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Mitigating the Legal Risks for Landlords Under the Rental Assistance Demonstration Program

Erica Mahoney

Texas A&M University School of Law (Student), ericamahoney@tamu.edu

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MITIGATING THE LEGAL RISKS FOR LANDLORDS UNDER THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM

By: Erica Mahoney[†]

ABSTRACT

Public housing units are deteriorating while there are insufficient allocations for their renovation or maintenance. In 2012, Congress initiated the Rental Assistance Demonstration (“RAD”) in an attempt to save public housing without the need to apportion additional funds to housing assistance programs. The RAD program converts public housing to mixed-income housing and transfers majority ownership to private developers. Current tenants of these public housing complexes are transferred to mixed-income apartment complexes owned by private landlords and developers who receive a portion of the rent from the tenant and additional rent from the local Public Housing Authority. The success of the RAD program is dependent on landlords and developers voluntarily participating and electing to dedicate units to affordable housing. This Comment discusses the legal exposures these landlords face when participating in RAD, methods of mitigating these risks, and policies to incentivize participation.

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[†] Erica Mahoney is a graduate of Texas A&M University School of Law and a licensed attorney in the state of Texas. Erica received her Master of Arts in Dispute Resolution from Southern Methodist University and her Bachelor of Arts in International Studies from the University of North Texas. She has focused her career on public service through working with nonprofit organizations. Erica would like to thank Dean Luz Herrera for her feedback and encouragement in drafting this article.

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I. INTRODUCTION

Public housing is in crisis as aging housing units are lost to deterioration. In response, Congress implemented the Rental Assistance Demonstration (“RAD”) program, which allows for a portion of certain public housing units’ ownership to be transferred to private developers.¹ During some rehabilitation and construction projects, tenants continue to reside within the same housing complex.² In other cases, it is necessary for tenants to relocate to mixed-income housing complexes using one of two voucher systems through a process called transfer of assistance.³ The success of this program, and public housing in general, relies on the willingness of private landlords to participate in these voucher programs and house public housing tenants. Many landlords are hesitant to accept housing assistance vouchers due to the unique legal exposures participation may create. Rural communities and areas in which development costs are high are seeing little to no participation in RAD because of the inability to attract investors.⁴ By mitigating legal risks, the program attracts more investments.

1. U.S. DEP’T. OF HOUS. & URBAN DEV., NOTICE H-2017-03, REV-3, PIH-2012-32 (HA) (2017).

2. *See id.*

3. *Id.*

4. ECONOMETRICA, INC., INTERIM REPORT: EVALUATION OF HUD’S RENTAL ASSISTANCE DEMONSTRATION 175 (Sept. 2016).

The first section of this Comment discusses the importance of public housing on the economy and households receiving assistance. The second section provides a description of the Rental Assistance Demonstration program. Finally, the third and fourth sections discuss the legal exposures deterring landlord participation and suggest policies that will mitigate these risks and encourage landlord participation.

II. PUBLIC HOUSING OVERVIEW

Currently, a total of five million individuals receive some type of housing assistance,⁵ with 2.3 million of those individuals living in public housing.⁶ The need for rental assistance is increasing as the United States faces a 7.4 million unit shortage of affordable housing units.⁷ However, many developers are continuously choosing to construct luxury homes over affordable housing due to the higher profit margin luxury home development offers.⁸ With only an average of twenty-eight affordable units available for every one hundred extremely low-income households, more households are in need of rental assistance to bridge the gap between what they can afford and what is available.⁹

Public housing is not only beneficial to the households receiving subsidies, but it benefits the community as well.¹⁰ Ninety percent of households living in public housing were “elderly, had disabilities, worked, had recently worked, or were subject to work requirements through another program,” with 52% of households in public housing being elderly or disabled.¹¹ Public housing prevents these individuals from transitioning into state funded assisted living or nursing homes earlier than necessary.¹² Assisted living and nursing homes cost the states significantly more money than public housing or rental assis-

5. Reuters, *Out in the Cold: New U.S. Budget Priorities Threaten Housing Aid Programs*, FORTUNE (Mar. 5, 2017), <http://fortune.com/2017/03/05/trump-hud-housing-assistance/> [<https://perma.cc/KYK7-BUNL>] (discussing that housing assistance includes tenant vouchers, subsidies to landlords, and grants for housing projects).

6. Jamie Alison Lee, *Rights at Risk in Privatized Public Housing*, 50 TULSA L. REV. 759, 763 (2015).

7. NAT'L LOW INCOME HOUS. COAL., *OUT OF REACH 2017: THE HIGH COST OF HOUSING 5* (2017).

8. See Neal Hefferren, *A Complete Guide to the Low-Income Housing Tax Credit Program*, PROP. METRICS (June 13, 2017), <https://www.propertymetrics.com/blog/2017/06/13/a-complete-guide-to-the-low-income-housing-tax-credit-program/> [<https://perma.cc/U3YH-WPX8>].

9. *Affordable Housing Statistics*, MONROE GROUP, <http://www.monroegroup.com/about-us/affordable-housing-statistics/> [<https://perma.cc/HBN3-CMCX>] (last visited Feb. 21, 2019).

10. Letter from Flora Brewer, Researcher, N. Tex. Reg'l Hous. Assessment, to Vice President Assisted Hous., Fort Worth Hous. Sols. (May 8, 2017) (on file with author).

11. *Policy Basics: Public Housing*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/policy-basics-public-housing> [<https://perma.cc/9R68-KGBX>] (last updated Nov. 15, 2017).

12. *Id.*

tance due to the higher price associated with staff and nursing care.¹³ In 2014, the United States paid approximately \$152 billion for long-term care through the Medicaid program.¹⁴

Most notably, public housing programs prevent homelessness. Although the public often believes homelessness is rooted in mental illness, recent studies have shown that the root cause of homelessness is most often a combination of “high demand for housing, increasing prices, limited supply, and significantly high number of extremely low-income residents.”¹⁵ Through providing housing units at an affordable price, the federal government and local housing authorities are able to reduce the frequency of panhandling, loitering, and camping in public areas.¹⁶ Furthermore, public housing programs have a positive impact on local communities. On a national scale, Public Housing Authorities (“PHA”s)¹⁷ directly inject \$8.1 billion into the economy by paying for the cost of supplies and labor associated with capital improvements and maintenance, while indirectly generating an additional \$8.2 billion annually.¹⁸

Public housing, like many social programs, has its origins in the Great Depression.¹⁹ The federal government passed the Housing Act of 1937 in response to numerous families in financial crisis.²⁰ This initial act set public housing standards at the federal level to be implemented locally²¹ by providing funding through Annual Contribution Contracts (“ACC”s) for local PHAs.²² First, the PHAs would issue municipal bonds to cover the cost of construction.²³ Then, the ACCs would authorize the federal government to reimburse the PHAs for the principal and interest on the municipal bond.²⁴ While federal funding covered the cost of construction, PHAs were responsible for the maintenance of the property.²⁵ Each household was responsible for paying 30% of its gross monthly income for rent.²⁶ Initially, the

13. *Id.*

14. Deidre McPhillips, *The Age-Old Dilemma*, U.S. NEWS & WORLD REP. (Dec. 27, 2016, 9:00 AM), <https://www.usnews.com/news/best-countries/articles/2016-12-27/funding-long-term-care-for-an-aging-global-population>.

15. Letter from Flora Brewer to Vice President Assisted Hous., *supra* note 10.

16. *Id.*

17. PHAs are local, independent agencies that administer low-income housing programs.

18. ECONSULT CORP., *ASSESSING THE ECONOMIC BENEFITS OF PUBLIC HOUSING FINAL REPORT 4* (Jan. 2007).

19. Peter W. Salsich, Jr., *Does America Need Public Housing?*, 19 GEO. MASON L. REV. 689, 734-35 (2012).

20. *See id.* at 691.

21. Lee, *supra* note 6.

22. Salsich, Jr., *supra* note 19, at 693.

23. *Id.* at 693-94.

24. *Id.* at 694.

25. *Id.*

26. *Id.* at 698.

rent collected from tenants was sufficient to cover the cost of maintenance.²⁷

During the Great Depression, public housing primarily provided affordable homes to temporary low-income families.²⁸ Following World War II, the tenants in public housing transitioned to primarily veterans returning from war.²⁹ Subsequently, the public housing tenant demographics changed from temporarily low-income tenants to individuals and families who were in chronic poverty.³⁰ The transition from temporarily low-income tenants to the chronically poor resulted in a decrease in the number of households that were able to pay an adequate monthly rent.³¹ With significantly less revenue raised from rents, the PHAs had less funds to cover the cost of maintenance and improvements.³² The majority of public housing properties in use today were built in the years immediately following World War II in order to provide housing to returning veterans.³³ All 1.2 million units available today are in excess of forty-five years old.³⁴ The increasing age of the properties, combined with the decrease in funds for maintenance, has resulted in massive deterioration.³⁵ Each year, 10,000 to 15,000 units are lost to deterioration,³⁶ with only a small number of units being replaced.³⁷ Currently, there is a \$26 billion back log of repairs, not including ordinary maintenance costs, needed to make existing units “decent and economically sustainable.”³⁸ Despite the high need for repairs and improvements, the already insufficient federal funding is decreasing further, causing public housing to suffer “a slow death by financial starvation.”³⁹

A. *Rental Assistance Demonstration Program Overview*

Congress initiated the RAD program through the Consolidated and Further Continuing Appropriations Act of 2012⁴⁰ with subsequent modifications in the Continuing Appropriations Acts of 2014, 2016, and 2017 and the Consolidated and Further Continuing Appropria-

27. Lee, *supra* note 6, at 764.

28. Salsich, Jr., *supra* note 19, at 694.

29. Lee, *supra* note 6.

30. Salsich, Jr., *supra* note 19, at 694.

31. *Id.*

32. *Id.*

33. *See id.* at 692; Lee, *supra* note 6, at 764.

