U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing
Office of Housing

Special Attention of:
Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Multifamily HUB Directors
Multifamily Program Center Directors
Regional and Field Office Directors
Regional Administrators
Performance Based Contract Administrators

Notice PIH-2012-32 (HA), REV-2

Issued: June 15, 2015

Expires: This Notice remains in effect until amended, superseded, or rescinded.

SUBJECT: Rental Assistance Demonstration – Final Implementation, Revision 2

Purpose

This revised notice (Notice) provides program instructions for the Rental Assistance Demonstration (RAD or Demonstration), including eligibility and selection criteria.

Background

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. No. 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act, 2014 (Public Law 113-76, approved January 17, 2014) and the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, approved December 6, 2014), collectively, the "RAD Statute." RAD has two separate components:

- First Component. The First Component allows projects funded under the public housing program to convert their assistance to long-term, project-based Section 8 rental assistance contracts. Under this component of RAD, public housing agencies (PHAs) may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. PHAs will convert their assistance at current subsidy levels. The 2015 Appropriations Act authorizes up to 185,000 units to convert assistance under this component. Section I of this Notice provides instructions for PHAs that apply for conversion under the First Component.

While the RAD statute, as amended, contains language authorizing HUD to convert Section 8 Moderate Rehabilitation (Mod Rehab) projects (including Mod Rehab SROs)[1] under the First Component, HUD is exercising its discretion to prioritize public housing conversions under the competitive requirements of this component. The demand for public housing conversions is extremely high and significantly exceeded the initial limitation on the number of units that could be converted under the First Component. In addition, unlike Mod Rehab conversions, there is no Second Component option available for public housing projects. Consequently, Mod Rehab conversions will now be processed exclusively under the Second Component of RAD, which is non-competitive. Any Mod Rehab projects currently being processed under the First Component either may be grandfathered under the provisions of Revision 1 of this Notice or have the option to switch to a conversion under the Second Component.

- Second Component. The Second Component allows owners of projects funded under the Rent Supplement (Rent Supp), Rental Assistance Payment (RAP), and Mod Rehab programs to convert tenant protection vouchers (TPVs) to PBVs or PBRA upon contract expiration or termination occurring after October 1, 2006. While there is no cap on the number of units that can convert assistance under this component of RAD, and no requirement for competitive selection, PBV conversions under this component are subject to the availability of TPVs. Section II of this Notice provides instructions for owners of Mod Rehab projects. Section III of this Notice provides instructions for owners of Rent Supp and RAP projects.

Collectively, pre-conversion projects whose assistance is converting from one form of rental assistance to another are referred in this Notice as "Converting Projects." Post-conversion projects with assistance converted from one form of rental assistance to another are referred in this Notice as "Covered Projects."

Previous versions of this Notice were published as follows:

- PIH Notice 2012-32 (July 26, 2012)
- PIH Notice 2012-32 REV-1 (July 2, 2013)
- PIH Notice 2012-32 REV-1 Technical Correction (February 6, 2014)[2]

Generally, public housing projects converting assistance under RAD will be bound by the terms of the Notice in effect at the time of closing. Therefore, the terms of this Notice will apply to all

[1] Because the RAD statute now includes Mod Rehab SRO, all references in this Notice to Mod Rehab include Mod Rehab SRO unless otherwise stated.

[2] See http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-32rev1.pdf.

projects currently seeking conversion of assistance, even if a CHAP has already been issued. All conversions under the Second Component will be bound by the notice in effect at the time of the conversion request. Finally, as described above, Mod Rehab projects currently being processed under the First Component have the option to be grandfathered under provisions of Revision 1 of this Notice. For all conversion types, HUD reserves the right, in its sole discretion, to apply provisions from previous versions of this Notice to program participants that are near conversion.

Explanation of Changes and Major Revisions in PIH 2012-32, REV-2.

This revised Notice, PIH 2012-32, REV-2, includes a change in eligibility and selection criteria as well as clarifications of existing instructions. Major revisions are summarized below. Where indicated, the provisions will be subject to a 30-day Notice and Comment period.

First Component

- Reflecting the increase to the unit cap from 60,000 to 185,000 units

- Providing additional time for PHAs to plan for the redevelopment of multi-phase projects by extending the time period for submission of the application of the final phase to July 1, 2018 (see Section 1.9.C).

- Providing contract rents at FY 2014 rent levels for all awards made subsequent to the increase in the unit cap. This provision facilitates conversion of a public housing project, multi-phase project, or a PHA-defined portfolio of project by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5, 1.7.A.5).

- Ensuring residents retain rights and protections when their Total Tenant Payment (30% of adjusted gross income) exceeds the Gross Rent on the HAP contract (see Section 1.6.C.10; 1.7.B.9).

- Eliminating interim program milestones (e.g. submission of a Physical Conditions Assessment within 90 days of award) to streamline processing. The Notice also provides additional time to submit Financing Plans for tax credit transactions to better align those deadlines with those of tax credit providers (see Section 1.12).

- Identifying the specific HUD nondiscrimination and equal opportunity requirements that are applicable under different conversion plans and establishing an up-front HUD review of these requirements for certain transactions (see Section 1.2.E).

- Clarifying when non-dwelling property and land can be removed/released from the public housing program in conjunction with a conversion (see Attachment 1A.M).

- To provide greater incentives to undertake energy conservation measures, permitting RAD contract rents to increase by a portion of the estimated savings in resident utility allowances (see Section 1.6.B.5; 1.7.A.5; Attachment 1C).

- Permitting Section 8 assistance to "float" within certain mixed-income properties, so that assistance is not permanently tied to specific units in a project (see Section 1.6.B.10; Section 1.7.A.11).

- Providing additional flexibility for voucher agencies to implement Choice-Mobility provisions in project-based voucher (PBV) conversions (see Section 1.6.D.9).

- Clarifying the applicability of site and neighborhood standards to new construction replacement housing on the site of the existing public housing (see Section 1.4.A.7).

- Clarifying that a PHA may operate a PBV program-wide or HCV program-wide waiting list and that a Project Owner may operate a community-wide waiting list for its PBRA projects (see Section 1.6.D.4 and 1.7.C.3).

- Providing greater detail around conversions that would transfer the assistance to a new site, including a) criteria HUD will use to assess the new site and b) options for the use or disposition of the original public housing site (see Section 1.4.A.12).

The following changes are subject to Notice and Comment because they impact eligibility and selection criteria (see below):

- Modifying the first-come, first-serve approach for selecting projects for participation in RAD in order to prioritize properties that are part of broader neighborhood revitalization and that have higher investment needs (see Section 1.11).
- Limiting conversions under the First Component to public housing projects. Mod Rehab projects will now be converted only under the Second Component (see Section 2).

<u>Second Component</u>

- Providing an option for owners of Mod Rehab, Rent Supp, and RAP projects to convert to 20-year project-based rental assistance (PBRA), in addition to the PBV option that has been available since RAD's inception (see Section 2 and 3).
- Allowing Mod Rehab SROs that were funded under the McKinney-Vento Homeless Assistance Act to convert to long-term PBV or PBRA contracts (see Section 2).

- Establishing current residents' right to remain or return to the property in all Second Component conversions.
- Clarifying the applicability of Davis-Bacon wages for Second Component conversion (see Section 2.5.J and 2.6.G; Section 3.5.J and 3.6.I).
- Clarifying PBV rent setting in Section 236 decoupled projects (see Section 3.5.H).

Notice and Comment for Changes in Eligibility and Selection Criteria

Unless HUD receives comment that would lead to the reconsideration of any of the indicated changes in eligibility and selection criteria, these changes will become immediately effective upon the expiration of the 30-day comment period. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public in a new revision immediately upon the expiration of the comment period. Please submit all comments to RAD@hud.gov.

PHAs and Project Owners applying to RAD during the 30-day public comment period will be subject to the new eligibility and selection criteria of this Notice. In the event that HUD reconsiders any changes to the eligibility and selection criteria after the 30-day comment period that materially impact an application submitted during the comment period, a PHA or Project Owner may amend an application previously submitted. However, CHAPs and Portfolio Awards for projects satisfying eligibility and selection criteria that are subject to notice and comment will only be issued upon expiration of the comment period.

Notice Organization

The main body of this Notice (Program Instructions) is divided into three sections:

- **Section I:** Provides instructions to PHAs and their development partners, who can convert the assistance of public housing projects under the First Component of the Demonstration.
- **Section II:** Provides instructions to owners of Mod Rehab projects, including SROs, who can convert the assistance of these projects under the Second Component of the Demonstration.
- **Section III:** Provides instructions to owners of Rent Supp and RAP projects, who can convert the assistance of these projects under the Second Component of the Demonstration.

Please refer to the appropriate section for relevant instructions. A table of contents is provided on pages 7-9 of this Notice for reference.

Demonstration Goals

RAD provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through enabling access by PHAs and owners to private debt and equity to address immediate and long-term capital needs.

RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties.

Evaluation

Each component of RAD will be evaluated separately:

- For the conversion of public housing assistance to long-term, project-based Section 8 with no incremental funding, HUD is required under the RAD statute to assess and publish findings regarding the impact of the conversion on: the preservation and improvement of the former public housing units, the amount of private capital leveraged as a result of such conversion, and the effect of such conversion on residents. (The 2012 Appropriations Act does not require an evaluation of the conversion of Mod Rehab under the First Component.) HUD has already published "A Progress Report on the Rental Assistance Demonstration (RAD) Evaluation," which provides a summary of early program results and outlines the evaluation underway.[3]
- For the conversion of TPVs to PBVs, the legislation requires that the Comptroller General of the United States conduct a study of the long-term impact of the fiscal year 2012 and 2013 conversion of TPVs to PBVs on the ratio of tenant-protection vouchers to project-based vouchers. The study, which was completed and published on April 24, 2014, is available at http://www.gao.gov/products/GAO-14-402

Further Information

Please check www.hud.gov/rad for the latest information on RAD or to join the RAD listserv. *Materials referenced in this Notice may be obtained from this RAD website*. Email questions to RAD@hud.gov. Additionally, HUD will develop informational materials to address various program elements that HUD will post on the RAD website.

[3] http://www.huduser.org/portal/RAD_Evaluation.html

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. OMB approved application and information collection forms will be posted on the RAD website and the Federal Register.

Lourdes Castro Ramírez, Principal Deputy Assistant Secretary, Office of Public and Indian Housing

Edward L. Golding, Principal Deputy Assistant Secretary for Housing

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DEFINITIONS

The Act. The United States Housing Act of 1937.

*Administering PHA***.** A PHA that administers rental assistance under the Act, which may include the HCV, Mod Rehab, or PBV programs.

Anniversary of the HAP Contract. The annual recurrence of the date of the first day of the term of the HAP Contract.

Annual Contributions Contract (ACC). The contract between HUD and a PHA under which HUD agrees to provide funding for a program (e.g., public housing or Housing Choice Vouchers (HCV) under the Act), and the PHA agrees to comply with HUD requirements for the program.

Capital Needs Assessment (CNA). A detailed physical inspection of a property to determine critical repair needs, short- and long-term rehabilitation needs, market comparable improvements, energy efficiency, unmet physical accessibility requirements, and environmental concerns.

Choice-Mobility. For residents of Covered Projects, the option to obtain a HCV from a PHA after a defined period of residency. (See Section 1.7(C)(5) of this Notice for PBRA conversions, and Section 1.6(D)(9) for PBV conversions, for further details on the Choice-Mobility component.)

Closing. The event during which the applicable transaction documents are entered into. "Conversion" does not occur prior to Closing. (See Section 1.13 for further details on closing.)

Combined Agency. A PHA that either directly, or through an affiliate, administers both a HCV program and public housing.

Commitment to enter into a Housing Assistance Payments Contract (CHAP). Conditional commitment provided to the PHA for units that have been selected under the First Component of the Demonstration that describes the terms under which HUD would enter into a HAP contract with the Project Owner once the project complies with all requirements in the CHAP, this Notice, and other statutory and regulatory requirements applicable to the project.

Contract Administrator. HUD or a PHA under ACC with HUD that either executes a HAP contract with a Project Owner or, in PBRA, to which HUD may assign the HAP contract and which upon assignment is responsible for administering the HAP contract.

Contract Rent. The total amount of rent specified in the HAP contract as payable to the Project Owner for a unit occupied by an eligible family. In PBV, the contract rent is referred to as "Rent to Owner."

Converting Project. The pre-conversion property whose assistance is converting from one form of rental assistance to another under the Demonstration.

Covered Project. The post-conversion property with assistance converted from one form of rental assistance to another under the Demonstration.

Current Funding. Applicable to public housing conversions, the combination of Federal subsidy and tenant rents for which a project is eligible under the public housing program in the fiscal year of conversion. (See Sections 1.6(B)(5), 1.7(A)(5), and Attachment 1C for further details on current funding.)

Date of Full Availability (DOFA). Per 24 CFR § 905.108, the last day of the month in which substantially all (95 percent or more) of the units in a public housing project are available for occupancy.

Declaration of Restrictive Covenants (DORC). The restrictive covenants covering a public housing mixed-finance project that obligate the Project Owner to operate project in accordance with the Act, HUD regulations, the ACC, the Mixed Finance ACC Amendment, and the HOPE VI Grant Agreement (if applicable).

Declaration of Trust (DOT). The restrictive covenant on projects assisted through a public housing ACC that obligates PHAs to operate public housing projects in accordance with the ACC, the Act, and HUD regulations and requirements.

Distributions. Any withdrawal or taking of surplus cash by the Project Owner (see definition for "Surplus Cash", below).

Enhanced Vouchers (EVs). Tenant protection vouchers provided pursuant to an eligibility event under section 8(t) of the Act. EVs differ from regular vouchers in three significant ways: (1) the payment standard used to calculate the voucher housing assistance payment for EVs may exceed a PHA's ordinary payment standard; (2) an EV provides residents with a right to remain in the project as long as the units are used for rental housing and are otherwise eligible for voucher assistance; and (3) the household must pay for rent no less than the rent the household was paying on the date of the eligibility event (minimum rent). If the household elects to move, the voucher is administered as a regular voucher. HUD provides EVs and funding to a voucher

agency that has jurisdiction over the area in which the property that the eligibility event occurred is located.

Fair Market Rent (FMR). The cost in a particular housing market area of privately owned, decent, safe and sanitary rental housing. HUD establishes and publishes in the Federal Register FMRs for dwelling units of varying sizes for each metropolitan area. FMRs are gross rent estimates, i.e., they include the cost of tenant-paid utilities. See 24 CFR part 888 subpart A.

Family Self-Sufficiency (FSS). FSS is a program designed to promote self-sufficiency of assisted families through the coordination of services. Residents enter into a five-year contract of participation which outlines goals related to seeking, obtaining, and maintaining employment. During the period of participation, residents may earn an escrow credit, based on increased earned income. FSS Coordinator funding may be available to PHAs to pay for the costs of a program coordinator who links residents with training opportunities, job placement organizations, and local employers.

Financing Plan. Documentation submitted to HUD for review to demonstrate that the Covered Project can be sustained physically and financially for the term of the HAP contract at the rent levels permitted under the Demonstration. The Plan must show how the project's immediate and long-term capital needs will be addressed.

Good-Cause Exemption. An allowance made by HUD exempting a covered PBRA project from the Choice-Mobility component. (See Sections 1.7(C)(5) and 2.3.6(C)(3) for further details on good-cause exemptions.)

Green Building. An approach to building, rehabilitation, repairs, maintenance, and property operations that is more sustainable than traditional approaches to such activities and results in a project that is more energy efficient, costs less to operate, has better indoor air quality, and reduces its overall impact on the environment. (See Section 1.4(A)(2) for further details on green building.)

Housing Assistance Payment (HAP). The payment made by the Contract Administrator to the Project Owner of an assisted unit as provided in the HAP contract. Where the unit is leased to an eligible household, the payment is the difference between the contract rent for a particular assisted unit and the tenant rent payable by the family.

Housing Quality Standards (HQS). Standards set forth in 24 CFR § 982.401 that must be met by all units in the HCV program before assistance can be paid on behalf of a household. The HQS in 24 CFR § 982.401 apply to PBV, in accordance with 24 CFR § 983.101. Generally, Voucher Agencies must conduct HQS inspections of PBV projects not less than biennially during the term of the HAP Contract.

HAP Contract. The contract entered into by the Project Owner and the contract administrator that sets forth the rights and duties of the parties with respect to the Covered Project and the payments under the contract.

Initial Repairs. The scope of work required by HUD to be performed within a defined period following the conversion.

Mixed-Finance Project. A public housing project developed with a combination of private financing and public housing development funds in accordance with 24 CFR Part 905 subpart F.

Operating Cost Adjustment Factor (OCAF). An operating cost adjustment factor established by HUD that is applied to current contract rent, less the portion of the rent paid for debt service.

Ownership or Control. The RAD Statute provides requirements for the ownership or control of Covered Projects under the First Component. See Section 1.6.B.3 and 1.7.A.3 for a description of how to satisfy those requirements for PBV and PBRA conversions.

PHA. A Public Housing Agency that administers programs under the Act, which could include public housing and HCVs. In addition to this general definition, the term PHA, as used in this Notice, refers to the owner of a First Component Converting Project (even if the project is a mixed finance project and the PHA does not own ACC units).

Prepayment. The satisfaction (i.e., payment in full) of the underlying mortgage prior to its maturity date. Prepayment is one of the eligibility triggering events for RAD conversion under Section III of this Notice,

Project Owner. For purposes of Section I, II, and III of this Notice, the term Project Owner refers to the owner of the Covered Project, including but not limited to any owner pursuant to a HAP Contract. For purposes of HAP Contracts, an Owner is a private person, partnership, or entity (including a cooperative), a non-profit entity, a PHA or other public entity, having the legal right to lease or sublease the dwelling units subject to the HAP Contract.

Public Housing Assessment System (PHAS). The current system used to measure the performance of PHAs administering the public housing program, per 24 CFR Part 902, or any successor system.

Public Housing Project. Per 24 CFR 905.108 the term ‘‘public housing’’ means low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than assistance under 42 U.S.C. 1437f of the 1937 Act (section 8). The term ‘‘public housing’’

includes dwelling units in a mixed finance project that are assisted by a public housing agency with public housing capital assistance or Operating Fund assistance. When used in reference to public housing, the term ‘‘project’’ means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing. Each public housing project that has a unique project identification number in the Public and Indian Housing Information Center (PIC).

Project-Based Voucher (PBV). A component of a PHA’s HCV program, where the PHA attaches voucher assistance to specific housing units through a PBV HAP contract with an owner. Unlike a tenant-based voucher, the PBV assistance remains attached to the unit when the family moves, and assists the next eligible family to move into the PBV unit. The PBV program is administered by HUD’s Office of Public and Indian Housing.

Project-Based Rental Assistance (PBRA). Rental assistance under Section 8 provided by HUD to owners according to the terms of a HAP contract for the provision of housing to eligible tenants. The PBRA program is administered by HUD’s Office of Housing.

RAD Conversion Commitment (RCC). For the First Component, the contract executed by HUD, the PHA and, as applicable, the post-conversion Project Owner. The RCC follows HUD approval of the Financing Plan and describes the terms and conditions of the conversion. (See Section 1.12 and Attachment 1A for further details on the RCC.)

RAD Use Agreement. Applicable to the First Component, the document specifying the affordability and use restrictions on the Covered Project, which will be coterminous with the HAP contract and must be recorded in a superior position to any new or existing financing or other encumbrances on the Covered Project. (See Sections 1.6(B)(4), 1.7(A)(4) for further details on the RAD Use Agreement.)

Resident Opportunity and Self-Sufficiency Service Coordinators (ROSS-SC). Funding under this program is made available for Service Coordinators. Service Coordinators assess the needs of residents of public housing and coordinate community resources to meet those needs. These services should enable participating families to make progress toward achieving economic independence and housing self-sufficiency, or, in the case of elderly or disabled residents, improve living conditions and enable residents to age-in-place.

Section Eight Management Assessment Program (SEMAP). The current system used to measure the performance of PHAs administering the Section 8 HCV program, per 24 CFR Part 985, or any successor system.

Surplus Cash. Following completion of initial repairs, the amount determined to be available at the end of an annual fiscal year period after payment, or after funds have been set aside for payment, of (i) operating expenses, (ii) mortgage payments, and (iii) all amounts required to be deposited in the replacement reserve or other restricted accounts essential to the Covered Project's operations.

Tenant Protection Vouchers (TPVs). Vouchers issued to eligible tenants of certain properties when an event at the property would otherwise expose tenants to a loss of rental assistance, resulting in an increase in their housing costs. Such events include when a Rent Supp or RAP contract terminates due to expiration, prepayment of the underlying mortgage, or an enforcement action. HUD provides TPVs and funding to a voucher agency that has jurisdiction over the area in which the property is located. TPVs may be regular HCVs, which are administered in accordance with all HCV program requirements, or EVs, as described above.

Tenant Rent. The amount payable monthly by the household as rent to the unit owner.

Uniform Physical Condition Standards. Protocols used for HUD Real Estate Assessment Center (REAC) physical inspections in accordance with 24 CFR Part 5, subpart G.

Utility Allowance. The amount that a PHA or Project Owner determines is reasonable for tenant-paid utility costs. In the case where the utility allowance exceeds the Total Tenant Payment (as defined at 24 CFR part 5.613), the tenant is reimbursed in the amount of such excess.

Voucher Agency. A PHA that administers a HCV program.

SECTION I: PUBLIC HOUSING PROJECTS

1.1 Purpose

Section 1 of this Notice provides instructions to PHAs and their development partners seeking to convert assistance of a public housing property.

1.2 General Program Description

Under this component of RAD, PHAs may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. As such, initial contract rents are established based on public housing funding levels, and are subject to applicable program rent caps. Applications may be submitted for a specific project (using the RAD Application), a PHA-defined portfolio of projects, or a multi-phase project. If a PHA applies for either a portfolio or multi-phase award, HUD will reserve RAD conversion authority for the projects or phases covered by the award, and the PHA will be required to submit a RAD Application for each individual project or phase. Following review and selection of a RAD Application, HUD will provide the PHA with a Commitment to enter into a Housing Assistance Payment (CHAP), after which the PHA will have to present a Financing Plan for HUD to approve. After HUD approval of the Financing Plan and successful closing of the conversion, a project will receive a long-term Section 8 HAP contract. Upon conversion, units whose assistance has been converted pursuant to RAD will be removed from the public housing program and Covered Projects will be released from the public housing Declaration of Trust (DOT) and the Declaration of Restrictive Covenants (DORCs), if applicable.

A. PBV Conversions. Where the PHA converts assistance of a public housing project to Section 8 PBVs, the HAP Contract will be administered by the agency with which HUD has entered into the applicable Voucher ACC (which in many cases will be the same agency that is converting assistance). Contract rents will be established according to the terms described in this Notice and will be adjusted annually by HUD's OCAF on each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract (see Section 1.6.B.5 and Attachment 1C) and the rent reasonableness requirement discussed later in this Notice. The initial contract will be for a period of at least 15 years (up to 20 years upon approval of the administering Voucher Agency). At expiration of the initial contract and each renewal contract, the Voucher Agency shall offer, and the Project Owner shall accept, a renewal contract. Each project with a PBV HAP contract will also be subject to a RAD Use Agreement that will renew with the HAP contract. Further, the administering Voucher Agency (i.e., the Contract Administrator) will provide a Choice-Mobility option to

residents of Covered Projects in accordance with section 1.6(D)(9). With the exception of provisions identified in this Notice (as well as retained flexibilities of Moving to Work (MTW) agencies), all regulatory and statutory requirements of the PBV program in 24 CFR Part 983, and applicable standing and subsequent Office of Public and Indian Housing guidance, including related handbooks, shall apply.

B. PBRA Conversions. Where the PHA converts assistance of a public housing project to Section 8 PBRA, the HAP Contract will generally be administered by HUD's Office of Housing, unless later assigned to a PHA that is under ACC with HUD for the purpose of administering project-based Section 8 HAP contracts. Contract rents will be established according to the terms described in this Notice and will be adjusted annually by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract (see section 1.7.A.5 and Attachment 1C). The initial contract will be for a period of 20 years and will be subject to annual appropriations. At expiration of the initial contract and each renewal contract, HUD shall offer, and the Project Owner shall accept, a contract that shall be eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). Each Covered Project with a PBRA HAP Contract will be subject to a 20-year RAD Use Agreement that will renew with the HAP contract. Further, Project Owners must offer a Choice-Mobility option to residents of Covered Projects, as specified in Section 1.7(C)(5) of this Notice, unless exempted from this requirement. With the exception of provisions identified in this Notice, all regulatory and statutory requirements of the PBRA program in 24 CFR Part 880, and applicable standing and subsequent Office of Housing guidance, including related handbooks, shall apply (as modified and published in Appendix I of this Notice).

C. Waivers. A major goal of the First Component of RAD is to test the conversion of the public housing assistance to long-term, project-based Section 8 assistance available to Project Owners of assisted multifamily housing in order to generate additional sources of private financing. Consequently, HUD is applying its waiver authority and ability to establish limited alternative requirements for the effective conversion assistance on a limited basis to facilitate the major goals of the Demonstration and maintain existing distinctions between the PBV and PBRA forms of contract assistance. Such distinctions will enable a PHA or Project Owner to choose the form of assistance to best meet its needs. It will also enable HUD and Congress to assess how effective each form of assistance proves to be in meeting such varied circumstances and needs.

D. Tenant Rights. Equally important for the success of RAD are meaningful resident participation, procedural rights, and mobility, which are addressed in detail in various sections of the Notice and summarized in Attachment 1B.

E. Fair Housing Requirements. RAD transactions are governed by the same civil rights authorities that govern HUD-assisted activities generally. See 24 CFR 5.105. The Fair Housing Act prohibits discrimination in housing (see 42 U.S.C. §§ 3601, et seq., and HUD regulations in 24 CFR part 100) and requires all federal executive departments and agencies to "administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further" fair housing (42 U.S.C. § 3608(d) and (e)). In addition, all federally assisted activities are subject to Title VI of the Civil Rights Act of 1964 forbidding discrimination on the basis of race, color and national origin (see 42 U.S.C. §§ 4000d, et. seq., and HUD regulations in 24 CFR part 1) and Section 504 of the Rehabilitation Act of 1973, which forbids discrimination on the basis of disability and requires that federally assisted programs make each activity "when viewed in its entirety" readily accessible to persons with disabilities and make reasonable accommodation to the needs of persons with disabilities (see 29 U.S.C. §§ 701, et seq., and HUD regulations in 24 CFR part 8), as well as Titles II and III of the Americans with Disabilities Act and Executive Order 11063 and HUD regulations at 24 CFR part 107. Thus, as with the administration of all HUD programs and all HUD-assisted activities, fair housing and civil rights issues must be considered in the administration of RAD transactions. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR part 1 and part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing.

Elements of RAD transactions that have civil rights implications include, but are not limited to, transfers of assistance, temporary and permanent relocation, demolition, site selection and new construction, occupancy policies, changes in unit configuration, increase or reduction in units, waiting list administration policies, policies regarding return of temporarily relocated tenants, substantial rehabilitation or alteration program accessibility, tenant selection policies and priority transfers, providing information to persons with Limited English Proficiency (LEP) and persons with disabilities, reasonable accommodation policies, and Affirmative Fair Housing Marketing Plans. All PHAs must consider civil rights when structuring these and other elements of their RAD transaction. Further, all RAD conversions that include one or more of the activities listed below must undergo a front-end review for compliance with certain civil rights and fair housing requirements. A RAD conversion may not include one of the activities below without prior written approval from HUD. All Financing Plans submitted following the 60th day after the publication of this Notice must include evidence that the PHA has secured written approval from HUD for any of the following activities that are included in its RAD conversion:

- Conversions of assistance involving new construction, whether on a new site or on a current site, in an area of minority concentration.
- Transfers of assistance where all or a portion of the Converting Project's assistance is transferred to a new site(s) as part of the subject transaction.

