March 12, 2019

Office of Recapitalization
United States Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

RE: Feedback on Draft Rental Assistance Demonstration Notice Revision 4

Office of Recapitalization Staff:

The Local Initiatives Support Corporation (LISC) thanks the U.S. Department of Housing and Urban Development (HUD) for the opportunity to provide feedback on the draft Section 202 Project Rental Assistance Contracts (PRAC) Rental Assistance Demonstration (RAD) Revision 4 Notice. We appreciate the Department's ongoing engagement with stakeholders as RAD for PRAC has been developed and encourage HUD to continue to work with the public as further revisions are made and as related documents are created, such as the Elderly Housing Use Agreement and release documents. We offer the following comments and look forward to working with HUD as this important senior affordable housing preservation program is developed.

Rent Setting

Section 202 PRACs are funded based on their necessary operating budgets and do not allow for the inclusion of debt service since they were funded through the Capital Advance program. Many properties will be taking on debt service for the first time and may have higher total costs after RAD conversion, even after factoring in efficiencies from the recapitalization work. There are a litany of PRAC property types and sizes, and some will fall below and above current Fair Market Rents (FMR). LISC's work nationally with Section 202 owners has shown us that some properties in very high cost markets, such as New York City or San Francisco, have rents in excess of 150 percent of FMR. The draft Notice proposes that initial contract rents be set at the lesser of approved PRAC rents, 120% of FMR for Section 8 Project-Based Rental Assistance (PBRA) projects, or 110% of FMR for Project-Based Voucher (PBV) projects.

1. *PRAC Rents are Often Low and Not Able to Support RAD Conversions.* LISC appreciates that HUD has offered some flexibility on rent setting with "rent bundling", rent increases before conversion, use of small area fair market rents, and reserving the right to modify PRAC rents. We are still concerned though that many PRAC rents are too low to support RAD conversions and encourage HUD to allow rent setting up to 150 percent of FMR in high costs markets as is outlined in the current RAD Notice.
2. *Budget Based Rent Increase before Conversion (Section 4.4A).* The Notice states that "HUD requires that Project Owners analyze project operating and capital needs as a well as the efficacy of resident services at each renewal and request adjustments to the Operating Expense Amount accordingly." We encourage HUD to provide the utmost flexibility in reviewing and approving these requests since rent increases will allow properties to leverage additional debt for recapitalization. In addition, we recommend that HUD provide additional guidance on the timing of annual Budget Based Rent Increases and RAD conversions. For instance, it's unclear when a Project Owner should submit a rent adjustment if they intend a RAD conversion. Is it at their annual PRAC contract renewal date or when the RAD conversion place is submitted? These

timing considerations are important for Project Owners accessing outside sources of financing for property improvements.

3. *HUD Discretion to Modify PRAC Rents (Section 4.7.4A)*. HUD states in Section 4.7.4A that it "may modify the PRAC rents if necessary to adequately fund the replacement reserves or if necessary to support a Service Coordinator or Supportive Services to meet the needs of the residents." LISC supports HUD maintaining authority to modify PRAC rents although suggests that additional detail be provided on what factors and thresholds HUD will consider for rent changes.

Elderly Housing Use Agreement

1. *First Position of Elderly Housing Use Agreement (Section 4.2)*. HUD proposes in Section 4.2 that at the time of conversion, Converting Properties will be released from any outstanding obligations under the Capital Advance Agreement, Capital Advance Mortgage Note, Capital Advance Program Regulatory Agreement, Capital Advance Program Use Agreement, and related or collateral documents associated with the PRAC. Properties will enter into a Housing for the Elderly Declaration of Restrictive Covenants and Use Agreement (Elderly Housing Use Agreement). The Elderly Housing Use Agreement will have a term of 20 years plus the balance of the term left on the Capital Advance Program Use Agreement at the time of conversion. LISC notes that HUD will need to structure the Housing Assistance Payment contract similar to RAD Component 1 to accommodate outside lender and investor concerns with having the Use Agreement in first position.
2. *Breach of Housing Assistance Payment (HAP) Contract due to Non-Compliance or Insufficiency of Federal Appropriations (Section 4.4I).* The Notice states in the event of a breach of the HAP contract due to non-compliance or insufficient appropriations, that new tenants must be elderly and that rents must not exceed 30 percent of 50 percent of area median income for the remaining Capital Advance Use Agreement. The draft though does not address existing residents and HUD should provide additional clarification on how these residents will be treated. LISC also notes that mandating deep income targeting without operating rental assistance will creates challenges for Project Owners since it will put them in the position of needing transition reserves, which are required by investors or other partners focused on the ongoing viability of the project. LISC encourages HUD to only require targeting to what's needed to maintain the financial viability of the project.

Operating Reserve

HUD mandates that Project Owners establish and maintain a Project Operating Reserve account in Section 4.4F. LISC encourages HUD to provide additional guidance on when and how Project Owners can access these dollars when it's not required by a third-party financing source.