34. Salsich, Jr., *supra* note 19, at 692.

35. Lee, *supra* note 6, at 766.

36. *Id.*

37. *Policy Basics: Public Housing*, *supra* note 11.

38. ABT ASSOCIATES, INC., CAPITAL NEEDS IN THE PUBLIC HOUSING PROGRAM, at ii, vii (2010).

39. Lee, *supra* note 6, at 767.

40. ECONOMETRICA, INC., *supra* note 4, at xiv.

tions Act of 2015.⁴¹ The program centralizes on four primary objectives: “(1) preserving affordable housing . . . (2) [a]ttracting outside sources of (private and public financing) . . . (3) [m]inimizing adverse impacts on existing residents . . . [and] (4) [i]mproving housing quality for residents.”⁴² The program is currently in a demonstration phase and is set to terminate if not made permanent before September 30, 2020.⁴³

Originally, Congress allotted for the conversion of only 60,000 units to Section 8 housing under the RAD program.⁴⁴ Following the program’s enactment, the United States Department of Housing and Urban Development (“HUD”) received applications from PHAs covering 184,000 units. In response, Congress raised the number of allotted units in 2014 to 184,000 units to match the number of applications received in the previous year.⁴⁵ In the subsequent year, Congress raised the cap to 185,000 units⁴⁶ and in 2017 to 225,000 units.⁴⁷ In 2018, RAD experienced the largest cap increase in its history when Congress raised the cap to 455,000 units.⁴⁸

One attractive feature of the RAD program is its avoidance of any increased need for federal funding. The funding PHAs receive from HUD remains the same; however, public housing units converting under RAD transfer their funds from the public housing or Mod Rehab programs to housing vouchers.⁴⁹

The RAD program is divided into two statutory components: (1) transferring both public housing structures and tenants to long-term voucher programs, and (2) converting Tenant Protection Vouchers is-

41. See Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5; Consolidated & Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014); Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015); Consolidated Appropriations Act of 2017, Pub. L. No. 115-31, 131 Stat. 135.

42. ECONOMETRICA, INC., *supra* note 4, at xiv.

43. Rental Assistance Demonstration: Notice of Increase in Cap and Rent Setting, 82 Fed. Reg. 40,013 (Aug. 23, 2017).

44. ECONOMETRICA, INC., *supra* note 4, at xiv.

45. Department of Housing and Urban Development Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 672 (2011).

46. Ed Gramlich, Nat’l Low Income Hous. Coal., *Rental Assistance Demonstration*, in 2015 ADVOCATES’ GUIDE 4-21 (2015).

47. HUD Releases Notice on RAD Cap Increase and Rent Setting, PAC. NW. REGIONAL COUNCIL NAT’L ASS’N HOUSING & REDEVELOPMENT OFFICIALS, <http://www.pnrcnahro.org/hud-releases-notice-on-rad-cap-increase-and-rent-setting/> [https://perma.cc/AL6A-AK9R] (last visited Feb. 8, 2019).

48. Alison Bell & Douglas Rice, *Congress Prioritizes Housing Programs in 2018 Funding Bill, Rejects Trump Administration Proposals*, CTR. ON BUDGET & POL’Y PRIORITIES (July 19, 2018), <https://www.cbpp.org/research/housing/congress-prioritizes-housing-programs-in-2018-funding-bill-rejects-trump> [https://perma.cc/2JT2-3T89].

49. U.S. DEP’T OF HOUS. & URBAN DEV., *RENTAL ASSISTANCE DEMONSTRATION (RAD): QUICK REFERENCE GUIDE TO MULTIFAMILY HOUSING REQUIREMENTS* 3 (2015).

sued under the Rent Supplement, Rent Assistance Payments, and Mod Rehab programs to long-term voucher programs.⁵⁰ This Comment focuses on the first statutory component, which is best understood through examining the component's two significant processes: (1) conversion of public housing unit ownership, and (2) relocation of public housing tenants when necessary through the use of housing vouchers.

1. Conversion of Public Housing Units

The first component of the RAD program addresses the current need to renovate public housing units. RAD authorizes PHAs to sell public housing complexes to private real estate developers and investors, with the PHA retaining a portion of the ownership.⁵¹ Under a partial private ownership, the developers and investors are able to leverage the property to receive private capital funding to rehabilitate the property.⁵² Once the developer renovates the property, the owner or developer of the housing complex can lease the property as mixed-income, which means some tenants are traditional private market tenants paying the full rent directly to the landlord, while other households receive rental assistance through the long-term voucher programs described in the following section.⁵³

PHAs' participation in the RAD program is strictly voluntarily. However, the program limits PHA participation in two ways.⁵⁴ First, the congressionally imposed cap limits the number of units allowed to convert to long-term voucher programs.⁵⁵ This limitation creates a competitive process for selection of units. Second, as enacted, only Section 9 Public Housing or Section 8 Mod Rehab housing units are eligible for conversion under the first component of RAD.⁵⁶ Section 9 Public Housing includes dwellings owned by PHAs and rented to qualified tenants for a rent that is usually equal to 30% of the household's income.⁵⁷ The Mod Rehab program is the predecessor of the Project-Based Rental Assistance ("PBRA") program. It allows private-market landlords to devote units to tenants who receive rental subsidies.⁵⁸ The program was discontinued in 1991; however, some units still exist under the PBRA through contract renewals between

50. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 1-2.

51. *Id.* at 30-31.

52. *Id.* at 22.

53. *See, e.g.*, U.S. DEP'T OF HOUS. & URBAN DEV., RENTAL ASSISTANCE DEMONSTRATION (RAD): QUICK REFERENCE GUIDE FOR PUBLIC HOUSING PROJECTS CONVERTING TO PROJECT-BASED VOUCHER (PBV) ASSISTANCE 7 (2014).

54. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 1.

55. *Id.*

56. *Id.* at 2.

57. *Moderate Rehabilitation*, U.S. DEP'T OF HOUSING & URBAN DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/ph/modrehab [<https://perma.cc/E36H-UZQC>] (last visited Feb. 8, 2019).

58. *Id.*

the landlord and PHA.⁵⁹ Although the RAD statute allows for Section 8 Mod Rehab housing units to convert under the first component of RAD, HUD does not approve applications for Mod Rehab projects under the first component due to the highly competitive selection process caused by the limited number of units allowed to convert under the first component's cap.⁶⁰ Instead, RAD's second component exclusively approves Mod Rehab applications.⁶¹

Because RAD is currently in the demonstration phase, HUD requires significant reporting and publishing of the program's results. HUD released the first Interim Report on RAD in September of 2016.⁶² Within the limited time that HUD studied the conversion of former public housing and Mod Rehab units for its first publication of the program's results —185 public housing complexes already completed the rehabilitation process under RAD.⁶³ As of the time of the first Interim Report, the PHAs raised \$2.25 billion from private sources to invest in rehabilitating public housing units.⁶⁴

2. Relocation of Tenants

The second process PHAs face when converting public housing under RAD's first component is the relocation of tenants residing in the public housing complexes.⁶⁵ Although some projects use a "conversion in place model" that allows ownership to be transferred and renovations to be made while tenants continue to reside at the complex, some projects require public housing tenants to relocate to a Project Based Voucher ("PBV") or PBRA property.⁶⁶ These vouchers allow tenants to relocate to reserved units in mixed-income properties owned primarily by for-profit landlords. Landlords participating in either the PBV and PBRA programs enter into a contract with HUD known as the Housing Assistance Payments ("HAP") contract, which outlines the landlord's obligations in order to receive tenants through the program.⁶⁷

59. *Id.*

60. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 2.

61. *Id.*

62. ECONOMETRICA, INC., *supra* note 4.

63. *Id.* at iii.

64. *Id.*

65. *See* U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 1-2.

66. *See id.* at 27.