- Conversions of assistance where the total number of units in the Covered Project is less than the original number of units in the Converting Project (this includes de minimis reductions);
- Conversions of assistance where the Covered Project's unit configuration is different from the unit configuration of the converting project;
- Conversions where the Covered Project serves a different population from the one served by the Converting Project (i.e. when a Converting Project serves families but the Covered Project is subject to an elderly preference);

Additionally, all PHAs will be required to submit an Accessibility and Relocation Checklist along with their Financing Plan, the purpose of which is to evaluate the following activities:

- Conversions of assistance in which the construction schedule indicates that relocation is likely to exceed 12 months;
- Conversions of assistance involving new construction or substantial rehabilitation, as those terms are defined in Section 504 of the Rehabilitation Act of 1973.

Furthermore, as part of its review of these elements, HUD may request that PHAs that are doing portfolio or multi-phased conversions provide information on their conversion plans for other projects or subsequent phases to ensure that the overall plans for RAD conversion are consistent with civil rights and fair housing. HUD may also require a front-end civil rights review of a RAD conversion where it has learned of potential fair housing and civil rights concerns or a history of such concerns.

1.3 **Eligibility**

Only PHAs may apply under this section of the Notice. However, PHAs may consider enlisting partners to facilitate recapitalization and development of its projects. Additionally, while public housing mixed-finance projects are eligible for conversion under the Demonstration (see Section 1.11(B) of this Notice), the application for conversion of assistance must be submitted by the PHA on whose ACC the units are included. This requirement also applies to directly-funded Resident Management Corporations (RMCs).

A RAD Application may be rejected, or a CHAP or RCC revoked, if HUD determines an applicant or PHA to be ineligible.

To be eligible for the Demonstration, a PHA must:

A. Have public housing units under an ACC;

B. Be classified as a Standard or High Performer under the Public Housing Assessment System (PHAS), or, if classified as "troubled" (Troubled), the PHA must be making substantial progress under its Recovery Agreement, Action Plan, Corrective Action Plan (CAP) or Memorandum of Agreement (MOA) and HUD must have determined that the factors

resulting in the PHA's Troubled status will not affect its capacity to carry out a successful conversion under this Demonstration;

C. Be classified as a Standard or High Performer under the Section Eight Management Assessment Program (SEMAP) if the PHA will be administering the PBV contract under RAD. If classified as Troubled, the PHA must be making substantial progress under the CAP and HUD must have determined that the factors resulting in the PHA's Troubled status will not affect its capacity to carry out a successful conversion under this Demonstration;

D. Be otherwise in substantial compliance with HUD reporting and programmatic requirements and/or satisfactorily in compliance with any CAP or MOA related to any 1) program finding or 2) failure to carry out, to the satisfaction of the Department, management decisions relating to an audit by the Office of Inspector General;

E. Not have a debarment, suspension, or Limited Denial of Participation in Federal programs lodged against the applicant, PHA Executive Director, Board members, or affiliates;

F. Submit a completed application that complies with all RAD Application instructions.

G. Not have a charge, cause determination, lawsuit, or letter of findings referenced in sub-paragraphs (1)-(5) below against a PHA, its transferees, proposed development partners, or sub-recipients that has not been resolved to HUD's satisfaction:

1. A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status;
2. A Fair Housing Act lawsuit filed by the Department of Justice (DOJ) alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. § 3614(a);
3. A letter of findings or lawsuit filed by DOJ identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974;
4. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation or gender identity; or
5. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

Applicants may still be eligible for the Demonstration if the charge, cause determination, lawsuit, or letter of findings referenced in subparagraphs 1, 2, 3, 4, or 5 above has been resolved to HUD's satisfaction. However, if the matter has not been resolved to HUD's satisfaction, then the applicant is ineligible to participate in the Demonstration.

HUD will determine if actions to resolve the items listed above are sufficient to resolve the matter. Examples of actions that could resolve the matter include, but are not limited to, current compliance with a:

- Voluntary compliance agreement (VCA) signed by all the parties;
- HUD-approved conciliation agreement signed by all the parties;
- Conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Consent order or consent decree; or
- Final judicial ruling or administrative ruling or decision.

Additionally, a PHA may be required to demonstrate that its proposed activities under RAD are consistent with and will not hinder or delay satisfaction of any applicable fair housing or civil rights VCA, conciliation agreement, consent order or consent decree, final judicial ruling, or administrative ruling or decision. HUD may terminate a CHAP or RCC if it determines that the terms of the conversion would be inconsistent with fair housing or civil rights laws or is inconsistent with, would hinder, or would delay satisfaction of a fair housing or civil rights court order, settlement agreement, or VCA (see section 1.12 of this Notice).

H. <u>HOPE VI Projects</u>. PHAs may submit applications for the following HOPE VI projects:

1. Projects with a Date of Funding Availability (DOFA) of greater than 10 years prior to the date of RAD application;
2. Projects with a DOFA of less than 10 years, if the Converting Project evidences a recent multi-year pattern of financial distress, indicated by:
   - At least two of the three most recent audited financial statements for the development partnership showing that the PHA's assignment of funding for the public housing-restricted units has been below 90% of the operating cost of such units; and
   - Evidence that withdrawals have been made from the project's operating deficit reserve, transformation reserve or similar reserve account(s) set up to address public housing funding shortfalls to such an extent that only 75% of such a reserve(s) remain available, or evidence that, in at least two of the past three years, the PHA or owner has made an annual contribution to meet the operating deficit created by the public housing-restricted units.

   To be eligible for this exception from the DOFA requirement, RAD applications for HOPE VI projects must include with the application the required audited financial statements and financial information documenting the pattern of distress.

3. Project(s) that, unless converted under RAD, would be the only remaining project(s) in the PHA's inventory.

1.4 Project Conversion Requirements and Financing Considerations

One of the main purposes of RAD is to demonstrate how the conversion of current public housing assistance to long-term, project-based Section 8 rental assistance contracts can generate access to private debt and equity to address immediate and long-term capital needs through rehabilitation or new construction. HUD therefore expects that the majority of projects undergoing conversion of assistance through RAD will do at least some rehabilitation or reconstruction. The following include requirements related to conversion plans more broadly, including those involving rehabilitation and construction:

A. Conversion Planning Requirements.

1. **Capital Needs Assessment (CNA).**[4] Except as noted below, each project selected for award will be required to perform a detailed physical inspection to determine both short-term rehabilitation needs and long-term capital needs to be addressed through a Reserve for Replacement Account. A CNA must be submitted with the Financing Plan.
   - **Transition to CNA eTool.** HUD is in the process of developing a standardized CNA eTool for multifamily housing that will also be required of all RAD transactions. This new CNA eTool will be required as part of any RAD Financing Plan (or application for FHA Firm Commitment) submitted six months after publication of the CNA eTool. Any CNA submitted prior to this date must follow the guidance under Revision 1 of this Notice.[5]
   - **Contractor Qualifications.** The CNA must be completed by a qualified, independent third-party professional as required in the appropriate HUD guidance (the RAD PCA or the CNA eTool).
   - **Exemptions**. HUD will exempt the following transaction types from CNA requirements, with the exception of preparing the 20 Year Reserve Schedule and the Utility Consumption Baseline (UCB):
     a. For non-FHA transactions,
        i. Projects built within the last 5 years;

[4] PIH Notice 2012-32 REV-1 used the terminology "Physical Condition Assessment," or PCA. This terminology has been changed with this revised Notice to "Capital Needs Assessment," or CNA.

[5] The PCA tool and Statement of Work described in Revision 1 can be accessed at www.hud.gov/rad.

ii. Projects that qualify as new construction or "substantial rehabilitation" (generally defined as meeting Level 3 Alterations per the 2012 International Building Code for Existing Buildings); or

iii. Projects that will be financed with Low Income Housing Tax Credits ("tax credits").

b. For FHA transactions, PHAs should follow applicable requirements in the MAP Guide governing exemptions.

Exemptions should be confirmed with the Transaction Manager assigned to the RAD conversion. There are no transactions exempt from completing the portions of the Excel Tool (existing RAD PCA or the CNA eTool) necessary for the appropriate Tool to produce the 20 Year Reserve Schedule and no transactions are exempt from completing the appropriate utility consumption tool (either the existing RAD PCA or the CNA eTool).

- **Utility Consumption Baseline.** For any CNA submitted six months after publication of the CNA eTool, the PHA must submit the Statement of Energy Performance or the Statement of Energy Design and Intent (SEDI), as applicable for New Construction or Gut Rehabilitation, or Statement of Energy Performance (SEP) for other levels of rehabilitation, from the Environmental Protection Agency's Portfolio Manager for UCB compliance. Both must be prepared to the standards cited in the MAP Guide, regardless of source of financing.

2. **Green Building and Energy Efficiency.** For all projects retrofitted under a RAD conversion, if systems and appliances are being replaced as part of the initial repairs identified in the approved Financing Plan, at a minimum PHAs shall complete replacements with Energy Star®, WaterSense® or Federal Energy Management Program (FEMP)-designated products and appliances.[6] Additionally, PHAs shall utilize the most energy- and water-efficient options that are financially feasible and that are found to be cost-effective by the CNA described above. The CNA will provide detailed analyses of energy-saving alternatives and other green building components, including payback and cost/saving analyses. PHAs are strongly encouraged, for all RAD conversion projects, to scope rehabilitation and ongoing replacements and operations that utilize the components that the CNA indicates make financial sense, and other components that the CNA indicates will improve indoor air quality and/or reduce overall environmental impact where those components have

[6] For Energy Star®, see http://www.energystar.gov/. For WaterSense®, see http://www.epa.gov/watersense/. For FEMP, see http://www1.eere.energy.gov/femp/.

little or no cost premium, consistent with the principles and best practices of the green building industry.

Where a PHA is planning to use a RAD conversion in conjunction with new construction, projects shall at a minimum meet or exceed the 2009 International Energy Conservation Code (IECC) or ASHRAE 90.1-2007 standard or any successor code that is adopted by HUD under the requirements of the Energy Independence and Security Act of 2007. All new construction projects are encouraged to meet or exceed the requirements for Energy Star for New Homes or Energy Star for Multifamily High Rise buildings. Further, in new construction and applicable retrofit projects, HUD strongly encourages the use of industry-recognized, green building certifications, such as the US Green Building Council's LEED Rating System, Enterprise Green Communities Criteria, the National Green Building Standard, Green Globes, GreenPoint Rating, EarthCraft, Earth Advantage, Passive House, or Living Buildings.

3. **Environmental Review.** Under Federal environmental review requirements, proposed RAD projects are subject to environmental review. Environmental documents are required to be submitted as part of the applicant's Financing Plan. HUD will not issue an RCC if the project plan does not meet the environmental review requirements described in **Attachment 1A**.

4. **Substantial Conversion of Assistance.** Conversions may not result in a reduction of the number of assisted units, except by a de minimis amount, defined as no more than the greater of five percent of the number of project or portfolio units under ACC immediately prior to conversion or five units. However, a unit is excluded from this de minimis threshold if any of the following apply:

    i. The unit has been vacant for more than 24 months at the time of RAD Application; or
    ii. Reducing the total unit number will allow the PHA to more effectively or efficiently serve assisted households through: 1) reconfiguring apartments (e.g., converting efficiency units to one-bedroom units); or 2) facilitating social service delivery (e.g., converting a basement unit into community space).

    Otherwise, a PHA may not reduce the number of ACC units at project without Section 18 Demolition or Disposition approval from the SAC.

In all cases, the PHA shall submit within their PIC removal application (See Section 1.12) a narrative explanation of the proposed reduction, including a description of the units to be removed, an explanation of why the project can better serve assisted residents at the reduced number, and any supporting evidence. The assigned Transaction Manager will approve any reduction of units by project or portfolio.

De Minimis exceptions are allowed across multi-phase or portfolio conversions. For example, a PHA that is converting 200 units across three properties is permitted to replace 185 units (i.e. 95% of 200) across its portfolio and apply the unit reductions to a single property. However, this property to which the de minimis exception is consolidated and applied must be the last one to convert.

A PHA must demonstrate that any reduction in units better serves residents, will not result in the involuntary permanent displacement of any tenant family, and will not result in discrimination based on race, color, religion, national origin, sex, disability, or familial status.

5. **Relocation Requirements.**
   i. **RAD Relocation Notice.** Relocation requirements related to public housing conversions under RAD (with the exception of) are described in Notice H 2014-09; PIH 2014-17, as may be amended from time to time ("RAD Relocation Notice").[7] The purpose of the RAD Relocation Notice is to provide PHAs and their development partners with information and resources on RAD program, Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and Fair Housing and Equal Opportunity (FHEO) requirements when planning for or implementing resident moves in connection with a RAD conversion under the First Component of RAD. Specifically, the RAD Relocation Notice provides guidance on relocation planning, resident right to return, relocation assistance, resident notification, initiation of relocation generally following closing, and fair housing and civil rights requirements.

      The appendices to the RAD Relocation Notice include recommended relocation plan contents, and sample relocation notices for issuance to residents depending on RAD project characteristics. Questions regarding relocation will generally be addressed in the RAD Relocation Notice and not this Notice. In the event of a

[7] "Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component" http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Notice2.pdf. For properties being redeveloped with funding under a Choice Neighborhoods Implementation (CNI) grant, the RAD Relocation Notice is superceded by guidance regarding relocation included in the CNI NOFA.

conflict between this Notice and the RAD Relocation Notice, with regard to relocation requirements, the RAD Relocation Notice controls.

ii. **Right to Return.** Any resident that may need to temporarily be relocated to facilitate rehabilitation or construction has a right to return to an assisted unit at the Covered Project once rehabilitation or construction is completed. Permanent involuntary displacement of residents may not occur as a result of a project's conversion of assistance, including, but not limited to, as a result of a change in bedroom distribution, a de minimis reduction of units, the reconfiguration of efficiency apartments, or the repurposing of dwelling units in order to facilitate social service delivery. Where the transfer of assistance to a new site is warranted and approved (see Section 1.2.A.12), residents of the Converting Project will have the right to reside in an assisted united at the new site once rehabilitation or construction is complete. For more information on how to implement these provisions see the RAD Relocation Notice.

iii. **Ineligibility of Tenant Protection Vouchers.** PHAs are not eligible to receive Tenant Protection Vouchers as a result of a RAD conversion.[8]

6. **Accessibility Requirements.** Federal accessibility requirements apply to all conversions – whether they entail new construction, alterations, or existing facilities. The laws that most typically apply include Section 504 of the Rehabilitation Act of 1973 (Section 504), the Fair Housing Act (FHAct) and the Americans with Disabilities Act (ADA). Although the requirements of each of these laws are somewhat different, PHAs must comply with each law that applies. All three laws typically apply to new construction. Section 504 and the ADA also apply to alterations and substantial rehabilitation as defined in 24 CFR 8.22 and 8.23 and to existing, unaltered facilities (24 CFR 8.24). See also 28 CFR 35.151(b) and 28 CFR 36.

   When a project's rehabilitation meets the definition of a "substantial alteration" under 24 CFR Part 8.23, a PHA must comply with all applicable accessibility requirements under Section 504. For some projects, "other alterations," as defined in Section 504, are made over time. If other alterations, considered together, amount to an alteration of an entire dwelling unit, the entire dwelling unit shall be made accessible.

[8] This provision does not preclude a PHA from receiving tenant protection vouchers for a property that has also received a Choice Neighborhoods Implementation grant.

Where a PHA is planning to use RAD conversion in conjunction with new construction, the project must comply with all applicable accessibility requirements for new construction. The specific requirements are set out in regulations at 24 CFR part 8, 28 CFR part 35 and 36, and 24 CFR part 100, subpart D. Information on the design and construction requirements of the Fair Housing Act that are applicable to new construction is found at www.fairhousingfirst.org.

PHAs are encouraged to use universal design principles, visitability principles, and active design guidelines in planning retrofit and new construction work, wherever feasible. However, adherence to universal design principles does not replace compliance with the accessibility requirements of Section 504, the ADA, and the Fair Housing Act.

7. **Site Selection and Neighborhood Standards.** Where a PHA is planning to convert assistance under RAD, the PHA must comply with all applicable site selection requirements as set forth in this Notice and in accordance with any additional applicable guidance provided by HUD. Site selection requirements set forth at 24 CFR § 983.57 shall apply to RAD conversions to PBV assistance and site selection requirements set forth at Appendix III shall apply to RAD conversions to PBRA assistance. Site selection must be consistent with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964 including implementing regulations at 24 CFR § 1.4(b)(3), Section 504 of the Rehabilitation Act of 1973 including implementing regulations at 24 CFR § 8.4(b)(5), and the Americans with Disabilities Act. Choice Neighborhoods Implementation projects are subject to the site and neighborhood standards published in the applicable NOFA.

   It is the PHA's responsibility to ensure that the site selection complies with the requirements of this Notice; the PHA must certify with the submission of its Annual Plan or Significant Amendment to its Annual Plan that it complies with the applicable site selection requirements. HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For conversions of assistance that involve new construction that is located in an area of minority concentration (whether on the existing public housing site or on a new site), HUD will conduct a front-end civil rights review of the site to determine whether it meets one of the conditions that would allow for new construction in an area of minority concentration.

   Under its Site and Neighborhood Standards, HUD may approve new construction in an area of minority concentration, consistent with the regulatory requirements cited above, provided that:

i. the new construction is located in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a revitalizing area); or
ii. there are sufficient comparable housing opportunities in areas outside of minority concentration.

In determining if the project meets the requirements above, HUD may consider such factors as: whether the locality has a demonstrated commitment to revitalization that includes or is in addition to the RAD conversion; whether the neighborhood shows signs of revitalizing, through indicators such as declining census tract poverty rates, low or declining violent crime rates or evidence of increased educational opportunity; or whether there is high private and public investment in retail, commercial or housing development that is already occurring or will imminently occur in the area.

A PHA must receive prior written approval from HUD following the review that HUD has accepted the PHA's certification and supporting documentation prior to entering into binding commitments for new construction. A determination that a site fails to meet these requirements will be grounds for disapproval of a Financing Plan.

HUD acceptance of a site that the PHA has determined to meet the site and neighborhood standards is not a determination of compliance with the duty to affirmatively further fair housing or other fair housing and civil rights requirements. HUD approval of the sites for one or more RAD conversions does not indicate approval of the PHA’s or locality’s overall housing strategy. A PHA that does not promote fair housing choice outside areas of minority concentration and continues to site affordable housing in minority concentrated areas may be in noncompliance with the duty to affirmatively further fair housing and other fair housing and civil rights obligations. The PHA is responsible for ensuring that its RAD conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

8. **Additional Design Considerations.** Applicants are also strongly encouraged to demonstrate contemporary best practices in rehabilitation and construction, utilizing a long-term and holistic view of costs and benefits and a decision-making process which includes current and future stakeholders. Planning and design should include building lifecycle costs, energy and water-efficiency, social inclusion and

connectivity, occupant health and welfare, basic environmental stewardship, and climate change resilience.[9]

9. **Demolition.** Conversion plans may include the partial or complete demolition of the Covered Project and replacement of assistance on-site or off-site. [10] Unless approved in writing by HUD, a PHA may only demolish and/or dispose of units following the closing of construction financing for the Covered Project. Demolition will be considered as part of the Environmental Review.

10. **Change in Unit Configuration.** Where a PHA is proposing to change the unit configuration as part of the conversion, the PHA must demonstrate that the change in bedroom distribution will not result in the involuntary permanent displacement of any resident and will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status. For example, if three and four-bedroom units are replaced with one and two-bedroom units, the conversion may, but in not all cases, result in discrimination against families with children.

11. **Ownership and Control**. Except where permitted to facilitate the use of tax credits, during both the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of the Covered Project by a public or non-profit entity . Public or non-profit entity or ownership control requirements may be satisfied if a public or non-profit entity: (1) holds a fee simple interest in the real property of the Covered Project; (2) has the direct or indirect legal authority (via contract, partnership share or agreement of an equity partnership, voting rights, or otherwise) to direct the financial and legal interests of the Project Owner or (3) has 51 percent or more interest of the general partner share in a limited partnership; is the managing member of an LLC or has 51 percent or more of the membership shares of an LLC.

    If 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

[9] PHAs may wish to reference additional product certifications and standards in their building specifications, to this end, and can find additional guidance via the US Green Building Council's Leadership in Energy and Environmental Design (LEED) Rating System. Most of these programs build on the Energy Star certification and the IECC / ASHRAE standards for ease of coordination.

[10] Section 18 of the Act does not apply to RAD Conversions and is not needed for conversion plans involving demolition. Therefore, demolition approval pursuant to Section 18 (including an approval letter by the Special Application Center) is not sufficient to permit demolition of units prior to Closing without prior written consent by HUD pursuant to RAD. See Section 1.5(B).

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.

HUD may allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the Covered Project, but only if HUD determined that the PHA preserves its interest in the property. Preservation of the PHA's sufficient interest in a project using tax credits could include, but not be limited to, the following, if properly structured subject to HUD's review:

- PHA, or an affiliate under its sole control, is the sole general partner or managing member;
- PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
- PHA retains control over the leasing of the Covered Project, such as exclusively maintaining and administering the waiting list for the Covered Project, including performing eligibility determinations complying with the PHA Plan;
- PHA enters into a Control Agreement by which the PHA retains consent rights over certain acts of the Project Owner (including, for example, disposition of the Covered Project, leasing, selecting the management agent, setting the operating budget and making withdrawals from the reserves) and retains certain rights over the Covered Project, such as administering the waiting list; or
- Other means that HUD finds acceptable, in its sole discretion

All current and future ownership entities are subject to the eligibility requirements of Section 1.3 of this Notice, including the civil rights threshold requirements. Furthermore, if a PHA or project is subject to a VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision (hereafter referred to as "VCA and related agreements"), it must ensure that the ownership agreement or other appropriate document makes the new owner subject to the remedial provisions contained in such documents to the extent required by Federal, state, and local law. It is the PHA's obligation to disclose such VCA and related agreements, to the prospective owner. The extent of the new owner's responsibilities, including whether the responsibilities are appropriately limited to the development, maintenance, or operation of the particular RAD project, must be appropriately documented. The PHA will follow any requirements for the modification of such VCA or related agreements. If HUD is a party to the VCA and related agreements, the RAD project will not close without HUD's express approval of the transfer of obligations to the new owner.

12. **Transfer of Assistance.** In order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, there are three scenarios under which assistance converted pursuant to RAD may be transferred off of the existing parcel of land (for the purposes of this sub-section, transfer of assistance does not include transfers to an adjacent site): (1) where the PHA requests assistance to be transferred as part of the conversion from Converting Project to Covered Project; (2) post-conversion where a Project Owner requests a partial or full transfer of assistance, or (3) where, as a result of a default of the Use Agreement or HAP Contract, HUD terminates the HAP Contract. In all cases, the transfers of assistance will be subject to the ownership and control provisions described in this Notice.

    Approvals of a PHA or owner's request to transfer assistance will be determined in HUD's sole discretion. HUD will assess that the transfer does not occur in neighborhoods with highly concentrated poverty based on the criteria formulated for transfers under 8(bb) of the Act.[11] Additionally, HUD will consider whether conversion on-site is economically non-viable; whether the Converting Project is physically obsolete or severely distressed; how the transfer would affect the Converting Project's residents; and all applicable fair housing and civil rights requirements. Any transfers of assistance must comply with all requirements detailed in this Notice, including environmental review (see Section 1.4.A.3 and Attachment 1A), Site and Neighborhood Standards (see Section 1.4.A.7), Changes in Unit configuration (see Section 1.4.A.10), and Accessibility requirements (see 1.4.A.6). Further, unless otherwise approved by HUD a PHA may transfer units from a public housing project to an existing tax credit project only if the transfer is necessary to help with the de-concentration of poverty and/or the de-densification of a public housing project with extensive capital needs.

    The project to which assistance is transferred will be subject to all of the contract terms as described in the HAP, RCC, and Use Agreement.

[11] The analysis can be found in Section VIII B.1 of H-2014-14 "Transferring Budget Authority of Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act." A copy of the criteria is available at www.hud.gov/rad. At a minimum, projects that are located in neighborhoods that meet these criteria will meet the requirement under this Notice that transfers not occur to neighborhoods of concentrated poverty. HUD may modify these criteria as appropriate to fit the purposes of RAD and will post the applicable criteria at www.hud.gov/rad.

a. **Transfer at Conversion.** Where a PHA proposes assistance to be transferred to a new site as part of the conversion, a PHA must request approval for a transfer of assistance within three months of CHAP award (see Section 1.12). It must also be included in the significant amendment to the PHA's Annual Plan or MTW Plan, and must be consistent with the Consolidated Plan. Where residents will remain in the Converting Project (i.e. the current public housing site) until the rehabilitation or construction of the Covered Project (i.e. the receiving site) is complete, the HAP contract will typically be effective on the Covered Project at closing of financing. However, the PHA and Project Owner may submit a request for Converting Project to remain as public housing during construction and for the HAP contract to be executed once the Covered Project is ready for occupancy. HUD will approve such requests in its sole discretion, based on sufficient demonstration that it is necessary to facilitate conversion.

When the assistance will be transferred at closing, the DOT will be released if:

1) as a condition of the RCC, the PHA will sell the property at Fair Market Value to a third party and use the proceeds to finance a RAD transaction;

2) as part of the Financing Plan, the PHA provides plans to sell the land within one year of the RAD closing so that it can be used for affordable housing purposes, in which case the property will be placed under a restrictive covenant that restricts its use to affordable housing; or

3) as part of the Financing Plan, the PHA provides plans to sell the land within one year at Fair Market Value to a third party and use the proceeds for affordable housing.

Upon any sale the PHA must escrow the proceeds in a bank account covered by a General Depository Agreement (HUD 51999) until they are needed to be disbursed for a RAD transaction or for other affordable housing purposes. Further, when removing the DOT as a result of a prospective FMV sale, HUD may require that an alternative restrictive covenant be placed on the property until the sale is effectuated.

For the purposes of the above paragraphs, "affordable housing" means activity that supports the pre-development, development or rehabilitation of other RAD conversions, public housing, section 8, LIHTC, or other federal or local affordable housing programs, or that provide services or amenities that will be used primarily by low-income households. If in the Financing Plan the PHA does not provide a plan for selling the property within one year of the RAD closing or does not identify a specified use for the land, the DOT will remain

in force until such time as the PHA secures approval from the HUD Special Applications Center (SAC) for any proposed activity.

b. **Transfer After Conversion.** a Project Owner may only request a transfer of assistance after 10 years from the effective date of the initial HAP Contract (unless a transfer is needed sooner as a result of unforeseen events such as a natural disaster). HUD may consider a partial or complete transfer of assistance to a new location. If applicable, any lender and/or investor of the Converted Project must approve the transfer of the assistance. In the event of such transfer, the Project Owner may request, subject to HUD consent, that the original RAD Use Agreement on the Covered Project be modified or released to reflect such transfer of assistance. A RAD Use Agreement will be recorded against the new location to which assistance is transferred.

c. **Transfers as a Result of Default.** In the event of default of a Covered Project's Use Agreement or HAP Contract, HUD may terminate the HAP Contract and transfer the assistance to another location. HUD will determine the appropriate location and owner entity for such transferred assistance consistent with the statutory goals and requirements of the Demonstration.

