



2015

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Recommended Citation

Balashov, Andrew (2015) "Comments: Private Investment: Trojan-horse or Shining Knight for America's Public Housing Stock," *University of Baltimore Journal of Land and Development*: Vol. 4: Iss. 2, Article 4.
Available at: <http://scholarworks.law.ubalt.edu/ubjld/vol4/iss2/4>

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COMMENTS

PRIVATE INVESTMENT: TROJAN-HORSE OR SHINING KNIGHT FOR AMERICA'S PUBLIC HOUSING STOCK

Andrew Balashov

I. Introduction

The numbers are staggering. The nation's largest public housing authorities ("HA's") are in a state of crisis as a result of massive budget shortfalls.¹ The Department of Housing and Urban Development (HUD) estimates it would take roughly \$26 billion to remedy the problem.² To put this in perspective, in 2014 the New York City Public Housing Authority had a \$77 million deficit and \$18 billion worth of "unfunded capital improvements," – a euphemism for basic upgrades to building systems such as water, heat, air conditioning, and elevators.³ At present, many of these systems are woefully below acceptable livability standards.⁴ This financial inability to make repairs and renovations has consequences beyond a lack of curb appeal. Crime increases if safety features, such as cameras and lighting, do not work,⁵ and if you force people to live in dilapidated and ruinous conditions then they in turn lose pride in their community.⁶ The result is a self-

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1. Scott Hoekman & John Griffith, *HUDs Rental Assistance Demonstration: A Bold Plan for Preserving Affordability in an Era of Austerity*, AFFORDABLE HOUSING TAX CREDIT COALITION (Feb. 2013), <http://www.taxcreditcoalition.org/guest-blogger/huds-rental-assistance-demonstration-a-bold-plan-for-preserving-affordability-in-an-era-of-austerity/>.
 2. See Abt Associates, *Capital Needs in the Public Housing Program: Revised Final Report*, 1-60 (Nov. 24, 2010), available at <http://www.abtassociates.com/Impact/2009/Abt-Associates-Assists-HUD-in-Reporting-to-Congres.aspx>. According to the report the number is the aggregate sum of all the outstanding capital upgrades needed for countries entire public housing stock. *Id.*
 3. Mireya Navarro, *Public Housing in New York Reaches a Fiscal Crisis*, N.Y. TIMES (Aug. 11, 2014), http://www.nytimes.com/2014/08/12/nyregion/new-york-public-housing-faces-crisis-as-demands-and-deficits-grow.html?_r=0.
 4. *See id.*
 5. Greg B. Smith, *Most Crime Ridden Housing Projects are also Buildings in Greatest Need of Repair*, DAILY NEWS (Oct. 6, 2014), <http://www.nydailynews.com/new-york/nyc-crime/exclusive-crime-ridden-projects-greatest-repairs-article-1.1964379>.
 6. *See id.*

perpetuating cycle of distrust and apathy that brings down the public housing system as a whole.⁷

Additional funding for public housing at the congressional level has been a perennially unpopular measure on both sides of the political spectrum.⁸ Over the years, a recurring possible solution has been to infuse private equity into the public housing system.⁹ The federal Section 8 program is structured upon this concept, and from some perspectives, has been successful at providing low-income residents with housing assistance.¹⁰ In 2012, HUD introduced the Rental Assistance Demonstration program (“RAD”) allowing HA’s to utilize the Section 8 model to ease their financial burdens.¹¹ RAD aims to restore the public housing budget deficit by incentivizing private investment in properties owned by the HA’s.¹² However, once the program was announced, fair housing advocates immediately pointed out the potential for private financial interests to erode the housing security that the public housing system provides.¹³

To understand this purported threat and assess its credibility, this article will first explain the difference between the public housing program and Section 8.¹⁴ Then it will look at how RAD may blur those lines and if doing so will destabilize the long term availability of low income housing and undermine tenant’s rights.¹⁵

7. See *Housing Manager’s Procedures Guide: Public Housing Authority*, U.S. DEP’T OF HOUS. AND URBAN DEV. (Nov. 2005), http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/mgmt. HUD acknowledges this fact themselves as their policies manual for community managers advises that the first hour of everyday be spent walking the grounds and that happy residents, curb appeal and community pride are interrelated. *Id.*

8. See Will Fisher, *Expanding Rental Assistance Demonstration Would Help Low-Income Families, Seniors, and People with Disabilities*, CENTER ON BUDGET & POLICY PRIORITIES (Nov. 7, 2014), <http://www.cbpp.org/cms/index.cfm?fa=view&id=4223> (noting the historical underfunding through inadequate congressional appropriations and recurring budget cuts).