67. *See* U.S. DEP'T OF HOUS. & URBAN DEV., RENTAL ASSISTANCE DEMONSTRATION: GUIDE TO CHOOSING BETWEEN PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) FOR PUBLIC HOUSING CONVERSIONS (2015). *See also* U.S. DEP'T OF HOUS. & URBAN DEV., HUD 52618, PART II PBRA HOUSING ASSISTANCE PAYMENTS CONTRACT RENTAL ASSISTANCE DEMONSTRATION (RAD) FOR THE CONVERSION OF PUBLIC HOUSING TO PROJECT-BASED SECTION 8 (COMPONENT 1) (2017), <https://www.radresource.net/output.cfm?id=pbrahapp2new> [<https://perma.cc/U5MA-4VDF>]; U.S. DEP'T OF HOUS. & URBAN DEV., HUD 52515, RENTAL ASSISTANCE DEMONSTRATION (RAD) FOR THE CONVERSION OF PUBLIC HOUSING TO THE SECTION 8 PROJECT-BASED VOUCHER (PBV) PROGRAM (2017),

The HAP contract describes the manner in which rent is paid to the landlord. The contract requires the PHA to determine the total amount of rent owed to the landlord for each unit.⁶⁸ The rent is then paid through a combination of the tenant's contribution and funds from the PHA.⁶⁹ The PHA is not given any additional funds when converting tenants from public housing. Instead, the PHA's contribution to the rent paid under the HAP contracts are transferred from the funds previously provided to the PHA for its public housing programs.⁷⁰

The amount of rent due is generally calculated as the lowest of "110[%] of the applicable fair market rent for the unit bedroom size minus any utility allowance" with some limited exceptions, or the "reasonable rent as determined in accordance with 24 CFR 983.303."⁷¹ The reasonableness standard requires the PHA to compare the proposed rent for the PBV or PBRA units to at least three other similar units in the area not receiving rental assistance.⁷² The PHA must consider factors, such as "the location, quality, size, unit type, and age of the contract unit; and [a]menities, housing services, maintenance, and utilities to be provided by the owner."⁷³ The rent determined by the initial HAP contract may be adjusted on each anniversary of the contract in order to continue to provide the landlord with the property's fair market value.⁷⁴ However, the updated contract may not reduce the amount of rent due to the landlord below the amount determined in the initial HAP contract.⁷⁵

Tenants participating in the PBV or PBRA programs pay rent directly to the landlord in the amount of "the highest of [30%] of [the tenant's] adjusted income, [10%] of gross income, or the portion of welfare assistance."⁷⁶ The PHA pays the landlord the difference between the amount of rent established in the HAP contract and the amount paid by the tenant.⁷⁷

<https://www.radresource.net/output.cfm?id=newradpbvp1> [<https://perma.cc/6P59-MKNV>](part 1), <https://www.radresource.net/output.cfm?id=pbvhapnewp2> [<https://perma.cc/Z9C2-5Y5A>] (part 2).

68. See PART II PBRA HOUSING ASSISTANCE PAYMENTS CONTRACT RENTAL ASSISTANCE DEMONSTRATION (RAD) FOR THE CONVERSION OF PUBLIC HOUSING TO PROJECT-BASED SECTION 8 (COMPONENT 1), *supra* note 67, at 7.

69. *Id.* at 2.

70. U.S. DEP'T OF HOUS. & URBAN DEV., ANNUAL CONTRIBUTIONS CONTRACT: PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION 10 (2000).

71. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 53, at 8.

72. 24 C.F.R. § 983.303(d)(1) (2017).

73. § 983.303(c)(2).

74. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 186.

75. § 983.303(a).

76. *Renewal of Section 8 Project-Based Rental Assistance*, U.S. DEP'T OF HOUSING & URBAN DEV., <https://www.hud.gov/hudprograms/rs8pbra> [<https://perma.cc/G55Z-R7JD>] (last visited Feb. 8, 2019).

77. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 1, at 11-12.

a. Project-Based Vouchers

The first relocation option is to offer tenants a unit under the PBV program. PBVs allow private landlords to contract with the local housing authorities to allot a specific number of units within a building or complex. Housing complexes accepting PBVs are limited to devoting 50% of its units to PBVs.⁷⁸ The initial contract has a term of fifteen years.⁷⁹ One year after receiving a PBV, a tenant may convert to a Housing Choice Voucher (“HCV”), which binds the voucher to the tenant, allowing the tenant to choose any rental unit in the private market.⁸⁰

b. Project-Based Rental Assistance

The second option for tenant relocation is to offer tenants a unit under the PBRA program.⁸¹ The PBRA program is the most common rental assistance program administered by HUD with 1.2 million households currently housed through the program.⁸² HUD’s Office of Multifamily Housing administers the PBRA program, unlike the PBV program.⁸³ Additionally, landlords are not restricted by a limit on the number of units they may devote to PBRAs.⁸⁴ PBRAs also allow private landlords to contract with the local housing authority to devote specific units to tenants receiving rental assistance through the PBRA program rather than an allotted number of floating units like the PBV program.⁸⁵ The initial contract has a term of twenty years.⁸⁶ In contrast to the PBV program, tenants receiving PBRAs may not request an HCV until they have lived at the PBRA property for two years.⁸⁷

B. Advantages and Disadvantages of the RAD Program

The transition from public housing to mixed-income and privately managed communities presents many benefits to tenants and the affordable housing system overall. First, this program resolves the primary issues of the deterioration of public housing units and the lack of

78. RENTAL ASSISTANCE DEMONSTRATION: GUIDE TO CHOOSING BETWEEN PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) FOR PUBLIC HOUSING CONVERSIONS, *supra* note 67, at 4.

79. Gramlich, *supra* note 46, at 4-22.

80. U.S. DEP’T OF HOUS. & URBAN DEV., FACT SHEET #10: THE DIFFERENCE BETWEEN PROJECT-BASED VOUCHERS AND PROJECT-BASED RENTAL ASSISTANCE 2.

81. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 1, at 1.

82. RENTAL ASSISTANCE DEMONSTRATION: GUIDE TO CHOOSING BETWEEN PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) FOR PUBLIC HOUSING CONVERSIONS, *supra* note 67, at 2.

83. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 80, at 1.

84. RENTAL ASSISTANCE DEMONSTRATION: GUIDE TO CHOOSING BETWEEN PROJECT-BASED VOUCHERS (PBVs) AND PROJECT-BASED RENTAL ASSISTANCE (PBRA) FOR PUBLIC HOUSING CONVERSIONS, *supra* note 67, at 4.

85. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 80, at 1.

86. Gramlich, *supra* note 46, at 4-22.

87. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 80.

funding for rehabilitation. Second, these programs also offer a benefit to the local economies in which the properties are located.⁸⁸ In RAD's first year, local PHAs were able to leverage property valued at \$250 million to raise \$2.5 billion in capital, a 9:1 ratio.⁸⁹ Additionally, landlords are able to acquire loans and investments to purchase and renovate new properties by using the HAP contract as proof of the landlord's expected profits and the ability to repay loans.⁹⁰ This generates profit to the landlords, developers, investors, and banking institutions. The rehabilitation process also injects income into the local economy through hiring labor from the community and purchasing supplies to complete construction.⁹¹

The PBV and PBRA programs also provide lasting benefits to tenants receiving assistance by providing tenants with the opportunity to move into communities that would otherwise be inaccessible due to the high cost of living.⁹² These communities often have the best schools and greater opportunity for financial growth. Children under the age of thirteen who move into wealthier communities through the use of housing vouchers are 32% more likely to attend college and will earn 31% more income per year as young adults in comparison to those who remain in low-income communities.⁹³ Furthermore, adults who move to areas of higher opportunity greatly reduced their risk of extreme obesity and diabetes and experienced 33% less instances of depression.⁹⁴ Despite these benefits, the program is not without its critics.

Many of the RAD program's opponents, such as House Representative Maxine Waters, critique the program for transitioning public assets to the private industry.⁹⁵ Rather than see public housing programs switch to private management, these opponents prefer to fully fund the public housing program and needed capital improvements.⁹⁶ However, the nation's increasing debt has prevented this from being feasible. Another criticism of the program centers on the developer's ability to utilize these programs to gain access to development subsi-

88. Letter from Flora Brewer to Vice President Assisted Hous., *supra* note 10.

89. ECONOMETRICA, INC., *supra* note 4, at xviii.

90. *See id.*

91. Letter from Flora Brewer to Vice President Assisted Hous., *supra* note 10.

92. Barbara Sard & Douglas Rice, *Realizing the Housing Voucher Program's Potential to Enable Families to Move to Better Neighborhoods*, Policy Futures, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 12, 2016), <https://www.cbpp.org/research/housing/realizing-the-housing-voucher-programs-potential-to-enable-families-to-move-to> [<https://perma.cc/WGY7-SQES>].

93. *Id.*

94. *Id.*

95. Press Release, U.S. House Comm. on Fin. Servs., Waters Calls on Obama to "Rethink" Rental Assistance Demonstration (Dec. 15, 2014), <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=398664> [<https://perma.cc/T4AZ-UQZR>].

96. *Id.*

dies, such as tax credits, while only being temporarily required to provide affordable housing.⁹⁷ Once the restrictions end, the developer can increase rents to market value.⁹⁸ These high profits generated through subsidies may result in a “massive windfall to private owners.”⁹⁹

Furthermore, the RAD program is merely a temporary solution to affordable housing needs. As the cost of housing increases, the number of households needing subsidies will increase. Public housing is already not available for all those that qualify due to a lack of funding. For example, the city of Fort Worth, Texas, has capped its waiting list at its current amount of 5,000 households.¹⁰⁰ Nationwide, only one in four households eligible for housing assistance will receive assistance due to insufficient funding.¹⁰¹ Thus, RAD may assist in addressing the needs for capital improvement, but it is not a comprehensive and final solution to affordable housing.