13. **Davis-Bacon prevailing wages.** The Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) apply to all initial repairs and new construction that are identified in the Financing Plan to the extent that such repairs or construction qualify as development. ''Development,'' as applied to work subject to Davis-Bacon requirements on Section 8 projects, encompasses work that constitutes remodeling that alters the nature or type of housing units in a PBV or PBRA project, reconstruction, or a substantial improvement in the quality or kind of original equipment and materials, and is initiated within 18 months of the HAP contract. Development activity does not include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Davis-Bacon requirements apply only to projects with nine or more assisted units.

14. **Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Section 3 (24 CFR Part 135) applies to all initial repairs and new constructions that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation. In addition, Section 3 may apply to the project after conversion based on the receipt of the use of federal financial assistance for rehabilitation activities.

B. Financing Requirements and Considerations.

To the extent that PHAs lack recent experience in accessing various forms of debt and/or equity capital, they should consider engaging technical assistance offered by local or national development intermediaries, professional financing advisors, consultants, and/or development partners to augment its capacities. In reviewing the Financing Plan for final approval, HUD assesses the capacity of the development team.

1. **Debt Financing.** Covered Projects are eligible for financing from private and public lending sources. All loans made that are secured by Covered Projects must be subordinate to a RAD Use Agreement.

   Permanent debt financing on Covered Projects must be at a fixed rate of interest, for a fixed term, fully amortized over no more than 40 years, and with a balloon no earlier than 18 years. In the case of PBV conversions when the HAP contract is less than 18 years, the balloon cannot be less than the term of the HAP contract.[12] The debt service coverage cannot be less than the higher of 1.11 or lender requirements. RAD does not prohibit excess loan proceeds from being used to support other purposes consistent with the PHA's mission, e.g., renovations to other properties, though other financing sources may impose such restrictions.

   Sources of private and public debt financing to consider include any and all sources that are commonly used in other low-income, use-restricted developments. In addition to commercial lenders, applicants should consider facilities—both construction and permanent—offered by Community Development Financial Institutions (CDFIs), Government Sponsored Enterprises (GSEs), including the network of Federal Home Loan Banks, and applicable private foundation financing. Public financing that may be available includes state and locally provided facilities employing federal Community Development Block Grants (CDBG) and state housing agency–provided financing. Many municipalities offer infrastructure and other forms of development financing through tax-increment financing (TIF) initiatives or other comparable public finance programs. In some cases, transit-oriented development programs may prove accessible. Additionally, while HOME Investment Partnerships program

[12] The conditions in this paragraph are applicable to first mortgages and not applicable to soft, subordinate financing. All subordinate (or secondary) financing must be disclosed and then approved by the first-mortgage lender as well as HUD in accordance with Chapter 8 of the Mortgage Credit and Underwriting and Processing Requirements of the Multifamily Accelerated Processing (MAP) Guide and any subsequent revisions or updates to the MAP Guide.

(HOME) funding is not permitted in any project that utilizes public housing Capital or Operating Funds, Converted Projects are eligible to use HOME funding.[13]

2. **Public Housing Capital and Operating Program Funds.** PHAs are permitted under the Demonstration to use available public housing funding, including Operating Reserves (as defined in PIH Notice 2011-55) and unobligated Capital Funds, as a source of capital to support conversion (see Section 1.5 of this Notice for more details). With written HUD approval, PHAs may also use Section 18 disposition proceeds. MTW agencies may use their block grant as an additional source of capital to support conversion. These funds, either as a source of debt or equity (grant), must be identified in the Financing Plan. Financing proceeds in excess of transaction costs will not be allowed when public housing Capital or Operating funds are contributed to the project conversion. However, in the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the Covered Project(s) at Closing; the PHA may convey all program funds to the Covered Project.

3. **Existing PHA Indebtedness and Contractual Obligations.** A PHA must disclose in its application and address in its Financing Plan the amount of project debt including energy performance contracts, Capital Fund Financing, Operating Fund Financing, Public Housing Mortgage Program, or other sources. The PHA may refinance existing debt obligations as part of conversion. Conversion alone does not relieve the PHA of these or other obligations. RAD does not constitute a waiver of any CFFP requirements and is not treated as a CFFP ACC Amendment, including any provisions restricting the removal of units from the inventory that would affect the debt service coverage ratio through diminished Capital Funding or requiring defeasance or prepayment, arising from program regulations or contractual relationship with the secured party. PHAs should be aware that any new first mortgage lender, to the extent permissible within the existing financing documents, may require that existing indebtedness be paid off or subordinated in connection with the refinancing and conversion of the Covered Project.

[13] HOME funds cannot be used on a project before the public housing restrictions are removed from the property nor can they be used to reimburse any cost incurred in a RAD deal before the public housing restrictions were eliminated (e.g., reimburse predevelopment costs). When structuring a RAD deal that will include HOME funds, it is important to ensure that HOME funds are used for costs that are eligible under 24 CFR 92.206.

4. **Federal Housing Administration (FHA) Insured Financing.** FHA mortgage insurance provides high leverage and long-term, fully amortizing fixed-rate financing at competitive interest rates. For more information, PHAs should contact an approved FHA Multifamily Lender: http://portal.hud.gov/hudportal/documents/huddoc?id=aprvlend.pdf.

   Some properties converting under RAD may qualify for financing under section 223(f) of the National Housing Act, which provides mortgage insurance for a permanent financing and may include project repairs. If the scope of required property repairs indicates "substantial rehabilitation," as defined by the FHA Multifamily Mortgage Insurance Program in the Multifamily Accelerated Processing (MAP) Guide, the appropriate FHA-insured financing may instead be section 221(d)(4) of the National Housing Act. FHA has released separate guidance detailing how HUD has modified the policy and processing of FHA insurance programs to accommodate RAD conversions and minimize duplicative requirements (See Notice H 2012-20, "Underwriting Instructions for Projects Converting Assistance as part of the Rental Assistance Demonstration (RAD) Program").

   Risk sharing programs offered by state housing financing agencies, Freddie Mac, and/or Fannie Mae should be considered. Secondary financing, tax credits, and other public sources can be used in conjunction with FHA-insured financing and risk-sharing programs. All of the above financing options may be used to credit-enhance tax-exempt bonds.

5. **Low-Income Housing Tax Credits (LIHTCs).** Applicants are encouraged to use LIHTCs and, if eligible, historic preservation tax credits, to support recapitalization. Covered Projects may be eligible for HUD's Multifamily Low Income Housing Tax Credit Pilot Program (Notice H 2012-1), which offers a distinct application platform and a separate processing track under the FHA Section 223(f) program described above.[14] Many states face excessive demand on an annual basis for allocations of 9% LIHTCs. Yet many more routinely do not fully allocate their supply of 4% as-of-right credits coupled with tax-exempt bond financing allowed under their annual Private Activity Bond Volume Cap. Applicants are encouraged to assess local demand and supply considerations if proposing to utilize LIHTCs and to discuss their interest in applying for LIHTCs as soon as possible with state or local tax credit issuing agencies to obtain guidance on how to compete for awards most effectively.

[14] Notice H 2012-1 can be found at http://portal.hud.gov/hudportal/documents/huddoc?id=12-01hsgn.pdf.

While the applicant must indicate in its application if it intends to use tax credits, there is no requirement to have secured these credits prior to submitting an application. Note that, for 9% credits, there are special application requirements that are described in Section 1.9 of this Notice.

6. **Grant Funding.** In addition to equity from the sale of tax credits, there are numerous additional sources of equity, including local, state, and federal grants. State and local CDBG and HOME funds may be utilized as "gap" grants for affordable housing developments. Numerous state and local governments offer other grant funds that can be used as an equity contribution in financing plans, particularly if a scope of work includes "green retrofitting" or weatherization components. In many localities, utility companies and appliance manufacturers offer grants related to energy-saving retrofit components (http://www.dsireusa.org/ is one source of information on incentives and policies state by state). Several private foundations and corporate social investment funds offer grant funding in support of affordable housing development. Finally, the Federal Home Loan Bank's "Affordable Housing Program" has been a significant source of grants for gap funding in affordable housing projects, including many public housing mixed-finance and HOPE VI developments, and may prove a generally-available source of gap funding for properties converting under RAD.

1.5 Waivers, Alternatives, and Other Public Housing Requirements

Under the Demonstration, HUD has the authority to waive or specify alternative public housing requirements, or to establish requirements for converted assistance under the demonstration. Additionally, the RAD statute imposes certain unique requirements. To facilitate the conversion of assistance, HUD is waiving or imposing the following alternative and other public housing program requirements for public housing projects converting assistance (Sections 1.6 and 1.7 list the waivers and alternative and other requirements of programs into which assistance is being converted):

A. Use of Public Housing Program Funds to Support Conversion. PHAs are permitted under the Demonstration to use available public housing funding, including Operating Reserves, Capital Funds, and Replacement Housing Factor (RHF) funds, Demolition and Disposition Transitional Funding (DDTF), as a source of capital in the development budget to support conversion, whether for rehabilitation or new construction. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs and establishment of a capital replacement reserve or operating reserve. These funds must be identified in the Financing Plan. If these funds are not identified in the Financing Plan, they cannot be used on a project after conversion. If the PHA requests, in accordance with section 9(j)(2)(A)((ii) of the United States Housing Act of 1937 and the relevant HUD Appropriation Acts, HUD will extend the PHA's obligation end date for Capital Funds used in the

conversion for up to five years from the point when Capital Funds became available to the PHA for obligation. By extending the obligation end dates, the expenditure end dates will be correspondingly extended. Such extensions will prevent PHAs from otherwise losing their unobligated Capital Funds prior to conversion.

Prior to the approval of a Financing Plan, a PHA may expend up to $100,000 in public housing program funds on pre-development conversion costs per project without HUD approval. Predevelopment assistance may be used to pay for materials and services related to proposed rehabilitation or development and may also be used for preliminary development work. Public housing program funds spent prior to the effective date of the HAP are subject to public housing procurement rules. Approval of the Financing Plan constitutes approval of the expenditure of any necessary additional predevelopment costs with public housing funds.

In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the Covered Project(s) at Closing; the PHA may convey all program funds to the Covered Project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under public housing ACC, a contribution of Operating Funds to the Covered Project that exceeds the average amount the project has held in Operating Reserves over the past three years will trigger a subsidy layering review under 24 CFR § 4.13. Similarly, any contribution of Capital Funds, including RHF or DDTF, will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the Capital Funds or Operating Reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

In addition, following execution of the HAP, PHAs are authorized to use Operating and Capital Funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective (See Section 1.13). Otherwise, a PHA may not contribute public housing program funds to the Covered Project unless such funding has been identified in the approved Financing Plan.

B. <u>Section 18 Applications[15] and RAD.</u> In connection with RAD conversions, Section 18 applies only in the following situations:

1. the disposition of excess land, as detailed in Paragraph N of Attachment 1A

[15] Although only Section 18 applications are specifically addressed in this section, HUD will also treat applications submitted for the removal of public housing units under Section 22 of the 1937 Act (voluntary conversion), Section 33 of the 1937 Act (required conversion), and Section 32 of the 1937 Act (homeownership) in accordance with this section. For required conversion, also see section J of this notice.

2. If a PHA proposed to reduce the number of assisted units by more than a de minimis amount, as defined in Section 1.4.A.3
3. In certain scenarios where assistance is transferred from the Covered Project and HUD has not approved the future use of the site or sales proceeds as part of the RAD conversion

Otherwise, a PHA cannot have both a CHAP and an approval of a Section 18 Application for the same public housing units. While a PHA may submit applications for both a RAD conversion and a Section 18 action covering the same units and may receive initial approval for both programs, it must make a decision as to which program to pursue within ten business days of receipt of the second approval. The PHA must inform its local HUD Office of Public Housing of its decision in writing that it will surrender its CHAP (provided it is eligible to pursue RAD in accordance with the following section) or withdraw its Section 18 approval. In addition:

1. Units for which a PHA has received a Section 18 approval are ineligible for RAD if it has taken any of the following actions to implement the Section 18 approval:
    i. awarded a demolition contract;
    ii. completed a disposition (i.e. transferring title and/or executing a ground lease);
    iii. requested TPVs from HUD as a result of a Section 18 approval;[16] or
    iv. Taken any steps to implement relocation under the Section 18 approval (i.e. issuing the 90-day notice to residents).

    If a PHA has already submitted a RAD application or has a CHAP and has taken one of these actions, it must submit a request to withdraw the RAD application or surrender the CHAP. Otherwise, HUD will disapprove the RAD application or revoke the CHAP.

2. If a PHA has received a CHAP for units for which it has also submitted a Section 18 application but not yet received a determination on, that Section 18 application, it must (i) submit a request to the SAC to withdrawal its Section 18 application; or (ii) submit a request to it local HUD Field Office of Public Housing to “hold” its CHAP while HUD completes its review of the Section 18 application. If a PHA decides to pursue RAD for eligible units that have been approved under a Section 18 application, HUD will not rescind the HUD approval on the Section 18

[16] This does not apply to any dispositions approved or any TPVs received in conjunction with a Choice Neighborhood award.

application. Rather, the SAC will send a written confirmation letter to the PHA acknowledging the PHA's decision to pursue RAD and will modify IMS/PIC accordingly.

C. Ineligibility for Asset Repositioning Fee (ARF), Replacement Housing Factor (RHF), or Demolition Disposition Transition Funding (DDTF). PHAs will be ineligible to receive ARF, Capital Fund RHF or DDTF grants (see 24 CFR § 990.190(h) and 24 CFR § 905.10(i) and (j), respectively) for Covered Projects. RAD does not affect ARF, RHF, or DDTF for other public housing projects either previously receiving those funds or which would otherwise be eligible to receive such funding in the year in which the HAP contract becomes effective. RAD does not affect the PHA's continued receipt of ARF, RHF, or DDTF for projects that were previously receiving these funds.

D. Effect of Conversion on PHA's Faircloth Limit. Section 9(g)(3) of the Act limits the construction of new public housing units, referred to as the "Faircloth Limit." Under the Faircloth Limit, a PHA may not use funds allocated under the Capital or Operating Funds for the purpose of constructing any new public housing units if the construction of those units would result in a net increase in the number of units the PHA owned, assisted, or operated as of October 1, 1999.

Conversions under the Demonstration will reduce a PHA's Faircloth Limit. For example, a PHA with a pre-RAD Faircloth Limit of 1,000 public housing units would have its Faircloth Limit reduced to 900 units if it converted a 100-unit project. Units not converted under the de minimis provision and which are removed from PIC would not affect the count under the PHA's Faircloth cap. In the example above, if 5 of the 100 units are de minimis and not converted, the PHA Faircloth Limit would be reduced to 905.

E. Conversion is a Significant Amendment to Annual/Five Year Plan. Conversion of assistance under the Demonstration is considered a significant amendment to the PHA's Five-Year Plan for qualified and non-qualified PHAs, a significant amendment to the Annual Plan for non-qualified PHAs, and an amendment to MTW Plan for MTW PHAs. As such, qualified and non-qualified PHAs, as well as MTW PHAs, are subject to the Consolidated Plan requirements and the public notice and Resident Advisory Board consultation requirements outlined in 24 CFR Part 903. MTW PHAs are also subject to the Consolidated Plan requirements; however, they must follow the MTW Plan Amendment and public process requirements outlined in the Standard MTW Agreement in lieu of the requirements in 24 CFR Part 903. If the conversion will require changes to the PHA's Admissions and Continued Occupancy Policy (ACOP) and/or Section 8 Administrative Plan, these changes must also be submitted with the significant amendment to the PHA Plan or amendment to the MTW Plan. In addition to the information already required by 24 CFR Part 903 for PHA

Plan amendments, all PHAs must provide the information listed in Attachment 1D in their Significant Amendment, or provide the information in any successor forms produced by HUD. A PHA may also fulfill this requirement by including the RAD-related provisions, or any successor forms, in their Five-Year Plan, Annual Plan, or MTW Plan (as applicable).

The Financing Plan must include a letter from HUD approving the Significant Amendment, Five-Year Plan, Annual Plan, or MTW Plan.

In addition, any substantial change to the conversion plan is required to undergo the significant amendment process or other HUD review if the substantial changes involve a transfer of assistance, a change in the number of assisted units, or a change in eligibility or preferences for new applicants.

F. Moving-To-Work (MTW) Agencies. If an MTW agency chooses to convert assistance to PBRA under this Demonstration, the Covered Project(s) will no longer be included as part of the PHA's MTW program.

If an MTW agency chooses to convert assistance to PBV, the Covered Project(s) will continue to be included in the PHA's MTW program. (See Section 1.6 for a discussion on provisions a MTW agency may not alter).

Further, prior to conversion, MTW agencies will be required to amend Attachment A of their MTW Agreement to the extent HUD determines is necessary to meet the statutory requirements of RAD. The PHA must request the amended Attachment A language from their MTW coordinator and follow provided instructions to return an executed Attachment A amendment to HUD no later than the Financing Plan submission.

G. Outstanding Debt Incurred Under Section 4 of the Act. For any outstanding principal balance and interest due on loans held by HUD that were issued to finance original development or modernization of the Converting Project under Section 4 of the Act, HUD will exercise its waiver authority under Section 4 of the Act to forgive the loan upon conversion.

H. Resident Opportunities and Self Sufficiency Service Coordinators (ROSS-SC) and Family Self-Sufficiency (FSS). In order to allow public housing residents currently participating in ROSS-SC or FSS to continue to do so following conversion, HUD is waiving provisions in section 34 of the Act that limit ROSS-SC to Public Housing, provisions in section 34 of the Act (for funding prior to FY 13) that limit Public Housing FSS to residents for public housing, and Section 23 of the Act (for funding FY14 and forward) that limits FSS to residents of public housing and the housing choice voucher program.

I. <u>Public Housing Assessment System (PHAS)</u>. After issuance of a CHAP, the affected project shall not be issued PHAS scores beginning with the fiscal year in which the CHAP was issued and continuing through subsequent fiscal years until conversion to Section 8. For a project with a CHAP to be excluded from PHAS indicator scores, immediately after the issuance of the CHAP the PHA must submit an application in the PIC Inventory Removals Module, as either "RAD Conversion PBV" or "RAD Conversion PBRA," for all units covered by the CHAP (see Section 1.12(B)). In order to be excluded from PHAS scoring, the PHA must submit the application in PIC by the fiscal year end for the project.

After issuance of the CHAP and submission of the application in PIC, but prior to conversion, all projects with a CHAP remain subject to the four PHAS assessments but will not be issued scores for the assessments. "Subject to the four PHAS assessments" means that the PHA must timely submit the required financial data schedule for each project with a CHAP and that the project will be subject to a physical inspection, a management assessment determined based on the financial submission, and a Capital Fund Program assessment. However, these scores will not be issued. If a PHA has at least one project without a CHAP or has any project with a CHAP for which the application has not been submitted in PIC by the fiscal year end, the PHA will receive a PHAS score and designation for that fiscal year. If HUD revokes the CHAP, HUD reserves the right to reassess and rescore all PHAS indicators and issue a new PHAS score and designation for all fiscal years for the projects under the CHAP.

HUD is waiving 24 CFR 902, Subpart A, to effectuate this treatment. After conversion, all converted units will be subject to the applicable Section 8 program requirements.

J. <u>Section 33 Required Conversion Review</u>.[17] While Section 33 of the Act would require that a PHA annually review its inventory to identify projects that should undergo the Required conversion process, PHAs will not be required to assess projects that have been issued a CHAP or are covered by a Portfolio or Multi-phase Award because HUD considers the RAD conversion process to fulfill the requirements of Section 33 of the Act. Accordingly, HUD is waiving 24 CFR Part 972, subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

[17] Section 33 of the Act requires PHAs to identify projects that must be removed from the stock of public housing.

K. <u>Energy Performance Contract (EPC)</u>.[18] A PHA may convert all units or a subset of units within an EPC. If a PHA plans to convert a subset of units within an EPC the remaining EPC must be financially viable and permitted under the current financing documents. The EPC must generate sufficient savings to cover debt service and other EPC project costs without counting the savings from the converting units. In order to demonstrate this, the PHA must submit updated EPC documentation to HUD's Energy Center to reflect the costs and performance of the remaining units, including:

1. Updated HUD Cost Summary Sheet.
2. Updated HUD Cash Flow.
3. Other documents as requested by the Energy Center staff.

The Energy Center will review these documents and provide a draft amended EPC approval letter specifying the impact of the RAD conversion and the minimum amount of debt that will need to be addressed in the conversion. As a result, HUD recommends that PHAs submit the updated EPC documentation as early as possible. The PHA's Financing Plan must demonstrate how the PHA will address the debt identified in the draft amended EPC approval letter. Following the project's closing, HUD will issue an amended EPC approval letter to the PHA.

L. <u>Capital Fund Education and Training Community Facilities (CFCF) Program</u>. CFCF provides capital funding to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. Where a community facility has been developed under CFCF in connection to or serving the residents of an existing public housing project converting its assistance under RAD, residents will continue to qualify as "PHA residents" for the purposes of CFCF program compliance. The community facility must continue to be available to public housing residents including "PHA residents."

M. <u>Lease Termination at Conversion is Not an Adverse Action</u>. 24 CFR 966.4(e)(8)(i) classifies lease terminations as an adverse actions for which a tenant can seek a hearing under the PHA's grievance procedure. Public housing lease terminations that occur as part of a RAD conversion do not qualify as an adverse action, provided that the tenants are provided with a notice of termination in accordance with 24 CFR 966.4(l)(3) as well as information on when and how they will receive their new Section 8 lease, which must be effective the same date the HAP contract becomes effective. Grievance procedure requirements do not apply to these lease terminations.

[18] HUD will issue further guidance on the intersection of RAD and EPCs that will be available at www.hud.gove/rad

1.6 Special Provisions Affecting Conversions to PBVs

Under the Demonstration, HUD has the authority to waive statutory and regulatory provisions governing the PBV program, or to establish alternative requirements for the effective conversion of assistance. Additionally, the RAD statute imposes certain unique requirements.

Listed below are the "special" requirements applicable to public housing projects converting assistance to long-term PBV assistance under the First Component of the Demonstration, with reference to the affected statute and/or regulation, where applicable. Special requirements are grouped into four categories: Project Selection, Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. All other regulatory and statutory requirements of the PBV program in 24 CFR § Part 983 and section 8(o)(13) of the Act apply, including environmental review, Davis-Bacon, and fair housing requirements.

MTW agencies will be able to apply activities impacting the PBV program that are approved in its MTW Plan to these properties as long as they do not conflict with RAD requirements. RAD requirements include statutory requirements or specifically identified special provisions affecting conversions to PBVs, or other conditions and requirements, as detailed in this Notice, including, but not limited to, RAD contract forms or Riders. With respect to any existing PBV regulations that are waived or modified below, except where explicitly noted below, MTW agencies may modify these or other requirements of the PBV program if the activity is approved in its MTW Plan. All other RAD Requirements listed below or elsewhere in this Notice shall apply to MTW agencies.

A. PBV Project Selection.

1. **Maximum Amount of PBV assistance.** Covered Projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which is 20 percent of the amount of budget authority allocated to a PHA under the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6 with respect to Covered Projects. As a result, a PHA that is administering RAD PBV assistance does not take the Budget Authority (BA) attributable to the RAD PBV into consideration when calculating the 20 percent limitation for any non-RAD PBV actions. In other words, the BA committed to RAD PBV is excluded from both the numerator and the denominator when calculating the percent of available BA that may be project-based for non-RAD PBV.

2. **Cap on the Number of PBV Units in Each Project.** The 25 percent limitation on the number of units that may receive PBV assistance in a project is increased to 50 percent. An assisted household cannot be involuntarily displaced as a result of this provision.

   A Project Owner may still project-base 100 percent of the units in a project provided it meets the exceptions explained in this paragraph. Units are not counted against the 50 percent cap in the following cases: (i) Units in a single-family building; (ii) Excepted units in a multifamily project (as the term is defined in 24 CFR Section 983.3). "Excepted units" means units in a multifamily project that are specifically made available for qualifying families. "Qualifying families" means: (i) Elderly and/or disabled families; and/or (ii) Families receiving supportive services. For a project to qualify for the exception, PHAs must include in the PHA administrative plan the type of services offered to families and the extent to which such services will be provided. See 24 CFR 983.56 for a more detailed discussion on excepted units. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).[19]

   For purposes of RAD, the requirement that a family must actually receive services to reside in the excepted unit has been modified. Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR§§ 983.56, 983.257(c), 983.261(a) and (d).

   To implement these provisions, HUD is implementing alternative requirements for section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the Covered Project.

3. **Owner Proposal Selection Procedures.** HUD is waiving 24 CFR § 983.51. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in this Notice.

[19] It is not required that the services be provided at or by the project (a third-party organization may provide the supportive services).

4. **Site selection – Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c)(2)**. HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

B. <u>PBV Contract Terms.</u>

1. **Length of Contract.** Covered Projects shall have an initial HAP term of at least 15 years (up to 20 years upon request of the Project Owner and with approval by the administering Voucher Agency). To implement this provision, HUD is specifying alternative requirements for section 8(o)(13)(F) of the Act (which establishes a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term). Project Owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the contract and may not reduce the number of assisted units without HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under the contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

2. **Mandatory Contract Renewal.** In accordance with RAD Statute, upon expiration of the initial contract and each renewal contract, the administering Voucher Agency must offer, and the Project Owner must 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. Consequently, section 8(o)(13)(G) of the Act, as well as 24 CFR § 983.205(b), governing the PHA discretion to renew the contract for terms of up to 15 years, will not apply. MTW agencies may not alter this requirement.

3. **Ownership or Control.** This section has been moved to Section 1.4.G

4. **RAD Use Agreement.** Pursuant to the RAD statute, a Covered Project shall have an initial RAD Use Agreement that will:
   - **i.** Be recorded in a superior position to all liens on the property;
   - **ii.** Run until the conclusion of the initial term of the HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that coincides with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary approves termination of the RAD Use Agreement in the case of a transfer of assistance;

iii. Provide that in the event that the HAP contract is removed due to breach, non-compliance or insufficiency of Appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below eighty percent (80%) of the area median income (AMI) at the time of admission and rents may not exceed thirty percent (30%) of eighty percent (80%) of AMI for an appropriate size unit for the remainder of the term of the RAD Use Agreement; and

iv. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and all applicable site selection and neighborhood standards.

5. **Initial Contract Rent Setting.** HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) All RAD applications, including applications for Portfolio or Multi-Phase awards, will have initial contract rents based on their "RAD rent base year:"

   i. All properties awarded under the original 60,000 unit cap have initial contract rents based on FY 2012 funding levels ("FY 12 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 14 and established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2012 funding, with an OCAF adjustment for both 2014 and 2015.

   ii. All properties awarded above HUD's original 60,000 unit cap but subject to the increased 185,000 cap in effect as of the date of this Notice will have initial contract rents based on FY 2014 funding levels ("FY 14 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 15 and established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2014 funding, with an OCAF adjustment for 2015.

   iii. Subsequent to authority to convert additional units, properties will have initial contract rents based on a future RAD rent base year in HUD's sole discretion.

   PHAs may have additional discretion in establishing initial contract rents using the following flexibilities:

   - **MTW Fungibility**. MTW agencies may use their MTW block grant funds to set their initial contract rents, subject to applicable program caps. The agency must use existing voucher funding to supplement rents; no additional voucher funding will be provided. MTW agencies may exercise this flexibility to set initial contract rents only when they have submitted applications for two or

more projects. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02.

- **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as "bundled" rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle.
  For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is $500; and in Project B, the contract rent is $600. The PHA could bundle the two projects such that the initial contract rents for both projects will be $550.

  See Section 1.9 for instructions on submitting applications with bundled rents.

- **Future Replacement Housing Factor (RHF) or Demolition Disposition Transition Funding (DDTF).**[20] PHAs that are scheduled to receive ongoing RHF or DDTF funding in future years may choose to forgo any ongoing RHF or DDTF grants and repurpose the subsidy to augment the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may augment the RAD rent.

