourth or first priority mortgages depending on the structure of an individual transaction. Inevitably, HUD reviews the circumstances and priority of loans of public housing funds for individual RAD projects as part of the Financing Plan review and, therefore, should not preemptively limit a PHA's ability to structure financially feasible and economically beneficial transactions. Accordingly, we encourage HUD to review the structure and use of public housing funds on a case-by-case basis during review of the Financing Plan instead of limiting potential structures in the Notice.

Acquisition Proceeds (Section 1.4.B.7): In comments submitted to HUD in connection with PIH 2012-32, REV 3, we expressed our strong disagreement with HUD's decision to require acquisition proceeds earned by a PHA be used for "Affordable Housing Purposes" since such a restriction is not required by the RAD statute and is inconsistent with HUD's previous position that RAD offered PHAs a way to access the value of their public housing properties. In this Notice, HUD has taken an even more restrictive position by disallowing PHAs from receiving any cash acquisition proceeds in excess of seller take-back financing if using Capital, Operating, or MTW funds as a source of funding. Though the Notice permits "a de minimis level of cash acquisition proceeds…with good cause," this possible allowance is buried in a footnote and does not describe what "de minimis level of cash acquisition proceeds" might be permitted or what circumstances would constitute good cause. We were opposed to HUD's efforts to place additional requirements and restrictions on acquisition proceeds in PIH 2012-32, REV 3, and remain in opposition of HUD's continued efforts to restrict a PHA's ability to access the value of their public housing assets. Acquisition proceeds should only be subject to those restrictions imposed by a PHA's state enabling act, and HUD should encourage PHAs to identify and leverage all possible sources of funds.

Use of Public Housing Program Funds to Support Conversion (Section 1.5.A): We support HUD's goal of ensuring that public housing funds loaned to a RAD project continue to support a PHA's affordable housing mission following repayment. However, as a corollary to comments to the definition of "Affordable Housing Purposes", we believe that PHA's should have substantial flexibility in the utilization of loan repayment funds for uses outside of the

current scope of "Affordable Housing Purposes" including, among other things, workforce housing and uses which comply with the PHA's public agency mission. In addition, the Notice requires that any prepayment of principal on a loan of public housing funds be considered program income that may only be used for public housing and Section 8 purposes. "Program Income" is a defined concept in the public housing realm, but is ambiguous in the context of RAD and Section 8. We do not believe HUD should limit the PHA's use of funds from the repayment or prepayment of loans of public housing funds and should permit PHAs to utilize such funds in accordance with its mission as a public agency. Alternatively, we encourage HUD to permit each PHA to individually develop an appropriate definition for "Affordable Housing Purposes" or reconsider the definition of Affordable Housing Purposes to include workforce housing and other uses reasonably within a PHA's mission. Further, at a minimum, the use of funds from the repayment and prepayment of loans of public housing funds should be uniformly limited to Affordable Housing Purposes.

SAC Applications, Project-Based Vouchers, and RAD (Section 1.5.B and Section 1.6): We support HUD's efforts to identify efficiencies for PHAs seeking multiple paths to reposition their portfolios. The ability of the Recap Office to work with the SAC to streamline policy issues and the application and approval process is appreciated by PHAs dealing with multiple HUD offices. The combination of RAD assistance and Section 18 with Tenant Protection Voucher assistance has resulted in both numerous benefits and unexpected operational challenges for PHAs. We are pleased to see that HUD has extended many of the same RAD waivers and resident protections to residents of "non-RAD PBV units located in the same Covered Project," which we believe will ease many of the operational burdens that come with administering multiple HUD programs within the same project and will benefit residents who may not otherwise understand why certain units operate differently than others when all were former public housing units and are otherwise indistinguishable from one another. However, as a technical matter, it remains unclear how such waivers for non-RAD PBV units will be documented. Unlike, RAD PBV HAP Contracts, regular PBV HAP Contracts do not require compliance with RAD requirements. To reduce confusion between conflicting HUD requirements, we would urge HUD to develop a form of HAP Rider that could be applied to non-RAD PBV units located in the same Covered Project, and would be willing to assist HUD with this effort. In addition, we would encourage HUD to clarify whether such waivers of traditional PBV requirements are mandatory or optional for project owners, especially as such relate retroactively to closed transactions, and to define the term "non-RAD PBV units located in the same Covered Project" to clarify whether such waivers are limited to non-RAD PBV units that are placed under HAP Contract simultaneous with the RAD conversion or, in the case of mixed-finance public housing or other mixed-income housing, whether such would also apply to PBV units that pre-date the RAD conversion and other unique circumstances that may arise.