The combination of public housing deterioration with the lack of funds to renovate and repair these units make the cost-neutral solution presented in RAD appealing as a short-term solution. However, the success of the program relies on the ability to relocate current public housing tenants to private market housing under the PBV and PBRA programs. Therefore, the participation of the landlords in the private industry is vital to the success of housing assistance in the United States.

III. LEGAL EXPOSURE OF PRIVATE LANDLORDS PARTICIPATING IN PBV AND PBRA PROGRAMS

While the RAD program appears to be a much-needed glimmer of hope for public housing, many areas have yet to participate.¹⁰² Participation in the PBV and PBRA programs presents unique legal challenges by imposing additional contractual, statutory, and regulatory obligations on landlords in addition to the legal exposure created by the insolvency of the tenants housed through these programs. Increased legal risks often result in an increase in cost. These challenges have a greater impact in rural communities and areas with higher costs of development where it is more difficult to attract investors.¹⁰³

97. Brandon M. Weiss, *Residual Value Capture in Subsidized Housing*, 10 HARV. L. & POL'Y REV. 521, 525 (2016).

98. *Id.*

99. *Id.*

100. *How to Apply – Housing Choice Vouchers*, FORT WORTH HOUSING SOLUTIONS, <https://www.fwhs.org/how-to-apply-housing-choice-vouchers/> [<https://perma.cc/27KL-FBVC>] (last visited Feb. 5, 2019).

101. Weiss, *supra* note 97, at 522-23.

102. ECONOMETRICA, INC., *supra* note 4, at 175.

103. *Id.*

A. Statutory and Regulatory Created Risks

Several laws regulate the distribution of public funds and impose penalties and fees for failing to comply with them. By accepting PBV and PBRA tenants, landlords voluntarily subject themselves to these additional statutes and regulations. These include the requirement to (1) affirmatively further fair housing,¹⁰⁴ (2) renew leases to tenants unless a “good cause” exists to deny the renewal,¹⁰⁵ (3) implement a grievance process,¹⁰⁶ (4) adhere to the Housing Quality Standards and participate in inspections,¹⁰⁷ and (5) provide information to HUD as requested for purposes of monitoring and evaluating the RAD program.¹⁰⁸

1. Affirmative Duty to Further Fair Housing

The federal government prohibits discrimination against specifically protected classes of individuals in housing transactions.¹⁰⁹ The Fair Housing Act specifically protects individuals from discrimination based on race, color, national origin, religion, sex, disability, and the presence of children.¹¹⁰ Additionally, the Act imposes on federal departments and agencies an affirmative duty to further fair housing.¹¹¹ Thus, the RAD program must show that procedures in selecting, constructing, and transferring households do not discriminate against these protected classes.¹¹² This higher standard of affirmatively furthering fair housing must be a consideration in the selection of complexes entering into a HAP contract to receive PBVs and PBRAs.¹¹³

HUD uses two methods to ensure it meets this standard. First, HUD prohibits PHAs from entering into a HAP contract with landlords who have (1) “a charge, cause determination, lawsuit, or letter of findings” relating to the “systemic violation of Fair Housing Act;” (2) a “lawsuit filed by the Department of Justice (“DOJ”) alleging a pattern or practice of discrimination or denial of rights to a group of persons;” or (3) a cause determination “concerning a systemic violation of provision of a state or local law proscribing discrimination in hous-

104. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 1, at 68.

105. U.S. DEP’T OF HOUS. & URBAN DEV., HUD 52530.C, TENANCY ADDENDUM SECTION 8 PROJECT-BASED VOUCHER PROGRAM (2015).

106. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 49, at 29.

107. U.S. DEP’T OF HOUS. & URBAN DEV., HUD 52530B, SECTION 8 PROJECT-BASED VOUCHER PROGRAM PBV HOUSING ASSISTANCE PAYMENTS CONTRACT EXISTING HOUSING PART 1 OF HAP CONTRACT (2015).

108. Lee, *supra* note 6, at 785.

109. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 1, at 18.

110. *File a Complaint*, U.S. DEP’T OF HOUSING & URBAN DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint [<https://perma.cc/DN3N-EPJ5>] (last visited Jan. 31, 2019).

111. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 1, at 18.

112. *Id.*

113. *Id.* at 140.

ing based on sexual orientation or gender identity.”¹¹⁴ Once a HAP agreement is signed, the contract may be revoked if the landlord fails to comply with fair housing standards.¹¹⁵ Additionally, each landlord participating in the RAD conversion process is required to develop and submit an Affirmative Fair Housing Marketing Plan (“AFHMP”).¹¹⁶ The AFHMP requires the landlord to describe its planned advertising and marketing activities to solicit tenants and to show how its plan will successfully attract specified categories of individuals determined to be least likely to apply.¹¹⁷

Participation in the PBV and PBRA programs also exposes landlords to additional causes of action in comparison to strictly private market landlords. In a traditional, private market lease, a tenant or prospective tenant may have a cause of action against a landlord under Title VIII of the Civil Rights Act, commonly known as the Fair Housing Act, for acts of discrimination in the sale or lease of housing.¹¹⁸ In addition to this cause of action, a landlord receiving federal funds, such as those received through the PBV and PBRA programs, could be liable not only under Title VIII, but also Title VI of the act, which prohibits discrimination in programs receiving federal financial assistance.¹¹⁹

2. Required Lease Renewals

In traditional housing, a landlord may freely choose not to renew a lease, with few limitations restricting the landlord’s right to deny a renewal, such as reasons based on discrimination. In contrast, a landlord renting to tenants through the PBV or PBRA programs may not deny the renewal of a lease unless the landlord can show “good cause.”¹²⁰ Good cause includes: “(a) disturbance of neighbors, (b) destruction of property, or (c) living or housekeeping habits that cause damage to the unit or premises.”¹²¹ Although a landlord who does not desire to renew a lease generally has reasons covered under the prescribed “good cause” exceptions, the participation in these programs imposes a burden on the landlord to prove its cause to HUD.¹²²

114. *Id.*

115. *Id.* at 141.

116. *Id.* at 112; U.S. DEP’T OF HOUS. & URBAN DEV., HUD 92243-PRA, AFFIRMATIVE FAIR HOUSING MARKETING PLAN (AFHMP) – MULTIFAMILY HOUSING (2014).

117. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 1, at 113; U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 116.

118. *See* 42 U.S.C. § 3604 (2012).

119. 42 U.S.C. § 2000d (2012).

120. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 105.

121. *Id.*

122. *See id.*

3. Grievance Process

Tenants receiving housing assistance through RAD receive special safeguards to ensure the protection of their rights in the transition from government-managed properties to privately-managed properties. One of these statutory protections is the implementation of a grievance process for tenants.¹²³ If a landlord seeks to take any action that may be adverse to a tenant, such as reducing the tenant's paid utility allowance, the landlord must give the tenant notice in writing explaining the landlord's grounds to take the action.¹²⁴ The tenants have a right to an informal hearing with the property owner and an impartial member of the staff.¹²⁵ Such hearings must be held within a reasonable time frame.¹²⁶ Each tenant has the right to bring a person to represent him or her in the hearing.¹²⁷ Additionally, the tenant may make statements, question witnesses, and examine evidence.¹²⁸ Following the hearing, the property owner must provide a written decision that explains the grounds for the action and the basis of the decision within a reasonable time frame.¹²⁹

4. Housing Quality Standards

Housing Quality Standards ("HQS") are established by RAD notices and regulations and further imposed on landlords through the incorporation of these standards in the HAP contract.¹³⁰ The HAP contract subjects landlords to a higher premise quality standard than traditional landlords.¹³¹ The landlord must maintain the property in a manner that provides "decent, safe, and sanitary housing in accordance with the HQS."¹³² These standards require the site, building exteriors, dwelling units, and building systems—such as HVAC and electrical systems—to be in good repair and free of health and safety hazards.¹³³

Furthermore, landlords are subject to numerous inspections to ensure they meet the standard of quality required by the HAP contract. Prior to entering into a HAP contract, the PHA must inspect each

123. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 49, at 29.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 30.

130. U.S. DEP'T OF HOUS. & URBAN DEV., RENTAL ASSISTANCE DEMONSTRATION (RAD): QUICK REFERENCE GUIDE FOR PUBLIC HOUSING PROJECTS CONVERTING TO PROJECT-BASED VOUCHER (PBV) ASSISTANCE 9–10 (2014).

131. *See* HUD Physical Condition Standards and Inspection Requirements, 24 C.F.R. § 5.703(g) (1999) (requiring landlords to adhere to all State and local codes in addition to HUD's physical condition standards).

132. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 123, at 6.