9. See Paul K. Casey et. al., *Public Housing, Private Development: The Lawyer’s Role*, PROB. & PROP. 56, 58 (1997). The idea has been around for while in various incarnations but on relatively small scales. *Id.*

10. *Study on Section 8 Voucher Success Rates*, U.S. DEP’T OF HOUS. AND URBAN DEV. (Nov. 2001), www.huduser.org/publications/pdf/sec8success.pdf.

11. Anne Marie Smetak, *Private Funding, Public Housing: The Devil in the Details*, 21 VA. J. SOC. POL’Y & L. 1, 10-12 (2014).

12. See *id.* at 19.

13. See *id.* at 50-51.

14. See *infra* Part II.

15. See *infra* Part III.

II. Background

a. Public Housing Program

i. Overview

The public housing system was established in 1937 when Congress passed the Wagner-Steagall Housing Act.¹⁶ This act was part of a series of New Deal reforms meant to stimulate the economy by creating jobs and providing readily available affordable housing.¹⁷ Under its express language, the government would use its funds to establish “decent and safe dwellings for low income families.”¹⁸ The individual states and municipalities were then tasked with establishing their own housing authorities by passing appropriate legislation.¹⁹ The public housing authority is generally considered a municipal corporation: a distinct legal entity created by statute that has limited authority to act within a specific geographical region.²⁰ Most HAs own and manage their housing stock and act as the landlord for all public housing residents within a particular area.²¹ The people who depend most on public housing often represent an area’s poorest and most vulnerable residents.²² This fact, coupled with the mandate from congress that the program’s goal is to provide affordable housing for those who need it most, has meant that all aspects of the public housing are governed by a comprehensive and transparent set of laws and regulations.²³ While there are those that have vehemently criticized some aspects of HA policies, perhaps justifiably,²⁴ it’s hard to deny the advantages of a clearly laid out scheme of statutory protections for te-

16. J.A. Stoloff, *A Brief History of Public Housing*, U.S. DEP’T OF HOUS. AND URBAN DEV., reengageinc.org/research/brief_history_public_housing.pdf (last visited Nov. 9, 2014).

17. *See id.*

18. 42 U.S.C.A. § 1437 (West 1999) (the language is taken from the present incarnation of the original Wagner-Steagall Act).

19. MD. CODE ANN., HOUS. & Cmty Dev. § 12-105(a)(2)(i)-(ii) (West 2011) (this is Maryland’s version of the statute). It recognizes that housing authorities are municipal corporations vested with authority to act within their designated territory and may own housing projects as well as develop, operate, sell and manage them. *Id.*

20. *See id.*

21. Paul K. Casey et. al., *Public Housing, Private Development: The Lawyer’s Role*, PROB. & PROP. 56, 58 (Sept./Oct. 1997).

22. *Resident Characteristics Report*, U.S. DEP’T OF HOUS. AND URBAN DEV. (Feb. 28, 2015), <https://pic.hud.gov/pic/RCRPublic/rcrstate.asp>. (a large percentage of residents are elderly, disabled or subsist exclusively on welfare).

23. *See* 42 U.S.C.A. § 1437n(a) (West 2014) (describing income eligibility criteria); 42 U.S.C.A. § 1437(a)(2) (West 2014) (regulations governing rent payments); 42 U.S.C.A. § 1437d(I)(4) (West 2013) (mandatory lease provisions in standard housing authority leases).

24. *See generally* Dep’t of Hous. and Urban Dev. v. Rucker, 535 U.S. 125 (2002) (infamous U.S. Supreme Court decision upholding housing authority’s right to evict innocent tenants for drug infractions that occur in their units).

nants living in public housing, especially when one acknowledges the complexities and pitfalls of the private rental market.²⁵

ii. Tenant's Rights

The rights of public housing tenants were expanded in the 1960's and 70's through some decisive legal victories.²⁶ As a result, a statutory framework emerged that governs all aspects of the housing authority-tenant relationship.²⁷ The housing authority lease for example, the most important document governing the landlord-tenant relationship, is standardized according to federal laws that outline mandatory provisions that it must have, as well as those which are prohibited.²⁸ When a dispute arises between an HA and one of its tenants, whether it concerns a lease violation, unpaid rent, or an eviction, there is a strict procedural process that both sides must adhere to.²⁹ Prior to having the matter brought before a judge in court, the parties are given several opportunities to resolve the issue between themselves in a more familiar and less intimidating setting.³⁰ Additionally, tenants may employ the use of non-legal advocates on their behalf at the formal hearing, a much cheaper and accessible alternative to hiring an attorney.³¹ All of these procedural safeguards cannot ensure one particular outcome over another, but they do guarantee predictability in the process, allowing those tasked with protecting the rights of tenants to operate efficiently and quickly on their behalf.