De Minimis Reductions and Faircloth Limits (Section 1.5.D): We are not clear on the statutory basis for the policy under prior RAD notices through which HUD requires a PHA's

Faircloth Limit to be reduced on a one-for-one basis for each public housing unit converted through RAD. Yet, HUD seeks to impose the same requirement on units that are not converted through RAD, but are instead removed from a PHA's portfolio through a de minimis reduction. In prior RAD notices, the removal of de minimis units was treated similarly to the Section 18 demolition/disposition of units and did not affect a PHA's Faircloth Limit. Now, HUD seeks to change this policy, not only with respect to future RAD conversions but also to apply such change retroactively to prior RAD conversions. While we appreciate the flexibility HUD provides to a PHA on de minimis reductions when converting through RAD, it is not clear why HUD would also want to prevent a PHA from being able to restore these units as public housing (or perhaps other RAD assisted housing) at a future point. Unlike units that are converted through RAD which are replaced with Section 8-assisted housing on a one-for-one basis, a de minimis reduction in units results in a net loss of assisted units even if a PHA uses its own project-based vouchers in the converting project. Requiring removal of these units from a PHA's Faircloth Limit treats these as RAD units instead of units removed under the authority of Section 18 and reduces a PHA's already limited ability to develop new units of assisted housing. In addition, we recognize that HUD has provided PHAs with a ninety-day window to submit a request to retain previously disposed de minimis units under its Faircloth Limit. However, we find this to be an arbitrary policy that could lead to inconsistent results. Whether an email is sent to HUD on day ninety or day ninety-one should not dictate what units may qualify under a PHA's Faircloth Limit. Accordingly, we would strongly urge HUD to reconsider this change in policy.

PHA Partnerships (Section 1.5.L): We very much support HUD's efforts to use RAD creatively to facilitate collaboration among PHAs. Also, while we agree with HUD's approach of stating these new authorizations only in general terms in the Notice, we expect that practitioners will have many questions about how to implement them and could benefit from additional HUD guidance. In particular, the Notice states that participating PHAs "must demonstrate to HUD mutual agreement under terms acceptable to HUD". Obviously, it would be helpful for PHAs to know more about what terms HUD would consider acceptable before expending time and resources on a proposal. In addition, the Notice seems to acknowledge, and we agree, that there may be jurisdictional issues under state enabling laws that are relevant to such proposals. We would be interested to know if HUD has done any further thinking about how to address that. Further, proposals of this nature would appear to have implications for various HUD regulatory, documentation, and systems issues, especially where HUD resources are assigned by one PHA to another. We suspect that HUD has done some analysis about how to deal with those matters, which may involve RAD waiver authority, so it would be helpful to know if HUD has a starting point for PHAs to use. Finally, one of the examples in the Notice references MTW agencies, which we find encouraging, since MTW also has significant waiver authority that could complement RAD. In particular, several years ago Congress directed HUD to expand MTW by 100 agencies, including 5 agencies which have RAD portfolio awards, and to implement regional MTW authority. HUD has not yet implemented those provisions, but we encourage HUD to do

so soon and take advantage of the potential synergies between these two demonstration programs. We would welcome the opportunity to confer with HUD further regarding PHA partnerships in RAD.

Owner Proposal Selection Procedures (Section 1.6.A.3): While we appreciate HUD's efforts to streamline programmatic requirements between RAD PBV units and non-RAD PBV units, we would request that HUD also extend the waiver of competitive selection requirements to non-RAD PBV units in the same Covered Project.

PBV Contract Terms (Section 1.6.B.1): We note that while PIH 2012-32, REV 3 required HUD approval to reduce the number of assisted units under a HAP Contract; HUD is now requiring such approval to be in writing and has removed the language reading that it would be "reviewed by HUD in the regular course of administration of the PBV program." Accordingly, it is not clear which HUD office will bear primary responsibility for approving such requests. Such requests may also be administratively burdensome for HUD to process if a PHA is required to obtain written HUD approval every time an over-income unit needs to be temporarily removed from a HAP Contract. We would encourage HUD to remove this requirement as it relates to general administration of the RAD HAP Contract and instead require PHAs comply with the terms of the Notice, which provide for substitution of a comparable unit for a partially assisted project or reinstatement of the unit when the over-income family vacates the property for a fully-assisted project.