133. 24 C.F.R. §§ 5.703(b)–(c) (2018).

unit that is subject to the contractual agreement.¹³⁴ The unit is subject to another PHA inspection prior to any new household moving into the unit.¹³⁵ Further, the PHA conducts annual inspections of at least 20% of the contracted units that are randomly selected by the PHA.¹³⁶ If 20% of the units selected for random inspection fail to meet the quality standards, the PHA must inspect all of the contracted units.¹³⁷ The PHA also may inspect contracted units if it receives complaints regarding maintenance or other inspection related issues.¹³⁸

5. Reporting Requirements

The RAD program is in a demonstration phase that requires HUD to publish reports, findings, and statistics on the program's progress to evaluate the success of the program and determine whether RAD should be made permanent.¹³⁹ HUD's requirement to report is imputed on the landlords, PHAs, and developers participating in the program.¹⁴⁰ Each must provide HUD with periodic reports, audits, and access to the properties for on-site reviews.¹⁴¹ While the exact data HUD requests from landlords may vary, the HAP contract requires that landlords make all records and documentation available to HUD and the local PHA.¹⁴² These extensive reporting requirements can be burdensome on for-profit landlords who rely on staff efficiency to ensure a profit or, in some instances, may not have sufficient staff to complete the requirements.

B. Contractual Risks

In addition to those created by statutes and regulations, the HAP contract with the local housing authority creates further legal risks and costs. These risks and costs include limits on the eviction process, restrictions placed on the contents of the landlords' leases, and limits placed on the sale or transfer of the property. If a party breaches or defaults, the PHA or HUD may exercise numerous remedies including denying, suspending, or reducing rental payments or terminating the HAP contract.¹⁴³

134. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 107, at 2.

135. HUD Dwelling Units Rule, 24 C.F.R. § 983.103(c) (2005).

136. *Id.*

137. *Id.*

138. 24 C.F.R. § 5.705.

139. Lee, *supra* note 6, at 768–69.

140. *See id.* at 789.

141. *See id.* at 790.

142. *See* U.S. DEP'T OF HOUS. AND URBAN DEV., SECTION 8 PROJECT-BASED VOUCHER PROGRAM PBV HOUSING ASSISTANCE PAYMENTS CONTRACT EXISTING HOUSING PART 2 OF HAP CONTRACT 15 (2015).

143. *Id.* at 13.

1. Eviction Process: Termination of the Lease During Lease Term

While traditional landlords are also limited in their ability to terminate a lease, landlords participating in the PBV or PBRA programs are strictly limited to five general causes for evicting a tenant receiving assistance.¹⁴⁴ A landlord may only terminate a PBV- or PBRA-funded lease due to:

- (1) serious or repeated violation of the lease;
- (2) violation of federal, state, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) criminal activity or alcohol abuse;
- (4) failure of a family in a supportive service excepted unit to complete its Family Self Sufficiency (“FSS”) Contract of Participation¹⁴⁵ or other supportive services requirement without good cause; or
- (5) other good cause.¹⁴⁶

HUD further limits the causes provided by limiting the definition of criminal activity to those activities that threaten the “health or safety of, or right to peaceful enjoyment of the premises by, other residents” or those in the immediate vicinity; violent crimes committed on or near the property; or drug-related crimes on or near the property.¹⁴⁷ Further, “good cause” is limited to “something the family did or failed to do” including damaging the property or causing disturbances.¹⁴⁸ Landlords of non-assisted units are also strictly limited in the basis for evicting tenants; however, PBV and PBRA landlords have an obligation to prove their basis of eviction to HUD in addition to the general eviction proceedings. Further, a RAD landlord who terminates a lease without sufficient cause is subject to remedies created under the HAP contract in addition to any tenant remedies created by the lease or state law.

2. Limitations on the Sale or Transfer of Property

The HAP contract specifically prohibits the assignment of the contract unless assigned after receiving federal approval from HUD.¹⁴⁹ Because the sale of the property would require the assignment or breach of the HAP contract, this provision effectively limits the sale

144. *See Id.*

145. PHAs select families to participate in the FSS program. Participating families are required to meet specified goals targeted at increasing the family’s income and reducing the dependency on government assistance. Services, such as employment counseling and child care, are provided to assist families in reaching these goals. These goals and services are captured in the FSS Contract of Participation. OFFICE OF PUB. HOUS. & VOUCHER PROGRAMS & OFFICE OF PUBLIC HOUS. INVS., FACT SHEET FAMILY SELF-SUFFICIENCY (FSS) PROGRAM (2016).

146. U.S. DEP’T. OF HOUS. & URBAN DEV., *supra* note 105.

147. *Id.*

148. *Id.*

149. *See id.*

or transfer of the contracted property. Any subsequent owner to the property must be independently eligible to enter the contract.¹⁵⁰ Subsequent owners are ineligible if they have previously violated the Fair Housing Act, are a relative of one of the tenants, have committed specified crimes, or have violated HQS or state or local housing codes.¹⁵¹ If an owner must sell his or her property, the owner has the additional obstacle of securing a sale with an eligible owner that is also willing to be subjected to the additional requirements and penalties discussed in this Comment.

Furthermore, if a HAP-contracted property enters foreclosure, the immediate successor takes the property subject to the HAP contract as well as the leases between the original owner and tenants receiving housing assistance.¹⁵² This could potentially limit the number of potential purchasers and decrease the amount that a purchaser would be willing to pay for the property. A reduced foreclosure purchase price could subject the original owner to a higher deficiency judgment to cover the remaining debt owed after the deduction of the foreclosure price.

3. Restrictions on Lease Agreements

While leasing requirements vary across states, in some states, like Texas, landlords and tenants are not bound to strict requirements regarding the contents of the lease.¹⁵³ Provided that the provisions are not illegal or unconscionable and that certain required statutory provisions are included, the parties are free to draft and agree to provisions as they choose.¹⁵⁴ This policy allows parties to tailor their lease to unique circumstances or to provide better liability protection to one or both of the parties of the lease. For example, a landlord may authorize the assignment or sublease of the unit upon the landlord's approval. This provision would protect the tenant from the financial liability resulting from breaching the lease, while also protecting the landlord against the loss of rent.

The HAP contract restricts the contents of the lease.¹⁵⁵ First, HUD provides a model standardized lease form.¹⁵⁶ Further, the HAP contract requires that the landlord and tenant sign a Tenancy Addendum written by HUD.¹⁵⁷ The landlord is prohibited from making any

150. See U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 142.

151. See U.S. DEP'T OF HOUS. AND URBAN DEV., SECTION 8 PROJECT-BASED VOUCHER PROGRAM PBV HOUSING ASSISTANCE PAYMENTS CONTRACT EXISTING HOUSING PART 2 OF HAP CONTRACT (2015).

152. *Id.*

153. See *Landlord and Tenant* 49 TEX. JUR. 3D § 19 (2016).

154. *Id.*

155. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 151, at 9.

156. See U.S. DEP'T OF HOUS. AND URBAN DEV., MODEL LEASE FOR SUBSIDIZED PROGRAMS (2014).

157. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 151, at 9.

changes to the addendum.¹⁵⁸ Additionally, the HAP contract provides that when a conflict exists between the addendum and the lease, the addendum controls.¹⁵⁹ Contained within the addendum and the HAP contract is a prohibition against the assignment or sublease of the unit.¹⁶⁰ The addendum further requires the approval for any changes in the composition of the household.¹⁶¹ This may result in unexpected turnover in the unit if the tenant must move and is unable to assign the unit to another individual.

4. Remedies under the Housing Assistance Payments Contracts

In addition to the statutory penalties, PBV and PBRA landlords under RAD are subject to the standard contractual remedies granted by law as well as remedies specifically agreed to within the HAP contract. Beyond the standard actions constituting a breach of contract, the agreement also provides that certain crimes, such as drug-related crimes, constitute a breach of the contract.¹⁶² If the owner is in breach of the contract, the PHA and HUD have the ability to reduce, abate, or terminate the housing assistance payments to the owner; seek an injunction, sanctions, or specific performance; or terminate the HAP contract.¹⁶³

C. *Tenant Insolvency Related Risks*

Finally, legal risks arise or are feared to arise from the insolvency of tenants receiving housing subsidies. Additionally, the public often holds false beliefs in certain stereotypes and prejudices regarding those living in public housing, including the belief there is an increased risk of damage to units, breaches to the lease, and security concerns.

1. Property Damage

At the end of the lease, or upon the tenant moving out of the unit, a tenant generally has the obligation to return the property to the landlord in good condition.¹⁶⁴ The landlord has two remedies to cover the cost of repairing damage. First, landlords traditionally require a tenant to provide a security deposit prior to moving into the unit. A security deposit is defined as an “advance of money . . . that is intended prima-

158. *Id.*

159. *Id.*

160. U.S. DEP'T OF HOUS. AND URBAN DEV., SECTION 8 TENANT-BASED ASSISTANCE HOUSING CHOICE VOUCHER PROGRAM (2014)

161. *Id.*

162. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 151, at 13–14.

163. *Id.*; Lee, *supra* note 6, at 792.

