

Rental Assistance Demonstration Resource Desk

Frequently Asked Questions

Category:

Posted: 10/14/2014

Question: It appears from Appendix 1, Section II of RAD notice that, similar to public housing relocations under the HUD URA Handbook, PHAs (rather than the tenant) can choose the type of moving assistance provided when carrying out a permanent dislocation residential move from a RAD unit to another PHA subsidized unit, with the PHA having the option of using force account labor or its own movers and ensuring that the tenant pays no cost. If the PHA chooses this option, the relocated tenant would still need to be paid the required dislocation allowance. This would also not excuse the PHA from covering all other moving-related costs (e.g., utility transfers and similar). Can you confirm if our reading of the RAD notice is correct on this issue?

Answer: Appendix 1, Section II of the RAD Relocation Notice, H 2014-09/PIH 2014-17, does not discuss permanent residential moves. However, Section V of Appendix 1 addresses this topic and provides that the PHA may choose the moving option if the move is from one public housing unit to another public housing unit. In all other cases, however, the choice of moving option is to be exercised by the resident and includes the two options explained at 49 CFR 24.301 and 24.302. If the move is from one public housing unit to another public housing unit, the resident is entitled to receive the dislocation allowance and reimbursement for any reasonable moving expenses that may be incurred by the resident. However, it should be noted that the expectation is that under this scenario, the resident will not incur any such out-of-pocket expenses. Eligible moving and related expenses include those items listed at 49 CFR 24.301(g). The RAD relocation notice is consistent on this point with guidance in HUD's Relocation Handbook, HUD Handbook 1378, at paragraph 3-2(B).

Posted: 10/14/2014

Question: What exactly would be qualified as a hardship and are there any hard rules for this or is this determined by the PHA on a case by case basis – and if so, are there any exclusions?

Answer: If a person not lawfully present in the United States will be displaced and the person demonstrates to the PHA's satisfaction that denial of relocation assistance will result in "exceptional and extremely unusual hardship" to the person's spouse, parent, or child who is a U.S. citizen or an alien lawfully admitted for permanent residence in the U.S., the person is eligible to receive URA relocation payments and assistance as a displaced person. The phrase "exceptional and extremely unusual hardship" is defined at 49 CFR 24.208(h). That definition focuses on the impact the denial of relocation assistance would have on health, safety and family cohesion. Income, by itself, as affected by the denial of relocation assistance and payments, is not enough to satisfy the "exceptional and extremely unusual hardship" standard. There is no hard rule regarding what qualifies as an "exceptional and extremely unusual hardship" under 49 CFR 24.208. Instead, the standard is intended to allow maximum reasonable discretion for displacing agencies. For more information, please see 64 FR 7127 (Feb. 12, 1999). PHA may, however, be limited in the use of public housing funds to address hardship cases because of requirements that apply to those funds. In such cases, PHAs may need to use funds from another source to address those cases.

Category: New Construction

Posted: 10/14/2014

Question: Is a RAD Property Condition Assessment (RPCA) required on a new construction or substantial renovation transaction?

Answer: A RPCA is required for all RAD transactions, except the following: 1) New Construction; 2) Gut Rehab (essentially, down to the stud); or 3) Recently modernized or constructed buildings (based on the recommendation of the HUD RAD Transaction Manager and approval by the RAD Team Lead). However, the RPCA Excel tool is still required to size the reserve for replacement deposit on all sub-rehab transactions, with the exception of "gut rehabs". "Gut rehabilitation" is defined as "removal/replacement of all or substantially all interior finished surfaces".

Category: RAD Physical Condition Assessment (RPCA)

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Category: Relocation

Posted: 10/14/2014

Question: Are security or utility deposits for replacement housing units considered a reasonable relocation expense?

Answer: URA regulations consider refundable security and utility deposits to be an ineligible expense in connection with a permanent move. However, in the context of temporary relocation, HUD policy allows for a PHA to advance funds for such deposits under a repayment agreement or pay such deposits on behalf of a temporarily relocated resident (provided any refund will be made to the PHA). For more information, see paragraph 2-7(A)(3) of HUD's Relocation Handbook, HUD Handbook 1378.

Posted: 10/14/2014

Question: Can relocation take place before closing/RAD Conversion?

Answer: Relocation may not begin until the date of closing. However, in rare cases, some project plans may necessitate relocation prior to closing. With prior HUD approval, for projects involving acquisition, PHAs may relocate residents prior to the closing date. PHAs must contact their assigned RAD transaction manager (TM) to discuss plans as early as possible in the process to ensure compliance with all URA and RAD requirements. PHAs should refer to Section 9: Initiation of Relocation of Notice H 2014-09/PIH 2014-17 for further information and requirements related to relocation prior to closing.

Posted: 10/14/2014

Question: Can the PHA charge residents fees for missing move dates?