PBV Site-Specific Utility Allowances (Section 1.6.B.5.d): We appreciate HUD's decision to allow a blanket waiver of 24 CFR 983.2(c)(6)(iii) for PHAs to implement site-specific utility allowances for both RAD PBV and non-RAD PBV units located at a Covered Project. The formal waiver request process can be long and burdensome. By providing such as an upfront waiver, residents of both RAD PBV and non-RAD PBV units can receive the same utility allowance for otherwise comparable units regardless of whether such is under a RAD contract or not.

Floating Units (Section 1.6.B.11): We appreciate HUD's decision to remove the requirement that public housing assistance must already be floating under a Choice Neighborhoods Implementation, HOPE VI grant, or existing mixed-finance project in order to "float" between designated RAD units and non-RAD units. However, the Notice is not clear how such an approval process for floating units would work. The Notice reads, "Upon the request of the owner to the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among units…" However, the Voucher Agency and HUD are not the same entity, so the owner's request to the Voucher Agency would not be sufficient to demonstrate HUD's approval. We would instead request that HUD issue a technical correction to remove the reference to HUD and replace such with a reference to the "Voucher Agency."

PBV Resident Rights and Participation (Section 1.6.C): The combination of RAD PBV and non-RAD PBV units on a single site allows PHAs and their development partners to leverage additional financial resources needed to cover the properties' immediate and long-term capital needs. We appreciate HUD's efforts to streamline and standardize the requirements between RAD PBV units and non-RAD PBV units, treating such residents in a consistent and fair manner. Absent such waivers, differing regulatory requirements for RAD PBV tenants and non-RAD PBV tenants are overly burdensome and an unnecessary source of confusion among residents and staff, including program compliance staff tasked with tracking which rights and program requirements apply to different households. As stated elsewhere, we would encourage HUD to develop a HAP Rider that could be applied to non-RAD PBV units to document such waivers. For ease of programmatic administration, we would urge HUD to also consider allowing PHAs to apply these waivers retroactively to closed transactions containing both RAD PBV and non-RAD PBV units on a case-by-case basis.

Phase-In of Tenant Rent Increases (Section 1.6.C.3): We would note the addition of a new notice requirement that the PHA communicate its policy with respect to the phase-in of tenant rent increases to affected residents in writing. To ensure PHAs can comply with the new written notice requirement regarding phase-in of tenant rent policies, we would respectfully request that HUD provide PHAs with a form of such notice along with additional guidance as to the timing of when such notice ought to be issued. In addition, as this requirement relates to residents of non-RAD PBV units, we would request HUD revise existing PBV form documents to allow for the Phase-In of Tenant Rent Increases.

Ongoing PHA Board Review of Operating Budget (Section 1.6.D.2): As stated elsewhere in these comments, a relationship between a PHA and its Board is an internal operational matter that ought to be governed by state and local law and left to individual PHAs to self-govern. The Notice seeks to impose the requirement that PHA's Board "approve the operating budget for the Covered Project annually…confirm that the Project Owner is making deposits into the Reserve for Replacement account…as well as assess the financial health of the Covered Project." However, none of the aforementioned approvals are statutorily required by RAD nor are they required of PHAs under HUD's current PBV program, and there is no guidance on what financial data a PHA should consider. Instead, HUD should allow to individual PHAs, consistent with their state enabling act and internal governance procedures, to determine which items ought to be reported to their Board. To the extent that HUD wishes to monitor a project owner's compliance with the RAD requirements, including the Reserve for Replacement account, HUD should do so itself rather than imposing such on a PHA.

New Construction or Substantial Rehab – PBRA and Opportunity Zones (Section 1.7.A.5.e): We are appreciative of HUD's willingness to provide additional rent increases to support RAD projects; however, to the extent there are additional funds available to support

increased rents, the funds should not be limited to projects located in Opportunity Zones and should be made available to both PBV and PBRA projects.

Phase-In of Tenant Rent Increases (Section 1.7.B.3): With respect to the phase-in of tenant rent increases as it relates to PBRA conversions, we would respectfully request HUD consider our earlier comments with respect to the publication of a form of written notice and our request that HUD clarify this requirement to include when such written tenant notice must be issued.