Notwithstanding HUD's calculation or the above-mentioned flexibilities, initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 CFR § 983.301), (except where alternative rent caps have been approved in a MTW Plan). To this effect, initial contract rents cannot exceed the lower of: (a) the reasonable rent (as defined under 24 CFR § 983.303); (b) an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard or rent cap approved in an MTW Plan), minus any utility allowance; or (c) the rent requested by the owner.

[20] RHF and DDTF are provided to PHAs following the demolition or disposition of public housing projects pursuant to Section 18 of the Act. PHAs will not receive RHF or DDTF as a result of and following the conversion of projects converting under RAD.

6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted only by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.[21] As such, section 8(o)(13)(I) of the Act and 24 CFR §§ 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303.[22] However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.[23] MTW agencies may not alter this requirement.

7. **Transfer of Assistance.** This section has been moved to Section 1.4.H.

8. **Agreement Waiver and RAD Rehab Assistance Payments.** For public housing conversions to PBV there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the AHAP, including regulations under 24 CFR § 983 subpart D are waived. Instead, the PHA and Project Owner will enter into a HAP contract before construction begins.

   Funding during construction will be provided on the following terms: that are not occupied at any point during the initial repairs as a result of rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment may be eligible, subject to the conditions below, for Rehab Assistance Payments equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the HAP Contract, the maximum number of units for which a Project Owner can receive RAD Rehab Assistance Payments is limited to the number of units eligible for Operating Fund

[21] OCAF are calculated and published in the Federal Register each year by HUD and are applied to the portion of a contract rent that is not committed to debt service payment in order to calculate the contract rent for the project in the following fiscal year.

[22] If the Covered Project is deemed to be PHA-owned pursuant to 24 CFR 983.59 (in other words, if, even though the Covered Project is owned by a separate legal entity, if that entity is under the control of the PHA that is the Voucher Agency, the Covered Project may be deemed to be owned by the PHA), an independent entity will need to perform the rent-setting and inspection functions set out in 24 CFR 983.59.

[23] The rent to owner may fall below the initial contract rent: 1) to correct errors in calculations in accordance with HUD requirements; 2) if additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55 (Prohibition of excess public assistance); or 3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

subsidy prior to conversion (which is typically associated with the occupied units).[1] As a result, some units in the Converted Property may not be eligible for Rehab Assistance Payments.

Following the earlier of the end of the construction period identified in the HUD-approved Financing Plan or actual construction, the PHA will no longer be eligible to receive RAD Rehab Assistance Payments, and all units under contract will be eligible for payment only for occupied units or for vacancy payments, as applicable. MTW agencies may not alter this requirement.

9. **HQS Inspections.** Under current regulations at 24 CFR 983.103(b) a unit covered under a HAP contract must be inspected and must meet HQS before assistance can be paid on behalf of a household. In addition, section 8(o)(8)(A) of the Act provides that HAP Contract units must be inspected to ensure compliance with HQS prior to payment of any assistance on behalf of a family. Under RAD, HUD requires that all units meet HQS no later than the date of completion of initial repairs as indicated in the RAD Conversion Commitment. Consequently, HUD is waiving and establishing an alternative requirement to 24 CFR 983.103(b) and section 8(o)(8)(A) of the Act.

10. **Floating Units.** For mixed-income Converting Projects where PHAs are currently exercising their discretion to allow subsidized units to float within a project redeveloped with funding under a Choice Neighborhoods Implementation or HOPE VI grant, or as part of a Mixed-Finance project, upon the request of the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among unoccupied units within the project having the same bedroom size. A unit to which assistance is floated must be comparable in condition to the unit it is replacing (i.e., the unit must be of the same quality and amenities as the unit it is replacing). Assistance may float from a Section 504 accessible unit only to another Section 504 accessible unit that has the same bedroom size and accessibility features. Units that float are not specifically designated under the HAP contract. Therefore, the requirements in 24 CFR 983.203(c) that the HAP contract provide “the location of each contract unit” and “the area of each contract unit” are waived. Instead, the HAP contract must specify the number and type of units in the property that are designated as RAD units, including any excepted units. From the time of the initial execution of the PBV RAD HAP contract, the property must maintain the same number and type of RAD units, including the same number and type of Section 504 accessible units.

[1] The number of units eligible for Operating Fund subsidy prior to conversion is equal to the number of Total Eligible Unit Months (EUMs) on the project’s Form-52723 submission (Section 2, Column B, Row 15.) divided by twelve and rounded down to the nearest whole number.

Floating units are subject to all of the requirements in this Notice and the PBV regulations, including physical inspections, rent adjustments, and income-mixing requirements. The alternative requirements with respect to floating units do not apply to non-RAD PBV units.

C. PBV Resident Rights and Participation.

1. **No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households.[24] Once that remaining household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement.

2. **Right to Return.** See section 1.4.A.4(b) regarding a resident's right to return.

3. **Renewal of Lease.** Since publication of the PIH Notice 2012-32 Rev 1, the regulations under 24 CFR § 983.257(b)(3) have been amended requiring Project Owners to renew all leases upon lease expiration, unless cause exists. MTW agencies may not alter this requirement.

4. **Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or $25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

[24] These protections (as well as all protections in this Notice for current households) apply when in order to facilitate repairs a household is relocated following the conversion and subsequently returns to the property, even if they are considered a "new admission" upon return.

The method described below explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058. If a family in a project converting from Public Housing to PBV was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1, as illustrated below.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard TTP

Five Year Phase in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP or flat rent and the standard TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and the standard TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference between most recently paid TTP and the standard TTP
- Year 5 AR and all subsequent recertifications – Full standard TTP

Please Note: In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward. MTW agencies may not alter this requirement.

5. **Family Self Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are current FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any remaining PH FSS funds, to serve those FSS participants who live in units converted by RAD. Due to the

program merger between PH FSS and HCV FSS that took place pursuant to the FY14 Appropriations Act (and was continued in the FY15 Appropriations Act), no special provisions are required to continue serving FSS participants that live in public housing units converting to PBV under RAD.

However, PHAs should note that there are certain FSS requirements (e.g. escrow calculation and escrow forfeitures) that apply differently depending on whether the FSS participant is a participant under the HCV program or a public housing resident, and PHAs must follow such requirements accordingly. All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984, the participants' contracts of participation, and the alternative requirements established in the "Waivers and Alternative Requirements for the FSS Program" Federal Register notice, published on December 29, 2014, at 79 FR 78100.[25] Further, upon conversion to PBV, already escrowed funds for FSS participants shall be transferred into the HCV escrow account and be considered TBRA funds, thus reverting to the HAP account if forfeited by the FSS participant.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future ROSS-SC grants, nor will its residents be eligible to be served by future ROSS-SC grants, which, by statute, can only serve public housing residents.

6. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of Covered Projects with converted PBV assistance will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

7. **Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the Project Owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.

[25] The funding streams for the PH FSS Program and the HCV FSS Program were first merged pursuant to the FY 2014 appropriations act. As a result, PHAs can serve both PH residents and HCV participants, including PBV participants, with FSS funding awarded under the FY 2014 FSS Notice of Funding Availability (FSS NOFA) and any other NOFA under which the combination of funds remains in the applicable appropriations act. For PHAs that had managed both programs separately and now have a merged program, a conversion to PBV should not impact their FSS participants.

i. **Termination Notification**. HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257 related to Project Owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:
   a. A reasonable period of time, but not to exceed 30 days:
      i. If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      ii. In the event of any drug-related or violent criminal activity or any felony conviction;
   b. 14 days in the case of nonpayment of rent; and
   c. 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

ii. **Grievance Process.** Pursuant to requirements in the RAD Statute, HUD is establishing additional procedural rights to comply with section 6 of the Act.

For issues related to tenancy and termination of assistance, PBV program rules require the Project Owner to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will specify alternative requirements for 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, to require that:
   a. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),[26] an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a Project Owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
      i. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR § 982.555(e)(4)(i).
      ii. For any additional hearings required under RAD, the Project Owner will perform the hearing.

[26] § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

b. There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or contract administrator.
c. The Project Owner gives residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
d. The Project Owner provides opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the PHA's Section 8 Administrative Plan.

8. **Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

   Under the Housing Choice Voucher program, the EID exclusion is limited only to persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to disabled persons is waived. The waiver, and resulting alternative requirement, apply only to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion e.g., due to loss of employment; tenants that move into the property following conversion, etc.,) is covered by this waiver.

9. **Jobs Plus.** Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance at that site unless significant re-location and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project.

10. **When Total Tenant Payment Exceeds Gross Rent.** Under normal PBV rules, the PHA may only select an occupied unit to be included under the PBV HAP contract if

the unit's occupants are eligible for housing assistance payments (24 CFR §983.53(d)). Also, a PHA must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the contract rent, plus any utility allowance, for the unit (i.e., the Gross Rent)) (24 CFR §983.258). Since the rent limitation under this Section of the Notice may often result in a family's TTP equaling or exceeding the gross rent for the unit, for current residents (i.e residents living in the public housing property prior to conversion), HUD is waiving both of these provisions and requiring that the unit for such families be placed on and/or remain under the HAP contract when TTP equals or exceeds than the Gross Rent. Further, HUD is establishing the alternative requirement that the rent to owner for the unit equal the family's TTP until such time that the family is eligible for a housing assistance payment. HUD is waiving as necessary to implement this alternative provision, the provisions of Section 8(o)(13)(H) of the Act and the implementing regulations at 24 CFR 983.301 as modified by Section 1.6.B.5 of this Notice.[27] In such cases, the resident is considered a participant under the program and all of the family obligations and protections under RAD and PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Assistance may subsequently be reinstated if the tenant becomes eligible for assistance. The PHA is required to process these individuals through the Form- 50058 submodule in PIC.

Following conversion, 24 CFR §983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time. Further, a PHA must remove a unit from the contract when no assistance has been paid for 180 days. If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, HUD is imposing an alternative requirement that the PHA must reinstate the unit after the family has vacated the property; and, if the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR §983.207 or, where "floating" units have been permitted, Section 1.6.B.10 of this Notice.

[27] For example, a public housing family residing in a property converting under RAD has a TTP of $600. The property has an initial Contract Rent of $500, with a $50 Utility Allowance. Following conversion, the residents is still responsible for paying $600 in tenant rent and utilities.

11. **Under-Occupied Unit.** If a family is in an under-occupied unit under 24 CFR 983.259 at the time of conversion, the family may remain in this unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized unit within a reasonable period of time, as determined by the administering Voucher Agency. In order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project, 24 CFR 983.259 is waived. MTW agencies may not modify this requirement.

D. PBV: Other Miscellaneous Provisions

1. **Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.

2. **Additional Monitoring Requirement.** The PHA's Board must approve the operating budget for the Covered Project annually in accordance with HUD requirements.[28]

3. **Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14.

4. **Establishment of Waiting List.** 24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:

    i. Transferring an existing site-based waiting list to a new site-based waiting list. If the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being

[28] For PBV conversions that are not FHA-insured, a future HUD notice will describe project financial data that may be required to be submitted by a PBV owner for purposes of the evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list.

ii. Informing applicants on the site-based waiting list on how to apply for a PBV program-wide or HCV program-wide waiting list.

iii. Informing applicants on a public housing community-wide waiting list on how to apply for a voucher-wide, PBV program-wide, or site-based waiting list. If using a site-based waiting list, PHAs shall establish a waiting list in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. In all cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency's public housing community-wide waiting list who wish to be placed onto the newly-established site-based waiting list must be done so in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and with the obligation to provide meaningful access for persons with limited English proficiency (LEP).[29]

A PHA must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies.

To implement this provision, HUD is specifying alternative requirements for 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the PHA

[29] For more information on serving persons with LEP, please see HUD's Final guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732), published on January 22, 2007.

shall administer its waiting list for the converted project in accordance with 24 CFR § 983.251(c).

5. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed project property.

6. **Agreement Waiver.** This section has been moved to 1.6.(B)(7).

7. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of permanent debt during the HAP contract term, to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)

8. **Administrative Fees for Public Housing Conversions during Transition Period**. For the remainder of the Calendar Year in which the HAP Contract is effective (i.e. “transition period”), RAD PBV projects will be funded with public housing funds. For example, if the project’s assistance converts effective July 1, 2015, the public housing Annual Contributions Contract (ACC) between the PHA and HUD will be amended to reflect the number of units under HAP contract, but will be for zero dollars, and the RAD PBV contract will be funded with public housing money for July through December 2015. Since TBRA is not the source of funds, PHAs should not report leasing and expenses into VMS during this period, and PHAs will not receive section 8 administrative fee funding for converted units during this time. .

   For fiscal years 2014 and 2015, PHAs operating HCV program received administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR § 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

   After this transition period, the section 8 ACC will be amended to include section 8 funding that corresponds to the units covered by the section 8 ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

9. **Choice-Mobility.** One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

   If as a result of participation in RAD a significant percentage of the PHA's HCV program becomes PBV assistance, it is possible for most or all of a PHA's turnover vouchers to be used to assist those RAD PBV families who wish to exercise mobility. While HUD is committed to ensuring mobility remains a cornerstone of RAD policy, HUD recognizes that it remains important for the PHA to still be able to use tenant-based vouchers to address the specific housing needs and priorities of the community. Therefore, HUD is establishing an alternative requirement for PHAs where, as a result of RAD, the total number of PBV units (including RAD PBV units) under HAP contract administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD.

   The alternative mobility policy provides that an eligible voucher agency would not be required to provide more than three-quarters of its turnover vouchers in any single year to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented, the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received. In order to adopt this provision, this alternative mobility policy must be included in an eligible PHA's administrative plan.

   To effectuate this provision, HUD is providing an alternative requirement to Section 8(o)(13)(E) and 24 CFR part 983.261(c). Please note that this alternative requirement does not apply to PBVs entered into outside of the context of RAD. MTW agencies may not alter this requirement.

10. **Reserve for Replacement**. The Project Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. For FHA transactions, Replacement Reserves shall be maintained in accordance with the FHA Regulatory Agreement. For all other transactions, Replacement Reserves shall be maintained in a bank account covered under a General Depository Agreement (HUD-51999) or similar instrument, as approved by HUD, where funds will be held by the

Project Owner or mortgagee and may be drawn from the reserve account and used subject to HUD guidelines and as directed by HUD.

1.7 Special Provisions Affecting Conversions to PBRA

Under the Demonstration, HUD has the authority to waive certain statutory and regulatory provisions, or to establish alternative requirements, for the effective conversion of assistance. Additionally, the RAD statute imposes certain unique requirements and authorizes HUD to establish requirements for converted assistance under the demonstration.

For public housing projects converting assistance to PBRA under the First Component of the Demonstration, 24 CFR Part 880, Section 8 Housing Assistance Payments Program for New Construction and applicable standing and subsequent Office of Housing guidance[30] will apply, except for the provisions listed below. These "special" provisions are grouped into three categories: Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. Where applicable, reference is made to the affected statute and/or regulation. For additional background purposes, HUD has provided Appendix I, which is a copy of the existing 24 CFR Part 880 regulation with the provisions stricken that will not apply to Covered Projects. Additionally, Appendix II includes the specific provisions of the Act that are inapplicable to PBRA conversions. Finally, Appendix III includes the site and neighborhood standards that apply to PBRA.

A. PBRA Contract Terms.

1. **Length of Contract.** Covered Projects shall have an initial HAP term of 20 years. To implement this provision, HUD is specifying alternative requirements for section 8(d)(2)(A) of the Act, which establishes a maximum term of 15 years for "an existing structure." Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, does not apply.

2. **Mandatory Contract Renewal.** Section 524 of MAHRAA and 24 CFR Part 402 currently govern renewals of expiring or terminating project-based section 8 HAP contracts and, in general, require HUD to renew such contracts "at the request of the owner." Pursuant to the RAD statute, upon expiration of the initial contract and each renewal contract, the Secretary must offer, and the Project Owner must accept,

[30] Examples of Office of Housing guidance include handbooks such as "Occupancy Requirements of Subsidized Multifamily Housing Programs" (4350.3) and "Multifamily Asset Management and Project Servicing" (4350.1). Future changes to part 880 would apply to RAD as long as the future changes are not provisions that have been stricken in the final Notice.

renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal. Consequently, to the extent that section 524 of MAHRAA and 24 CFR Part 402 are in effect upon contract expiration, the various provisions stating or requiring that any renewal of an expiring contract for project-based assistance under Section 8 shall be "at the request of the owner" will not apply.

3. **Ownership or Control.** This section has been moved to Section 1.4.G.

4. **RAD Use Agreement.** Pursuant to the RAD Statute, Covered Projects shall have an initial RAD Use Agreement that will:
   i. Be recorded superior to other liens on the property;
   ii. Run until the conclusion of the initial term of the HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that runs with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary provides approval for the RAD Use Agreement to be terminated when an Project Owner requests a transfer of assistance;
   iii. Provide that in the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract new tenants must have incomes at or below eighty (80%) percent of the area median income (AMI) at the time of admission, and rents may not exceed 30% of 80% of median income for an appropriate-size unit for the remainder of the term of the RAD Use Agreement; and
   iv. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing.

5. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. Consequently, HUD is specifying alternative requirements for section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, and for section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the "project account." HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) All RAD applications, including applications for Portfolio or Multi-Phase awards, will have initial contract rents based on their "RAD rent base year:"
   - All properties awarded under the original 60,000 unit cap have initial contract rents based on FY 2012 funding levels ("FY 12 RAD rent base year"). These rents will be adjusted each year by HUD's OCAF starting in CY 14 and

established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2012 funding, with an OCAF adjustment for both 2014 and 2015.

- All properties awarded above HUD's original 60,000 unit cap but subject to the increased 185,000 cap in effect as of the date of this Notice will have initial contract rents based on FY 2014 funding levels ("FY 14 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 15 and established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2014 funding, with an OCAF adjustment for 2015.
- Subsequent to authority to convert additional units, properties will have initial contract rents based on a future RAD rent base year in HUD's sole discretion.

Within these parameters, PHAs have additional discretion in establishing initial contract rents using the following flexibility:

i. **MTW Fungibility**. MTW agencies may use their MTW block grant funds to set their initial contract rents. In addition to the rent cap described below, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. MTW agencies may exercise this flexibility to set initial contract rents only when they have submitted an application for two or more projects. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02. If an MTW agency converts a project to PBRA, the agency's public housing subsidy will be permanently reduced by the amount required to fund the PBRA HAP (see Attachment 1C). HUD will limit the number of projects a MTW agency may convert to PBRA if the PHA does not have sufficient public housing subsidy to convert into PBRA assistance.

ii. **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as "bundled" rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle. For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is $500; and in Project B, the contract rent is $600. The PHA could bundle the two projects such that the initial contract rent at

both projects will be $550. See Section 1.9 for instructions on submitting applications with bundled rents.

iii. **Future RHF or DDTF.**[31] PHAs that are scheduled to receive ongoing RHF or DDTF funding in future years may choose to forgo any ongoing RHF or DDTF grants and repurpose the subsidy to augment the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may augment the RAD rent.

iv. **Tenant Paid Utility Savings.** When conversion will result in the reduction of one or more utility components (e.g. Gas, water & sewer, electric) used to establish the Utility Allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail.

Notwithstanding HUD's calculation or the above-mentioned flexibilities, initial contract rents will be capped at 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when HUD's calculation of contract rents exceeds 120 percent of the FMR but where the PHA believes that such rents are below the comparable market rent, the PHA may request an exception under which the project may receive rents in excess of 120 percent of the FMR but not in excess of the lower of comparable market rents or 150 percent of FMR. HUD will grant such a request only when HUD determines that a Rent Comparability Study (RCS), which the PHA must procure and pay for, establishes that rents are below comparable market rents. Any such determination will be made by HUD in its sole and absolute discretion. Where initial contract rents are at or below 120 percent of the FMR, no RCS is required.

6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted by HUD's OCAF at each Anniversary of the HAP Contract, subject to (a) the availability of appropriations for each year of the initial term of the HAP contract, and (b) the Maximum Rent, as defined below.[32]

[31] RHF and DDTF are provided to PHAs following the demolition or disposition of public housing projects pursuant to Section 18 of the Act. PHAs will not receive RHF or DDTF as a result of and following the conversion of projects converting under RAD.

[32] OCAFs are calculated and published each year by HUD in the Federal Register and are applied to the portion of a contract rent that is not committed to debt service payment in order to calculate the contract rent for the project in the following fiscal year. For the most recent guidance on OCAF, please see: http://www.gpo.gov/fdsys/pkg/FR-2011-10-26/pdf/2011-27816.pdf.

The Maximum Rent is the higher of 140% of FMR (less utility allowances) or the market rents, as demonstrated by an RCS procured and paid for by the Project Owner. Where an RCS has been used to establish initial rents or to justify an OCAF adjusted rent that exceeds 140% of the FMR, the RCS will remain valid for five years, the Maximum Rent will not apply for the next four annual rent adjustments, and rents will be adjusted only by the OCAF.

7. **Distributions.** Regardless of type of financing, Converted Projects will not be subject to any limitation on distributions of surplus cash, contingent on the availability of surplus cash as determined by year-end audited or certified financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205, which, among other provisions, establishes certain limitations on distributions for profit-motivated owners and authorizes HUD to require the owner to establish a residual receipts account. Distributions are not considered program or project funds.

8. **Transfer of Assistance**. This section has been moved to Section 1.4.H.

9. **RAD Rehab Assistance Payments**. HUD and the Project Owner will enter into a HAP contract before construction begins. To ensure that the amount of subsidy for the Covered Project is retained at the pre-conversion level once the assistance is converted to the HAP contract, Covered Projects will be eligible for assistance equal to current funding, as defined in this notice, less adjusted formula income, per Attachment 1C, for units that are not occupied at any point during the initial repairs as a result of rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment. As necessary to implement this provision, HUD is suspending the applicability of additional provisions in 24 CFR § 880.504(a) until all contract units are made available for occupancy and waiving the applicability of section 8(c)(4) of the Act.

   Except where the Section 8 Pass-Through[33] is used, units that are not occupied at any point during the initial repairs as a result of rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment may be eligible, subject to the conditions below, for Rehab Assistance Payments equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the

[33] As fully described in Handbook 4350.1, Chapter 38, Paragraph 38-32, under the Section 8 Pass Through Owners with residents under a project-based Section 8 HAP contract whose unit was rendered uninhabitable may temporarily lease a unit in another building, which is habitable, under UPCS. The Owner can sign a temporary lease on behalf of the displaced Section 8 resident (i.e. a master lease) and begin to voucher for the contract rent for that temporary unit.

calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the HAP Contract, the maximum number of units for which a Project Owner can receive RAD Rehab Assistance Payments is limited to the number of units eligible for Operating Fund subsidy prior to conversion (which is typically associated with the occupied units).[1] As a result, some units in the Converted Property may not be eligible for Rehab Assistance Payments.

Following the earlier of the end of the construction period identified in the HUD-approved Financing Plan or actual construction, the PHA will no longer be eligible to receive RAD Rehab Assistance Payments, and all units under contract will be eligible for payment only for occupied units or for vacancy payments, as applicable.

10. **Future Statutory or Administrative Changes.** Consistent with PBRA HAP contracts entered into under MAHRAA, any changes in HUD requirements, except to the extent required by statute, that are inconsistent with the PBRA HAP contract entered into through RAD, shall not be applicable. Further, for any statutory change during the term of the contract affecting contract rents that HUD determines will threaten the physical viability of the property, the Owner may terminate the contract upon notification to HUD. Notwithstanding such termination, the project shall remain subject to the RAD Use Agreement encumbering the property on which the project is located.[34]

11. **Floating Units.** Upon the request of the Project Owner of a Covered Project that is partially-assisted (i.e., fewer than 100% of the units are covered by the HAP Contract), HUD will permit the section 8 assistance to float between units within the project that have the same bedroom size and the same contract rent. Assistance may float from a Section 504 accessible unit only to another Section 504 accessible unit that has the same bedroom size and accessibility features. Further, as a condition for granting such request, HUD requires that the unassisted units be inspected with the same frequency as the assisted units are required to be inspected under 24 CFR Part 200 Subpart P. From the time of the initial execution of the HAP contract, the property must maintain the same number and type of RAD units.

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[1] The number of units eligible for Operating Fund subsidy prior to conversion is equal to the number of Total Eligible Unit Months (EUMs) on the project's Form-52723 submission (Section 2, Column B, Row 15.) divided by twelve and rounded down to the nearest whole number.

[34] Until HUD revises the currently approved PBRA HAP contract for RAD, PHAs may request amendments to the HAP contract in accordance with this provision.

12. **UPCS (REAC) Inspections.** Under current regulations at 24 CFR Part 5 Subpart G, a unit covered under a PBRA HAP contract must meet the UPCS before assistance can be paid on behalf of a household. Under RAD, once all units under the HAP contract become occupied, HUD will order a REAC inspection of the property to ensure conditions meet the UPCS. HUD is hereby waiving and establishing this alternative requirement to 24 CFR Part 5 Subpart G

B. <u>PBRA Resident Rights and Participation.</u>

1. **No Rescreening of Tenants upon Conversion.** Pursuant to RAD Statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[35] For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, the first clause of section 8(c)(4) of the Act and 24 CFR § 880.603(b), concerning determination of eligibility and selection of tenants, will not apply for current households. Once the remaining household moves out, the unit must be leased to an eligible family

2. **Right to Return.** See section 1.4(4)(B) regarding a resident's right to return.

3. **Phase-in of Tenant Rent Increases.** If a resident's monthly rent increases by the greater of 10 percent or $25.00 purely as a result of conversion, the rent increase will be phased in over 3 years, which a PHA may extend to 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 880.201 (definition of "total tenant payment"), to allow for the phase-in of tenant rent increases. A PHA must set the length of the phase-in period to be three years, five years or a combination depending on circumstances. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

[35] These protections (as well as all protections in this Notice for current households) apply when in order to facilitate repairs a household is relocated following the conversion and subsequently returns to the property, even if they are considered a "new admission" upon return.

The below method explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section "Calculated Multifamily TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on the family's most recent HUD Form 50059. If a family in a project converting from Public Housing to PBRA was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1, below.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid Total Tenant Payments (TTP) or flat rent and the calculated Multifamily housing TTP

- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR – 66% of difference between most recently paid TTP and calculated Multifamily housing TTP

- Year 3: Year 3 AR and all subsequent recertifications – Year 3 AR and any IR in Year 3: Full Multifamily housing TTP

Five Year Phase-in

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP or flat rent and the calculated Multifamily housing TTP

- Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and calculated Multifamily housing TTP

- Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and calculated Multifamily housing TTP

- Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference between most recently paid TTP and calculated Multifamily housing TTP

- Year 5 AR and all subsequent recertifications – Full Multifamily housing TTP

Please Note: In either the three year phase-in or the five-year phase-in, once Multifamily housing TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full multifamily housing TTP from that point forward

4. **Family Self-Sufficiency (FSS) and Resident Opportunities and Self Sufficiency (ROSS-SC). Family Self-Sufficiency (FSS) and Resident Opportunities and Self Sufficiency (ROSS-SC).** Public Housing residents that are currently FSS participants will continue to be eligible for FSS once their housing is converted under RAD. All Project Owners will be required to administer the FSS program in accordance with the requirements of 24 CFR 984, the participants' contracts of participation, and future guidance published by HUD. Project Owners will be allowed to use any funds already granted for FSS coordinator salaries until such funds are expended. All Project Owners will be required to provide both service coordinators and payments to escrow until the end of the Contract of Participation for each resident. Upon conversion, already escrowed funds for FSS participants shall be transferred into the PBRA escrow account and be considered PBRA funds, thus reverting to PBRA if forfeited by the FSS participant. Through waiver in this Notice, FSS funds awarded in FY14 and prior FSS funds may be used to continue to serve FSS participants living in units converted under RAD to PBRA. Pursuant to FY 2015 Appropriations Act any FSS funds awarded in FY 2015 (and forward if the provision is extended), may be used to also serve any other PBRA resident, affected by RAD or not.

   Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future ROSS-SC grants nor will its residents be eligible to be served by future ROSS-SC grants, as ROSS-SC, by statute, can serve only public housing residents.

5. **Resident Participation and Funding.** Residents of Covered Projects with assistance converted to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, in accordance with Attachment 1B, residents will be eligible for resident participation funding.

6. **Resident Procedural Rights.** The information provided below must be included as part of the House Rules for the associated project and the House Rules must be furnished to HUD as part of the Financing Plan submission. See Attachment 1E for a sample Addendum to the House Rules.

i. Termination Notification. Pursuant to the RAD Statute, HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects converting assistance under RAD, that supplement notification requirements in regulations at 24 CFR § 880.607 and the Multifamily HUD Model Lease.

a. *Termination of Tenancy and Assistance*. The termination procedure for RAD conversions to PBRA will additionally require that Project Owners provide adequate written notice of termination of the lease which shall not be less than:

i. A reasonable period of time, but not to exceed 30 days:

- If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
- In the event of any drug-related or violent criminal activity or any felony conviction; or

ii. 14 days in the case of nonpayment of rent.

b. *Termination of Assistance.* In all other cases, the requirements at 24 CFR § 880.603, the Multifamily HUD Model Lease, and any other HUD multifamily administrative guidance shall apply.

ii. Grievance Process. Due to requirements in the RAD statute, HUD is incorporating resident procedural rights to comply with the requirements of section 6 of the Act. In addition to program rules that require that tenants are given notice of covered actions under 24 CFR Part 245 (including increases in rent, conversions of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant paid utility allowances), HUD requires that:

a. Residents be provided with notice of the specific grounds of the Project Owner's proposed adverse action, as well as their right to an informal hearing with the Project Owner;

b. Residents have an opportunity for an informal hearing with an impartial member of the Project Owner's staff within a reasonable period of time;

c. Residents have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the Project Owner as the basis for the adverse action. With reasonable notice to the Project Owner, prior to hearing and at the residents' own cost, residents may copy any documents or records related to the proposed adverse action; and

d. Project Owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action and

the evidence the Project Owner relied on as the basis for the adverse action.

The Project Owner will be bound by decisions from these hearings, except if the:

a. Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing.

b. Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

If the Project Owner determines that it is not bound by a hearing decision, the Project Owner must promptly notify the resident of this determination, and of the reasons for the determination.

7. **Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID exclusion after conversion, in accordance with regulations at 24 CFR § 960.255. After conversion, no other tenants will be eligible to receive the EID. If a tenant receiving the EID exclusion undergoes a break in employment, ceases to use the EID exclusion, or the EID exclusion expires in accordance with 24 CFR §960.255, the tenant will no longer receive the EID exclusion and the Owner will no longer be subject to the provisions of 24 CFR §960.255. Furthermore, tenants whose EID ceases or expires after conversion shall not be subject to the rent phase-in provision, as described in Section 1.7.B.3; instead, the rent will automatically be adjusted to the appropriate rent level based upon tenant income at that time.

8. **Jobs Plus**. Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target project(s) under RAD will be able to finish out their Jobs Plus grant at that site unless significant relocation and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project. If the program is continued, the Project Owner must agree to continue to implement the program according to HUD's program requirements.

9. **When Total Tenant Payment Exceeds Gross Rent.** Under the PBRA program, assisted families are responsible for paying 30% of adjusted gross income towards rent and utilities, referred to as Total Tenant Payment (TTP). Under normal PBRA rules, a Project Owner must process a termination of assistance pursuant to section 8-5 C. of Housing Handbook 4350.3, REV-1 when the family's TTP has risen to a level

that is equal to or greater than the contract rent, plus any utility allowance, for the unit (i.e., the Gross Rent)). In addition, section 8-6 A.1 provides that, when terminating a tenant's assistance, the owner is to increase the tenant rent to the contract rent (assuming that the tenant does not receive the benefit of any other type of subsidy).

For residents in place at the time of conversion to PBRA, as well as for new admissions, however, when TTP exceeds the contract rent plus any utility allowance, the Project Owner must refrain from processing a termination of assistance and must charge a tenant rent that is 30% of the household adjusted income, less the utility allowance in the contract.[36] To this end, HUD is waiving sections 8-5 C. and 8-6 A. 1. of Housing Handbook 4350.3, REV-1. In such cases, the tenant will still be considered a Section 8 tenant and will still have the rights and be subject to the requirements of Section 8 tenants: Tenants will retain all of the rights under the Model Lease, including the right to occupy the unit, as well as those provided through this Notice, and tenants will still be subject to the requirements for Section 8 tenants, including the requirements concerning reexamination of family income and composition found in 24 CFR §§ 5.657 and 880.603(c). Owners are not required to use the Enterprise Income Verification (EIV) system for such families. Assistance may subsequently be reinstated if the Tenant becomes eligible for assistance. In the event that the tenant moves out, the Project Owner must select an applicant from the waiting list who meets the applicable income limits for the project.

The Project Owner is not required to process these individuals through Multifamily Housing's Tenant Rental Assistance Certification System (TRACS). All normal actions for the contract rent shall continue for these units, including application of the OCAF adjustment to the contract rent indicated in the HAP contract—since the OCAF adjusted rent will still be in effect whenever the unit is occupied by a family eligible for rental assistance.

10. **Under-occupied Units.** If at the time of conversion, an eligible family assisted under the HAP contract is occupying a unit that is larger than appropriate because of the family's composition, the family will be permitted to continue to occupy the unit until such time as an appropriate-sized unit becomes available in the Covered Project When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized within a

[36] For example, a public housing family residing in a property converting under RAD has a TTP of $600. The property has an initial Contract Rent of $500, with a $50 Utility Allowance. Following conversion, the residents is still responsible for paying $600 in tenant rent and utilities. Accordingly, the Project Owner must charge this resident $550, i.e., $600 TTP, minus $50 Utility Allowance.

reasonable period of time. In order to allow the family to remain in the under-occupied unit until an appropriate sized unit becomes available in the Covered Project, HUD is waiving the portion of 24 CFR § 880.605 that assumes the unit has become under-occupied as the result of a change in family size.

C. PBRA: Other Miscellaneous Provisions.

1. **Access to Records, including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work.

2. **Davis-Bacon prevailing wages and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14.

3. **Establishment of Waiting List.** The Project Owner can utilize a project-specific or community waiting list. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
    i. Transferring an existing site-based waiting list to a new site-based waiting list. If the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list.
    ii. Informing applicants on the site-based waiting list on how to apply for a community-wide waiting list.
    iii. Informing applicants on a public housing community-wide waiting list on how to apply for a new community-wide or site-based waiting list. If using a site-based waiting list, PHAs shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. In both cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list, given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the

population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency's public housing community-wide waiting list who wish to be placed onto the newly-established site-based waiting list must be placed in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and the obligation to provide meaningful access for persons with limited English proficiency (LEP).[37]

A PHA must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations.

To implement this provision, HUD is specifying alternative requirements for 24 CFR § 880.603 regarding selection and admission of assisted tenants. However, after the initial waiting list has been established, the PHA shall administer its waiting list for the converted project in accordance with 24 CFR § 880.603.

4. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project.

5. **Choice-Mobility.** HUD seeks to provide all residents of Covered Projects with viable Choice-Mobility options. PHAs that are applying to convert the assistance of a project to PBRA are required to provide a Choice-Mobility option to residents of Covered Projects in accordance with the following:[38]

[37] For more information on serving persons with LEP, please see HUD's Final guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732), published on January 22, 2007.

[38] The Choice-Mobility requirements that apply to covered PBRA projects differ from the requirements that apply to covered PBV projects.

i. *Resident Eligibility.* Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of: (a) 24 months from date of execution of the HAP or (b) 24 months after the move-in date.

ii. *Voucher Inventory Turnover Cap.* Recognizing the limitation on the availability of turnover vouchers from year to year, a voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

iii. *Project Turnover Cap.* Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the property, in any year, a PHA may limit the number of Choice-Mobility moves exercised by eligible households to 15 percent of the assisted units in the project. (For example, if the project has 100 assisted units, the PHA could limit the number of families exercising Choice-Mobility to 15 in any year, but not to less than 15.) While a voucher agency is not required to establish a project turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

HUD's goal is to have all residents in the Demonstration offered a Choice-Mobility option within a reasonable time after conversion. However, as HUD recognizes that not all PHAs will have vouchers sufficient to support this effort, HUD will take the following actions:

- Provide voucher agencies that make such a commitment bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.[39] [40]
- Grant a good-cause exemption from the Choice-Mobility requirement for no more than 10 percent of units in the Demonstration. HUD will consider requests for good-cause exemptions only from the following types of PHAs:

[39] The sponsoring agency must commit to the full term of the initial HAP, must undergo a significant amendment to its Annual Plan (no later than 60 days after execution of the project's CHAP), and must comply with section 8(o)(6)(A) relating to selection preferences.

[40] In order to implement this incentive, HUD is waiving provisions under 24 CFR § 985.3(h) to provide donating agencies with bonus points under the SEMAP for deconcentration.

- Public housing–only agencies, defined as agencies that own units under a public housing ACC, but do not administer, directly or through an affiliate, a Housing Choice Voucher program; or
- Combined agencies that currently have more than one-third of their turnover vouchers set aside for veterans, as defined for the purpose of HUD-VASH, or homeless populations, as defined in 24 CFR § 91.5.[41] To be eligible for this exemption, the PHA's admission policies must have been formally approved by the PHA's board prior to the time of application.

6. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of permanent debt during the HAP contract term to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)

7. **Submission of Year-End Financial Statements**. Covered Projects converting assistance to PBRA must comply with 24 CFR Part 5 Subpart H, as amended, revised, or modified by HUD.[42]

8. **Classification of Converting Projects as Pre-1981 Act Projects under Section 16(c) of the United States Housing Act of 1937.** For purposes of ensuring maximum flexibility in converting to PBRA, all such projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the US Housing Act of 1937. Section 16(c)(1), which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, Project Owners of projects converting to PBRA may admit applicants with incomes up to the low-income limit. HUD Headquarters tracks the 25% restriction on a nationwide basis. Project Owners of projects converting to PBRA do not need to request an exception to admit low-income families. In order to implement this provision, HUD is specifying alternative requirements for section 16(c)(2) of the US Housing Act of 1937 and 24 CFR §5.653(d)(2) to require Project Owners of projects

[41] A veteran is, for the purpose of HUD-VASH, a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable and is eligible for Veterans Administration health care.

[42] This provision is included to clarify existing requirements for PHAs that own PBRA-assisted projects through Single Asset Entities. Such owners are considered reporting entities under 24 CFR § 5.801 (a)(3) and (a)(4).

converting to PBRA to adhere to the requirements of section 16(c)(1) of the US Housing Act of 1937 and 24 CFR §5.653(d)(1).

9. **Owner-Adopted Preferences.** Project Owners may adopt a preference for elderly single persons pursuant to 24 CFR § 5.655(c)(5) and Housing Handbook 4350.3, Chapter 4. Project Owners who wish to adopt a preference for populations that are not identified in 24 CFR § 5.655(c)(5) (e.g., elderly families, near-elderly single persons, near-elderly families), may do so pursuant to Housing Notice 2013-21 (July 25, 2013). An owner may not adopt a preference that would have the purpose or effect of substantially delaying or denying the participation of other eligible families in the program on the basis of race, color, national origin, religion, sex, disability, or familial status, or would create or perpetuate segregation

1.8 **Resident Notification**

Prior to submitting an application to participate in the Demonstration, the PHA must:

1. Notify residents of projects proposed for conversion and notify legitimate resident organizations of the PHA's intent to pursue a conversion;
2. Conduct at least two meetings with residents of projects proposed for conversion to discuss conversion plans and provide opportunity for comment; and
3. Prepare comprehensive written responses to comments received in connection with the required resident meetings on the proposed conversion to be submitted with the RAD Application.
4. Issue a General Information Notice (GIN). See Section 1.4.A.5.

Once a PHA is selected to participate in the Demonstration, it must have at least one more meeting with residents before HUD will execute a HAP contract.

The requirement for resident notification and meetings for the RAD program are separate from, and complimentary to, the resident notification and consultation requirements under the significant amendment process (24 CFR Part 903) and applicable relocation requirements (see Section 1.4(A)(4). A PHA must comply with all applicable resident consultation and notification requirements. Refer to the RAD Relocation Notice for resident consultation requirements regarding relocation.

In addition, a PHA must have an additional meeting with residents if there is a substantial change to the conversion plans. A substantial change includes, but is not limited to:

- Transfer of assistance or ownership;

- Change in the number or configuration of assisted units or any other change that may impact a household's ability to re-occupy the property following repairs or construction; or
- A substantial change in the scope of work.

Upon issuance of the RCC (see Section 1.12 of this Notice), the PHA must notify each affected household that conversion of the project has been approved, and inform households of the specific rehabilitation or construction plans and any impact the conversion may have on them. Households in the affected project(s) who do not want to transition to a new program may be offered, if available, the opportunity to move to other public housing owned by the PHA.

When providing resident notification and meetings, a PHA must use effective communication for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act of 1990. Effective communication includes, but is not limited to, providing written materials in appropriate alternative formats (e.g., Braille, large type), as needed, and providing sign language interpreters and assistive listening devices at resident meetings, as needed (24 CFR 8.6). Additionally, resident meetings must be held in facilities that are physically accessible to persons with disabilities. Where physical accessibility is not achievable, a PHA must use alternative methods to meet with qualified individuals with disabilities, such as holding meetings at an alternate accessible site or offering in-home meetings. Such meetings must be provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The most integrated setting appropriate to the needs of qualified individuals with disabilities is a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible (28 CFR part 35, appendix B).

Additionally, a PHA must provide meaningful access to its programs and activities for persons who have a limited ability to read, speak, or understand English. For projects undergoing RAD conversion, a PHA must provide language assistance to residents of the project who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings. Such language assistance may include, but is not limited to, providing written translation of notices regarding the plans for the project and relocation and oral interpretation at resident meetings. For guidance on providing language assistance to persons with LEP, please see Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732).

1.9 **Application Requirements**

Under the Demonstration, applicants may apply to convert a single project, a PHA-defined portfolio of projects, a multi-phase project, or a set of projects that incorporate rent flexibilities such as rent bundling or MTW fungibility. The requirements for each type of application are listed below:

- **General Requirements.** All applicants must complete the Microsoft Excel-based RAD Application, which HUD will make available on the RAD website (www.hud.gov/rad), along with all other required submittals. The RAD Application will include certain pre-populated project data and will require the applicant to input proposed data related to the long-term physical and financial feasibility of the project and other conversion-related items. For an application to be complete, user inputs must meet any applicable thresholds embedded and described in the RAD Application.

  Applications will be accepted on a project-by-project basis, except where otherwise noted in this Section. If a PHA desires to convert only a portion of a project (e.g., only the high-rise portion of a project that is currently combined with scattered sites) and maintain the remaining portion as public housing, the PHA should indicate as such in its application (i.e., the PHA will not need to request a change in configuration for the project in order to submit the application).

  The application includes a statement of known environmental conditions. It is important for the applicant to keep environmental impacts in mind, and to begin assembling environmental reports, during the application submission process. Following application review and approval, the proposed construction plans and site selection will be evaluated during environmental review and will require modification if they do not meet environmental review requirements.[43] Questions regarding environmental review requirements should be directed to the local Responsible Entity contact for conversions to PBV, or to the local HUD Field Environmental Officer[44] for any project involving FHA financing and/or PBRA conversions.

  Upon completion of required entries on the application, the PHA will be able to generate a number of key exhibits, including a financing pro-forma for the project. The purpose of the pro-forma is to ensure that the PHA has sufficiently considered the long-term preservation needs of the property and the means by which those needs will be financed. In completing the financing pro-forma, the PHA must identify likely sources of debt and/or equity financing.

[43] See Attachment 1A for a discussion of environmental review requirements.
[44] Field Environmental Officer contact information is available at, https://www.hudexchange.info/environmental-review/hud-environmental-staff-contacts/.

The RAD Application contains a template of each of the followings documents, which must be submitted where applicable:

1. A **RAD Board Approval Form**, which will include the proposed pro-forma and other key certifications, must be approved by the PHA's Board and signed by the authorized representative of the PHA. This form will be required for all submitted applications.

2. A **Financing Letter of Interest/Intent** from each lender or equity investor, indicating, among other conditions, that the proposed pro-forma is reasonable. This letter is required where third-party financing is indicated in the application pro-forma. (A Financing Letter of Interest/Intent is not required where the pro-forma indicates that no financing is required, e.g., where immediate and long-term project capital needs can be met through a Reserve for Replacements account, or where the PHA is providing the financing.) The Financing Letter of Interest/Intent does not promise or imply a commitment to make a loan or equity investment but does signify that the lender or investor has reviewed the pro-forma for the subject project and considers it reasonable to proceed with further analysis and due diligence.

3. A **Mixed-Finance Affidavit** is required where the PHA is requesting to convert the public housing assistance in a mixed-finance project. This affidavit must be signed by both the PHA administering the public housing ACC and the Owner Entity of the project. Since only PHAs can apply under the Demonstration (see Section 1.3 of this Notice), the purpose of this affidavit is to ensure that both parties (the Owner Entity and the PHA) agree in principle to the conversion. Please note, however, that the HAP contract for a mixed-finance conversion will be executed between the Contract Administrator and the mixed-finance Owner Entity, not the PHA administering the public housing ACC. (The PHA may be part of the ownership structure, however.)

4. A **Choice-Mobility Commitment Letter** signed by: (a) the voucher agency that has committed to provide Choice-Mobility vouchers to the covered PBRA project of another PHA for the term of the initial HAP ; and (b) the agency that obtains a commitment from a voucher agency to support Choice-Mobility for a specified PBRA project. <u>PHAs that are able to meet the Choice-Mobility requirement through turnover from their own voucher programs do not need to complete this letter</u>.

If a PHA chooses to convert assistance to PBVs, the PHA must identify in the RAD Application the voucher agency that is willing to administer the PBV contract. If another PHA is proposed as the contract administrator and the project is selected, the PHA will need

to submit a signed letter from the voucher agency evidencing the agency's willingness to administer the PBVs. (The PHA may contact the local HUD Office of Public Housing to identify a list of voucher agencies that have appropriate legal jurisdiction to perform this role. If there is no voucher agency with overlapping legal jurisdiction that is willing to administer the PBV contract, the PHA may want to consider converting the project to PBRA. However, in so doing, the PHA would still be required to meet the Choice-Mobility requirement described above.)

Finally, the RAD application must include responses to comments received in connection with the required resident meetings on the proposed conversion.

- **Applications Proposing to Use 9% LIHTCs**. Applicants are encouraged to use both 4% and 9% LIHTCs in their project financing. However, as the demand for the allocation of 9% LIHTCs is typically excessive, applicants proposing to use 9% LIHTCs, if a reservation has not already been secured, are required to submit a letter from the credit-issuing authority addressing:

    1. Whether the property and proposed transaction appear eligible;
    2. Whether the applicant PHA or owner entity has acceptable experience to proceed;
    3. The timing of application and award; and
    4. Whether a typical reservation of credits is sufficient to address the expected need of the first or only phase of the subject project.

    If the applicant has been unsuccessful at securing such a letter from its state or local tax credit issuing agency, the application must include evidence that the applicant diligently attempted to secure such a letter, as well as a self-scored LIHTC application under the Qualified Allocation Plan (QAP) in place at the time of application that demonstrates that the project would have been eligible and competitive for credits in the most recent round.

- **Applications for Multi-phase Development**. PHAs may submit applications involving the multi-phase redevelopment of projects. A PHA must submit a RAD Application that reflects the first phase as well an explanation of future phases, including a narrative summary of the proposed phasing, the proposed date of submission of each phase's financing plan, the proposed date of each phase's LIHTC application (if applicable), and the proposed date of any demolition or disposition associated with each phase (if applicable).[45] Upon acceptance of the PHA's application, HUD will issue a CHAP for the initial phase and a Multi-phase Award Letter covering all phases of the project. A Multi-phase Award allows a PHA to

[45] A Multi-Phase Application template is available at www.hud.gov/rad

reserve conversion authority for a project with multiple distinct development phases and locks in the applicable contract rent for the entire project at the time of initial application.

For awards made pursuant to the original 60,000 unit cap, the PHA will have until July 1, 2015 to submit an application for the final phase of the project covered by the Multi-phase Award, unless HUD provides, in its sole discretion, an extension. For all Multi-phase awards made pursuant to the increase in the cap to 185,000 units, the Application for the last phase of a Multi-phase awards will be due no later than July 1, 2018. Subsequent to authority to convert additional units, HUD will establish Multi-phase awards in its sole discretion. Recipients of Multi-phase Awards shall still be required to fulfill all CHAP milestones for each of the CHAPs awarded by HUD. If the PHA is unable to complete a phase of the conversion, HUD reserves the right to revoke the CHAPs covering that phase and all subsequent phases of the conversion.

HUD recognizes that in certain situations multi-phase development warrants the early demolition of a greater number of units than may be replaced in a single phase. HUD will consider individual requests for early demolition based on a site plan, the timing and sources & uses for each proposed phase, the capacity of the development team, the impact on residents, and the overall likelihood that units will be successfully redeveloped.

Applicants should keep in mind that the environmental documents submitted with the Financing Plan during the first phase (see Attachment 1A) must be submitted for the entire site, i.e., all of the phases of the multi-phase development, and that the environmental review conducted during the first phase will cover the entire site.

- **Applications with Bundled Rents.** When bundled rents are proposed, as described in Section 1.6.B.5 and Section 1.7.A.5, the PHA must include in each project's application a reference to the other project(s) in the rent bundle and must also include with the application a calculation demonstrating that the total subsidy for the bundled projects will not exceed the aggregate funding for the Covered Projects.[46] Upon CHAP award, failure of one project to meet the requirements set forth in this Notice shall result in the termination of the second project if that project is no longer feasible without the rent bundle. Further, the project that is donating subsidy (and converting at lower rents) must close before or simultaneous with the project(s) that are receiving subsidy (and converting at higher rents)

[46] HUD has prepared a sample Rent Bundling Worksheet that is available at www.hud.gov/rad

- **MTW Contract Rent Flexibility**. MTW agencies may submit an application proposing to use their MTW block grant authority to set initial contract rents only when it has submitted applications for two or more projects. The application must indicate the additional proposed subsidy dedicated to the Converting Project(s). Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02.

- **Portfolio Awards.** A PHA may apply for a Portfolio Award, which allows a PHA to reserve RAD conversion authority for a set of projects and locks in the applicable contract rent in the year of application. In order to apply for a Portfolio Award, a PHA must submit:

  1. A list of all projects proposed for a Portfolio Award, that includes, for each project, the project's name, PIC Development Number, units to be converted, total estimated capital needs, and the major anticipated financing sources, where applicable; and

  2. RAD Applications for at least 50% of the projects identified in the portfolio.

  Upon approval of the application submission listed above, HUD will issue, in addition to the provision of CHAPs for the applications submitted, a Portfolio Award Letter covering the remaining projects within the portfolio proposed by the applicant. The Portfolio Award Letter reserves RAD conversion authority for the remaining units in the portfolio and locks in the applicable contract rent for the year of the application submission for the projects covered by the Portfolio Award. The PHA will have 365 days from issuance of the Portfolio Award Letter to submit acceptable RAD Applications for the remaining projects included in the Portfolio Award, which will result in the issuance of a CHAP for each project.[47] Recipients of Portfolio Awards shall still be required to fulfill all milestones for each CHAP issued by HUD. If at any time HUD determines that a PHA has failed to make sufficient progress towards the submitted conversion of the proposed portfolio, HUD may revoke RAD conversion authority provided under the Portfolio Award for all projects where a CHAP has yet to be issued.

  PHAs that have received CHAPs for multiple projects may convert their awards into a Portfolio award as long as no more than half of the converting inventory is covered under the Portfolio Award.

[47] For PHAs proposing a Portfolio conversion of over 3,000 public housing units, HUD may provide additional time for the PHA to submit the remaining applications.

- **Joint Application under the FY 2014/FY 2015 Choice Neighborhoods Initiative (CNI) Implementation Notice of Funding Availability (CNI NOFA).** A CNI Implementation NOFA applicant wishing to submit a joint RAD/CNI Implementation NOFA application must designate in the Housing Strategy section of their CNI NOFA application that their application is a joint RAD/CNI application, as well as provide a letter affirmatively requesting the housing project(s) name and PIC Development Number and the number of standing public housing units that the PHA wishes to convert under RAD. In such cases, the CNI NOFA Application date shall be considered the date of application for RAD. Subject to a review of the criteria in Section 1.3 of this Notice and collection of additional information as needed, Joint applications will be issued a CHAP for each project identified in their joint application and will lock in the applicable contract rents in the year of the application submission for projects covered by the CHAP. Recipients of Joint RAD/CNI Awards shall still be required to fulfill all milestones for each CHAP, unless HUD issues extensions for good cause. CNI applicants may submit a separate RAD application for a project ahead of the CNI NOFA Application date, in order to secure a CHAP under the RAD cap. If a RAD application is sent by a CNI applicant ahead of their CNI application, pending the CNI award, milestones will be adjusted to match the CNI timeline.

1.10 Submission of Applications

All required materials (including attachments and narrative summaries) must be submitted electronically using the Microsoft Excel-based RAD Application, which will be made available at www.hud.gov/rad. In addition to submitting the RAD application as an Excel file, the executed attachments must be included as PDF files. No paper or fax submissions are permitted.

There is no HUD fee for the submission of an application or the withdrawal of an application or award. There also is no cap on the number of project applications that a PHA may submit or resubmit.

Only complete applications will be considered. Rejected applicants will be notified and the PHA may choose to re-submit. If resubmitted, the application will be reviewed in order of the date of the resubmission. If a PHA provides an application prior to the expiration of the 30-day public comment period noted in Section 1.1 that would be affected by new eligibility criteria set forth in this Notice, then HUD shall consider the application to have been received the day following the expiration of the Notice and Comment Period. HUD will review those applications in the order in which they were received.

Unless the application process is closed, which HUD would announce through the RAD website, the last date that HUD will accept an application is the final date of the statutory authority, as

identified in the Federal Register. This announcement will specify the items related to selection and eligibility that will be required.

Applications must be sent via email to RADapplications@hud.gov.

1.11 Selection Criteria

This section explains the criteria that HUD will use to select projects for participation under the Demonstration.

A. Initial Application Period (CLOSED). As required under the RAD statute, HUD first conducted an initial competition period to ensure that awards were made to PHAs of various sizes and across geographies. HUD created target pools for awards based on PHA size and in four Census regions and made awards pursuant to those target pools. This initial application period opened on September 24, 2012 (60 days after the initial version of this Notice was issued) and closed on October 24, 2012 (30 days after the initial application period opened).

B. Second Application Period. The Second Application Period commenced on October 25, 2012 and closes 30 days following the publication of this Notice. All applications submitted during the Initial Application Period compete on a first-come, first-serve basis, where HUD issues a PHA an award for any Application that meets all eligibility criteria and that was received while HUD had available authority under the statutory cap.

