

March 12, 2019

Mr. C. Lamar Seats
Deputy Assistant Secretary
Office of Multifamily Housing
U.S. Dept. of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410
Attention: Mr. Tom Davis, Director, Office of Recapitalization

Dear Mr. Seats and Mr. Davis:

LeadingAge New York is grateful for the opportunity to comment on the draft Section IV for future revision of the Rental Assistance Demonstration (RAD) notice. We look forward to the future implementation of RAD for PRAC authority which will allow certain Section 202 PRAC senior housing providers a way to bring private financing to preserve their communities and pursue expansion of enriched affordable living opportunities for seniors.

We commend HUD on the general clarity and organization of the draft implementation guidance and its engagement of stakeholders throughout the process of policy development. We greatly appreciate the opportunity to review the near-final guidance and to provide insights into changes that may help facilitate better usability. We hope that HUD will continue to employ the process of stakeholder engagement and to achieve iterative changes to the notice that incorporate lessons learned as well as modifications necessary to improve covered programs and processes.

We particularly thank HUD for its careful attention to safeguarding the future sustainability of converting PRAC properties, while ensuring the preservation and enhancement of appropriate supports and services for the low-income older adult residents.

Addressing the long-term sustainability of *all* Section 202 PRAC properties remains a priority for LeadingAge New York and its members. LeadingAge New York hopes that HUD will acknowledge the need to support the non-RAD converting PRAC portfolio through enhanced guidance and standards related to PRAC contract renewals and rent adjustments (to include regular evaluation of the sufficiency of existing or future deposits to the reserve for replacement account and provision of services and service coordination) and potential future administration funding requests for emergency capital repair grants.

As you may know, the mission of LeadingAge New York and LeadingAge, is to be the trusted voice for aging in America. LeadingAge's 6,000+ members and partners include not-for-profit organizations representing the entire field of aging services, 39 state partners, including LeadingAge New York, hundreds of businesses, consumer groups, foundations, and research partners. LeadingAge is also a part of the Global Ageing Network (formerly the International Association of Homes and Services for the Aging), whose membership spans 30 countries, and

LeadingAge members comprise the vast majority of not-for-profit providers in the Section 202 program. New York State alone has 13,339 202/PRAC homes in more than 225 Section 202 communities, serving approximately 14,787 individuals. Furthermore, the average annual income of a New York Section 202/PRAC household is \$13,673, far too low to afford rent in the private market.

Recognition and Support for Certain Key Provisions

LeadingAge New York thanks HUD for ensuring the continued control of converting properties by not-for-profits, while providing flexibility in the form new ownership entities or partnerships might take. (Item H, p. 7)

We gratefully acknowledge the prioritization of supportive services for older adults in the General Requirements section, including requirements to incorporate long-term commitments to meeting the supportive service needs of residents in contractual obligations at closing (Item C, p. 5); making provisions where necessary to approve service costs to be paid from project rental assistance up to \$27 per unit per month to provide effective supportive services for older adults (Item S, p. 13); ensuring that supportive services will be provided on a consistent, long-term basis to support residents (Item N, p. 36); and articulating HUD's commitment to "modify PRAC rents if necessary to support a Service Coordinator of Supportive Services to meet the needs of the residents" (Item A, p. 25). We urge HUD, further, to add reference to "related long-term provision of supports and services" as an explicit element for consideration in the review of conversion plan requirements and feasibility benchmarks (Attachment 4A, p. 27, line 15).

We wholeheartedly support provisions that ensure the long-term affordability of the asset by adding 20 years to the current remaining use restrictions (Item I, p. 7). Given that the original capital investment (capital advance) is being totally forgiven, leaving the current or future acquiring owner free to leverage the full value of the asset for new financing, we support the requirements restricting income eligibility to ensure these homes remain available for those with the greatest needs as drafted for the added 20 years.

We further welcome the clarifications about Davis-Bacon applicability depending on the form of subsidy to be adopted upon conversion (Item R, p. 12); treatment of residual receipts by allowing use of existing balances to support conversion (Item T, p. 13), along with the removal of future obligations for creation of a residual receipts account thus enabling use of surplus cash to enhance operating reserves or distributions (Item E, p. 19); ability to reconfigure units (Item B, p. 27 and Item O, p. 37) or even transfer subsidy authority (Item B, p. 14 and Item B, p. 18) if needed; as well as excepting PBRA RAD conversions from REAC UPCS inspection until after completion of any work proposed in conjunction with the conversion (Item I, p. 21).

There are, however, certain provisions in the current draft that we generally support, even greatly appreciate, but also feel could benefit from additional clarification or specification.

Recommendations for Specific Clarifications or Additions

As noted above, we urge HUD to add reference to “related long-term provision of supports and services” as an explicit element to be included in the review and consideration of conversions plan requirements and feasibility benchmarks (Attachment 4A, p. 27, line 15).

