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## Owner-Adopted Preferences in the RAD Program

Below is an explanation of owner-adopted preferences for RAD Properties, including direction for owners wanting to establish an owner-adopted elderly preference. This message consolidates and highlights current policy located in the RAD Notice (PIH 2012-32 (HA) H-2017-03, REV-3), HUD Handbook 4350.3, REV-1, the Section 8 Statute, the regulation at 24 CFR § 5.655, and Housing Notice 2013-21.

This listserv message also makes clear that owners of RAD properties are not permitted to establish an elderly designation (i.e., a set-aside of units for the elderly) because the section 8 statute, unlike the statute governing public housing, does not authorize designations. However, owners of RAD properties may adopt a selection preference for elderly individuals and/or elderly families, which permits those applicants, to be selected from the waiting list and housed before other eligible families. Any preference adopted as part of the conversion that will alter the occupancy of the property is subject to an upfront civil rights review during the RAD conversion process. Certain preference also require approval from HUD's Multifamily Field Office, as described below.

### Owner-Adopted Preferences That Do Not Require HUD Multifamily Field Office approval

Project Owners may adopt a preference for any or all the populations identified in 24 CFR § 5.655(c)(5) without prior HUD approval. These four preferences are for:

- Single persons who are 62 or older over other single persons
- Single persons who are displaced over other single persons
- Single persons who are homeless over other single persons
- Single persons with disabilities over other single persons

### Preferences that Require HUD Multifamily Field Office Approval

As stated in section V. b. of Housing Notice 2013-21 (issued July 25, 2013), Section 8 project owners may establish an owner-adopted preference for populations other than those identified in 24 CFR 5.655(c)(5) but first obtain local HUD office approval. Examples include but are not limited to:

- Elderly families
- Near-elderly single persons
- Near-elderly families

Note: RAD properties are not eligible for the statutory elderly preference established by Title VI, Subtitle D of the Housing and Community Development Act of 1992, implemented through 24 CFR § 880.612a, and discussed in HUD Handbook 4350.3, REV-1, paragraph 3-18. For this reason, 24 CFR § 880.612a was struck in Appendix I of the RAD Notice beginning with Revision-2 (issued June 15, 2015).

## RAD Conversions Prior to June 15, 2015

RAD Conversions prior to Revision-2 to the RAD Notice (PIH 2012-32) may have established the statutory elderly preference following 24 CFR 880.612a. Further, properties may have incorrectly identified and implemented an elderly preference as an elderly designation. This is because 24 CFR § 880.612a was not struck in Appendix I of the RAD Notice prior to June 15, 2015. Owners who have done either are required to analyze their policies and, if necessary, modify them to comply with RAD Notice - Revision 3, 24 CFR 5.655(c), and Housing Notice 2013-21.

## Fair Housing Requirements for Preferences

An owner may not adopt a preference that would have the purpose or effect of substantially delaying or denying the participation of other eligible families in the program on the basis of race, color, national origin, religion, sex, disability, or familial status, or would create or perpetuate segregation. Since June 15, 2015, where an owner was adopting a preference that would have the effect of changing the occupancy of the public housing property, HUD has performed an upfront civil rights review prior to authorizing the conversion.

## Identifying Preferences in the Tenant Selection Plan

Owners must also include a description of any preference in use at the property. This includes the regulatory approved preferences found at 24 CFR 5.655(c)(5) and any preferences that have been approved by HUD (e.g. elderly families, near-elderly single persons, near-elderly families). Owners must inform all applicants about available preferences and give all applicants an opportunity to show that they qualify for available preferences. This notification to applicants must be made when a new preference is implemented.

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