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AFTER A DECADE OF RAD, WHAT NOW?

By Greg Byrne

HUD's Office of Recapitalization, which administers the Rental Assistance Demonstration (RAD) program, recently celebrated RAD's 10-year anniversary with an impressive list of accomplishments (see below).[1] RAD was created as part of the 2012 HUD appropriations bill, with the first transaction closing in 2013. As a demonstration, RAD was never intended as a permanent program but to inform future policy. That being the case, where do we go from here?

Background

Fundamentally, the RAD program was designed to help preserve (or replace, where appropriate) public housing's aging inventory, which, at the time RAD was enacted, stood at about 1.15 million units but was hemorrhaging stock due to deteriorating physical conditions. The idea was to allow public housing agencies (PHAs) to convert from public housing to Section 8 at Fair Market Rents (FMRs), which, along with long-term assistance contracts, would enable PHAs to raise both first mortgage proceeds and, where needed, tax credit equity to recapitalize their properties. When RAD was first introduced as legislation, Congress was receptive to the argument that public housing was "undercapitalized" and that a better way to preserve public housing might be to convert to Section 8 to allow PHAs to access private capital.[2] However, the Congress was not ready to put up the additional $1.5 billion it was going to cost (at that time) to convert public housing at FMR-based rents. Instead, Congress authorized HUD to move forward with the program as a demonstration (initially authorized for 60,000 units but later expanded to 455,000 units) but without any additional subsidy, resulting in RAD's "no additional cost" provision. PHAs could convert, but only at existing funding under the Operating Fund and Capital Fund programs.[3] Thus, RAD was born.

As part of the inevitable negotiations with affected industry organizations and advocacy groups to get RAD launched, certain other key provisions were built into the demonstration, including:

- Public or non-profit ownership or control,

[1] Office of Recapitalization, *RADBlast! Reflections on 10 Years of Public Housing Conversions*, November 20, 2023.

[2] I don't want to rehash all the arguments here why the Section 8 program is such a better tool for raising private capital, but will point out that, as compared with Section 8, the public housing program lacks a long-term rental subsidy contract with built-in rent adjustments for inflation.

[3] The funding levels under the separate public housing Operating Fund and Capital Fund programs were converted, on a project-by-project basis, to a "RAD Section 8 Contract Rent." Nationwide, in 2022, those RAD Contract Rents, plus applicable utility allowances, were equal to about 88% of HUD's FMRs.

- The absolute right for all residents to return to the converted project following renovation/construction,
- Tenant rights as existed in public housing,
- Long-term renewable use agreements and subsidy contracts,
- One for one replacement[4], and
- The right for all residents, with few exceptions, to access turnover vouchers to move elsewhere after one or two years, a provision also known as Choice-Mobility.[5]

PHAs were then allowed to choose among two existing project-based Section 8 vehicles – either Project-Based Rental Assistance (PBRA), administered by HUD's Office of Multifamily Housing, or Project-Based Vouchers (PBVs), administered by local voucher agencies and overseen by the Office of Public and Indian Housing.

To convert under RAD, a PHA would be required to undertake an independent 20-year physical needs assessment (PNA) and then submit a Financing Plan demonstrating that the project had the resources to cover those capital needs as they came due, whether through PHA grants, debt, equity, or other sources.

The Numbers

How has RAD done 10 years later? Has it achieved its basic goal? Has it demonstrated that, by converting public housing to the Section 8 platform, even often at less-than-FMR rents, PHAs can better leverage private capital and preserve these assets long-term?

It would be hard to argue that RAD has been anything but a resounding success. RAD has converted 174,000 units (about 15% of the public housing program at the time of enactment) across a range of PHA sizes and project types.[6] These transactions have resulted in $19.1 billion in construction activity while generating $10.0 billion in first mortgage proceeds and another $11.3 billion in tax credit equity. As a by-product, ten years of steady RAD construction has also generated a steady stream of jobs, has substantially improved dilapidated stock, and has spurred larger neighborhood revitalization.

Initially, there were many who did not believe that the financing industry would be interested in making large investments and mortgage capital available to public housing. PHAs were not believed to be "bankable." But RAD has proven that the long-term Section 8 subsidy contracts, with built-in contract rent adjustments for inflation, are the critical element in attracting debt and equity.

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[4] The RAD program includes a de-minimis allowance of 5% to accommodate needed upgrades to physical space or for other local objectives, although PHAs have utilized only a small fraction of that authority.