Answer: According to federal public housing rules, PHAs have limited abilities to charge additional fees unless permitted by state and local law. PHAs should consult with local counsel and review their lease terms to determine whether or not such fees would be allowed.

Posted: 10/14/2014

Question: How is the proration calculated? i.e., if the PHA pays for the move, for example \$1200 – and the family has ineligible members, would the family have to pay back the prorated portion to the PHA?

Answer: Moving expenses provided for an eligible family that includes displaced persons that are lawfully present and persons that are not lawfully present in the United States are to be calculated based on the proportion of lawful occupants to the total number of occupants, except where the move is undertaken by the PHA from one public housing unit to another public housing unit and is set at a flat rate (that is, not based on the number of eligible individuals in the family). As an example, if 3 out of 5 total occupants are found to be eligible to receive relocation assistance, then the family is eligible to receive assistance to cover 3/5 (or 60%) of the moving expenses that the family would otherwise have been eligible to receive. For additional information, please see Frequently Asked Questions attached to an August 9, 1999 Federal Highway Administration memorandum relating to Section 104 of the URA (available at: http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/illegaqa.cfm). Please note that when a PHA undertakes the move at no cost to the resident, the PHA is responsible for doing so in accordance with all applicable Public Housing requirements, including any requirements that govern the provision of assistance to persons that are not U.S. citizens or lawfully present resident noncitizens. If a PHA undertakes the family's move at no cost to the family, a subsequent discovery that the family contains an ineligible family member does not justify seeking repayment from the family. However, the PHA should address the issue to ensure that the overpayment is not charged to public housing funds or characterized as an eligible moving expense under the URA.

Posted: 10/14/2014

Question: May residents who are temporarily relocated – twelve months or less – choose to stay permanently in the relocation unit (assuming it's another public housing unit)? Do they have to make that choice before being relocated? What if residents who will be relocated for more than one year and elect to return, decide to stay in the temporary unit at the end of the relocation period? Do they have to return to the RAD unit, or can they stay in the temporary unit if the PHA owns that unit?

Answer: A resident that is temporarily relocated for a year or less in accordance with URA requirements and provided the opportunity to return to a unit in the completed project within a one-year timeframe is not considered permanently displaced. If the relocation period is anticipated to last one year or less, the PHA does not have to make an offer of permanent relocation payments and assistance at URA levels prior to the relocation. However, the PHA must offer the right to return (RTR) once the unit is completed and fit for occupancy to meet RAD requirements. The PHA must obtain an informed consent from any resident that chooses to decline RTR. At its discretion, the PHA may allow a resident to stay in the temporary relocation unit instead of returning to the RAD unit. If relocation for a RAD project is expected to last beyond one year, the PHA is required to offer the resident at the initiation of negotiations (ION) date a choice between accepting temporary relocation with RTR or accepting permanent relocation at URA levels. After the relocation extends beyond one year, the PHA must again offer any temporarily relocated residents the opportunity to be permanently relocated in accordance with the URA and therefore decline their RTR or remain temporarily relocated along with updated information and RTR to the completed project. Under the URA, the PHA is required to provide a resident that chooses to accept permanent relocation with referrals to comparable replacement dwellings and base the replacement housing payment on the most comparable unit. If the temporary unit is not a comparable replacement dwelling, as defined in the URA regulations, the PHA cannot offer it to the resident as a comparable option. However, if the PHA allows the resident to stay permanently in the temporary unit, the resident may voluntarily choose to stay there and apply the RHP (if any) to that unit, so long as the unit is decent, safe, and sanitary. PHAs should note that although acceptance of permanent relocation assistance after the one-year mark means that the resident is declining their RTR, the converse is not true. PHAs are specifically prohibited from proposing or requesting that a resident waive his or her rights or entitlements to relocation assistance and benefits under the URA.

Posted: 10/14/2014

Question: My deal is closed. I've converted my units to PBRA. Can my relocation plan involve relocating families temporarily to other public housing units?

Answer: Yes, a PHA can move families temporarily into available public housing units as long as the PHA's public admissions and occupancy procedures allow for this. Families temporarily relocated to public housing units would be treated as public housing residents during that period (e.g. the family would use a public housing lease and the PHA could consider the unit occupied for purposes of the Operating Fund subsidy, etc.). PHAs should note that the temporary relocation unit must be decent, safe, and sanitary.

Posted: 10/14/2014

Question: Under the requirements of the RAD Relocation Notice, does a PHA have to give any subsidized tenant who is permanently displaced from a RAD unit the option to choose down payment assistance in lieu of relocation to another subsidized rental unit, even in relocations that would not increase the household's rent payment? Even if the down payment assistance option must be offered, would the PHA be required to pay down payment assistance if the maximum housing payment to which the tenant is entitled is \$0 (presumably due to a move from a subsidized RAD unit to another subsidized PHA unit)?