164. *Improvements or Alterations of Property by Tenant* 3 TEX. PRAC. GUIDE REAL ESTATE LITIG. § 11:67, (citing *Dunlap v. Mars Plumbing Supply Co.*, 504 S.W.2d 917 (Tex. App.—San Antonio, 1973)).

rily to secure performance under a lease or a dwelling that has been entered into by a landlord and a tenant.”¹⁶⁵ The landlord may deduct the cost of repairing damage that exceeds normal wear and tear from the security deposit.¹⁶⁶ When the cost of damage is at or below the security deposit amount, the landlord is financially protected from damage caused by the tenant as well as any resulting litigation costs and the costs associated with collecting a judgment. If the damage exceeds the amount of the security deposit, the landlord may seek remedies through a civil claim to recover the amount of the damages that exceed the security deposit.¹⁶⁷

The tenants that qualify for housing assistance are generally insolvent due to the income requirements for eligibility. If a tenant damages the property unit to the extent that the repairs exceed the amount of the security deposit, the landlord may be unable to collect on a judgment against the tenant for the amounts owed beyond those covered by the deposit. The HAP contract specifically protects the PHA and HUD from liability to the landlord for any damage to the property unit created by the tenant.¹⁶⁸ The HAP contract simultaneously requires the unit be maintained in accordance with the HQS.¹⁶⁹ Thus, if the tenant is insolvent, the landlord is liable for repairing the damage to the unit to ensure it meets HQS requirements. Further, the HAP contract prohibits the landlord from requiring the tenant to pay a higher security deposit amount than customary in the locality or than required from tenants in un-assisted units.¹⁷⁰ This leaves the landlord with few options to protect against bearing the cost of repairs to the unit resulting from a tenant’s actions or negligence.

2. Security Concerns

Generally, a landlord does not owe a duty to a tenant to protect the tenant against physical harm.¹⁷¹ However, a landlord does have the duty to use ordinary care in providing protection against foreseeable dangers.¹⁷² The foreseeability of dangers that trigger the responsibility to provide additional security measures is based on the frequency and types of crimes in the immediate area.¹⁷³ Often the public assumes the presence of public housing and assisted units causes a higher rate of crime. If true, this could result in the landlord having the financial burden of providing additional security measures and could result in a

165. *Id.* § 11:71 (citing TEX. PROP. CODE ANN. § 92.102 (West 2018)).

166. TEX. PROP. CODE ANN. § 92.104 (a)–(b) (West 2018).

167. 3 TEX. PRAC. GUIDE REAL ESTATE LITIG. § 11:67.

168. U.S. DEP’T OF HOUS. AND URBAN DEV., *supra* note 107.

169. U.S. DEP’T OF HOUS. AND URBAN DEV., *supra* note 151, at 7.

170. *Id.* at 11.

171. RESTATEMENT (SECOND) OF TORTS § 315 (AM. LAW INST. 1965).

172. *Id.*

173. *Id.*

negligence claim against the landlord if the landlord fails to provide sufficient protections.

Further, many units participating in RAD are mixed-income communities, meaning the landlord rents some of the units to market-rent tenants. The safety of the tenants may impact the marketability of other units, which can cause the rents to decline or vacancies to increase. The fears of increased crime and decreased property values often serve as motivators for the public to resist the introduction of public housing or housing vouchers to new communities and may discourage landlords from participating in the PBV or PBRA programs.¹⁷⁴

Numerous studies have examined the impact of traditional public housing and housing vouchers on crime and property values in the community. Some studies found that traditional public housing often correlated with an increase in crime in the community but found that the relationship was not causal.¹⁷⁵ Instead, the increase in crime resulted from the already declining conditions in the community where the public housing was placed.¹⁷⁶ Thus, public housing was often seen as being related to crime based on the historical choice of location of public housing complexes.

As housing voucher programs are largely replacing traditional public housing, studies have begun to evaluate the effect of housing vouchers on crime and property values in their local communities. These studies have found that vouchers have no impact on crime, with some finding that crime may be reduced by the introduction of housing vouchers into a community. There is a theory that this reduction is a result of crime being less necessary because housing assistance programs allow households to have more money to cover expenses¹⁷⁷ or because the tenants have more pride in their community.¹⁷⁸ The positive effect of housing assistance on communities led the National Crime Prevention Council to call for the construction of public housing in an effort to stabilize communities and reduce crime.¹⁷⁹

Additionally, HUD and PHAs have implemented measures to prevent crime in assisted housing units.¹⁸⁰ The HAP contract requires landlords and tenants to sign the Tenancy Addendum, which specifi-

174. Michael C. Lens, *The Impact of Housing Vouchers on Crime in US Cities and Suburbs*, URB. STUD. 51(6) 1274 (May 2014).

175. *Id.* at 1277–78.

176. *See id.* at 1276.

177. *Id.* at 1276.

178. Nat'l Crime Prevention Council, *Strategy: Ensure Supply of Affordable Housing*, <https://web.archive.org/web/20040331003425/http://www.ncpc.org/ncpc/ncpc/?pg=2088-9318> [<https://perma.cc/24NL-566N>] (last visited Feb. 5, 2019).

179. BUS. AND PROF'L PEOPLE FOR THE PUB. INTEREST, *Myths and Stereotypes about Affordable Housing* (June 2004).

180. *See generally* HUD Lease and Tenancy Rule, 24 C.F.R. § 982.308(f) (1999) (requiring that a Tenancy Agreement is included in every HAP contract); U.S. DEP'T OF HOUS. AND URBAN DEV., TENANCY ADDENDUM SECTION 8 PROJECT-BASED

cally allows the landlord to evict tenants based on the tenant's participation in criminal activities.¹⁸¹ Further, HUD and PHA may prohibit the tenant from receiving any further housing assistance based on the tenant's criminal activities. The threat of losing shelter is often a sufficient deterrent to crime. For these reasons, the fear of increased crime and the resulting increased exposure to liability is unfounded and based on misinformation.

IV. POLICIES AND PROGRAM SUGGESTIONS TO MITIGATE LEGAL EXPOSURE

The implementation of certain policies or programs can mitigate the legal risks to landlords and encourage more private-industry participation in the RAD program. These programs may include the creation of risk pools to reimburse landlords for property damage; facilitating partnerships between PBV and PBRA tenants and local non-profit organizations; increasing the Low-Income Housing Tax Credit cap; and adopting inclusionary and incentivized zoning ordinances to incentivize affordable housing development.

A. *Mitigating Financial Risks Associated with Tenant Insolvency*

1. Landlord Mitigation Fund

Many regions and organizations are addressing the perceived risk of renting to insolvent tenants through the creation of landlord mitigation funds or risk pools that are designed to reimburse landlords for expenses arising from property damage, unpaid rent, or other expenses related to renting to insolvent tenants.¹⁸² Several states including Minnesota, Florida, Oregon, and California have established landlord mitigation funds.¹⁸³ While the specifics vary across each program, the landlord mitigation funds are often established by a donation of funds from participating cities, counties, state, or local non-profit organizations.¹⁸⁴ The mitigation fund defines the eligibility of tenants and, therefore, landlords.¹⁸⁵ Additionally, the mitigation fund establishes the requirements for claims, including what type of damages are covered, the minimum or maximum values of the claim, and

VOUCHER PROGRAM (2015) (stating that owners may terminate tenancy for certain criminal activities).

181. *See generally* § 982.308(f) (requiring that a Tenancy Agreement is included in every HAP contract); U.S. DEPT. OF HOUS. AND URBAN DEV., *supra* note 180 (stating that owners may terminate tenancy for certain criminal activities)

182. Hattie Hiler, *Landlord Risk Mitigation Funds: A Literature and Design Review*, MINN. HOUSING FIN. AGENCY 4, 6 (Aug. 2016), www.mnhousing.gov/get/MHFA_1040835 [<https://perma.cc/995G-TLBC>]; *See, e.g.*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *ENGAGING & SUPPORTING LANDLORDS THROUGH RISK MITIGATION FUNDS* (2016).

183. *See, e.g.*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

184. *See, e.g., id.*

185. *See, e.g., id.*

any required documentation or preconditions to receiving the reimbursement.¹⁸⁶ To date, these funds have largely targeted veterans, individuals in rehabilitation centers, the chronically homeless, or individuals holding Housing Choice Vouchers.¹⁸⁷ The majority of funds impose caps on claims, often between \$1,000–\$3,000.¹⁸⁸ In some cases, programs are designed as a shared risk policy, which requires the landlord to pay a portion of the claim, with the remaining percentage reimbursed by the fund.¹⁸⁹

Oregon was the first state to establish a state-wide landlord mitigation fund. In 2014, the Oregon legislature enacted the Housing Choice Landlord Guarantee program in response to a tight rental market that discouraged landlords from accepting tenants with housing vouchers.¹⁹⁰ Initially, the legislature allocated \$475,000 to the fund, but later increased the fund by an additional \$300,000.¹⁹¹ All households holding a Housing Choice Voucher or Veterans Affairs Supportive Housing (“VASH”) voucher are automatically eligible.¹⁹² Thus, landlords leasing a unit to a tenant holding an HCV or VASH may access the fund if that tenant causes specified damages to the landlord. This fund allows reimbursement for “property damage, unpaid rent, or other damages: [1]caused as a result of the tenant’s occupancy under the Housing Choice Voucher Program [2]that exceed normal wear and tear; and [3]that are in excess of \$500 but not more than \$5,000 per tenancy.”¹⁹³ As a precautionary act to prevent abuse, the legislature amended the statute to require landlords to obtain a judgment against the tenant, thereby requiring the landlord to prove damages to a legally sufficient degree.¹⁹⁴ In 2016, there were 34,726 households eligible for coverage under the Housing Choice Landlord Guarantee; however, the claims made to the fund represented less than 0.003% of eligible households.¹⁹⁵