[5] The first five items on this list were all based on the RAD statute (although it was HUD that defined substantial conversion of assistance to mean not more than a 5% reduction in units). The resident right to move – Choice-Mobility – was established administratively and not via statute.

[6] RAD conversion data as of 12/2/23, as reported on the RAD Resource Desk (RAD Resource Desk). It is worth recognizing the Office of Recapitalization's commitment to transparency in publishing various program data.

Importantly, the early success of RAD also spurred other complementary efforts within HUD to provide PHAs with as many options to convert to Section 8 as statutorily possible[7], including:

- Expanded use of the Section 8 disposition program, and the accompanying award of Section 8 Tenant Protection Vouchers (TPVs), which can then be project-based (often at higher rents than under RAD);
- A streamlining of the Voluntary Conversion Program (called Streamlined Voluntary Conversion, or SVC), allowing PHAs with 250 or fewer units to trade in their public housing for Section 8 TPVs and, with tenant consent, to project-base those TPVs; and
- Various RAD and Section 18 "blends", including a construction blend and a blend for PHAs with 250 or fewer units (where 20% of the units convert under RAD and 80% under Section 18).

In other words, as RAD continued to demonstrate the leveraging power of long-term Section 8 subsidy contracts, PHAs and other stakeholders began pressing HUD for even more opportunities to get over to the Section 8 platform.

As a result, there's really nothing more that we can learn from RAD. It has made its basic point, which is that the Section 8 program is a much better vehicle for attracting capital and preserving the nation's public housing assets. What needs to be done now is to finish the job.

The Need for Action

If the RAD program has been so successful (it has!), why do anything? Why change? There are three main reasons:

- The first is something of a moral argument, which is that, if we are motivated to improve the living conditions of residents of public housing, and if there is overwhelming evidence that an alternative vehicle exists to make that happen, we should be compelled to take appropriate action.
- The second is that the pace of RAD activity may have peaked. The table below shows the number of public housing units converted each year since the program's inception, along with "Other Units" in the transaction.[8]

[7] Conversion to Section 8, whether through RAD, Section 18, or Streamlined Voluntary Conversion, is now referred to as "repositioning."
[8] Data as of 12/2/23, per RAD Resource Desk.

RAD Conversions, by Year				
Year	Total Transactions	ACC Units	Other Units	Total Units
2103	13	1,248	78	1,326
2014	114	11,904	1,862	13,766
2015	129	14,686	3,178	17,864
2016	262	29,621	2,221	31,842
2017	303	30,684	3,254	33,938
2018	111	22,097	3,301	25,398
2019	162	18,698	6,012	24,710
2020	172	16,267	8,690	24,957
2021	121	11,714	8,491	20,205
2022	133	11,536	6,821	18,357
2023	67	5,227	8,776	14,003
Totals	1,587	173,682	52,684	226,366

After converting some 15,000 to 31,000 units per year from 2015 to 2020, the numbers are now declining, and we are on pace to close only about 6,000 units in 2023.[9] Even if we were to consider "Other Units", the pace has cooled.[10] (In the early years of the program, Other Units were mostly market or non-RAD tax credit units, but more recently they tend to include public housing units that have been removed via Section 18 under the RAD/Section 18 Construction Blends.[11]) There is no doubt that COVID-19 disrupted the RAD pipeline, as PHAs had to focus on other pressing matters and as construction costs and interest rates skyrocketed, but the slowed pace of RAD conversions can certainly also be attributed to (a) a sense of fatigue by PHAs in navigating the different conversion options and their differing requirements and (b) a "wait and see" attitude among many PHAs regarding what may eventually replace (or enhance) RAD, fearful that, if they were to convert now, they may lose out on what might be a better deal down the road.

- The third is that HUD has largely run out of inventive ways to boost the RAD rents. The most recent update to the RAD Notice, published July 27, 2023, includes a number of helpful process improvements, but it doesn't alter the basic math that RAD rents are subject to current funding and, in most markets, are substantially below FMRs.[12] [13] With the Section 8 "blends" introduced over the past several years,

[9] 2023 closing data through 12/2/23.

[10] This "cooling off" is also apparent from the pace of new RAD applications, which, over the past two years, has averaged only about 12,000 units per year.