b. Section 8 Program

i. Overview

In addition to creating the public housing system, the 1937 Wagner-Steagall Act authorized the government to make payments to private landlords on behalf of qualified low-income tenants, thereby creating the Section 8 subsidized housing program.³² Under Section 8 the government, through the local HA, pays a portion of the tenant's rent

25. *Assessing the Economic Benefits of Public Housing: Final Report*, HOUSING CENTER (Jan. 2007), https://www.housingcenter.com/sites/default/files/EcoImpactReport03_01_07.pdf ("Public Housing Constitutes and Economic and Social Asset that Cannot be Created or Sustained by the Private Market").

26. *See Barrientos v. 1801-1825 Morton LLC*, 583 F.3d 1197, 1203 (9th Cir. 2009) (itself a victory for housing advocates, the decision traces the evolution of public housing regulations through the 1940s).

27. *See id.*

28. *See* 24 C.F.R. § 966.6 (2015).

29. *See* 24 C.F.R. § 966.50-57 (2015) (this section of the regulations is entitled grievance procedures and requirements and it expressly lays out the rights and responsibilities of both parties).

30. 24 C.F.R. § 966.54 (2015). This section entitles the parties to an informal grievance hearing.

31. *See id.*

32. *See* 42 U.S.C.A. § 1437f (West 2014). For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically

directly to the landlord. The two most common types of Section 8 are either project-based, which is tied to particular property, or tenant based meaning they are generally transferrable and the holder has flexibility in choosing where to live, provided the owner accepts his or her voucher.³³ The other major difference between the two programs has to do with ownership. Instead of HAs, Section 8 recipients are dealing with private landlords, or management companies hired on their behalf. Under the project-based model, the owner receives favorable financing in exchange for maintaining the building for low-income residents for a fixed term of years.³⁴ However the owner's ultimate incentive is to profit from the venture, and once the contract runs out there is no requirement that the landlord must continue to participate in the program.

ii. Tenant's Rights

Section 8 tenants receive less statutory protection than their public housing counterparts.³⁵ When a landlord elects to participate in the program they sign a contract with the local housing authority agreeing to certain conditions meant to protect the tenants.³⁶ A landlord is prohibited from raising rent without the permission of the HA, and may not evict a tenant, absent lease violations, without "good cause."³⁷ Unfortunately, the standard is vague and the HUD regulations do not provide a clear definition, allowing many landlords to unfairly evict tenants who lack the resources to fight back.³⁸ Additionally, HUD imposes housing quality standards for both the project-based and tenant-based programs, though they are not as rigorous as those HA's re-

mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

33. The Massachusetts Law Reform Institute, *What Types of Vouchers are There?*, MASSLEGALHELP (Dec. 2009), <http://www.masslegalhelp.org/housing/types-vouchers>.
34. *Congress Considers Overdue Housing Preservation Agenda*, HOUSING LAW BULLETIN (Mar. 2008), <http://nhlp.org/node/983>.
35. See Barrientos, *supra* note 26. The court explains that because the landlords were private owners and not a state government, they were worried that too much regulation would keep people from participating and accepting section 8 tenants. *Id.* The result was a gradual stripping away of statutory protections. *Id.* For example at one point landlords could only evict a tenant with prior PHA approval, now they must only demonstrate good cause. Also the landlord proceeds through the courts and not the housing authority to evict a tenant. *See id.*
36. *See id.* at 1202.
37. 24 CFR § 880.607 (2010). (the statute allows for eviction for (1) substantial lease violations, (2) repeated minor violations, or (3) other good cause).
38. *2 Investigates: Landlords use Questionable Tactics to Evict Tenants*, Fox 2, <http://wn.ktvu.com/story/27053971/2-investigates-landlords-use-questionable-tactics-to-evict-low-income-tenants> (last visited Apr. 19, 2015).