Similar programs exist throughout the United States. The Minnesota legislature initiated a landlord mitigation fund in May 2016, allocating \$250,000 in funds.¹⁹⁶ The City of Orlando created a mitigation fund in 2014.¹⁹⁷ The fund initially limited claims solely to property

186. *See, e.g., id.*

187. Hiler, *supra* note 182, at 9–10; *see, e.g.,* U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

188. Hiler, *supra* note 182, at 9–10.

189. Hiler, *supra* note 182, at 22–23; *See, e.g.,* U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

190. OR. REV. STAT. § 456.378 (2015).

191. Hiler, *supra* note 182, at 16.

192. *Id.*

193. OR. REV. STAT. § 456.378.

194. *Id.*

195. Hiler, *supra* note 182, at 16–17.

196. *Id.*; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

197. Hiler, *supra* note 182, at 17; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

damage, but the city expanded the fund to offer coverage for short-term vacancies.¹⁹⁸ Between its enactment and 2016, no landlords had filed a claim to receive reimbursement from the mitigation fund, “supporting the idea that such a fund provides peace of mind rather than address[es] a significant existing financial need for landlords.”¹⁹⁹ Numerous other cities and counties including Seattle, Washington; Norfolk, Virginia; Fargo-Moorhead, North Dakota; Dakota County, Minnesota; and Denver, Colorado have implemented landlord mitigation funds.²⁰⁰

Studies on the successes of these programs have concluded that landlord mitigation funds are most successful when the programs “outline[] claim guidelines, household participation, landlord engagement, and program evaluation.”²⁰¹ Additionally, publicity is important to effectively notify potential landlords of the availability of funds.²⁰² To date, landlord mitigation funds have primarily focused on HCVs, VASH, or tenants leaving rehabilitation centers.²⁰³ States and localities seeking to encourage landlords to participate in the RAD program through contracting to receive PBV or PBRA vouchers should consider developing landlord mitigation funds that offer coverage for these specific housing vouchers.

2. Partnerships with Non-Profit Organizations

Establishing partnerships between PBV and PBRA tenants and local non-profit organizations can mitigate the perceived risks associated with renting to low-income tenants by providing households with resources that prevent escalation and damage.²⁰⁴ Landlord mitigation funds may facilitate partnerships by requiring tenants to participate in case management or offering tenants housing or mediation education to resolve disputes before landlords face a broken lease and unpaid rent.²⁰⁵ These supportive services prevent claims to landlord mitigation funds.²⁰⁶

198. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

199. Hiler, *supra* note 182, at 17; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

200. Hiler, *supra* note 182, at 9–10; Erin Adler, *As Rental Markets Tightens, Agencies Try Mitigation Funds to Lower Risks for Landlords*, STAR TRIB. (June 10, 2017), <http://www.startribune.com/as-rental-market-tightens-agencies-try-mitigation-funds-to-lower-risk-for-landlords/427695823/> [<https://perma.cc/UZ29-SANM>].

201. Hiler, *supra* note 182, at 19.

202. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 182.

203. *Id.*; Hiler, *supra* note 182, at 9–10.

204. Hiler, *supra* note 182, at 19.

205. *Id.* at 20.

206. *Id.* at 19.

A research study in Texas found that properties implementing eviction-prevention programs saved an average of \$38 per unit per year.²⁰⁷ The most effective types of programs include intervention, case management, and monitoring tenants for early signals of eviction.²⁰⁸ When landlords facilitate partnerships with non-profit or governmental organizations, it allows them to have access to these cost-saving programs without the burden of funding the additional cost of specialized staff to administer them. Facilitation may be through informal systems, such as resource guides or referral networks; or more formal systems, such as mandatory tenant participation requirements.

B. *Encouraging Landlord Participation Through Increased Incentives*

Several risks landlords face due to the participation in PBV and PBRA programs cannot be directly mitigated; however, policies may be adopted to incentivize landlords to take on these additional risks by making participation more profitable.

1. Land Use Regulations

Cities can incentivize private industry participation in PBV and PBRA programs on a local level by adopting inclusionary and incentivized zoning ordinances to offset costs of development and potential legal costs. Inclusionary zoning is a principle that developed to contradict the exclusionary zoning policies of traditional land use that resulted in increased segregation.²⁰⁹ While inclusionary zoning can have a variety of goals, its use can be specifically targeted towards increasing the development of affordable housing by providing mechanisms to offset costs associated with development.²¹⁰ Over 300 jurisdictions have enacted inclusionary zoning ordinances, but not all ordinances are based on the purpose of increasing affordable housing units.²¹¹

Cities may adopt mandatory inclusionary zoning ordinances, which require a specified number of units to be dedicated to affordable housing.²¹² However, some states place limitations on whether cities

207. Michael Wilt, *The Benefits of Preventing Eviction*, TEX. ST. AFFORDABLE HOUSING CORP. (Dec. 11, 2015), <https://www.tsahc.org/blog/post/the-benefits-of-preventing-eviction> [<https://perma.cc/VYQ8-4FRL>].

208. *Id.*

209. Jai Keep-Barnes, *Inclusionary Zoning as a Taking: A Critical Look at its Ability to Provide Affordable Housing*, 49 URB. LAW. 67, 70 (2017).

210. Fruman Ctr. for Real Est. & Urb. Pol'y & Ctr. for Housing Pol'y, *The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas* 3 (Mar. 2008), <http://furmancenter.org/files/publications/IZPolicyBrief.pdf> [<https://perma.cc/4R6N-MKYU>].

211. *Id.*

212. Off. of Pol'y Dev. & Res., *Inclusionary Zoning and Mixed-Income Communities* (Spring 2013), <https://www.huduser.gov/portal/periodicals/em/spring13/highlight3.html> [<https://perma.cc/5VHW-A3HD>].

can implement mandatory inclusionary zoning.²¹³ Alternatively, cities can enact voluntary ordinances to encourage development through incentivized zoning or subsidizing affordable housing development.²¹⁴

Incentives often include density bonuses.²¹⁵ Density bonuses allow developers to construct their units at higher density levels than ordinarily allowed under the city's zoning laws. The amount of the density increase is generally based on the percentage of tenants at a specified percentage of the Area Median Income ("AMI").²¹⁶ This incentive increases a developer's potential profit by increasing the number of tenants housed within the building.²¹⁷ Opt-out fees may be implemented for developers who elect not to provide affordable housing but seek the density bonus.²¹⁸ These funds are then available for allocation to affordable housing efforts.²¹⁹ In addition to density bonuses, cities can incentivize the voluntary participation in affordable housing through expediting city approvals on development and waiving fees associated with development.²²⁰ Profits can also increase through reducing set-backs or increasing floor areas, which would allow developers to construct buildings closer to boundaries and, thus, increase rental space.²²¹

A study conducted on inclusionary zoning found that programs granting density bonuses and exempting smaller projects correlated with a higher number of affordable units produced within the jurisdiction.²²² However, the study cautioned that "even those ordinances that have produced the most affordable housing units . . . have not solved the community's housing challenges."²²³ Rather, inclusionary zoning ordinances should be part of a multidimensional approach to encourage the development of affordable housing.²²⁴

2. Expanding the Low-Income Housing Tax Credit

The financing for a real estate acquisition or the construction of affordable housing is highly complex, requiring knowledge of public and private financing resources.²²⁵ The complexities of the Low-Income

213. CITY OF DALL., CITY COUNCIL HOUS. COMM., INCLUSIONARY ZONING (2016).

214. *Id.*; Off. of Pol'y Dev. & Res., *supra* note 212.

215. CITY OF DALL., *supra* note 213.

216. *Id.*

217. *Id.*

218. Off. of Pol'y Dev. & Res., *supra* note 212.

219. *Id.*

220. *Id.*

221. DAWN JOURDAN & ERIC J. STRAUSS, PLANNING FOR WICKED PROBLEMS: A PLANNER'S GUIDE TO LAND USE LAW 72-73 (Taylor & Francis, 1st ed. 2016).

222. Fruman Ctr. for Real Est. & Urb. Pol'y & Ctr. for Housing Pol'y, *supra* note 210, at 10.

223. *Id.* at 9.

224. *Id.*

225. See Ted M. Handel & David C. Nahas, *Leveraging the Low-Income Housing Tax Credits Program*, 26-JAN L.A. LAW 23 (2004).

Housing Tax Credit (“LIHTC”) can prevent participation in the RAD program.²²⁶ However, the perception of investment in affordable housing is generally not as high-risk due to the large number of households that are eligible for assistance.²²⁷

To encourage developer participation in affordable housing, Congress created the LIHTC, which provides annual tax credits over the course of ten years.²²⁸ LIHTCs have served as a source of equity in approximately 90% of affordable housing developments, providing nearly 3 million affordable housing units²²⁹ and is considered “the most successful subsidized housing program to date.”²³⁰ To encourage landlord participation in the PBV and PBRA programs under RAD, Congress should expand the number of tax credits allocated each year and establish a minimum for the 4% tax credit to ensure the program is more predictable.