Answer: Yes. The URA regulation at 49 CFR 24.402(c) makes clear that an eligible displaced person who purchases a replacement dwelling, instead of renting a comparable replacement dwelling, is entitled to a downpayment assistance payment in the amount the person would receive as a rental assistance payment under 49 CFR 24.402(b). To be clear, the PHA must provide this option at the election of the displaced person. The PHA has the discretion to increase the downpayment assistance payment to an amount not to exceed \$5,250 (Note: This maximum amount is raised to \$7,200 for tenant moves in which the resident is not required to move before October 1, 2014 and has not moved before that date. See CPD Notice 14-09).

Posted: 10/14/2014

Question: We understand that if there is a possibility of relocation then the General Information Notice (GIN) must be sent to residents prior to the CHAP. However, we are on the waiting list because our applications were submitted after the 60,000 unit cap was reached. Given that there's the possibility that we may not be able to participate in RAD in the near future, do we still need to send out the GIN prior to receiving a "conditional" CHAP or do we wait until after Congress increases or eliminates the cap, or otherwise until further notice from HUD?

Answer: PHAs that have already submitted their applications are waiting to receive conditional approval of their applications and will not receive a CHAP unless and until Congress provides HUD sufficient authority to do so. PHAs should wait for further notice from HUD to provide residents with a GIN, and should continue to operate their projects under all applicable public housing requirements.

Posted: 10/14/2014

Question: What are the ramifications for residents who absolutely will not move – due to illnesses and severely disabled HHM's? The PHA's legal counsel is addressing this from the legal standpoint, however do you have any advice from the relocation perspective?

Answer: This issue involves a temporary move and the residents are expected to return to the units. Generally, assuming that the relocation process is done in accordance with the RAD Relocation Notice, H 2014-09/PIH 2014-17, the temporary relocation of residents should proceed smoothly. Keep in mind that the Notice gives more specific requirements for relocating residents with disabilities. See Notice at §10, pages 10-12. Specifically, PHAs should consult the disabled residents' information to provide them with replacement housing appropriate to their accessibility needs. To the extent the PHA has complied with these Notice requirements and the residents still refuse to move, the PHA should consult State and local law for any legal remedies.

Posted: 10/14/2014

Question: What happens when a relative has power of attorney for a HOH who is incapable of making their own decisions? Will the person with the POA be allowed to make the decisions for all of the RAD requirements and functions?

Answer: Whether a person with the POA (Agent) may be allowed to make the decisions of the resident (Principal) for all of the RAD requirements and functions really depends on the nature and language of the POA. If the POA gives the agent full power and authority to act on the resident's behalf to include entering into contracts (which would include lease arrangements, housing, etc.), then the Agent could make decisions related to RAD requirements and functions. For example, some POAs use language such as – “My Agent shall have full power and authority to act on my behalf. This power of authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future.” The POA may also set out certain powers assigned to the Agent (the list of powers could be descriptive and not exhaustive). The above POA language would be one that covers decisions related to RAD requirements and functions.

Posted: 10/14/2014

Question: What is the best way to determine a resident's moving benefits?

Answer: The URA rules for moving expenses for a displaced person are located at 49 CFR 24.301-24.306. Additional guidance on expenses relating to residential moves is found at Paragraph 3-2 of HUD Handbook 1378, “Tenant Assistance, Relocation and Real Property Acquisition,” <http://portal.hud.gov/hudportal/documents/huddoc?id=1378c3CPDH.pdf>. PHAs participating in RAD should also follow the guidance regarding moves in Appendix 1 of the RAD Relocation Notice, H2014-09/PIH2014-17. If not all members of the family being relocated are persons lawfully present in the United States, proration of moving expenses may be necessary. See other FAQs on proration for more information.

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Question: When do resident relocation requirements begin, at CHAP Award or at Closing? Our PHA wants to make sure they are providing required notices and assistance on time.

Answer: PHAs should begin to engage residents on relocation matters as soon as they begin to develop any RAD development or rehabilitation plans that may involve relocation. PHAs should refer to Section 4: Relocation Planning of Notice H 2014-09/PIH 2014-17. The chart provided in this section presents a general sequencing of relocation planning activities within the RAD milestones.

Posted: 10/14/2014

Question: When is proration of moving expenses necessary, and why?

Answer: Section 104(a) of the URA, and implementing regulations at 49 CFR 24.208, provide that a displaced person is not eligible to receive relocation payments or other assistance under the URA if the person is an alien not lawfully present in the United States. This general rule is subject to the hardship exception discussed in another FAQ. To comply with section 104 and the regulations, moving expenses must be prorated, that is, computed based on the eligible members of the family. Similar requirements apply to the use of public housing funds. See 24 CFR 5.520(“Proration of Assistance”).

Category: Residents

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