C. Third Application Period. The Third Application Period commences 30 days following the publication of this Notice. During this period, for all applications that meet all eligibility criteria, HUD will utilize the Priority Categories below to issue CHAPs or to determine the Application's placement on the waiting list. HUD will review each Application in the order in which it is received and rank each qualified application, first by the Priority Category in which it falls and then by the date the Application was submitted. At the end of each calendar month, HUD will award CHAPs beginning with the highest ranked applications, up until the point at which issuing an additional award would exceed the statutory cap. If in any given month a qualified application cannot be awarded because HUD has reached its available authority under the statutory cap, the application will be placed on the waiting list. Its position on the waiting list will be determined first by the priority category in which it falls and then by the date the Application was submitted.

In addition to completing all required fields in the RAD Application, PHAs must also clearly indicate with their Application submission if the project meets any of the Priority Categories and for Category #ii and #iii provide supporting evidence. For applications that are placed on

the waiting list, a PHA may contact HUD to amend its application to modify the Priority Category in which a project would be classified.

1. **Priority Categories.** HUD is establishing the following six priority categories for the purpose of the Third Application Period.
   i. Applications or Multi-phase Applications that will redevelop physically or functionally obsolete housing as evidenced by proposals involving:
      a. Full or partial demolition of the existing project, with new construction that includes tax credit only units and/or market rate units;
      b. Full or partial demolition of the existing project, with new construction; or
      c. Choice Neighborhoods Implementation grant that HUD has awarded to the subject property
   ii. Applications that are part of a comprehensive neighborhood revitalization plan
      a. Choice Neighborhoods Planning grant;
      b. Promise Zones; or
      c. Locally recognized neighborhood revitalization plan, as evidenced by a letter of support from the City or County government describing the commitment and investments in the community
   iii. Applications that are, in HUD's sole discretion, in imminent danger of losing financing if they are not provided a CHAP (e.g. as evidenced by a 9% tax credit award)
   iv. Other applications using tax credits
   v. Applications that are part of a Portfolio or Multi-Phase award in which 50% of properties fall under any of the above categories.
   vi. All other applications, Portfolio Awards, and Multi-phase awards.

   HUD may, in its sole discretion, revoke a CHAP or reject a Financing Plan if the conversion plans change in such a way that would have affected the project's selection.

2. **Replacement Awards.** If a CHAP, Portfolio Award, or Multi-Phase Award that is issued to a PHA is revoked or withdrawn (including revocations when the PHA fails to comply with the requirements of this Notice), HUD will issue a replacement award from the waiting list, if one has formed. In issuing such replacement awards, HUD will utilize the foregoing provisions regarding prioritization of applications received during the Second Application Period.

3. **Online Summary.** HUD will post a summary of applications selected for CHAP, Portfolio, or Multi-phase Awards and waiting list status for all other applicants. The summary will be updated monthly.

D. Exemptions from the Choice-Mobility Component. For PBRA conversions, HUD will allow good-cause exemptions on a first-come, first-served basis up to the 10 percent limit.[48] An Application that meets all requirements of the Notice, but that cannot be awarded a CHAP because it has requested a good-cause exemption and HUD reached its 10% cap will be placed on the waiting list. The Application will be passed over if all of the good-cause exemptions as indicated above have been exhausted. An Application may be selected for a good-cause exemption if a CHAP is terminated for a project that originally received a good-cause exemption. At any point during the Second or Third Application Period, a PHA may revise its application only to certify that it will meet the Choice-Mobility component. If an application is modified in this way, it would retain its place on the waiting list.

E. Application Denials. If HUD determines that a PHA does not meet the eligibility requirements in Section 1.3, HUD will issue a letter denying a CHAP to the PHA citing the specific grounds for the denial of its application. The PHA then has 14 days from the date of the letter to appeal the denial in writing. The appeal must include the grounds for appealing the denial and supporting documentation. The Department will review the appeal and will notify the PHA of its decision within 60 days of the appeal. If applicable, the PHA's position on the waiting list will not be adversely affected if a decision is made in favor of the PHA. If a PHA's application is denied, the PHA may revise the application and resubmit; such resubmittals will be reviewed in the order of date of resubmission. The appeal should be sent to RADapplications@hud.gov, with the Name of the project included in the Subject Line, e.g., "Subject: Lincoln Townhomes, Appeal."

1.12 CHAP Award and Financing Plan Submission

A. CHAP Award. PHAs will be notified of selection via issuance of a CHAP, or Commitment to enter into a Housing Assistance Payment, which shall include the HUD-approved terms and conditions for conversion of assistance. The CHAP will not be subject to negotiation.

If a PHA applies for either a Multi-phase or Portfolio Award, HUD will reserve RAD conversion authority for the phases or projects covered by the award. A PHA must fulfill applicable milestones for submission of the applications for the remaining phases or projects. HUD's issuance of a CHAP includes terms on which HUD will later issue the HAP. For this reason, the CHAP should be useful in the PHA's discussions with lenders, investors and other providers of financing.

[48] As of the date of publication of this Notice, the good-cause exemptions have not been allotted up to the 10 percent limit. As a result, HUD will allow good-cause exemptions during the Ongoing Application period on a first-come, first served basis up to the 10 percent limit.

The CHAP may be revoked by HUD: (1) if, at any time, the PHA or project become ineligible under the provisions of this notice; (2) upon HUD's determination of financial infeasibility; (3) for PHA failure to meet required deadlines; (4) for PHA non-cooperation; (5) for violation of program rules and restrictions, including fraud, (6) if the PHA fails to submit an approved significant amendment to HUD, and/or (7) if HUD determines that the terms of the conversion would be inconsistent with fair housing and civil rights laws or a fair housing or civil rights court order, settlement agreement, or voluntary compliance agreement.

Because units under the Demonstration are limited, it is critically important that recipients of a CHAP diligently pursue the Financing Plan and complete conversion or withdraw, so that HUD might award those units to a PHA that is able and willing to convert the assistance of units.

B. Acceptance of CHAP. Within 30 days of CHAP issuance, a PHA must confirm its acceptance of the CHAP by submitting an application into the Inventory Removals module in PIC identifying the units that will be removed from the public housing Annual Contributions Contract (ACC) when the project completes conversion.[49] Failure to submit an application into PIC according to the instructions provided by HUD will result in a suspension of the CHAP and a revocation if not corrected within 15 days of notification, unless HUD identifies just cause for an extension. If the CHAP is re-instated, it will retain its original issuance date. Similarly, if the transaction changes and HUD determines that the PIC application needs to be modified by the PHA, the PHA will have 30 days to resubmit the Inventory Removal application and HUD will follow the above-described procedure for failure to comply.

C. Milestones and Financing Plan. For every project that receives a CHAP, the PHA must submit a Financing Plan. See Attachment 1A for Financing Plan Requirements. For all CHAP awards made prior to January 1, 2015, the Financing Plan is due according to the existing agreement between the PHA and HUD. For CHAP awards issued after January 1, 2015, the Financing Plan is due according to the instructions below. For purposes of Financing Plan Milestones, the term "CHAP issuance date" refers to the later of the issuance of the CHAP or 30 days following the publication of this Notice (all days are expressed in calendar days):

[49] Instructions for submitting a Removal Application into PIC are available here: http://www.radresource.net/output.cfm?id=picremove. Please note that HUD uses the application in PIC in order to implement the PHAS scoring exemption described in Section 1.5.I. When a CHAP is issued within the last 30 days of the PHA's fiscal year end date, PHAs may want to submit the application into PIC in less than 30 days..

- For non-LIHTC, FHA transactions, the Application for Firm Commitment, in lieu of the Financing plan, is due 180 days following the CHAP issuance date.
- In all other non-LIHTC transactions, the Financing Plan is due 180 days following the CHAP issuance date.
- For 4% LIHTC transactions the PHA must evidence that it has applied for LIHTC and completed the CNA no later than 180 days following CHAP issuance date. HUD may provide additional time for projects in states without rolling 4% LIHTC awards. The Financing Plan (or FHA Application for Firm Commitment) is then due within 90 days of the 4% award.
- For 9% LIHTC transactions, the PHA must submit evidence that it has applied for the first available 9% LIHTC round in their state beginning 90 days after the CHAP issuance date.[50] Following notification of its 9% LIHTC award, the Financing Plan (or FHA Application for Firm Commitment) is then due within 180 days following the 9% LIHTC award. If the PHA's applications for 9% tax credits is unsuccessful, the CHAP will be terminated unless, within 30 days of notification, the PHA:
    - Demonstrates that it diligently pursued 9% tax credits, , as evidenced by the score and ranking in the unsuccessful 9% application or by other means at HUD's discretion and
    - Proposes a financing strategy that does not rely on 9% tax credits and that is feasible in HUD's sole discretion. HUD will re-establish a Financing Plan due date based on the proposed financing.
- For any transaction that involves a transfer of assistance, the PHA has 90 days to identify the site to which assistance will be transferred and must submit to HUD documentation demonstrating that the site meets the criteria for transfers of assistance set forth in this Notice. The Financing Plan due date will be adjusted accordingly to permit time to identify the site.

The above timeframes reflect the additional complexity and due diligence requirements associated with tax credit transactions, which often also involve multiple financing sources. At the same time, these timeframes recognize the fact of limited RAD authority and the desire of the Department to demonstrate early results. Once the credits are awarded, the design of the LIHTC program, and the motivation of the different development partners, encourages the project to move expeditiously to closing.

The Financing Plan due date for each transaction will be established by HUD after CHAP award and recorded in the RAD Resource Desk. Approval of extensions is at HUD's sole

[50] Application for a tax credit round prior to this date that is unsuccessful is not grounds for CHAP revocation.

discretion. Extensions will not be approved if the delays resulted from factors that are within the PHA's control.

HUD will expedite the processing of all awards made pursuant to the first four Priority Categories listed in Section 1.11.C.1.

A Financing Plan must be substantially complete in order for HUD to consider the submission timely.[51] A PHA that fails to submit a complete Financing Plan within the above time-frames may have its CHAP revoked.

HUD's decisions regarding the acceptance of the Financing Plan will be made in HUD's sole discretion. If HUD determines that a Financing Plan is not feasible and/or that the requirements of the Financing Plan as set forth in Attachment 1A have not been met, the PHA will have 30 days to make corrections that satisfactorily address HUD's concerns. If a Financing Plan is not accepted, HUD's letter of disapproval will contain recommendations, if any, that may result in an acceptable Financing Plan.

A PHA will be notified of HUD's acceptance of the Financing Plan by the issuance of a RAD Conversion Commitment (RCC), conditioned upon firm commitment of financing from the lender on substantially the same terms as those presented with the Financing Plan.[52] The RCC will outline the key components of the planned RAD conversion and the conditions that need to be satisfied in order to close the conversion. The RCC will be a template document not subject to negotiation.

The PHA will have 30 calendar days from the date of issuance of the RCC to execute the RCC and return it to HUD. If the RCC is not returned in this time period, it will expire.

Once the RCC is executed, HUD expects that the RAD conversion will close in a timely manner. The RCC will allow 90 calendar days (from the date the RCC is issued to the PHA) in which to close.

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[51] HUD will determine whether a Financing Plan is substantially complete in its sole discretion. Generally, a substantially complete Financing Plan cannot lack any major components.

[52] Loan proceeds and other financing sources remain sufficient to cover immediate capital needs and, in comparison to the terms put forth in the original application, the debt service coverage ratio does not decrease by more than 0.05%, the amortization and term (maturity) of financing remain the same, and the interest rates are competitive with the market.

The RCC sets out the requirements of the transaction that will ultimately be concluded at Closing. These requirements include such items as: the number of affordable housing units being converted, the HAP contract rents, the choice of PBRA or PBV HAP contract, financing terms and Sources and Uses, and special conditions that must be cleared before closing. The terms of the RCC survive Closing.

1.13 Closing

A. Closing Preparations. Conversion does not occur prior to the Closing.

The RCC sets out the requirements for Closing. Draft closing documents, including those listed in the RCC and any closing checklist provided by HUD, must be submitted to HUD for review prior to closing. As indicated on the checklists, the closing package must contain financing documentation for programmatic and underwriting review purposes and evidence of title (and copies of title exception documents) and survey satisfactory to HUD. HUD forms of the closing documents, including HAP contracts, must be used. Closing may not occur until all policy and legal issues are addressed to HUD's satisfaction. After closing, HUD must receive fully executed versions of the closing documents, as directed by HUD. To facilitate closing, HUD may send documents to an escrow agent to hold in trust until all of HUD's closing requirements, including the closing of any construction financing, have been met.

In the event that construction or bridge financing will be used as part of the transaction financing, HUD will require evidence before closing of firm commitment for take-out or permanent financing conditional only to the completion of construction or term of the bridge financing. For transactions utilizing outside financing, HUD will require evidence that financing sources have closed and will be providing the contemplated funding. If the project is being financed with an FHA-insured loan, the closing requirements listed under the MAP Guide will apply.

The PHA must submit a draft closing package, including but not limited to the applicable documents listed in the closing checklist.

B. Preparations for leaving the public housing program.[53]

1. **50058 End of Participation (EOP).** In order for properties to be removed from IMS/PIC and for families to formally transition off of the public housing program, PHAs must submit a Form-50058 EOP for every resident at the Converting Project on

[53] HUD intends to publish a Public Housing Closeout Quick Reference Guide to standardize the procedures PHAs will use to closeout a public housing operation.

or before the day before the effective date of the HAP contract. The EOP may be created by a PHA's software or using Family Reporting Software (FRS) and uploaded to IMS/PIC, or the PHA may submit an on-line EOP.[54] Failure to do so may result in delays in HAP payments to the Converted Project.

2. **Leases.** PHAs must provide residents with notification of public housing lease termination in accordance with 24 CFR 966.4(l)(3)

3. **Use of Capital Funds or Operating Reserves in the Development Budget.** All Capital Funds, including RHF and DDTF, or Operating Reserves that have been approved in the Financing Plan must be drawn down at closing and placed in an escrow account. If there is new debt being placed on the Covered Project, these funds can be held by the lender. If no new debt will be utilized, the PHA must place the funds in a separate bank account covered under a General Depository Agreement.[55]

4. **Preparations for Entering PBV or PBRA.** PHAs should be aware that many tasks must be undertaken well in advance of closing (e.g. preparation of new leases). [56]

5. **Funding Upon Closing.** For the remainder of the first Calendar Year in which a HAP contract is effective, Operating Funds and Capital Funds will be obligated to the PHA for the Covered Project at the level of public housing subsidy available to that project in that fiscal year regardless of the initial contract rent amount or OCAF.[57] Operating Fund and Capital Fund amounts will be moved into specific RAD Budget Line Items (BLIs) in LOCCS.
   i. **Operating Fund.**
      a. PHAs must submit Operating Subsidy tools and follow the normal Operating Subsidy process (including revisions where corrections are needed) for the project for the year in which the project converts.

[54] For instructions on submitting an on-line EOP see http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/faq/58view#6

[55] A copy of HUD's GDA is available here http://portal.hud.gov/hudportal/documents/huddoc?id=51999.pdf

[56] HUD has developed quick reference guides to assist PHAs in preparing to operate and administer properties assisted under the PBV and PBRA programs, which are available at www.hud.gov/rad

[57] HAP contracts become effective on the first of the month following a closing. Following conversion, the public housing units that are included in the RAD conversion will be removed from the Public Housing Information Center (PIC). This action will not impact public housing subsidy for the converted project for the balance of the Calendar Year

b. Eligible Operating funds must be drawn down and conveyed to the property by December 31st of the year the HAP contract becomes effective.

ii. **Capital Fund.** The amount of Capital Funds that can be used for HAP payments during this initial year is based on the PHA's Capital Fund Formula Grant attributable to the project ("Project amount") in the year of conversion, pro-rated by the number of units in the PIC Development that are converting and then by the months remaining in the year in which the HAP contract became effective. For the purposes of RAD, the project amount is spread over the Calendar Year, rather than the Fiscal Year. Where HUD has not yet obligated the full FY's Capital Funds to the PHA, HUD shall obligate the remaining funds as soon as available.

Prior to conversion, HUD will provide PHAs with worksheets to assist with the above-mentioned calculations.

Commencing on the effective date of the HAP contract, the PHA must use all such funds to make HAP payments for the remainder of that calendar year. During this period—the months between the effective date of the HAP contract and the end of the calendar year—HUD will **not** provide additional subsidy to the project if the amount provided through the public housing Operating Fund and Capital Fund is insufficient to cover the rents listed in the HAP contract. HUD requires PHAs to estimate any potential deficit and encourages PHAs to establish an Operating Reserve Deficit in their Financing Plan (using Operating Reserves, available Capital Funds, financing proceeds, or any other eligible source), but is under no HUD-imposed obligation to do so.

In the Calendar Year following conversion, Covered Projects will be funded from the PBRA account or the TBRA, relative to the form of Section 8 assistance for the Covered Project(s), according to the amount indicated in the HAP contract, including any applicable OCAF, subject to all terms and conditions of the HAP contract.

6. **Post-Closing Cost Certification.** For all repairs included in the Scope of Work in the RCC, Project Owners must submit to HUD a cost certification. Project Owners can fulfill this requirement by submitting a cost certification required by a lender or investor or, if one is not required by a financing source (or not applicable), another form as prescribed by HUD.

1.14 Developer Fee

HUD recognizes that in order to secure and administer debt and equity sources, and oversee the successful completion of significant rehabilitation, the PHA or Project Owner will have to either dedicate experienced staff, if such experience currently exists on staff, or hire or contract for the expertise necessary to successfully complete rehabilitation on schedule and on budget. The Development Budget included in the Financing Plan may include a developer fee to address these costs according to the following requirements:

A. For non-LIHTC transactions, the developer fee may be up to 10 percent of the total development budget (all hard costs and reasonable soft costs), less developer fee and reserves and less any acquisition costs in non-arms-length acquisitions, e.g., transfers of property title to related or wholly-owned entities for the purpose of meeting single asset entity ownership requirements. The release of the developer fee will be made upon achievement of the following milestones:

1. At initial closing, up to 33 percent of the total developer fee;
2. At 50 percent completion of rehabilitation, as certified by HUD's inspector, another 33 percent of the total developer fee;
3. At 100 percent completion, as certified by HUD's inspector, the remainder of the total earned developer fee.

Development cost overruns that exceed funded contingencies may be drawn from any unearned and unreleased portion of the developer fee, and may therefore reduce the ultimate fee paid.

B. In LIHTC transactions (with or without private debt), a developer fee payable from the tax credit equity will be subject to the LIHTC allocating agency's limitations on developer fees, and may not, without HUD approval, exceed 15 percent of total development costs, payable on the schedule allowed by the allocating agency and/or equity investor.

Earned developer fees are not considered program income.

1.15 Additional Information

For additional information on this section of the Notice, please check **www.hud.gov/rad** or email questions to **RAD@hud.gov.**

Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks

A Financing Plan will not be reviewed until all required documentation is submitted. HUD will complete an initial review for document completeness within five business days of submission. Once HUD has determined that all required documents have been received, HUD will review the documents submitted.

HUD's purpose in reviewing Financing Plans is to ensure the long-term physical and financial viability of the Covered Project. If a Financing Plan fails one or more feasibility benchmarks, the HUD reviewer may still accept the Financing Plan if HUD determines that, taken as a whole, the Financing Plan is consistent with the long-term physical and financial viability of the property and/or the PHA can adequately support, through historical data or other means, the presented figures. HUD reserves the right to reject any Financing Plan if the information provided is not complete, accurate, or in compliance with the submission requirements listed below. HUD will not accept the Financing Plan if the project does not meet environmental review requirements, as described below.

Below are all the required components of a complete Financing Plan and the requirements of each component. Please note that for RAD conversions that will utilize FHA mortgage insurance, the submission requirements and feasibility benchmarks are primarily found in the FHA Multifamily Accelerating (MAP) Guide as revised by Mortgagee Letter 2012-20. The end of this Attachment lists the submissions that must be made separate and apart from the FHA-insured loan application and uploaded to the RAD Resource Desk.

HUD reserves the right to streamline any or all of these requirements for classes of project, e.g., no debt-transactions or small projects.

A. Type of conversion. Identify whether the Covered Project will convert to PBV or PBRA assistance.

i. For PBV conversions, identify the PHA that will administer the PBV HAP contract.

ii. For PBRA conversions, where the PHA does not administer a voucher program and did not receive a good cause exemption for Choice-Mobility, upload a fully executed Choice Mobility Letter of Agreement signed by the PHA converting units and the PHA that has agreed to administer the vouchers in order to comply with the Choice Mobility requirement.

B. Capital Needs Assessment (CNA). See section 1.4(A)(1).

C. Scope of Work for Rehabilitation or New Construction. The scope of work must:

1. Identify and address all repairs required in the CNA (including all items identified in the CNA as not functioning at the time of the site visit) or provide a written justification why those items are not included. Briefly discuss any differences between the conclusions / recommendations of the CNA provider; the levels of immediate rehabilitation needs; and the PHA's choices for replacement components.
2. Include quantities and costs. Rehabilitation or new construction estimates must be based upon reasonable market estimates of actual costs, confirmed either by cost estimating completed by the architect/engineer, or through actual competitive bids for major rehabilitation or construction items, in compliance with HUD requirements.
3. Include a summary of environmental issues known at that time, and a discussion of any planned environmental remediation (including post-closing Operations & Maintenance plans), and a summary of accessibility features that are required pursuant to the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively. Please see the revised Scope of Work for the CNA for a complete list of accessibility requirements and resources. Include a description of how all utility consuming components that are past estimated useful life at the time of the RAD application (or that are not functioning at the time of the CNA inspection) will be replaced with the most financially efficient alternative (taking into account initial cost and utility savings), as documented in the CNA.
4. Include a construction contingency of 10%. Note that HUD may require a higher contingency on a case-by-case basis.
5. Include a reasonable timeline for completion of all rehabilitation items acceptable to HUD, generally 12 to 18 months from the date of closing the conversion and any financing, depending on the scope of rehabilitation funded.

D. Environmental Review. HUD can neither accept nor approve an applicant's Financing Plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. The following describes the submission and approval steps for securing a completed environmental review.

RAD transactions will either be reviewed under 24 CFR Part 50 or 24 CFR Part 58, i.e., "Part 50 Reviews" or "Part 58 Reviews."[58] All PBRA and FHA transactions require Part 50

[58] Please see the Environmental Review for RAD Transactions guidance document, available at https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/.

Reviews, which are conducted by HUD staff. Non-FHA PBV transactions require Part 58 Reviews, which are conducted by a Responsible Entity (RE), except in accordance with 24 CFR 58.11, when HUD may determine to conduct the review under Part 50.

Transaction Type	Required Environmental Review
Non-FHA with PBRA	Part 50
FHA insured	Part 50
Non-FHA with PBV	Part 58

For multi-phase developments, the environmental documents submitted with the Financing Plan during the first phase must be submitted for the entire site, i.e. all of the phases of the multi-phase development, and the environmental review conducted during the first phase will cover the entire site. Further, requests to transfer assistance from the Converting Project to a new location are subject to environmental review.

For all Part 50 reviews, the applicant must submit reports and documentation to HUD in accordance with 24 CFR Part 50, as discussed in Chapter 9 of the MAP guide, except as follows:[59, 60]

1. For PBRA conversions, (or where HUD has determined to conduct the PBV conversion review under Part 50) PHAs are not required to follow the radon testing requirements of HN 2013-03. However, HUD strongly recommends testing for all projects and mitigation of any structures with elevated radon (4 pCi/L or above).
2. For PBRA conversions (or where HUD has determined to conduct the PBV conversion review under Part 50) that do not include substantial rehabilitation or new construction activities, PHAs shall provide HUD with one of the following:[61,62]
    - A transaction screen in accordance with ASTM E 1528-14 (or the most recent edition). A transaction screen will identify potential environmental concerns based on questionnaires, owner/occupant inquiry, site visit, government records inquiry and historical sources inquiry. The transaction screen must be prepared by a qualified professional, in accordance with 24 CFR 50.3(i)(4). As the definition of preparer in ASTM E 1528-14 does not meet this requirement, the professional must have either (a) a science degree and at least

[59] Additional guidance on environmental review requirements is available on the HUD Environmental Review website, at https://www.hudexchange.info/environmental-review/.
[60] The MAP Guide is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430.

[61] Substantial rehabilitation is any rehabilitation that does not meet the conditions in 24 CFR 50.20(a)(2) for exclusion from review under the National Environmental Policy Act.
[62] Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-13.

one year of practical environmental assessment experience in the field, or (b) three years of practical environmental assessment experience in the field performing site assessments for site contamination. If any potential environmental concerns are identified, an ASTM Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) must be provided; OR

- A Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition).

HUD staff will carefully review the submissions and may require additional information in order to complete their review. When HUD conducts the environmental review under Part 50, it documents the review using HUD Form 4128, Environmental Assessment and Compliance Findings for the Related Laws.[63] HUD's review will result in a determination, which may stipulate the rejection of the site for this demonstration or may require the completion of mitigation measures. The RCC will include any conditions required to carry out any and all mitigation measures as may result from the environmental review. Any conditions that cannot be satisfied before Closing will survive Closing.

When a Responsible Entity (RE) completes an environmental review under Part 58, the Financing Plan must include either Form 7015.16 or a letter with the Responsible Entity's (RE's) finding of exempt activity in order to consider the environmental review to be complete. The RE should use HUD recommended formats to document the environmental review record.[64] The PHA should submit an environmental report to the RE, in such form as prescribed by the RE, to enable the RE to complete their analysis. Once the review is completed, the PHA must submit *either*:

- Form HUD-7015.15, Request for Release of Funds, to their local PIH field staff.[65] After the PIH Field Director approves the RROF, the Director sends a completed HUD Form 7015.16 to the PHA, approving the release of funds. The PHA must submit the completed Form 7015.16 to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR 58.34, the PHA must submit the RE's finding of exempt activity with their RAD application. A finding of exempt activity is a statement of the result of the RE's environmental review, and is required even when form HUD-7015.15 is not required.

[63] The current HUD Form 4128 will soon be replaced with an online system for conducting environmental reviews, called the HEROS system. HUD is currently piloting the HEROS system, and RAD is one of the programs involved in the pilot.
[64] HUD recommended formats are available at https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/ and https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/.
[65] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

A letter from the RE indicating that the project converts to Exempt under 24 CFR 58.34 is sufficient.

E. Accessibility and Relocation Plan Checklist. All PHAs shall complete and submit the Approved Accessibility and Relocation Plan Checklist provided by HUD. The checklist shall include a certification that the relocation plan complies with all applicable HUD requirements, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 **(**URA) and its implementing regulations (49 CFR Part 24) as well as Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §8.23).[66] The cost of the relocation must be fully funded in the Development Budget.

F. Development Budget (Sources and Uses of Funds). The Development Budget must:

a. Include a reasonable, balanced and comprehensive presentation of sources and uses of funds, entered into the Transaction Log on the RAD Resource Desk, and which is in accordance with all applicable HUD requirements.
b. Demonstrate that existing loans or debt will be paid off at the closing or supported through NOI. For projects covered under an EPC, the PHA must provide a draft amended EPC approval letter from the PIH Energy Center specifying the minimum amount of debt that will need to be addressed in the conversion.
c. Demonstrate that any Identity of Interest (IOI) loans or advances will be converted to unsecured Surplus Cash Notes (IOI loans may not be paid off from the proceeds of new financing).
d. Include narrative that discusses any aspects of the planned rehabilitation that may result in an initial operating deficit during the rehabilitation and how that deficit will be funded, including any operating deficit escrow or similar fund.
e. Include a Subsidy Layering Review (SLR) if one has been performed by another agency. If no SLR has been performed, HUD will complete a SLR whenever multiple federal sources are proposed, when public housing funds are used (see Section 1.5(A)), or when a MTW agency is using MTW block grant funds to set their initial contract rents (see Section 1.6(B)5 and 1.7(A)5).

G. Development Team. Include the following information:

1. Identification of all participants, including the PHA, the general contractor, the legal entity that will own the project, the proposed management agent, and all "principals" of those entities.