quire for their own properties.³⁹ In contrast to the housing authority, which uses a standard form lease with all of its tenants,⁴⁰ Section 8 tenants sign private lease agreements with their landlords.⁴¹ As a result, terms and conditions of the lease may vary widely from property to property, depending on the landlord.⁴² This makes the Section 8 system less predictable to tenants than the public housing system and increases the risk that tenants will encounter problems that could lead to eviction and termination of assistance.⁴³

III. Analysis

a. Rental Assistance Development

The RAD program went into effect in 2014.⁴⁴ Under the program, HAs can convert their distressed public housing stock into project-based Section 8 housing instead.⁴⁵ Because the program is new and still in the test phase, only 60,000 properties across the country have been approved for initial conversion.⁴⁶ Under the program, two things will change for an HA property converted to Section 8.⁴⁷ First, for the particular project, the source of funding will become consistent because it will now come from the funds allotted for subsidies to Section 8 buildings rather than from unreliable congressional appropriations that have typically been the source of funding for HAs.⁴⁸ The second change is that the HA would now be able to borrow money from private investors and use the property as collateral.⁴⁹ This would create liquidity for the HA, allowing it to make much needed repairs on the properties, in familiar terms, it is like taking out a home equity

39. 42 U.S.C.A. § 1437f(o)(8) (West 2014). (stating that before any payment is made to the landlord the HA will enter the property and inspect to ensure it complies with their standards).

40. 42 U.S.C.A. § 1437d(I)(4) (West 2013).

41. *Housing Choice Voucher Program Guidebook, Chapter 8: Housing Search and Leasing*, U.S. DEP'T OF HOUS. AND URBAN DEV., https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11752.pdf (last visited Mar. 31, 2015) (HUD manual discussing house rule addendums to HAP contract).

42. Rachel M. Cohen, *The RAD-ical Shifts to Public Housing*, THE AMERICAN PROSPECT, <http://prospect.org/article/can-private-capital-save-public-housing-tenants-have-their-doubts> (last visited Mar. 30, 2015).

43. *See id.*

44. *See* Hoekman & Griffith, *supra* note 1.

45. *See id.* (this is one of two components of the program, the second is less contentious and does not affect public housing stock).

46. *See* Fern Shen, *Baltimore's RAD Plan is Among Nations Largest*, HUD Secretary Says, BALT. BREW (Mar. 20, 2014), <https://www.baltimorebrew.com/2014/03/20/baltimores-rad-plan-is-among-nations-largest-hud-secretary-says/>.

47. *See* Smetak, *supra* note 11, at 3.

48. Jake Blumgart, *Public Housing is Dead, Long Live Public Housing!*, ALJAZEERA AMERICA (Jan. 10, 2015), <http://america.aljazeera.com/opinions/2015/1/public-housing-reformchestercamden.html>.

49. *See id.*

loan to remodel your kitchen.⁵⁰ While all of this sounds good in theory, the fear comes from the new presence of private for-profit interests in the affordable housing model.⁵¹ Some of the apprehension is justified given the failure of the past programs that attempted to join private capital with public housing, notably the HOPE VI program.⁵²

b. Reasons for Doubt

The last large-scale program aimed at fixing the problem of distressed public housing was HOPE VI.⁵³ Begun in 1992 and continued through 2009, the program's goal was to use HUD funding, in partnership with private developers, to tear down and rebuild some of the worst housing projects in the nation.⁵⁴ Most of these were high-rise towers built in the 1960's and 70's, and consistently plagued by drugs, violent crime, and poverty.⁵⁵ While the program replaced many of these buildings with planned, expansive, mixed-income communities, the net effect was a reduction in the amount of available low-income housing.⁵⁶ Critics allege that a lack of planning and accountability standards caused thousands of families to be displaced from their homes.⁵⁷ One issue was there was no requirement that the newly constructed homes house the same amount of residents as those they replaced.⁵⁸ The solution was to give transferrable vouchers to the displaced residents so they could find housing on the open-market, but after living for decades in public housing many of these people simply could not navigate the private market and secure housing for themselves.⁵⁹

c. What Are the Risks

Public housing is fairly insulated from the perils of the open market.⁶⁰ HAs are not motivated by profit or accountability to investors so

50. See Smetak, *supra* note 11, at 3-6.

51. See Cohen, *supra* note 42.

52. See *id.*

53. *False Hope: A Critical Assessment of the HOPE VI Public Housing Redevelopment Project*, NATIONAL HOUSING LAW PROJECT (June 2002), www.nhlp.org/files/FalseHOPE.pdf.

