Guidelines for Rent Setting in RAD 2 Properties:

In the revised RAD Notice, for the Second Component, HUD permits rents to be set above 110% of FMR (but at or below 120% of FMR) in certain situations. The Notice reads as follows:

> **Initial contract rent setting**. Initial rent levels for the PBRA contract are subject to section 8(c)(1) of the Act. For projects that will not undergo Work, the initial contract rents will be established at the lesser of the following rent levels: (1) the comparable market rent, as determined by a Rent Comparability Study (RCS), which must be prepared in accordance with the requirements of Chapter Nine of the Section 8 Renewal Policy Guidebook[1] and submitted with the request for prospective conversion; and (2) 110 percent of the applicable fair market rent (FMR), less utility allowances or 120 percent of the applicable FMR, less utility allowances, in the case of projects that (i) preserve project-based rental assistance in communities with high percentages of rent-burdened households and where it is particularly hard to utilize tenant-based assistance, (ii) serve to expand housing opportunities in communities with poverty rates less than 30%, and/or (iii) support revitalization activities that are resulting in material private investment in the surrounding neighborhoods. With HUD approval, the Project Owner may use the Small Area FMR in place of the FMR in the computation of rents. To implement this provision HUD is implementing an alternative requirement to 24 CFR §888.113(h) so as to permit the use of a Small Area FMR by project for initial contract rent setting and when adjusting contract rents. [2]

A RAD 2 property undergoing conversion is therefore allowed to set their rents up to 120% of FMR if such a level is at or below the level of the rent comparability study generated by the property owner, and if it satisfies **one or more** of the relevant conditions. These conditions are that the transaction would:

(i) preserve project-based rental assistance in communities with high percentages of rent-burdened households and where it is particularly hard to utilize tenant-based assistance
(ii) serve to expand housing opportunities in communities with poverty rates less than 30%, and/or
(iii) support revitalization activities that are resulting in material private investment in the surrounding neighborhoods.

If a property meets one of these guidelines, they are eligible to raise their rents up to 120% of FMR, assuming that the rent comparability study is in excess of the proposed rent levels.

Which FMR Can You Use? MSA FMR or Small Area FMR?

The Notice states above that a property may compute the initial rents based off either the regional FMR or Small Area FMR, subject to HUD approval. The Office of Recapitalization will show deference to the property owner in making the decision about which FMR is used in your rent setting calculation. However, if you use Small Area FMR, your Rent Comparability Study must be done with properties within the Small Area, not throughout the Metropolitan Area.

How Would a Property Owner Request Rents up to 120% of FMR?

When a property owner has decided it will enter the RAD 2 program, and is working with HUD and the Office of Recapitalization to propose a set of initial contract rents, it may decide that the property would be benefitted by, and is eligible for, rents in excess of 110% of FMR, potentially up to 120% of FMR. They may then submit a letter to the Office of Recapitalization laying out why the property qualifies for this higher level of RAD rent. It must lay out a rationale for the property's qualification for these higher rents based on 1, 2 or all 3 of the conditions laid out in the Notice. HUD will then evaluate this letter, and inform the owner of its determination. If HUD determines that the property qualifies under any one single stipulation, then it will be allowed to qualify for a rent level above 110%, should the RCS allow such a level. If the RCS indicates a comparable local rent below 110% of FMR, then the property would not be eligible for a rent level above 110% of FMR even if one of these conditions applies to the property.

What Information Would be Provided in the Letter?

The following would be the basis for satisfying the criteria for each of the listed conditions in the Notice.

1) Preservation of project-based rental assistance in communities with high percentages of rent-burdened households and where it is particularly hard to utilize tenant-based assistance

    - The property owner would need to provide information that indicates that the level of rent burdened households in this community is in excess of the average amount of such households either at a national or statewide level.
    - HUD classifies a household as "rent burdened" if it spends in excess of 30% of its household income on rent.
    - A property owner may define community either by zip code, by metropolitan area, by city or town, or by some other standard. However, the owner must provide data based on the American Community Survey or most recent decennial census, as provided by the US Census Bureau.
    - The property owner may provide supplemental data from other sources, as desired.
    - The national average for housing cost burden in the 2015 American Community Survey published by the US Census Bureau is that 51% of renter households were deemed as housing cost burdened.
    - *Tools*:
        - The American Fact Finder page is here (https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml). This provides a search function for data from the US Census Bureau's American Community Surveys.
        - Type in the locality you wish to examine in the search box and click go. (For e.g., the city name, the zip code, etc.) Click the **"Housing tab"** on the left hand column, and then click the "**Financial Characteristics"** data sheet in the main box. This will provide housing cost burden across several different income groups. In order to ascertain the total percent of households in the selected area spending 30% or more of their income on rent, under "**Estimate column"** (which is under the "**Renter-occupied Housing Unit column"**), add together the numbers from each "**30% or More"** row from each income set (5 total numbers) with the **"zero or negative income"** row. Adding these six figures together will equal the selected area's housing cost burden.
        - If you prefer, input the entirety **Renter-occupied Housing Unit column's Estimate column** into of the into column C of the Microsoft Excel RAD 2 calculator located here (link). [Hit the ESC key if needed after pasting this data to remove the format adjustment box] This will calculate the total percent of households in the selected area spending 30% or more of their income on rent in **Cell D26.**

2) Serve to expand housing opportunities in communities with poverty rates less than 30%

- The property owner would need to provide information that indicates that the preservation of this property would serve to expand opportunities to obtain affordable housing in a low poverty area.
- For this condition, regional data is insufficient as it is not precise enough.
- The property owner must provide data that indicates that the poverty rate of this zip code is less than 30%.
- The owner must provide data from the US Census Bureau.
- The property owner may provide supplemental data from other sources, as desired, such as census tract information.
- *Tools:*
    - The American Community Survey data is located here: https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml.
    - There, enter the zip code and click "go". When the page loads, click on the **poverty tab** located on the left side of the link page. This will provide the poverty rate of the converting property's zip code.

3) Support revitalization activities that are resulting in material private investment in the surrounding neighborhoods

- To satisfy this condition, the property owner must delineate concrete steps being taken in an organized fashion, by the local, state or federal government to organize and stimulate revitalization in this area.
- Some examples of such an activity include (but are not limited to):
    - The declaration of the neighborhood as a Promise Zone or Choice Neighborhood by the Department of Housing and Urban Development, or other coordinated investments from HUD.
    - A Mayoral initiative to focus city-resources and/or energy into the converting project's area.
    - A new city or regional planning initiative to alter the existing zoning, roadway, transit or development patterns to stimulate private investment.
    - A local community board initiative to transform a blighted area of the neighborhood.
- Please be as specific as possible in noting the ongoing goals of these revitalization activities that are being undertaken. That may be an amount of total investment dollars coming into an area, a target for population growth in a section of the city, or an increase in the amount of building permits being taken out by developers.
- Merely citing anecdotal information that there is ongoing privately funded construction occurring sporadically in the area is insufficient to satisfy this condition, as the existence of some level of construction is not in of itself sufficient.
- The letter provided by the property owner must detail how this conversion (supplemented by the increase in the RAD rents up to 120% of FMR) will support and buttress the revitalization activities taking place in this area.