[66] For additional information see "Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component" http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Notice2.pdf

2. Evidence of recent successful experience with similar rehabilitation or construction projects. For properties requiring substantial rehabilitation or new construction, the Project Owner is required to engage a general contractor, unless recent and comparable experience managing rehabilitation can be demonstrated or if the development team is using the FHA-insured Section 223(f) program or a repair program approved by HUD. If multiple funding sources will be used for the Covered Project, the development team must demonstrate that it has experience with at least three transactions with multiple sources of financing.

3. For PBRA conversions, evidence that all principals have Previous Participation Certification in the Active Partners Performance System (APPS) (formerly the Form 2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.[67]

H. Proposed Financing. For each proposed loan, equity contribution, or grant, the PHA must include a:[68]

1. Recent lender, investor or grant engagement letter, dated no later than 60 days prior to Financing Plan submission, with key terms identified (including amount, repayment terms, interest rate, amortization, maturity, prepayment restrictions, pay-in schedule, etc.) from all financing provider(s). Key terms for any permanent financing must comply with the conditions under Section 1.4(B)(1) of this Notice (fixed rate of interest, for a fixed term, and fully amortized over that term; balloon payments not permitted before year 18; amortization term cannot exceed 40 years; etc.). Additionally, all subordinate (or secondary) financing must be disclosed and then approved by the first-mortgage lender as well as HUD in accordance with section 8.9 of the Mortgage Credit and Underwriting and Processing Requirements of the MAP guide and any subsequent revisions or updates to the MAP guide.
2. Brief discussion of conditions / milestones to be satisfied prior to closing;

[67] The APPS/2530 applies to all FHA transactions and transactions in which 20% of the units in the Covered Project will be covered under a PBRA contract (PBV transactions without FHA financing are exempt). The PHA and any entities wholly owned by the PHA are not subject to 2530/APPS. For LLCs and LPs, non-PHA members and partners, respectively, with 25% or more of the ownership interests are subject to approval provided that for LIHTC transactions, limited partners or investment members are exempt. For non-profit entities, 2530s are required for Board Officers but not Board Members. Management agents are subject to 2530 unless wholly-owned.

[68] HUD has created templates that are available on the RAD Resource Desk that PHAs can use to provide all required information on each loan, equity contribution, and grants.

3. Documentation that the first mortgage lender has consented to the Use Agreement and that the lien of the new first mortgage loan will be subordinate to the Use Agreement;
4. Estimation of projected closing date for all proposed financing. Discuss any known impediments to closing within the timeframe required under the Notice. Include a discussion of key milestones with estimated milestone completion dates. The terms for all seller take-back financing must also be disclosed.

I. Operating Pro Forma. The Operating Pro-Forma must:

1. Be entered into the Transaction Log of the RAD Resource Desk (stabilized cash flow)
2. In a PHA provided template, project out for the term of the initial contract.
3. Include an attached discussion of the extent of energy and water savings that are anticipated as a result of the rehabilitation or construction and the basis for those estimates. The discussion must explain to what extent anticipated savings in utility costs have been included in the pro forma operating expenses.
4. Include an attached Rent Comparability Study for projects converting to PBRA where current funding[69] is greater than 120 percent of the FMR and where the PHA believes current funding is below the market rent. The Rent Comparability Study must be prepared in accordance with Chapter 9 of HUD's Section 8 Renewal Guide. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8
5. Be consistent with local standards for Federally-assisted housing and otherwise comply with at least the following feasibility benchmarks:
   - **a.** Rents shall not exceed the amounts permitted under program rules
   - **b.** All other sources of income must be supported with a narrative or must not exceed the average for the last three years (other income should not include interest income on the replacement reserve account, which must remain in the reserve and is not available for other purposes).
   - **c.** Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent.
   - **d.** Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent.
   - **e.** Where the PHA indicates continuation of a Payment In Lieu of Taxes (PILOT), provide a legal opinion based upon state and local law of continuation of PILOT post conversion. If the PILOT will not be continued after conversion, the PHA must provide documentation of real estate tax estimates.
   - **f.** Insurance costs must be documented, such as quotes from an insurance agent based on actual recent premiums for similar projects.

[69] Current Funding, for purposes of this Attachment, is the funding determined using Attachment 1C of this Notice.

g. All other operating expenses shall be no less than 85 percent of the average for the last three years, unless justified.

h. The annual replacement reserve deposit should be equal to that amount which, if deposited annually, will be sufficient to fund all capital needs, as identified in the CNA, arising during the first 20 years and otherwise not addressed upfront in either the rehabilitation or an initial deposit to the replacement reserve account, and sufficient to maintain a minimum balance at the end of each year during that 20-year period that is at least 5 percent of the total, aggregate projected capital needs for that period. The PHA should use reasonable estimates in the inflation but in doing so the rate for escalating the increase in repair costs should not exceed the rate of interest on reserve deposits by more than 1%.

i. For non-leveraged transactions, the stabilized cash flow should not be less than $12 per unit monthly. For leveraged transactions, the debt-coverage ratio should not be less than 1.11 over a ten year period using 2% growth in revenue and 3% growth in expenses.

J. Market Study. A market study will only be required at HUD's request, e.g., in cases where the project is currently experiencing a high vacancy rate, or when project plans include unit configuration or inclusion of market-rate units. For projects using an FHA insured mortgage, please see the Multifamily Accelerated Processing (MAP) Guide for instruction on when a market study is, and is not, required.

K. Approved Significant Amendment to the PHA Plan. Provide a letter from HUD approving the Significant Amendment, Five-Year Plan, Annual Plan, or MTW Plan.

L. Pre-Approval of Specific Activities. For Financing Plans submitted after the 60th day from the publication of this Notice, evidence that the PHA has secured written approval from HUD for any of the following activities that are included in its RAD conversion.

1. For conversions of assistance involving new construction, whether on a new site or on a current site, in an area of minority concentration, confirmation that the project locations meets Site and Neighborhood Standards (See Section 1.4.A.7).
2. For transfers of assistance where all or a portion of the Converting Project's assistance is transferred to a new site(s) as part of the subject transaction, confirmation from HUD that the project meets the fair housing and civil rights requirements described in:
   i. Site and Neighborhood Standards (see Section 1.4.A.7),
   ii. Changes in Unit configuration (see Section 1.4.A.10), and
   iii. Accessibility requirements (see 1.4.A.6).

3. For conversions of assistance where the total number of units in the Covered Project is less than the original number of units in the Converting Project (this includes de minimis reductions), confirmation that the reduction will not result in discrimination based on race, color, religion, national origin, sex, disability, or familial statu.
4. For Conversions of assistance where the Covered Project's unit configuration is different from the unit configuration of the converting project, confirmation that the conversion will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status.
5. Conversions where the Covered Project serves a different population from the one served by the Converting Project (e.g. when a Converting Project serves families but the Covered Project is subject to an elderly preference), confirmation that the conversion will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status.

M. Approval of Non-dwelling Real Property. Based on information the PHA provides in the RAD PIC Removal Application, the PIH Field Office will review and approve any non-dwelling real property that can be released from public housing use restrictions (Declaration of Trust (DOT) or Declaration of Restrictive Covenants (DORC)), under RAD authority, as part of a RAD transaction, provided it is encumbered under a RAD Use Agreement (including any addendum that may be required by HUD). The following non-dwelling real property can be included:

1. Buildings that contain units to be converted under RAD, including:
- units designated as "non-dwelling units" in IMS/PIC (laundry facilities, storage, management offices);
- community and common space;
- units that are not public housing, but are part of a mixed-income community amongst mixed-finance public housing units and are documented in IMS/PIC as "non-ACC" units;[70] and
- underlying land at those buildings;

2. Necessary appurtenances for the RAD units (e.g., parking lots, playgrounds);

[70] The DORC on a mixed-finance public housing project covers both land and improvements constituting that project. Since public housing units may "float", the property description and unit count in IMS/PIC covers both public housing and non-public housing units. Therefore, when HUD approves public housing units to be released from DORC and removed from IMS/PIC based on a RAD conversion, HUD automatically approves the release of the other non-public housing units from DORC.

3. Non-dwelling structures (e.g., sheds, community buildings) that at will be demolished as part of the conversion, provided such demolition is included in the approved RAD RCC;

4. Free standing non-dwelling buildings or other non-dwelling real property that will be used primarily to "support" the RAD units (e.g., project-specific community centers, maintenance building, management office building), provided such property is contiguous, adjacent or in close proximity to the RAD dwelling units parcel, and the PHA evidences the property will support the RAD units through either direct supportive services for residents or direct administrative and/or management support for RAD units. Such property may also serve other residents or projects of the PHA provided the property primarily serves and supports the RAD units; and

5. Vacant land and other real property necessary to support the RAD units (e.g., landscaping, community gardens, or reasonable green-space that is required for zoning).

HUD, in its sole discretion, will determine whether property proposed for release falls into any of the categories above and can therefore be removed from the DOT or DORC at closing.

In order for HUD to release the DOT from any public housing property[71] not referenced above, a PHA must submit a request in accordance with the applicable requirements of other HUD programs and federal authorities, such as disposition under Section 18 of the 1937 Act.

N. Approved Amendment to Attachment A of the MTW Agreement. For MTW agencies that have not completed this step as part of a previously completed conversion, the PHA must provide an executed amendment to Attachment A of their MTW Agreement with language provided by the PHA's MTW coordinator.

O. Affirmative Fair Housing Marketing Plan (AFHMP). For PBRA conversions, evidence that a completed AFHMP (HUD 935.2A) has been submitted for approval to the local Multifamily Regional Center.[72] Typically, the management agent or the entity responsible for

[71] Note that "public housing property" includes all real property that has been acquired, developed, modernized, maintained or operated with assistance under Section 9 of the 1937 Act or other previous forms of public housing assistance and may include property that is not recorded in IMS/PIC and/or is not encumbered by a valid DOT.

[72] If a PHA is converting more than one project to PBRA, a separate AFHMP must be submitted for each project.

marketing (if different) is responsible for completing and submitting the AFHMP. If an Project Owner plans to adopt any local or residency preferences, the Project Owner must submit its Tenant Selection Plan along with the AFHMP (see HUD Handbook 4350.3, page 4-4). Each Covered Project must have a HUD-approved AFHMP prior to closing.

The purpose of affirmative marketing is to ensure that individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, national origin, religion, sex, disability, or familial status.

P. Estimate of public housing funds available for HAP subsidy. The PHA shall provide an estimate of the public housing subsidy that will be used to support payments under the HAP contract in accordance with Section 1.13.B.5. HUD will provide tools for PHAs to make such estimates.

Q. Transfer of Assistance. For all conversions involving a transfer of assistance to a new site, the PHA must submit:

1. Evidence of HUD approval of the site and
2. A request from the PHA, based on the conditions established in Section 1.4.A.12 and subject to HUD approval, for the DOT to be released at closing. Absent a request and HUD approval, the DOT will remain on the current public housing site.

<u>Financing Plan Requirements for Transactions Utilizing FHA-Insurance</u>

For RAD conversions that will utilize FHA mortgage insurance, the submission requirements and feasibility benchmarks are primarily found in the FHA Multifamily Accelerating (MAP) Guide as revised by Mortgagee Letter 2012-20. In addition to submissions made in an FHA insured loan Application for Firm Commitment, PHAs must also upload the following items to the RAD Resource Desk. (Unless otherwise indicated, the PHA must submit all of the items listed in the cited paragraph):

- <u>A. Type of Conversion</u>
- <u>E. Accessibility and Relocation Plan Checklist</u>
- <u>F. Development Budget (Sources and Uses of Funds)</u>.
    - Sources and Uses submitted with the FHA Application must be entered into the Transaction Log on the RAD Resource Desk.
    - For projects covered under an EPC, the PHA must provide a draft amended EPC approval letter from the PIH Energy Center specifying the minimum amount of debt that will need to be addressed in the conversion.
    - Subparagraph 5. Subsidy Layering Review, if completed by an HFA (tax credits) or by another agency. If no SLR is been performed, HUD will complete a SLR

whenever multiple federal sources are proposed, when public housing funds are used (see Section 1.5(A)), or when a MTW agency is using MTW block grant funds to set their initial contract rents (see Section 1.6(B)5 and 1.7(A)5).

- H. Proposed Financing
- I. Operating Pro Forma.
- J. Market Study
- K. Approved Significant Amendment to the PHA Plan.
- L. Fair Housing and Civil Rights Pre-Approval of Specific Activities (if applicable)
- M. Approval of Non-dwelling Real Property
- N. Approved Amendment to Attachment A of the MTW Agreement (if applicable)
- P. Estimate of public housing funds available for HAP subsidy
- Q. Transfer of Assistance

Attachment 1B – Resident Provisions in Conversions of Assistance from Public Housing to PBRA and PBV

This Attachment contains two sections, describing:

1B.1 Summary of Resident Provisions
1B.2 Resident Participation and Funding

1B.1 Summary of Resident Provisions

The following is a summary of special provisions and alternative requirements related to tenants of public housing projects converting under RAD:

- Conversion will be considered a significant amendment to a PHA Plan (see Section 1.5(E) of this Notice);
- Notification of proposed conversion, meetings during the conversion process, written response to residents comments on conversion, and notification of conversion approval and impact (see Section 1.8 of this Notice);
- No rescreening at conversion (see Section 1.6(C)(1) of this Notice for conversions to PBV and Section 1.7(B)(1) for conversions to PBRA);
- Right to return after temporary relocation to facilitate rehabilitation or construction (see Section 1.6(C)(2) of this Notice for conversions to PBV and Section 1.7(B)(2) for conversions to PBRA);
- Phase-in of tenant rent increases (see Section 1.6(C)(4) of this Notice for conversions to PBV and Section 1.7(B)(3) for conversions to PBRA);
- Continued participation in the ROSS-SC and FSS programs (see Section 1.6(C)(5) of this Notice, for conversions to PBV and Section 1.7(B)(4) for conversions to PBRA);
- Continued Earned Income Disregard (see Section 1.6(C)(8) of this Notice, for conversions to PBV and Section 1.7.(B)(7) for conversions to PBRA);
- Continued recognition of and funding for legitimate residents organizations (see Section 1.6(C)(6) of this Notice for conversions to PBV, Section 1.7(B)(5) of this Notice for conversions to PBRA, and below in Attachment 1B.2 for additional requirements for both programs);
- Procedural rights consistent with section 6 of the Act (see Section 1.6(C)(7) of this Notice for conversions to PBV and Section 1.7(B)(6) of this Notice for conversions to PBRA); and
- Choice-mobility option allowing a resident to move with a tenant-based voucher after tenancy in the Covered Project (see 24 CFR § 983.260 for conversions to PBV and Section 1.7(C)(5) of this Notice for conversions to PBRA).

- For additional information, refer to Notice H2014-09; PIH 2014-17 for additional information on relocation requirements under RAD.

1B.2 Resident Participation and Funding[73]

The following provisions contain the resident participation and funding requirements for public housing conversions to PBRA and PBV, respectively.

A. PBRA: Resident Participation and Funding

Residents of Covered Projects converting assistance to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, a Project Owner must provide $25 per occupied unit annually for resident participation, of which at least $15 per occupied unit shall be provided to the legitimate tenant organization at the covered property. These funds must be used for resident education, organizing around tenancy issues, and training activities.

In the absence of a legitimate resident organization at a Covered Project:

1. HUD encourages the Project Owner and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owners are also encouraged to actively engage residents in the absence of a resident organization; and
2. Project Owners must make resident participation funds available to residents for organizing activities in accordance with this Notice. Residents must make requests for these funds in writing to the Project Owner. These requests will be subject to approval by the Project Owner.

B. PBV: Resident Participation and Funding

To support resident participation following conversion of assistance, residents of Covered Projects converting assistance to the PBV program will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

1. **Legitimate Resident Organization.** A Project Owner must recognize legitimate resident organizations and give reasonable consideration to concerns raised by legitimate resident

[73] For the purposes of this Attachment, HUD uses the term “Project Owner” to refer to the owner of a converting or Covered Project. In some instances the owner of a project could be a public, non-profit, or for-profit, e.g., mixed-finance projects).

organizations. A resident organization is legitimate if it has been established by the residents of a Covered Project, meets regularly, operates democratically, is representative of all residents in the project, and is completely independent of the Project Owner, management, and their representatives.

In the absence of a legitimate resident organization at a Covered Project, HUD encourages the Project Owner and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owner s are also encouraged to actively engage residents in the absence of a resident organization; and

2. **Protected Activities.** Project Owners must allow residents and resident organizers to conduct the following activities related to the establishment or operation of a resident organization:
    - **a.** Distributing leaflets in lobby areas;
    - **b.** Placing leaflets at or under residents' doors;
    - **c.** Distributing leaflets in common areas;
    - **d.** Initiating contact with residents;
    - **e.** Conducting door-to-door surveys of residents to ascertain interest in establishing a resident organization and to offer information about resident organizations;
    - **f.** Posting information on bulletin boards;
    - **g.** Assisting resident to participate in resident organization activities;
    - **h.** Convening regularly scheduled resident organization meetings in a space on site and accessible to residents, in a manner that is fully independent of management representatives. In order to preserve the independence of resident organizations, management representatives may not attend such meetings unless invited by the resident organization to specific meetings to discuss a specific issue or issues; and
    - **i.** Formulating responses to Project Owner's requests for:
        - **i.** Rent increases;
        - **ii.** Partial payment of claims;
        - **iii.** The conversion from project-based paid utilities to resident-paid utilities;
        - **iv.** A reduction in resident utility allowances;
        - **v.** Converting residential units to non-residential use, cooperative housing, or condominiums;
        - **vi.** Major capital additions; and
        - **vii.** Prepayment of loans.

In addition to these activities, Project Owners must allow residents and resident organizers to conduct other reasonable activities related to the establishment or operation of a resident organization.

Project Owner s shall not require residents and resident organizers to obtain prior permission before engaging in the activities permitted in this section.

3. **Meeting Space.** Project Owners must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:
   - **a.** Residents or a resident organization and used for activities related to the operation of the resident organization; or
   - **b.** Residents seeking to establish a resident organization or collectively address issues related to their living environment.

   Resident and resident organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the project has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

   Project Owners may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. A PHA may waive this fee.

4. **Resident Organizers.** A resident organizer is a resident or non-resident who assists residents in establishing and operating a resident organization, and who is not an employee or representative of current or prospective Project Owners, managers, or their agents.

   Project Owners must allow resident organizers to assist residents in establishing and operating resident organizations.

5. **Canvassing.** If a Covered Project has a consistently enforced, written policy against canvassing, then a non-resident resident organizer must be accompanied by a resident while on the property of the project.

   If a project has a written policy favoring canvassing, any non-resident resident organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently

enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

A resident has the right not to be re-canvassed against his or her wishes regarding participation in a resident organization.

6. **Funding.** Project Owners must provide $25 per occupied unit annually for resident participation, of which at least $15 per occupied unit shall be provided to the legitimate resident organization at the covered property. These funds must be used for resident education, organizing around tenancy issues, and training activities.
   In the absence of a legitimate resident organization at a Covered Project:
   a. HUD encourages the Project Owner s and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owner are also encouraged to actively engage residents in the absence of a resident organization; and
   b. Project Owner s must make resident participation funds available to residents for organizing activities in accordance with this Notice. Residents must make requests for these funds in writing to the Project Owner. These requests will be subject to approval by the Project Owner.

Attachment 1C – Calculation of HAP Contract Rents for Conversions of Assistance from Public Housing to PBRA or PBV

This attachment explains the method by which HUD calculated the contract rents for each project and provides additional detail on contract rent setting, including a demonstration of the application of applicable rent caps for PBRA and PBV conversions. These instructions apply only to public housing conversions under Section 1 of the Notice.

Actual initial contract rents may vary from the calculation described above as a result of actual rent caps in effect at the time of conversion (e.g. the most recently published Fair Market Rents), OCAF rent increases, and rent flexibilities described in Sections1.6(B)(5) and 1.7(A)(5).

1. Step One – Determine Current Funding[74]

Current funding will be determined based on the sum of the following for each project:

- Per unit monthly (PUM) subsidy eligibility at full occupancy under the Operating Fund program, based on the current year's Operating Fund appropriation (incorporating any pro-ration and excluding Asset Repositioning Fee).[75]
- The amount of the PHA's Capital Fund Formula Grant attributable to the project, divided by the units recognized under the Capital Fund formula, i.e., "standing units", divided by twelve, and
- PUM adjusted formula income under the Operating Fund program, i.e. tenant rent.[76]

[74] HUD reserves the right to update or correct calculated contract rents based on technical corrections and to modify the methodology for properties for which this information is unavailable at the time rents were initially calculated.

[75] Operating Subsidy was derived from Form-52723 from 2012 or 2014 (depending on a projects applicable RAD Rent Base Year), taking the following steps:

Step 1: Combine 1) PEL [Section 3 Part A, Line 03 (PUM inflated PEL)] + 2) UEL [Section 3 Part A, Line 05 (PUM inflated UEL)] + 3) Add-Ons [Section 3 Part A, Line 07-15] (excluding Asset Repositioning Fee [Line14] and Resident Participation Funding [Line 11], divided by Total Unit Months + 4) Resident Participation Funding [$25, divided by 12] + 5) Transition Funding [Section 3 Part C Line 02] + Other [Section 3, Part C, Line 03], divided by Total Unit Months. The result is a PUM amount.

Step 2: Subtract Adjusted Formula Income [Section 3 Part B, Line 03 (PUM adjusted Formula Income)]

Step 3: Multiply the result by the current year's pro-ration

The Result is the derived PUM Operating Subsidy under RAD. Note that in this calculation the Operating Subsidy Allocation Adjustment is added back in for properties converting based on FY 2012 funding..

[76] Section 3, Part B, Line 03 of HUD Form-52723.

Thus, if the operating subsidy eligibility for a project is $340 PUM (adjusted for proration), the Capital Fund formula grant attributable to the project is $135 PUM, and adjusted formula income is $308 PUM, then current funding totals $783 PUM.[77]

2. **Step Two – Apply Bedroom Adjustment Factor**
   The weighted average current funding amount will then be adjusted by a bedroom adjustment factor to arrive at bedroom-specific rent schedule, which would apply to the bedroom configuration of the Covered Project. HUD will use the same bedroom adjustment factors as reflected in the metropolitan FMR schedules for the area in which the project is located. The following is an illustration:

Current Funding: Bedroom Adjusted Based on FMR								
Bedroom Size	0BR	1BR	2BR	3BR	4BR	5BR	6BR	TOTAL
PIC Units	0	20	50	30	0	0	0	100
Metropolitan FMRs	$550	$650	$775	$900	$1,000	$1,150	$1,300	
FMR Bedroom Adjustments	0.710	0.839	1.000	1.161	1.290	1.484	1.677	
Bedroom Adjusted Rent		**$646**	**$770**	**$894**				**$783**

3. **Step Three – Apply Rent Caps**
   Finally, HUD would compare the Current Funding Rents calculated in Step Two with the applicable rent caps to determine the HAP Contract Rent for conversions to either PBRA or PBV (see Sections 1.6(B)(5) and 1.7(A)(5) of this Notice for a discussion of rent caps), as illustrated in the continuing example below.

Conversion to PBRA			
Bedroom Size	*1BR*	*2BR*	*3BR*
Current Funding Rents (Step Two)	**$646**	**$770**	**$894**
120% of FMR	$780	$930	$1,080

[77] The calculation of contract rents for MTW agencies with an alternative subsidy calculation under the public housing program differs from the approach illustrated above because their Operating subsidy is not currently allocated at a project level. For these agencies, HUD used data provided in the Form HUD-50058 MTW to derive tenant rents. For Operating Fund subsidy, for applications submitted by or before March 5, 2015, the project's Operating subsidy is determined based on a pro rata share of the agency's Operating Fund grant. For applications submitted after March 5, 2015, HUD will derive an approximation of Operating Fund subsidy under 24 CFR Part 990 for the purpose of calculating contract rents under RAD. PHAs should email rad@hud.gov to request revised RAD contract rents.

- Utility Allowance	$50	$60	$70
FMR Rent Cap	**$730**	**$870**	**$1,010**
Market Rent	$640	$740	$830
-- Lower of Current Funding Rent and FMR rent cap --			
PBRA Contract Rent	**$646**	**$770**	**$894**

When converting to PBRA, the contract rent is the lower of 120 percent of FMR or current funding. In this case, the Current Funding rents are below 120 percent of FMR (minus the Utility Allowance) and so the contract rent is unchanged from the current funding rent calculated in Step Two. (The market rent does not have any impact since current funding does not exceed 120 percent of the FMR)

Conversion to PBV			
Bedroom Size	*1BR*	*2BR*	*3BR*
Current Funding Rents (Step Two)	**$646**	**$770**	**$894**
Reasonable Rent	**$640**	**$740**	**$830**
110% of FMR	$715	$853	$990
- Utility Allowance	$50	$60	$70
FMR Rent Cap	**$665**	**$793**	**$920**
-- Lower of Current Funding Rent, Reasonable Rent, or FMR rent cap--			
PBV Contract Rent	**$640**	**$740**	**$830**

When converting to PBV, the contract rent is the lower of the Reasonable Rent or 110 percent of the FMR (minus the Utility Allowance). In this case, the Current Funding rents exceed the Reasonable Rents. As a result, the contract rents for this project would be capped at the Reasonable Rent.

Utility Allowances The contract rents defined above are net of any utility allowances. Except for cases described below, the utility allowances used in the HAP contract at closing must be the actual utility allowances that are in effect for each public housing unit type prior to conversion. The CHAP, which includes the rent schedule, must be updated prior to conversion to reflect current utility allowances.

Tenant-Paid Utility Savings for PBRA Conversions. Where conversion plans will result in energy and water efficiency improvements, PHAs can submit UA projections performed by a professional engineer, based on the project's plans and specifications that, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design

and materials, mechanical systems, appliances, and characteristics of the building location. The projections must be submitted in the RAD UA Projections Template. If approved by HUD, these UAs will be used to modify the initial PBRA contract rents (for new construction) or post-rehab rents (for rehab) in the HAP Contract. The rents will be adjusted in the following way:

a. Where post-construction the property will have the same provisions and configuration of utilities as the original property, HUD will increase the contract rents by 75% of the approved reduction in Utility Allowance.

Example 1: Configuration of Utilities remains the same; Tenant-paid utility savings

CHAP Rent Schedule

BR	Contract Rent	Utility Allowance	Gross Rent
1-BR	$500	$130	$630

RAD Utility Allowance Projections Template

	Current: Tenant pays gas, electric; and water	Future: Tenant pays gas, electric and water	Impact on Contract Rent
Gas	$50	$40	+$10 x 75%= + $7.5
Electric	$40	$30	+$10 x 75%= + $7.5
Water	$40	$20	+$20 x 75% = + $15
UA	$130	$90	Total = +$30

Revised CHAP Rent

BR	Contract Rent	Utility Allowance	Gross Rent
1-BR	$530	$90	$620

b. Where post-construction the new property will have a provision and configuration of utilities different from the original property, HUD will assess each utility. For utilities that will shift from project-paid to tenant-paid or vice versa, an increase or decrease in the utility allowance as a result of a new configuration will cause an equal and opposite change to the contract rent. For utilities that will remain tenant-paid, HUD will increase the contract rents by 75% of the approved reduction in Utility Allowance.

Example 2: Configuration of Utilities changes; Tenant-paid utility savings

CHAP Rent Schedule

BR	Contract Rent	Utility Allowance	Gross Rent
1-BR	$500	$50	$550

RAD Utility Allowance Projections Template

	Current: PHA pays Gas and electric; tenant pays water	Future: Tenant pays gas, electric and water	Impact on Contract Rent
Gas	$0	$30	-$30
Electric	$0	$30	-$30
Water	$50	$30	+$20 x 75% = + $15
UA	$50	$90	-$45

Revised CHAP Rent

BR	Contract Rent	Utility Allowance	Gross Rent
1-BR	$455	$90	$545

At conversion the HAP contract will include a pre-construction and post-construction rent schedule.