Regarding Initial Contract Rent Setting (Item C, p. 18 for PBRA), we welcome the significant flexibilities provided by enabling bundled rents to aggregate subsidy and adjust rents across a broader combination of sites, and we appreciate that HUD elected 120% of fair market rent (FMR) for the PBRA program, a somewhat higher capping component than 110% as in the PBV program. Concerning Contract Rent Adjustments (Item D, p. 19), we also appreciate HUD’s articulated statement that, where a rent comparability study (RCS) is used to justify OCAF-adjusted rents that exceeds the FMR cap, that Maximum Rents will not apply during the five-year term of the RCS. *However, for those PRAC provider sites with rents that cannot be bundled, we feel that electing 140% of FMR (as permitted to allow voucher holders the option of living in communities with enhanced supportive services, like assisted living) instead of 120% would enable (based on HUD’s own calculations) a greater portion of the potential PRAC universe to participate without being excluded based on this percentage figure. We hope that HUD will consider modifying this provision.* We, additionally, are grateful that HUD intends to assign a transaction manager that will be responsible for assisting interested owners in reviewing the sufficiency of, and making modification if necessary to, existing PRAC rents (Item A, p. 25).

Regarding continued elderly nature of program, resident protections and grandfathering of current residents, we believe HUD’s intent to ensure program mission to continue to serve elderly persons (Item H, p. 21), guarantee current residents have continued rights of occupancy (grandfathering) (Item L, p. 17 for PBV; Items F, p. 20 and H, p. 21 for PBRA), and safeguard resident right of return (Item L, p. 9) is clear. However, as described below, there are some occupancy policy issues which could benefit from additional clarity. We believe such clarity would help avoid confusion by oversight entities, unnecessary findings against owners for unwitting non-compliance, and even potential loss of subsidy for current and future residents.

Implementation of age-distinct intentions could be strengthened by enhancing the existing statement at Item H, Occupancy (p. 21, line 4) which instructs that converting properties “must continue to serve elderly persons,” providing a reference reading, “The term ‘elderly person’ means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy” (Footnote #19, p. 21). To eliminate any possible concern that converting properties will be subject to the standard Section 8 program definition, as in other RAD programs where an elderly designation may include disabled non-elderly families, *we suggest that HUD explicitly state in the Occupancy paragraph that such properties “will retain the current HUD Definition C for future eligibility,” including the language from the footnote, and specify that this definition will be incorporated into the new Elderly Housing Use Agreement (Item I, p. 7).*

Grandfathering of existing residents (Item H, p. 21, lines 6 and 7) should be enhanced to ensure that current residents are assured not just of continued occupancy but also *continued rental assistance subsidies in all cases where assistance is being provided at the time of the conversion*. This goes to the issue of citizenship or proof of being an eligible non-citizen, which is not required for assistance under the PRAC program, but presumably will be required for new admissions. As drafted, the footnotes in the PBV section of the notice (#11, p. 17) and PBRA section (#18, p. 20) discuss certain RAD statute amendments to ensure that conversion would not be “the basis for rescreening, *termination of assistance*, or eviction...” but are applied specifically to the issue of continued occupancy in under-occupied units. However, could this language be applied to the Occupancy Requirements section as well, *we urge the explicit addition of the term “rental assistance” in the text of the last sentence in Item H to read, “Existing residents are not subject to re-screening for income, rental assistance, and/or continued occupancy eligibility.” Further, we urge HUD to insert in the second sentence of the “No Rescreening of Tenants Upon Conversion” paragraph that “With respect to occupancy and continuation of rental assistance subsidy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria that occurred prior to conversion....”* (Item F, page 20, line 4)

Concerning other Section 8 versus PRAC operational considerations, while we assume that minimum rents, income targeting, and any other Section 8 requirements will apply to new applicants, *we encourage HUD to articulate in the paragraph on Occupancy Requirements* (Item H, p. 21) *that, “outside of the non-citizen rule, anything in the Section 8 program that does not already apply to PRAC program rents, like minimum rents, will be applied to current residents as well, at their next full or annual recertification, or at the date of conversion”* – an option which could be left up to the owners, or decided upon and specifically stated by HUD. (Item H, p. 21)

It would be also be helpful if the form of lease and any necessary modifications to the lease, like expected inclusion of pet provisions and treatment of issues like charging fees for late payments and/or insufficient funds fees for returned checks, could be clarified by HUD and/or made the subject of future discussion for clarification at some point prior to the first conversion. But we do not think these particular issues should be grounds to hold up release of the revised notice.

Comments Regarding Interest in PBV Option

Among HUD’s specific questions, several of which have already been addressed above, HUD asked about the degree of interest in PBV. LeadingAge members have overwhelmingly indicated their expectation to utilize the PBRA conversion option. But none were willing to suggest the outright elimination of the PBV conversion option. Therefore, we encourage HUD, if possible, to retain such provisions as are already included in the draft regarding how PBV might work, while articulating that further development of that section would be needed before it can be utilized as a functional option. If such retention without further effort/modification is not feasible then, at this time, we encourage HUD to remove the PBV component in order not to delay release of the revised RAD notice. Later, should PBV become a necessary or specifically sought option, we hope HUD will

continue (as they have effectively so far) to engage stakeholders, seeking dialogue on apparent issues, and consider making subsequent revisions to the RAD notice.

Again, we thank you for this opportunity. We look forward to working with HUD to implement and further improve this program. Please contact Sara Neitzel at 518-867-8835 or by e-mail at sneitzel@leadingageny.org with any questions or comments.

Sincerely,

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LeadingAge New York