To qualify for a LIHTC, “20[%] of the units must qualify at or below 50[%] of the Area Median Income (“AMI”) established by HUD, or 40[%] must qualify at or below 60[%] of AMI.”²³¹ LIHTCs offer two types of tax credit options.²³² Developers constructing housing or substantially rehabilitating an existing building are eligible for 9% tax credit for the building’s qualified basis.²³³ At the end of the ten-year period, the 9% tax credit results in a credit equal to 70% of the building’s cost.²³⁴ Alternatively, the LIHTC offers a 4% tax credit for the acquisition of an existing building that will be substantially renovated.²³⁵ LIHTCs give developers greater access to funding sources because the tax credits are attractive to potential investors.²³⁶ However, the acquisition of tax credits is highly competitive.²³⁷ Congress limited the number of LIHTCs available under the 9% tax credit and requires the distribution of tax credits on a per capita basis.²³⁸

In March of 2017, House Representative Patrick Tiberi introduced the Affordable Housing Credit Improvement Act of 2017.²³⁹ This bill would expand the availability of LIHTCs and make “project financing

226. ECONOMETRICA, INC., *supra* note 4, at 175.

227. Handel & Nahas, *supra* note 225, at 24.

228. *Id.* at 23.

229. NAT’L ASS’N OF HOUS. & REDEVELOPMENT OFFICIALS, EXPAND AFFORDABLE HOUSING PRODUCTION RESOURCES 13 (2017).

230. Weiss, *supra* note 97, at 525.

231. Handel & Nahas, *supra* note 225, at 24.

232. *Id.* at 23.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.* at 24.

237. NAT’L ASS’N OF HOUS. & REDEVELOPMENT OFFICIALS, *supra* note 229.

238. Handel & Nahas, *supra* note 225, at 24; 26 U.S.C. § 42 (2012).

239. U.S. CONG., *H.R. 1661 Affordable Housing Credit Improvement Act of 2017*, <https://www.congress.gov/bill/115th-congress/house-bill/1661> [<https://perma.cc/U7FN-82XV>] (last visited Feb. 21, 2019).

more predictable and feasible.”²⁴⁰ RAD conversions are dependent on the availability of LIHTCs. The RAD program’s first Interim Report analyzed the financing raised by the 185 closed conversions and found the greatest portion came from private investors in LIHTC equity, amounting to 39.4% of the financing raised.²⁴¹ By expanding the availability and stability of LIHTCs, Congress can expand developers’ access to other private equity sources, thus encouraging greater participation in the program.

First, the house bill establishes a minimum for the 4% tax credit.²⁴² While the tax credit received the label of the 4% credit, the actual percentage a developer receives depends on a formula based on federal borrowing rates.²⁴³ In contrast, Congress imposed a 9% minimum for the 9% credit.²⁴⁴ This bill would create a similar restriction on the 4% credit, allowing more predictability in the actual tax credit realized.²⁴⁵ In addition to the house bill, an increase in the number of tax credits allocated under the 9% credit would decrease the competitiveness of receiving credits.²⁴⁶ Although LIHTCs cost the government \$8 billion annually,²⁴⁷ the program adds over \$9 billion into the economy, which has “generated \$3.5 billion in federal, state, and local taxes each year.”²⁴⁸ Thus, the \$8 billion loss is ultimately offset by \$3.5 billion. These steps would allow easier and more predictable access to the equity needed to participate in the PBV and PBRA programs while adding economic value to the community.

Expanding the ten-year time-period in which developers must offer affordable housing under the LIHTC program can also result in an increased number of affordable housing units. While LIHTCs make affordable housing more profitable by providing significant subsidies to developers and investors, the resulting housing units are only restricted by the affordable housing requirements for ten years.²⁴⁹ A developer receiving a 9% tax credit can ultimately receive a tax reduction that equals up to 70% of the cost of the development.²⁵⁰ A poorly constructed building will generally still have a lifespan of at

240. NAT’L ASS’N OF HOUS. AND REDEVELOPMENT OFFICIALS, NAHRO STATEMENT FOR THE SENATE FINANCE COMMITTEE HEARING AMERICA’S AFFORDABLE HOUSING CRISIS: CHALLENGES AND SOLUTIONS 3 (2017).

241. ECONOMETRICA, INC., *supra* note 4.

242. AFFORDABLE RENTAL HOUSING A.C.T.I.O.N., THE AFFORDABLE HOUSING CREDIT IMPROVEMENT ACT OF 2017 H.R. 1661 3 (2017).

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. Weiss, *supra* note 97, at 524.

248. Robert Dietz, *The Economic Impact of the Affordable Housing Credit*, EYE ON HOUS. (July 15, 2014), <http://eyeonhousing.org/2014/07/the-economic-impact-of-the-affordable-housing-credit/> [<https://perma.cc/U8UE-NEK3>].

249. See Weiss, *supra* note 97, at 525.

250. Handel & Nahas, *supra* note 225, at 23.

least thirty-five years, whereas higher quality buildings have a projected lifespan of at least seventy years.²⁵¹ Thus, the ten-year restriction period allows developers to finance a significant portion of their apartment complex structure through avoiding their full tax liability, while subsequently allowing the developer to receive full market rent for at least 70% of the building's projected lifespan. Landlords participating in the PBV and PBRA programs must provide units under these programs for an additional five to ten years over the LIHTC requirement based on the HAP term.²⁵² Congress could increase participation in the PBV and PBRA programs by raising the time period restriction on properties receiving LIHTCs to bridge the gap between the time period restriction applicable to LIHTC and the term required by the HAP contract.

C. Summary of Solutions

Policy makers can encourage landlords to participate in the PBV and PBRA programs under RAD by implementing the following programs:

- Establish a landlord mitigation fund that provides property damage coverage resulting from leasing to tenants who receive subsidies through the PBV, PBRA, and HCV programs;
- Facilitate partnerships with non-profit organizations or governmental entities that provide eviction-prevention programs, such as case management, financial counseling, and emergency rent assistance;
- Adopt incentive-based zoning ordinances that provide PBV and PBRA developers with density bonuses, decreased property setbacks, expediated permit approvals, or fee waivers, and allow developers to pay an opt-out fee to receive some of these incentives without constructing affordable units in order to fund a landlord mitigation fund;
- Establish a minimum tax credit rate of 4% for the 4% tax credit under the Low-Income Housing Tax Credit;
- Increase the number of tax credits allowed under the 9% tax credit under the Low-Income Housing Tax Credit; and
- Increase the mandatory ten-year time period requirement in which LIHTC properties must provide affordable housing.

V. CONCLUSION

The Rental Assistance Demonstration program offers an innovative solution to the public housing crisis by transferring ownership of public housing structures to private developers who will rehabilitate the structures. The program's success relies in part on the participation of

251. Kishor Pate, How Long Does A Modern Concrete Building Last?, LINKEDIN (July 28, 2015), <https://www.linkedin.com/pulse/how-long-does-modern-concrete-building-last-amit-enterprises-housing> [<https://perma.cc/W487-VKRT>].

252. See Gramlich, *supra* note 46, at 4-22.

private developers or landlords who choose to enter Housing Assistance Payment contracts with the United States Department of Housing and Urban Development and their local Public Housing Authority. These contracts obligate landlords to dedicate a specified number of units to the Project-Based Voucher program or the Project-Based Rental Assistance program. These programs allow tenants who receive housing assistance to lease the unit. The tenant pays the landlord only 30% of the household's monthly income towards rent, and the local PHA pays the landlord the difference between the tenant's share and the lesser of the area's median rent or the fair market value of the unit. While the contract provides sufficient projected income to the landlord, it comes with several legal risks. These risks include statutory and regulatory created causes of action and penalties, additional risk through the remedies and obligations established in the contract, and tenant insolvency. The creation of a landlord mitigation fund to provide reimbursement for claims based on tenant's destruction of the property can mitigate risks associated with tenant insolvency. Additionally, the facilitation of partnerships between PBV and PBRA tenants and local non-profit organizations can mitigate risks associated with tenant insolvency through providing services and case management that decrease the chance of early lease termination, eviction, security concerns, and property damage.

The creation of incentives can make participation in the PBV and PBRA programs more financially attractive to landlords. Expanding the cap on the 9% tax credit and establishing a minimum for the 4% tax credit under the Low-Income Housing Tax Credit program will increase the availability and predictability of tax credits to developers. In turn, this will result in increased availability of private equity funding. Finally, cities can adopt inclusionary zoning ordinances that mandate or encourage developers to participate in affordable housing by requiring developers to dedicate a requisite number of units to affordable units, offering density bonuses based on the percentage of units dedicated to affordable housing, decreasing set-backs, increasing floor areas, or expediting approvals and fee waivers during development. Cities can also create opt-out provisions to allow developers to receive these benefits without dedicating units to affordable housing in order to finance a landlord mitigation fund or other affordable housing initiatives.