[11] One of the trends that is apparent from the RAD data is that a larger percentage of RAD transactions today are RAD/Section 18 blends. In this regard, the introduction of the RAD/Section 18 Blends has been extremely useful in facilitating the recapitalization of older and higher-need properties. At the same time, these are more complicated transactions and take longer to plan and execute.

[12] See RAD Supplemental Notice 4B (RAD_Supplemental_Notice_4B_-_FINAL.pdf (radresource.net) , July 27, 2023.

[13] The most significant change in the recent RAD notice is the authority to allow PHAs to supplement or boost the RAD rents with funds from an agency's voucher program in order to support the development of new units through

HUD seems to have done about all it can within existing statutory parameters to get rents closer to market.

Given all this, now is the time to launch a broader initiative to convert the remainder of the public housing stock to a more stable Section 8-based platform.

Has Anything Like This Been Done Before?

There already exists a large-scale precedent for, essentially, trading in an older subsidy program for Section 8. It's called the Section 8 Loan Management Set-Aside Program, or LMSA. Th Section 8 program was created in 1974. Eventually, some 850,000 PBRA units were developed under the Section 8 New Construction and Substantial Rehabilitation program. However, HUD also added LMSAs to nearly 500,000 units that had previously been developed under the shallow-subsidy Below Market Interest Rate (BMIR) and Section 236 programs.[14] These older assisted housing projects were suffering from the exact same conditions that plague current-day public housing, which was deteriorating physical conditions and limited ability, under the then-current rent structures, to pay for repairs through refinancing. The only real difference is that the public housing stock has even larger capital backlog needs than existed for the BMIR and 236 inventories at the time that they converted to Section 8.

The Shape of Things to Come?

If it's time to pivot, what should we look for in terms of a permanent program to convert public housing to Section 8? A core set of program principles might include the following:

1. **PHAs should be provided with the option of choosing between the two existing project-based Section 8 subsidy vehicles –** We don't need another boutique (or third) program. PHAs should be allowed to convert to PBRA or PBV as those programs are designed today. Indeed, one of the problems of the current public housing program is its programmatic isolation, which shouldn't be replicated.[15]
2. **Rents should be market-based, capped at some reasonable level of FMR –** At the heart of any permanent conversion program should be a rent-setting system

the Faircloth-to-RAD program. Unfortunately, this new authority does not apply or extend to existing public housing units. But it does open policy avenues.

[14] A total of about 670,000 BMIR or Section 236 units were developed, the vast majority of which were later awarded Section 8 LMSAs. See Schwartz, Alex F. 2015. *Housing Policy in the United States*, New York: Routledge: 203-210.

[15] Such a permanent conversion program should be able to accommodate the same key elements found in RAD, including long-term use agreements and public ownership and control, except for Choice-Mobility, least not without a large expansion in the voucher program. Choice-Mobility depends on the availability of turnover vouchers in a PHA's voucher program. If 1 million public housing units convert to Section 8, and if 10-15% of residents utilized their Choice-Mobility option each year, there would be few if any turnover vouchers available to serve anyone on the voucher waiting lists. RAD was able to include, and achieve, Choice-Mobility only because of the more limited number of units involved in the demonstration. As a reminder, this particular RAD provision is administrative and not statutory.

with market-based rents. Although it has been remarkable what PHAs have been able to pull off with rents tied to current public housing funding levels, there is a limit to how far we can go with below-market rents. All of HUD's subsidy programs have been moving over the past few decades to a market-based rent system, with certain program caps (generally, 110% in the PBV program and 120%-150% in the PBRA programs). Public housing is the only major HUD housing program without a market-based rent. There's no real policy argument to justify why PHAs should get less than market rent, subject to whatever reasonable program cap is established.