54. See *id.*

55. *Id.*

56. *Id.*

57. See Cohen, *supra* note 42.

58. David Raskin, *Revisiting the HOPE VI Public Housing Program's Legacy*, GOVERNING (May 2012), <http://www.governing.com/topics/health-human-services/housing/gov-revisiting-hope-public-housing-programs-legacy.html>.

59. See *id.* Under the voucher program, the tenant goes out and finds a qualified rental property on their own. The voucher offsets the total amount they have to pay by a set percentage and the government pays this directly to the landlord. *Id.*

60. For example foreclosures, or bankruptcies do not affect assessment to public housing stock the same way they do on the traditional rental market.

they have no incentive to take financial risks and are constrained by statute to ensure they operate in accord with Congress' mandate.⁶¹ However, the general fear is still that once private interests are introduced into the equation then that will all change.⁶² The RAD program does not preclude the possibility that some of the public housing projects converted to Section 8 may wind up being operated by private entities.⁶³ This could happen either through an outright sale,⁶⁴ or if the HA borrows against the equity of the real property and defaults, the lender could theoretically foreclose on the property.⁶⁵ Residents worry that under any form of the RAD program they will be more at risk of losing their housing.⁶⁶ This is because the public housing laws that they have come to rely upon for protection are being replaced by a new, less familiar system, which will ultimately provide a smaller safety net.⁶⁷

The other concern about the RAD program has to do with the long-term effect it will have on the availability of low-income housing. In the current Section 8 project-based model the property owner receives financing benefits, to purchase, modify, or construct the property. In exchange for these incentives, the owner signs a contract and agrees to keep the property in the program for a fixed amount of time.⁶⁸ However, once this period is up the owner is free to "opt-out" of the program and place the property back into the rental-market. RAD critics worry that this is exactly what will happen with the privatized buildings.

d. Are the Fears Justified?

The privatization of any historically public entity has always been met with doubt and skepticism.⁶⁹ Most notably, today there is a huge

61. MD. CODE ANN., HOUS. & Cmty Dev. § 12-401(a)(2) (West 2006) ("...[a]n authority. . . may not operate for profit or as a source of revenue to the political subdivision").

62. See Cohen, *supra* note 42 ("RAD is an emblematic case of this era's intensified push to use privatization in the pursuit of social goals—not because that approach is necessarily better policy, but because it is politically possible")

63. Yvonne Wenger & Luke Broadwater, *Baltimore Housing Authority to Sell 22 Complexes to Private Developers*, BALT. SUN (Mar. 5, 2014), http://articles.baltimoresun.com/2014-03-05/news/bs-md-ci-public-housing-20140305_1_grazi-ano-baltimore-housing-authority-private-developers.

64. See *id.*

65. See Smetak, *supra* note 11, at 3-4.

66. See Cohen, *supra* note 42.

67. David Forbes, *Asheville Public Housing Evictions Spark Concerns*, CAROLINA PUBLIC PRESS (Jan. 5, 2015), <http://www.carolinapublicpress.org/21406/asheville-public-housing-evictions-spark-concerns>.

68. See *What Types of Vouchers are There?*, *supra* note 33.

69. Avihay Dorfman & Alon Harel, *The Case Against Privatization*, HEBREW UNIVERSITY OF JERUSALEM (Jun. 10, 2012), [law.huji.ac.il/upload/privatization\(1\).pdf](http://law.huji.ac.il/upload/privatization(1).pdf).

push against co-opting private interests in the prison system and the water and sanitation systems.⁷⁰ The fear comes from the fact that we rely heavily on the availability of publicly administered services.⁷¹ They are like a rock: consistent, reliable, and safe. As a result, people worry that if we let for-profit interests get involved, then something as socially important as public housing, a program that provides millions with access to a fundamental human right, could disappear as a result of a bad business decision.⁷² After all even the biggest corporations can fail and we simply don't want to expose basic services to such a huge risk.⁷³

Implementing the RAD program is a far cry from saying that the entire public housing system will be privatized.⁷⁴ RAD is, at least at this point, in its pilot stage with only a fraction of the total national public housing stock slated for conversion.⁷⁵ The notion that housing projects will be sold off to the highest bidder in order to be razed and condos erected on their site is misplaced.⁷⁶ While the transfer of publicly owned housing to private hands is possible, the structure of the program favors housing authorities to retain ownership of the properties.⁷⁷ Additionally, there are protections in place to prevent the unintentional transfer of property to private hands through an event such as a foreclosure on a particular property.⁷⁸ The goal is to create a public-private partnership between the two entities while keeping in

70. Paul Bucheit, *8 Ways Privatization has Failed America*, COMMON DREAMS (Aug. 5, 2013), <http://www.commondreams.org/views/2013/08/05/8-ways-privatization-has-failed-america>.