Resident Procedural Rights (Section 1.7.B.6) and Family Right to Move (Attachment 1E): Though we can appreciate HUD's desire to inform residents of their choice mobility rights, the language presented in Attachment 1E, the PBRA House Rules Lease Addendum is overly-prescriptive and inconsistent with RAD requirements for the following reasons. First, the Attachment 1E language requires that when a voucher is not immediately available "the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance." However, Section 1.7.C.5 of the Notice clearly states that, "a voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to residents of the Covered Project" and "may…limit the number of Choice-Mobility moves exercised by eligible households to 15 percent of the assisted units in the project [in any given year]." Accordingly, a PHA cannot be required to provide a choice-mobility resident with the next available voucher if it has already used one-third of its turnover vouchers for choice mobility or if more than 15% of the assisted households have already exercised choice-mobility rights in a given year. Second, HUD's Attachment 1E requirement that a tenant wait until "after the family has secured a lease with such tenant-based rental assistance" to provide the PBRA RAD owner with the required thirty day written notice to vacate would cause a situation where a tenant is concurrently receiving subsidy under both the PBRA program and the HCV program, and simultaneously under two residential leases, in violation of Paragraph 13 of the Model Lease for Subsidized Programs. Accordingly, we would encourage HUD to limit the Attachment 1E language to simply read as follows, "Each family has the option to obtain tenant-based rental assistance (commonly known as a Housing Choice Voucher) from [name of the PHA] subject to certain program limitations, at any time after the second year of occupancy," which should be sufficient to ensure a tenant remains informed of their choice-mobility rights.

Application for Multi-Phase Development and Applications for Portfolio Awards (Sections 1.9.B and 1.9.C): We strongly support HUD's efforts to offer more realistic flexibility for planning and executing large, multi-project portfolio and multi-phase projects by introducing a new portfolio award approach. The previous timelines for executing portfolio and multi-phase projects were not aligned to realistic non-HUD resource assembly and allocation timelines, which seemed to necessitate many timeline extensions and additional project management demands all around. We support HUD's efforts to advance RAD portfolio conversions according to new timelines. We also will be pleased to offer real-time feedback on how the new timelines

work in practice relative to the allocation schedules of other commonly-used sources of public and private financing. We would also respectfully request that HUD allow a good cause or reasonable justification exception to the required closing timelines for PHAs who fail to meet the timeline requirements but continue to make progress to ensure that PHAs will not be penalized for closing delays beyond their control.

CHAP Award (Section 1.12.A): While the Notice adds the requirement that a "PHA is responsible for ensuring that the rents included in the CHAP do not exceed the Reasonable Rent in accordance with 24 CFR 983.301," the Notice also states that, "The CHAP will not be subject to negotiation." As drafted, if a PHA could not negotiate with HUD to lower the CHAP rents, this would prohibit projects with CHAP rents in excess of the Reasonable Rent from converting under RAD, which we do not believe to be HUD's intent. Instead, we would request HUD issue a technical correction to clarify that, aside from annual OCAF increases, there will not be upward adjustments made to CHAP rent amounts.

Closing Preparation (Section 1.13.A): Though we appreciate HUD's interest in ensuring its executed documents remain in escrow until all HUD-required closing conditions have been satisfied, the Notice's requirement that "the closing of any construction financing" occur prior to the release of HUD's documents from escrow is not possible to achieve. As long as the HUD Declaration of Trust or Declaration of Restrictive Covenants remains on the property, a PHA or project owner may not place a mortgage or other lien on the public housing. Accordingly, in order to close on construction financing, HUD must first be willing to authorize its release of the Release of the Declaration of Trust or Release of the Declaration of Restrictive Covenants from escrow. In addition, we would urge HUD to remove its newly-added requirement that permanent loan financing must have "conditions acceptable to HUD," or, at minimum, to specify those requirements. HUD's interest in the property is ensuring that such remains used for affordable housing, which is achieved through the RAD Use Agreement. As long as a lender is willing to subordinate to the RAD Use Agreement, the decision of which financing conditions would be considered acceptable should be left to a PHA and project owner to decide.

Developer Fee (Section 1.14): We are disappointed to see the Notice continue the additional limitations on the developer fees that may be earned imposed in PIH 2012-32, REV 3. We believe that the language previously used in Revision Two appropriately limited developer fees to the allocating agency's limitations, subject to a cap of 15% absent HUD approval. The Notice now requires a complex formula that limits developer fees to the greater of two alternatives: (1) fifteen (15) percent of the total development cost less acquisition payments made to the PHA, developer fee and reserves; or (2) the lesser of $1,000,000 or fifteen (15) percent of the total development costs without offset for acquisition payments made to the PHA, developer fee and reserves. The first alternative limits the paid portion of the developer fee to 15 percent, but excludes acquisition payments (in addition to developer fee and reserves, which we