3. **There should be a companion capital program of gap funding** – It would be great if, by simply providing market-based rents, PHAs could sufficiently recapitalize their properties. But that's just not feasible, especially considering that the public housing inventory has over 200,000 units that are more than 60 years old. Nationwide, the repair backlog is variously estimated at some $70 to $90 billion. Section 8 market-based rents will make it so much easier to attract private debt and equity, but for some portion of the public housing stock, those resources will not be enough. Dedicated capital funding will be needed to preserve (or replace) these very high-need properties as well as properties in low-rent markets with less ability to generate sufficient first mortgage proceeds to address repair needs. This gap funding should be "last in" funds, with the expectation that the PHA has used its Section 8 rents first to leverage mortgage capital.[16] Exempting public housing conversions from state tax-exempt volume caps (and, therefore, eligibility for 4% tax credits) would be one way to help.
4. **There should be a reasonable transition period between the current repositioning programs and their replacement** – We shouldn't pull the rug out from under any current PHA planning efforts to reposition their inventories. Hence, we should keep all the current repositioning options open – RAD, Section 18, SVC – for some time even as a permanent conversion program is authorized.
5. **There should be a stated timeframe for full conversion of the inventory that is both finite but reasonable** – Realistically, we are looking at something like a 10 or 15-year conversion period.
6. **Tenants should be ensured the same basic tenant rights as exist under RAD, including the absolute right to return.**
7. **We should seek to streamline the processing of conversions** – In rolling out RAD for public housing, HUD had a legitimate desire to reduce "program risk", resulting in additional guardrails and processing requirements that shouldn't be necessary in a permanent program. We also need to find a way to convert at a much larger scale and to ease the burden on PHAs. In this regard, it's worth remembering that the conversion of the Rent Supplement and RAP properties under RAD's Second

[16] One could envision exceptions for, say, projects requiring small loans, where private financing might be impractical. An interesting policy issue would also be whether this gap funding would be in addition to, or in lieu of, equity that might be raised through 4% or 9% tax credits. HUD's Office of Recapitalization has extensive history sizing loans, and dealing with such exception issues, in the Mark to Market program.

Component happened without any submission of financing plans for PBV conversions and greatly reduced financing plan requirements for PBRA conversions. While this topic is too large to explore fully in this paper, suffice it to say that there are likely ways to simplify conversion processing under a permanent program, possibly even delegating to field offices the processing of certain "standard" or "light" conversions.

8. **We should provide flexibility for smaller PHAs –** HUD's current repositioning options already acknowledge the unique circumstances of small and very small PHAs, allowing for certain exemptions or expedited processing. The desire to provide substantial flexibility to small PHAs should continue under a permanent conversion program, including the ability to carry over existing reserves upon conversion or to grandfather existing funding (contract rents) in certain rural or very low-cost markets (similar to the "exception rent" provisions in the Section 8 PBRA Mark-to-Market program).

Of course, the above will cost more than current public housing funding. But we knew that before RAD was enacted. There's no other way to properly preserve the public housing stock, not with public housing's enormous capital backlog. Spreading things out over, say, 10 or 15 years would be one way to ameliorate the fiscal cost. But without such a replacement program for RAD that includes market-based rents, along with gap funding, the public housing inventory is going to continue to suffer, and the only reasonable alternative would be to turn public housing into something of a block grant, where PHAs are free to triage their stock based on current funding. While block grant approach would be technically feasible to design, it would also result in what most would consider to be an intolerable loss of hard units (and likely contribute to the acute homelessness crisis facing so many cities).

Given that public housing's future almost certainly leans towards Section 8, but also recognizing that legislation required to enact a permanent conversion program may be several years off, HUD should, in the meantime, at least address the "legacy project problem" by expanding Section 18 eligibility for projects built before 1960, much as HUD did with scattered sites in 2018.[17] As argued in *Recognizing Functional Obsolescence in Determining Eligibility for Public Housing Demolition and Disposition* (Papers | Greg Byrne Consulting), which I wrote with Rob Hazelton, making these projects automatically eligible for Section 18 would (1) reduce transaction costs and (2) greatly facilitate local PHA efforts to plan for the necessary redevelopment of these older projects, most of which suffer from a host of design flaws, high capital needs, and an undue concentration of poverty.

Final Note

A decade seems like an awfully long time for a demonstration.

[17] Microsoft Word - 18-04pihn (hud.gov) , page 5.

We should applaud HUD and the Congress for introducing/enacting the RAD program and then for providing PHAs with ever-increasing options for getting public housing onto the Section 8 platform. Indeed, for some PHAs and public housing projects, the current suite of repositioning tools works well. But, unfortunately, not universally. The current system, so to speak, can also be complicated to navigate, with the differing program requirements associated with each repositioning option. It would be better to clear the deck and have one universal conversion program. Such an effort would greatly assist PHAs in their long-term planning. More importantly, it would better help preserve this valuable stock.

The results are in. It's time now to plan for RAD's succession and for the various industry organizations and advocacy groups to begin working through a guiding set of principles.

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