Restrictions on Proceeds from Sale or Refinance

Section 4.4J of the draft Notice states that "proceeds from any sale or refinance of the Covered Project that occurs during the period equal to the remaining term of the Capital Advance Use Agreement will be restricted to benefit the property or residents of the property (such as capital improvements or service delivery), or to other Affordable Housing Purposes." LISC appreciates that HUD is providing Project Owners some flexibility with sales proceeds although is concerned that this policy will create a disincentive to participate in RAD for PRAC. This policy may incentivize Project Owners to sell their property after their Capital Advance Use Agreement expires, which would allow them to access sale proceeds, instead of recapitalizing and preserving the property. This restriction is also not in line with other HUD policy guidance on sales proceeds, including Housing Notice 2011-31. Housing Notice 2011-31 allows sales proceeds under certain circumstances, all of which are incorporated in the draft RAD Notice. LISC encourages HUD to allow Project Owners access to sales proceeds to incentivize the preservation of this important senior affordable housing stock.

Ownership
LISC appreciates the flexibility that HUD has provided on nonprofits maintaining ownership interests while providing flexibility with allowing the use of limited liability company partnerships and general partnerships. With this flexibility we want to ensure that general partnership agreements clearly stipulate that nonprofit owners and operators fully direct the financial and legal interests of the Converting Properties. In that regard, we welcome HUD guidance in the Notice specifying ownership and control requirements of the controlling general partner or managing member with respect to initiating: withdrawals from reserves; granting of easements to third-parties; future capital repairs; mortgage modifications; distribution of cash flow; and liquidation of partnership interests.

Service Coordination
Research has increasingly found that service coordination in affordable housing properties provides numerous benefits, including higher quality of life for residents, positive health outcomes, and decreased social isolation. Section 202 PRAC properties are required to have a service coordination plan and many have service coordinators funded through their property's operating budget.

1. *Supportive Services for the Elderly & Provision of Services (Section 4.4C & 4.4S)*. LISC was pleased that HUD increased the amount of service costs which can be paid from project rental assistance up to $27 per unit per month (PUPM) from the current $15 PUPM maximum. While the Notice does not prescribe specific Service Coordination standards, LISC encourages HUD to hold owners to the highest feasible performance standards so that seniors receive high quality services. In addition, LISC requests that HUD consider if the new PUPM standard can be included during a PRAC budget renewal so there's no difference between eligible service provision costs between PRAC and Section 8 programs.
2. *Fair Market Rents and Service Coordination.* Fair Market Rents do not include service coordination costs and HUD should not include these costs when determining if rents fall within the FMR. These costs should be added back in after all other costs are included and should be approved as long as it's still budget neutral.

Occupancy Issues
1. *Minimum Rents (Section 4.5I)*. In the Section 202 program, residents are eligible if they are at least 62 years old at the time of occupancy. Residents are also not subject to minimum rents. LISC was pleased that HUD will continue to utilize the same elderly definition in Section 202(k) of the Housing Act of 1959 and recommends additional information be provided on whether existing and new residents post-conversion will be subject to Section 8 minimum rents. LISC recommends that residents not be subject to minimum rents, if possible, since the average income of a Section 202 resident is around $13,000 per year, with almost all on fixed incomes.
2. *Resident Notification and Consultation (Section 4.7.3A)*. The resident notification requirements stipulated in the Notice are thorough and consistent with other RAD tenant engagement requirements, including accommodations for persons with physical disabilities and language barriers. However, special consideration must be given to seniors who while not physically disabled may have less capacity to fully understand the implications of a disruption to their day-to-day routines as a result of major capital repairs to their homes or from the result of a temporary relocation. The Notice should indicate that Project Owners make reasonable efforts to ensure that immediate family members and/or caregivers of seniors are informed of the upcoming Conversion.

Other
1. *Market Study for High Vacancy Areas (Attachment 4.A, O)*. HUD states that a "market study or net demand analysis may be required if the project is currently experiencing a high vacancy rate or if the Project Owner is requesting a reconfiguration of units." HUD states that Project Owners

"consult with the Transaction Manager to determine if a market study is necessary before procuring one." LISC recommends that HUD provide additional information what constitutes a "high vacancy rate" for the purpose of this Notice. HUD provides similar data for "low vacancy areas" in the annual Tenant Protection Voucher Set-Aside Notice.

2. *Technical Assistance (TA) to Section 202 Owners*. Many Section 202 owners will require significant technical assistance to successfully execute a RAD for PRAC conversion. LISC encourages HUD to provide TA itself and through contracts or cooperative agreements with TA vendors to ensure Section 202 Project Owner's goals are met.
3. *Degree of Interest in PBV Conversions*. LISC does not believe there will be interest from PRAC Project Owners to utilize PBV for RAD for PRAC conversions and encourages HUD to focus on establishing and furthering the PRAC to PBRA process.

LISC would be happy to provide additional information on our comments. Please contact Mark Kudlowitz (mkudlowitz@lisc.org) with any questions.