do not object to) from that calculation. We believe that acquisition payments should not serve as a reduction of paid fee. To the extent the PHA can recognize the value of its land and the fee can still be paid, it seems to us that the demonstration has been successful and we should not create rules against that success. The second prong limits the paid fee to the lower of $1,000,000 or fifteen (15) percent without any offset. Again, we do not agree with this calculation as static limitations on fees fail to adequately account for differences in deal sizes and serve to disincentive larger deals that can be far more efficient. Finally, we think that subsidy layering reviews already protect against excess uses of federal funds, and this limitation is not necessary. While HUD will allow a 25% increase in the development fee limits for projects willing to adopt certain homeless and/or permanent supportive housing preferences, such is contingent on multiple factors beyond a PHA's control. In addition, given that all current public housing occupants would have a RAD right to return, it is not clear how such a preference would be implemented. If HUD wants to incentivize RAD projects to provide housing for certain vulnerable populations, HUD should seek to do so through the provision of additional operating subsidy, not through arbitrary limitations on the Developer Fee that may otherwise be earned.

Proposed Financing (Appendix 1A, Section H): As previously commented to HUD in connection with PIH 2012-32, REV 3, the requirement that permanent debt financing not have a balloon payment until after "the earlier to occur of a) expiration of the term of the HAP Contract or b) 17 years from the date of the permanent debt financing" should be revised to read fifteen (15) years instead of seventeen (17) years. PHAs and their partners may seek longer terms before requiring a balloon payment to become due; however, a fifteen (15) year term (starting at stabilization) is common in the industry. A seventeen (17) year requirement would prevent PHAs from accessing these loan products, limit options, and perhaps increase borrowing costs.

In addition to the above comments related to Component One of the Notice, below please find our additional comments on Component Two for your consideration.

Section II: Moderate Rehabilitation Projects

Conversion Planning Requirements – Capital Needs Assessment (CNA) (Section 2.4.A): We appreciate HUD's exemption of certain projects from the CNA submission requirements including newly constructed (within the past 5 years) properties, small projects (20 units or fewer), non-FHA transactions (provided the equity provider determines the scope of work and reserve requirements and the ADRR is at least $450 per unit) as this will free up additional resources to preserve and operate the housing.

Conversion Planning Requirements – Transfers of Assistance (Section 2.4.J): We appreciate HUD's recognition of the need to expand the permissible reasons to transfer assistance to include eminent domain, unforeseen circumstance and other situations as approved

by HUD, which we expect will further facilitate the preservation, development and financing of affordable housing. We also support HUD's decision to permit Mod Rehab PBRA transferees to execute a new PBRA contract when construction financing closes and to allow owners to use Section 8 Pass-Through funding to ensure subsidy continues to flow during construction.

Special Provisions Affecting Conversions to PBV's – Davis-Bacon Prevailing Wages (Section 2.5.I): HUD's determination to limit the applicability of Davis-Bacon wages to only those circumstances where construction or rehabilitation is performed on 9 or more previously unassisted units is a welcome modification and will help ensure more funds are available to support critically needed affordable housing.

Special Provisions Affecting Conversions to PBRA – Initial Contract Rent Setting (Section 2.6.C): We support HUD's determination to establish RCS-based "as-is" and "post-rehabilitation" rents for those PBRA properties that will undergo improvements and we expect that such early commitments by HUD with respect to "post rehabilitation" rents will help facilitate significant financing and preservation options.

Special Provisions Affecting Conversions to PBRA – Davis-Bacon Prevailing Wages (Section 2.6.F): We appreciate HUD's determination to limit the applicability of Davis-Bacon wages to only those circumstances where construction or rehabilitation is performed on 9 or more previously unassisted units, which we expect will free up resources for additional affordable housing purposes.

Special Provisions Affecting Conversions to PBRA – Choice-Mobility (Section 2.6.I): See comments with respect to Resident Procedural Rights (Section 1.7.B.6) and Family Right to Move (Attachment 1E).

Section IV: Section 202 Project Rental Assistance Contract (PRAC) Projects

General Program Description – PBV Conversions (Section 4.2.A): We appreciate HUD's efforts to provide project owners with the option to convert PRACs to PBVs despite the logistical challenges posed by transitioning between funding platforms.