71. See Dorfman & Harel, *supra* note 69, at 70.

72. Rebecca Burns, *HUD's Privatization Scheme May Herald the End of Public Housing*, AL JAZEERA AMERICA (Nov. 11, 2014), <http://america.aljazeera.com/opinions/2014/11/public-housing-renovationrentalassisteddemonstration.html>.

73. See *id.*

74. U.S. DEP'T OF HOUS. AND URBAN DEV., REVISED RAD GUIDANCE PIH-2012-32 REV, 1 (2013). HUD itself has said that this is simply a trial run, for that reason the application was limited to only 60,000 properties, a miniscule percentage of the entire system. *Id.*

75. See *id.*

76. See Danae King, *Residents, Union Workers, Protest Sale of Public Housing*, BALTIMORE SUN (June 11, 2014), http://articles.baltimoresun.com/2014-06-11/news/bs-md-public-housing-sale-protest-20140611_1_rental-assistance-demonstration-program-housing-authority-bel-park-tower. Residents sentiments are that this will be a worst case scenario and that ultimately they will be displaced as a result of RAD, much of this stems from lack of adequate information about the program and its effects. *Id.*

77. See Revised RAD Guidance, *supra* note 74 at 14 ("However, as HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary.").

78. See Smetak, *supra* note 11 at 3.

place a safety net to prevent the private interest from overrunning the ultimate goal of the program, which is to create more and better affordable housing.⁷⁹

RAD contains specific provisions that will help ensure that the property will continue to operate as low-income housing for the longest possible duration, regardless of ownership.⁸⁰ Once the conversion is made to a Section 8 property, it becomes subject to a twenty year RAD use agreement contract, and upon the expiration of the contract, there is a twenty-year mandatory renewal clause.⁸¹ The result is that the Public Housing Authority (PHA) or a not-for-profit entity must maintain at least a 51% ownership interest in the property or have authority over how it's run through a contract or other legal agreement.⁸² Additional provisions are aimed at making sure that tenants are not disenfranchised by the conversion, and further, forbid the new owners of any of the buildings from requiring residents to get recertified for eligibility.⁸³ In the buildings that will require substantial construction, tenants will be given temporary housing while the renovations take place, and guaranteed that they will be allowed to return once the work is complete.⁸⁴

IV. Conclusion

Places that have seen the fastest implementation of the program have noted early and immediate benefits in the form of community improvements, repairs, and added amenities.⁸⁵ And HAs are acknowledging that many of these projects would not have been possible without the RAD program. The reality is PHA tenants, many of whom have been repeatedly let down over the years by the Federal Housing Program in one form or another, will continue to be skeptical until they experience the benefits first hand. While it is good that housing advocacy organizations are skeptical of the program since any tenant pro-

79. See Burns, *supra* note 72.

80. See REVISED RAD GUIDANCE, *supra* note 74.

81. See *id.* (“[T]he agency administering the vouchers shall offer, and the PHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal.”).

82. See *id.* at 14.

83. See Cohen, *supra* note 42.

84. *Status of HUD's Rental Assistance Demonstration Program: Evaluation and Results to Date*, U.S. DEP'T OF HOUS. & URBAN DEV. (Sept. 14, 2014), www.huduser.org/portal/publications/pdf/RAD_Evaluation.pdf.

85. John Bell, *What \$28M in Apartment Renovations Looks Like in Salem*, PORTLAND BUSINESS JOURNAL (Jan. 15, 2015), <http://www.bizjournals.com/portland/blog/real-estate-daily/2015/01/what-28m-in-apartment-renovations-looks-like-in.html> (Anecdotal evidence of successful implementation of RAD upgrades to the rental units in spite of initial apprehension by residents). Salem used the funds to successfully enhance nearly one third of its public housing units with amenities like energy efficient windows, new kitchens, and modern heating and cooling systems. *Id.*

tections are useless if there is no agency to enforce compliance with them, it is a little defeatist to decree that the program has failed before it has even gotten off the ground.