General Requirements – Capital Needs Assessment (CNA) (Section 4.4.B): While we recognize HUD's desire for consistency across CNA submissions, the RAD for PRAC program offers a unique opportunity for PRAC properties to be appropriately positioned for long-term success. Accordingly, what HUD deems to be "additional discretionary items" may actually be necessary to ensure continued operations that ensure the residents' best interests are protected, especially given HUD's requirement that the CNA also address physical accessibility improvements and aging-related design considerations. We support HUD's decision to extend the applicability period of CNAs to a full 12 months as we expect this to decrease costs and facilitate various financing considerations.

General Requirements – Ownership and Control (Section 4.4.J): We appreciate HUD's recognition of non-profit entities that are affiliated with a public agency as sufficient to satisfy the requirement for non-profit ownership and control during the balance of the term of the property's Capital Advance Use Agreement.

General Requirements – Elderly Housing Use Agreement (Section 4.4.K): We look forward to HUD's release of the Elderly Housing Use Agreement (EHUA) and encourage HUD to issue the agreement in draft form and to provide a comment period before implementing this critically important document. While we appreciate HUD's recognition of insufficient Federal appropriations and the need to transfer assistance as appropriate reasons to modify or terminate the EHUA, we encourage HUD to consider extending this option to additional circumstances that are outside of the owner's control, such as natural disasters or force majeure.

General Requirements – Restrictions on Net Proceeds from Refinance or Sale (Section 4.4.L): We support HUD's recognition of the need for owners to recover appropriate costs incurred on behalf of the property before calculating restricted net proceeds. HUD's recognition of fees and transaction costs related to the sale, any unrecovered and previously undrawn seller equity (on a pro-rata basis), and any identity of interest loans or advances used to address project or resident needs will further incentivize owners to make similar investments in the property that protect the project and/or advance residents' needs.

General Requirements – Transfers of Assistance (TOA) (Section 4.4.Q): We appreciate HUD's inclusion of additional circumstances that justify a TOA to include eminent domain and other unforeseen circumstances in addition to natural disasters, and we believe that HUD's recognition of additional circumstances requiring a transfer will provide needed flexibility to respond to conditions that the owner did not cause and cannot control. Likewise, we support HUD's determination to permit PBRA projects to receive Pass-Through assistance during construction.

General Requirements – Davis-Bacon Prevailing Wages (Section 4.4.R): We appreciate HUD's determination to limit the applicability of Davis-Bacon wages to only those circumstances where construction or rehabilitation is performed on 9 or more previously unassisted or rent restricted units, which we expect will free up resources for additional affordable housing purposes.

General Requirements – Provision of Services (Section 4.4.T): While we share HUD's belief in the importance of supportive services for the elderly, we are concerned about diversion of project rental assistance funds to pay for the higher allowance for such services. Specifically, HUD is waiving and providing an alternate requirement to 24 CFR § 891.225 to expand eligible service costs from $15 to $27 per unit per month. With rental assistance funds already overextended, we are concerned about a potential decrease in owners' ability to provide housing services as necessary funds are shifted to supportive services.

Special Provisions Affecting Conversions to PBVs – Initiation of Contract (Section 4.5.A): We encourage HUD to entertain conversions at times other than only when the existing PRAC expires to provide owners with additional flexibility on the timing of conversions. While we appreciate the coordination that the transfer of funding is likely to require, we encourage HUD to revisit the need to satisfy all closing conditions and require escrow of the transactional documents for 90 days prior to PRAC expiration. We are concerned that the transitional delays may discourage conversions to PBVs.

Special Provisions Affecting Conversions to PBVs – Initial Contract Rent Setting (Section 4.5.H): We appreciate the flexibility offered via HUD's rent bundling provision and expect that it will enable geographically isolated and small properties to obtain viable rents to support project operations.

Special Provisions Affecting Conversions to PBRA – Initial Contract Rent Setting (Section 4.6.D): We appreciate the flexibility offered via HUD's rent bundling provision and expect that it will enable geographically isolated and small properties to obtain viable rents to support project operations. HUD's permission to use SAFMRs is also appreciated, as is the ability to apply for mid-term modification of rents prior to conversion. Nevertheless, we encourage HUD to expand the use of mid-term rent modifications beyond only limited circumstances as we expect a number of properties would benefit from this option, especially if the project's annual renewal cycle is six or more months away.

Thank you for the opportunity to provide comments on the Notice. If you have any questions, please do not hesitate to contact us.

Sincerely,

Sunia Zaterman
Executive Director
CLPHA

Stephen I. Holmquist
Member
Reno & Cavanaugh, PLLC

Patrick M. Costigan
Strategic Advisor
RAD Collaborative