To be eligible for this provision, a PHA must submit Utility Consumption Baseline data into EPA's Portfolio Manager

Tenant-Paid Utilities and PBV Conversions. Unless a waiver is requested and approved as described below, the PHA must maintain a utility allowance schedule for all tenant-paid utilities in accordance with 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517. The utility allowances would become effective for each family at recertification.

A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule and to apply the same adjustments to contract rents based on Tenant-Paid Utility Savings as described above for PBRA conversions.[78] To be approved, a PHA must demonstrate good cause that the utility allowance schedule used in its voucher program would either create an undue cost on families because the utility allowance provided under the voucher program is too low, or discourage conservation and efficient use of HAP funds because the utility allowance provided under the voucher program would be excessive if applied to the Covered Project. For HUD to consider such a waiver, the PHA must submit an analysis of utility rates for the community and consumption data of project residents in comparison to community consumption

[78] MTW agencies would secure approval for site-specific utility allowances via their MTW Plan. If approved, an MTW agency may also apply the same adjustments to contract rents based on Tenant-Paid Utility Savings.

rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis.

Such waiver requests should be submitted to the PIH Field Office. The PHA should notify the RAD Transaction Manager of the request.

Notes

1. For MTW agencies converting to PBV that are utilizing MTW Fungibility, as described in Section 1.6, the agency will use existing voucher funding to supplement rents (no incremental voucher funding will be provided). For MTW agencies converting to PBRA that are utilizing MTW Fungibility, as described in Section 1.7, HUD will permanently reduce the agency's public housing funds by the full amount established for the HAP Contract.

For example, assume that an MTW agency that is closing effective July 1, 2014 is considering using fungibility for a project of 100 units whose contract rent is $500 PUM and whose subsidy is $200 PUM. In order to make the deal feasible, the MTW must make the contract rent $550 PUM and receive a subsidy of $250 PUM. In order to do this, the MTW agency must agree to a permanent reduction in its Operating and Capital Fund subsidy by a combined $60,000 a year ($50 PUM for 100 units for 12 months) starting in CY 2015. During the remainder of CY 2014, the PHA can use its available public housing or other funds to make up any gap in rental subsidy as a result of Operating and Capital Fund allocations to a RAD project that are lower than the HAP subsidy. In the year following, the HAP contract rent provided will be $550 PUM.

2. For applications where the PHA proposes a de minimis reduction of units, projects will not be permitted to retain the subsidy of any units that are not included in the conversion application. An exception is made when the PHA is proposing a de minimis reduction in dwelling units, but certain units will be designated for special purpose uses or units are being reconfigured through rehab to improve marketability (e.g. combining efficiencies). The project will retain the subsidy attributable to those units and the contract rents for the dwelling units will increase by a share of the foregone subsidy (i.e., the Operating Fund and Capital Fund portion of the weighted Contract Rent).

3. When a project's funding is reduced as a result of a program cap on contract rents, a PHA may request that HUD transfer the excess subsidy to the PHA's voucher program in order to facilitate Choice-Mobility.

4. PHAs that are scheduled to receive ongoing Replacement Housing Factor or Demolition Disposition Transition Funding in future years may choose to forego any ongoing RHF/DDTF grants and repurpose the foregone subsidy to augment the initial RAD rent. At a

PHA's request HUD will provide a forecast of total Anticipated RHF/DDTF grants beginning in the year following conversion. The RAD rent may then be augmented by the following amount:

Total Anticipated RHF/DDTF Grants ÷ 20 ÷ Number of Units converting under RAD ÷12 = PUM RAD Rent Augmentation

The PUM RAD Rent Augmentation would be reflected in the initial rents established in the HAP contracts. The contract rents will still be subject to applicable rent caps. PHAs electing to utilize this flexibility must acknowledge through a certification that HUD will cancel all future obligations of Replacement Housing Factor (RHF) funds or Demolition and Disposition Transition Funding (DDTF) that would have been awarded.

5. Resident Paid Utilities. For projects with an existing EPC using the Residnet Paid Utility (RPU) Incentive, HUD will allow an amendment to the posted RAD rent to add the Per Unit Month (PUM) EPC Resident Paid Utility Incentive. Further,if a converting project currently has surcharges for excess consumption of PHA-supplied utilities (in accordance with 24 CFR 965.506), HUD will allow an amendment to the posted RAD rent by the amount in Row 19 of the HUD-52722 (Calculation of Utility Expense Level) divided by Total Unit Months (Section 2 Column A Line 15) of the HUD-52723 used in the Fiscal Year in which the RAD contract rents were calculated.

Attachment 1D – Requirements for RAD-Specific PHA Plan and/or Significant Amendment to the PHA Plan Submissions

Until such time as the required elements may be provided in a HUD-provided form, the following items must be covered in a request for a RAD-Specific PHA Plan Submission, Significant Amendment to the PHA Plan, MTW Plan, or MTW's revision to the MTW plan:

1. A description of the units to be converted. The description should include the following:
- **a.** The number of units;
- **b.** The bedroom distribution of units, and
- **c.** The type of units (e.g., family, elderly/disabled, or elderly-only);

2. Any change in the number of units that is proposed as part of the conversion, including:
- **a.** De minimis unit reductions and
- **b.** Unit reductions that are exempt from the de minimis cap;
- **c.** Any change in the bedroom distribution of units that is proposed as part of the conversion;

3. Changes in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted.
- **a.** If Converting to PBV: This includes any waiting list preferences that will be adopted for the converted project as well as the Resident Rights and Participation, Tenant Protections for residents stated in Section 1.6, Attachment 1B of this Notice and the Joint Housing/PIH Notice H-2014-09/ PIH-2014-17. (See Table 1 below for more specific guidance).
- **b.** If Converting to PBRA: This includes any waiting list preferences that will be adopted for the converted project as well as the Resident Rights and Participation, Tenant Protections for residents stated in Section 1.7 and Attachment 1B of this Notice and the Joint Housing PIH Notice H-2014-09/ PIH-2014-17. (see Table 1 below for more specific guidance).

4. If there will be a transfer of assistance at the time of conversion, the significant amendment must include:
- **a.** The number of units to be transferred;
- **b.** The bedroom distribution of the units in the new building(s), and
- **c.** The type of units, if changed (e.g., family, elderly/disabled, or elderly-only); and
- **d.** Any reduction or change in the number of units and what reduction category they fall under (i.e. de minimis)
- **e.** How the waiting list will be transferred and how households will be selected for the transfer, where applicable (please see Table 2 below for more specific guidance).

5. An indication of whether the PHA is currently under a voluntary compliance agreement, consent order or consent decree or final judicial ruling or administrative ruling or decision and an assurance that compliance will not be negatively impacted by conversion activities.

6. A statement certifying that the RAD conversion complies with all applicable site selection and neighborhood reviews standards and that all appropriate procedures have been followed.

7. All other required information and certifications necessary to submit a Significant Amendment to the PHA Plan, including Resident Advisory Board comments and responses, challenged elements, and all required certifications.

8. For MTWs utilizing MTW Fungibility as defined in Section 1.9.E and Section 1.6 or 1.7, as applicable, a statement explaining how the MTW will be able to maintain continued service level requirements.

Additionally, in accordance with 24 CFR Part 903, a PHA must perform the following actions in regards to their Capital Funds:

1. During the PHA Plan submission and/or significant amendment stage, a PHA shall notify the public that the current and future Capital Fund Program Grants Budgets, will be reduced as a result of any projects converting to RAD,.
   - **a.** The PHA should provide an estimate of the amount of the current Capital Fund grant that is associated with the proposed project(s) and the impact on the PHA's current Five-Year PHA Plan and Five-Year Capital Fund Action Plan.
   - **b.** If the RAD conversion will impact an existing CFFP or EPC, or it proposes to utilize RHF funds to facilitate conversion, the PHA should also indicate the estimated impact of those activities.

Finally, to avoid the need for a possible subsequent significant amendment, the PHA should examine its definition of "Substantial Deviation". The PHA may want to redefine its definition of Substantial Deviation in Section 10 of the PHA Plan to exclude the following items:

1. The decision to convert to either Project Based Rental Assistance or Project Based Voucher Assistance;
   - **a.** Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
   - **b.** Changes to the construction and rehabilitation plan for each approved RAD conversion; and
   - **c.** Changes to the financing structure for each approved RAD conversion.

2. Please Note: Approval of a PHA's Financing Plan may be delayed if a PHA has made a substantial change to its plans, as defined locally, and the PHA has not completed a new PHA Plan or Significant Amendment to its PHA Plan submission. In addition, if HUD determines that there has been a significant change to the Significant Amendment involving transfers of assistance, changes in the number of assisted units, or a change in eligibility or preferences, HUD may require that a PHA resubmit their Significant Amendment.

Table 1: List of RAD Program Elements Affecting Resident Rights and Participation, Waiting List and Grievance Procedures for PBV and PBRA

Below, please find a table listing out each of the provisions affecting residents' rights and participation, waiting list and grievance procedures that must be included in a PHA's Significant Amendment. The table lists out the provisions applicable to the type of conversion (PBV or PBRA) that the PHA is proposing. This list is not a substitute for providing a copy of the relevant tenant protections listed below. PHAs should either provide reference to these tenant protections or place the tenant protections cited in this table directly into their Plan submission.

Project Based Voucher Requirements (Section 1.6 of PIH Notice 2012-32, REV-2 and the Joint Housing PIH Notice H-2014-09/ PIH-2014-17)	Project Based Rental Assistance Requirements (Section 1.7 of PIH Notice 2012-32, REV-2 and the Joint Housing PIH Notice H-2014-09/PIH-2014-17))
Tenant Protections Under Joint Housing PIH Notice H-2014-09/ PIH-2014-17.)	
1. Right to Return and Relocation Assistance	1. Right to return and Relocation Assistance
Tenant Protections Under Section 1.6.C (PBV) or Section 1.7.B (PBRA)	
1. No re-screening of tenants upon conversion	1. No re-screening of tenants upon conversion;
2. Under-Occupied Unit	2. Under-Occupied Unit (See Section 1.7)
3. Renewal of Lease	N/A
4. Phase-in of tenant rent increase:	3. Phase-in of tenant rent increase:
5. FSS and ROSS-SC programs;	5. FSS and ROSS-SC programs;
6. Resident Participation and Funding.	6. Resident Participation and Funding.
7. Termination notification	7. Termination notification
8. Grievance process	8. Grievance process
9. Earned Income Disregard.	9. Earned Income Disregard.

11. Jobs Plus	10. Jobs Plus
10. When Total Tenant Payment Exceeds Gross Rent.	11. When Total Tenant Payment Exceeds Gross Rent.
Tenant Protections Under Section 1.6.D (PBV) or Section 1.7.C (PBRA)	
1. Establishment of Waiting List	1. Establishment of Waiting List
2. Choice Mobility	2. Choice Mobility

Sample PHA Plan Amendment

Below, is a sample PHA Plan Amendment. It is intended as an attachment to the PHA Plan that would cover all the required elements for RAD. Please note: The PHA Plan must be submitted with all appropriate forms and certifications to be acceptable to HUD, this includes the HUD Form 50075; HUD Form 50077 (or HUD Form 50077-CR as applicable); HUD Form 50077-SL; and any form that may be required to perform PHA Plan activities in the future.

Attachment R – Rental Assistance Demonstration (RAD)

The (insert PHA name here) is amending its (annual and/or 5-year) PHA Plan because it was a successful applicant in the Rental Assistance Demonstration (RAD). As a result, the (insert PHA name here) will be converting to (Project Based Vouchers or Project Based Rental Assistance) under the guidelines of PIH Notice 2012-32, REV-1 and any successor Notices. Upon conversion to (Project Based Vouchers or Project Based Rental Assistance) the Authority will adopt the resident rights, participation, waiting list and grievance procedures listed in (*For conversions to PBV:* Section 1.6 of PIH Notice 2012-32, REV-2; and Joint Housing PIH Notice H-2014-09/PIH-2014-17; *For conversions to PBRA:* Section 1.7 of PIH Notice 2012-32, REV-2; and Joint Housing PIH Notice H-2014-09/PIH-2014-17). These resident rights, participation, waiting list and grievance procedures are appended to this Attachment. Additionally, the (insert PHA name here) certifies that it is currently compliant with all fair housing and civil rights requirements, [insert only if applicable] including those imposed by any remedial orders or agreements, namely [specify the name and date of the consent decree, order, voluntary compliance agreement, or other remedial order or agreement].

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing (insert PHA name here) with access to private sources of capital to repair and preserve its affordable housing assets. Please be aware that upon conversion, the Authority's Capital Fund Budget will be reduced by the pro rata share of Public Housing Developments converted as part of the Demonstration, and that (insert PHA name here) may also borrow funds to address their capital needs. [Insert only if applicable: The (insert PHA name here) will also be contributing Operating Reserves in the amount of $XXX, Capital Funds in the amount of $XXX towards the conversion, and/or Replacement Housing Factor (RHF) Funds in the amount of $XXX towards the conversion.] [Insert only if applicable: The (insert PHA name here) currently has debt under the Capital Fund Financing Program and will be working with (insert lender or bond trustee name) to address outstanding debt issues, which may result in additional reductions of capital funds.] [Insert only if applicable: The (insert PHA name here) currently has debt under an Energy Performance Contract and will be working with (insert EPC provider's name) to address outstanding debt issues, which may result in additional reductions of capital or operating funds.] [For MTWs only, insert the following: Regardless of any funding changes that may occur as a result of conversion under RAD, (insert MTW name here) certifies that it will maintain its continued service level at (insert continued service level).]

Below, please find specific information related to the Public Housing Development(s) selected for RAD:

Development #1

Name of Public Housing Project:	PIC Development ID:	Conversion type (i.e., PBV or PBRA):	Transfer of Assistance: (if yes, please put the location if known, and # of units transferring)
Total Units:	Pre- RAD Unit Type (i.e., Family, Senior, etc.):	Post-RAD Unit Type if different (i.e., Family, Senior, etc.)	Capital Fund allocation of Development: (Annual Capital Fund Grant attributable to the Project, if known) OR, (Total Annual Capital Fund allocation divided by total number of public housing units in PHA, multiplied by total number of units in project)
Bedroom Type	**Number of Units Pre-Conversion**	**Number of Units Post-Conversion**	**Change in Number of Units per Bedroom Type and Why (De Minimis Reduction, Transfer of Assistance, Unit Reconfigurations, etc.)**

Studio/Efficiency			
One Bedroom			
Two Bedroom			
Three Bedroom			
Four Bedroom			
Five Bedroom			
Six Bedroom			

(If performing a Transfer of Assistance):	(Explain any changes in in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted)

Resident Rights, Participation, Waiting List and Grievance Procedures

If converting to PBV: (Insert PIH Notice 2012-32, REV-2 Section 1.6.C & Section 1.6.D, and Joint Housing/PIH Notice H-2014-09/ PIH-2014-17, as a whole, into this Attachment to your PHA Plan)

If converting to PBRA: (Insert PIH Notice 2012-32, REV-2 Section 1.7.B & Section 1.7.C, and Joint Housing/PIH Notice H-2014-09/ PIH-2014-17, as a whole, into this Attachment to your PHA Plan)

Significant Amendment Definition

If your PHA is changing its definition for substantial deviation to the PHA Plan, below find a suggested version:

As part of the Rental Assistance Demonstration (RAD), (insert PHA name here) is redefining the definition of a substantial deviation from the PHA Plan to exclude the following RAD-specific items:

a. The decision to convert to either Project Based Rental Assistance or Project Based Voucher Assistance;
b. Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
c. Changes to the construction and rehabilitation plan for each approved RAD conversion; and
d. Changes to the financing structure for each approved RAD conversion.

Attachment 1E - House Rules: Addendum A – Resident Procedural Rights

The information provided below must be included as part of the House Rules for the associated project and evidence of such incorporation may be requested by HUD for purposes of monitoring the program.

a. **Termination Notification**. HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects converting assistance under RAD, that supplement notification requirements in regulations at 24 CFR § 880.607 and the Multifamily HUD Model Lease.
   - **i.** *Termination of Tenancy and Assistance*. The termination procedure for RAD conversions to PBRA will additionally require that Project Owners provide adequate written notice of termination of the lease which shall not be less than:
     1. A reasonable period of time, but not to exceed 30 days:
     2. If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
        - **a.** In the event of any drug-related or violent criminal activity or any felony conviction; or
        - **b.** 14 days in the case of nonpayment of rent.
   - **ii.** *Termination of Assistance.* In all other cases, the requirements at 24 CFR § 880.603, the Multifamily HUD Model Lease, and any other HUD multifamily administrative guidance shall apply.

b. **Grievance Process.** In addition to program rules that require that tenants are given notice of covered actions under 24 CFR Part 245 (including increases in rent, conversions of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant paid utility allowances), HUD is incorporating resident procedural rights to comply with the requirements of section 6 of the Act. RAD will require that:
   - **i.** Residents be provided with notice of the specific grounds of the Project Owner's proposed adverse action, as well as their right to an informal hearing with the Project Owner;
   - **ii.** Residents will have an opportunity for an informal hearing with an impartial member of the Project Owner's staff within a reasonable period of time;
   - **iii.** Residents will have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the Project Owner as the basis for the adverse action. With reasonable notice to the Project Owner, prior to hearing and at the residents' own cost, resident may copy any documents or records related to the proposed adverse action; and

iv. Project Owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action, and the evidence the Project Owner relied on as the basis for the adverse action.

The Project Owner will be bound by decisions from these hearings, except if the:

i. Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing.

ii. Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

If the Project Owner determines that it is not bound by a hearing decision, the PHA must promptly notify the resident of this determination, and of the reasons for the determination.

SECTION II: MODERATE REHABILITATION PROJECTS

2.1 Purpose

This Section provides RAD program instructions to owners of Section 8 Moderate Rehabilitation projects, including Single Room Occupancy (SRO) dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act. Collectively, these projects will be referred to as "Mod Rehab" projects unless otherwise noted.

HUD has consolidated the process and requirements for all Mod Rehab conversions under the Second Component. Those projects that are currently being processed under the First Component of this Notice will be allowed to switch and be processed under the Second Component of this Notice. This consolidation allows owners to participate in RAD non-competitively and provides for a simpler presentation of conversion options. In addition, while the Second Component does not have the broad statutory waiver authority that the First Component does, the Second Component does provide that participation is subject to the "requirements established by the Secretary." HUD has used this authority to develop alternative requirements, and the ability to waive purely regulatory provisions in order to fulfill the purposes of the Demonstration.

2.2 General Program Description

Owners may choose between two forms of long-term Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). Conversions may be prospective (when an owner still has an active Mod Rehab contract at the project) or retroactive (when the Mod Rehab contract has already expired at the project). Owners pursuing a prospective conversion may choose from either a PBV contract or a PBRA contract. Owners who are pursuing a retroactive conversion will be limited to PBV conversions only.

A. PBV Conversions. An owner may request to enter into a Section 8 PBV HAP contract with an eligible PHA to administer the contract. With the exception of provisions identified in this Notice (as well as retained flexibilities of Moving to Work (MTW) agencies, all regulatory and statutory requirements of the PBV program in 24 CFR Part 983, and applicable standing and subsequent Office of Public and Indian Housing guidance, including related handbooks, shall apply.

1. **Prospective Conversions**. Projects are eligible for prospective conversions if the Mod Rehab contract has not yet expired or been terminated. In a prospective conversion, the project will receive PBV assistance in lieu of the TPV assistance that would have been otherwise provided to project residents. Prospective conversions may be suspended in a particular fiscal year if HUD does not have sufficient TPV appropriations to fund all of the demands on the TPV account due to conversions.

Owners must comply with the resident consultation procedures described in this Notice and must submit a request to HUD to confirm that the PHA that currently administers the Mod Rehab contract is willing to administer the PBV contract. If that PHA declines to consent, HUD will make a reasonable effort to find a PHA with operational jurisdiction willing to enter into a PBV contract with the owner.

Following resident consultation and submission and approval of a Financing Plan, the project will close when any new financing closes, the Mod Rehab contract is terminated (or expires), and the new HAP contract is executed. The PHA that has agreed to administer the PBV HAP contract will have the vouchers added to its Annual Contributions Contract (ACC).

2. **Retroactive Conversions**. Where contract expiration has occurred and TPVs or EVs have already been issued to project residents or where TPVs or EVs have been requested and processed for project residents (i.e., the PHA's ACC has been amended reflecting the new increment of TPVs or EVs), projects may be eligible for a retroactive conversion to PBV assistance. The contract expiration and issuance of EVs or TPVs must have occurred on or after October 1, 2006.

   Only the units occupied by eligible low-income residents that received TPV or EV assistance at the time of contract expiration or termination, who continue to reside in the project, and who consent to the conversion may be assisted under the PBV HAP contract. For retroactive conversions, as required under the RAD statute, the "Administering PHA" must approve a request for a retroactive conversion to a PBV HAP contract. If the actively Administering PHA does not consent to long-term conversion of the contract to PBV assistance, the project is not eligible for retroactive conversion.

B. PBRA Conversions. An owner may request to enter into a 20-year Section 8 PBRA HAP contract (subject to annual appropriations); the HAP contract will be executed by HUD's Office of Housing. PBRA contract rents will be determined based on the project's current contract rent levels and will be adjusted by an OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term and the requirements of section 2.6 D. At expiration of the initial contract, the owner is eligible to renew the contract under section 524 of MAHRAA, subject to the terms and conditions applicable at the time of renewal and to the availability of appropriations for each year of such renewal. Regulatory requirements of the PBRA program in 24 CFR Part 880, with the exception of provisions identified in this Notice, and applicable standing and subsequent Office of Housing guidance, including handbooks, shall apply.

2.3 Eligibility

Owners of Mod Rehab projects that meet all eligibility requirements described below may submit a Financing Plan to convert assistance under the Second Component of RAD.

2.3.1 Eligible Owners

A. Compliance with HUD and the PHA. Owners must be in good standing with HUD and the PHA. The owner must have a history of compliance with program and contractual requirements, including maintaining units in a decent, safe, and sanitary manner. If a proposed conversion is in the context of an acquisition, the Administering PHA must consent to the assignment of the contract in accordance with the provisions of the Mod Rehab HAP contract. The purchaser must provide evidence of successful experience owning and operating HUD or other affordable multifamily housing properties.

B. Fair Housing and Civil Rights Compliance for PBV and PBRA Conversions. An owner must be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a). An owner will not be eligible to participate in RAD if it has any of the charges, cause determinations, lawsuits, or letters of findings referenced in sub-paragraphs (1)-(5) below against the owner, its transferees, proposed development partners, or sub- recipients, unless they have been resolved to HUD's satisfaction.:

4. A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status;

5. A Fair Housing Act lawsuit filed by the Department of Justice (DOJ) alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. § 3614(a);

6. A letter of findings or lawsuit filed by DOJ identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974;

7. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation or gender identity; or

8. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

Applicants may still be eligible for conversion under RAD if such a charge, cause determination, lawsuit, or letter of findings referenced in subparagraphs 1, 2, 3, 4, or 5 above has been resolved to HUD's satisfaction. However, if the matter has not been so resolved, then the applicant is ineligible to participate in RAD.

HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to current compliance with a:

- Voluntary compliance agreement (VCA) signed by all the parties;
- HUD-approved conciliation agreement signed by all the parties;
- Conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Consent order or consent decree; or
- Final judicial ruling or administrative ruling or decision.

Additionally, an owner may be required to demonstrate that its proposed activities under RAD are consistent with any applicable VCA, conciliation agreement, consent order or consent decree, final judicial ruling, or administrative ruling or decision. HUD may terminate an approval if it determines that the terms of the conversion would be inconsistent with fair housing or civil rights laws or a fair housing or civil rights court order, settlement agreement, or VCA. Furthermore, if a project is subject to a VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision, it must ensure that the ownership agreement or other appropriate document makes the new owner subject to the remedial provisions contained in such documents. It is the owner's obligation to disclose such VCAs, etc., to the prospective owner. The extent of the owner's responsibilities, including whether the responsibilities are appropriately limited to the development, maintenance, or operation of the particular RAD project, must be appropriately documented. The owner will follow any requirements for the modification of such VCAs, etc. If HUD is a party to the VCA, etc., the RAD project will not close without HUD's express approval of the transfer of obligations to the new owner.

2.3.2 Eligible Properties and Units

A. Eligible Properties. A project is eligible for a prospective conversion if the project is currently receiving assistance through a Mod Rehab contract that is either in its initial or renewal term. For retroactive conversions, a project is eligible to convert if the project previously had a Mod Rehab contract that expired or terminated on or after October 1, 2006. Properties that were previously assisted under a Mod Rehab contract where the HAP contract

has been terminated by the Administering PHA due to non-compliance are ineligible to participate under this Notice.

HUD will permit PHAs and owners to mutually agree to terminate the Mod Rehab contract as necessary to enter into the new PBV or PBRA contract. However, so as not to create accelerated pressure on the TPV account, HUD will only approve the early termination of Mod Rehab contracts that are still under their original 10 year term if the project is converting to PBRA.

B. Physical Condition. The owner must provide evidence that the project meets the minimum threshold requirements of "decent, safe, and sanitary" housing. An owner must submit the project's most recent HQS or REAC score as evidence that the project meets this minimum threshold requirement.

For PBV conversions, unless provided explicit approval by HUD, the converting units must qualify as existing housing in order to be selected for conversion under the Second Component of RAD. The PHA must ensure that the units substantially meet HQS, as defined in the PHA's Section 8 administrative plan. Prior to entering into a PBV HAP contract, the Administering PHA will inspect the units proposed for conversion to ensure that the units fully comply with HQS. The HAP Contract will not be executed until and unless the converting units fully meet HQS.

C. Eligible Units. For prospective conversions, all units on the original Mod Rehab contract are eligible for conversion under RAD. For PBV conversions, this includes only units that are occupied at the time of the expiration or termination of the Mod Rehab Contract. For retroactive conversions, eligible Mod Rehab contract units are those that are occupied at the time of the RAD conversion by households who received TPV assistance as the result of the expiration or termination of the contract.

Please note that for PBV conversions, the PHA makes the final determination of eligibility to be included on the PBV HAP; this includes a determination that the household is income eligible for the PBV program and that the tenant's total payment (TTP) of rent does not exceed the contract rent at the project.

2.4 Conversion Planning Requirements

A. Capital Needs Assessment (CNA).[79] Except as noted below, each project selected for award will be required to perform a detailed physical inspection to determine both short-term rehabilitation needs and long-term capital needs to be addressed through a Reserve for Replacement Account. A CNA must be submitted with the Financing Plan.

- **Transition to CNA eTool.** HUD is in the process of developing a standardized CNA eTool for multifamily housing that will also be required of all RAD transactions. This new CNA eTool will be required as part of any RAD Financing Plan (or application for FHA Firm Commitment) submitted six months after publication of the CNA eTool. Any CNA submitted prior to this date must follow the guidance under Revision 1 of this Notice.[80]
- **Contractor Qualifications.** The CNA must be completed by a qualified, independent third-party professional as required in the appropriate HUD guidance (the RAD PCA or the CNA eTool).
- **Exemptions**. HUD will exempt the following transaction types from CNA requirements, with the exception of preparing the 20 Year Reserve Schedule and the Utility Consumption Baseline (UCB):
    a. For non-FHA transactions,
        i. Projects built within the last 5 years;
        ii. Projects that qualify as new construction or "substantial rehabilitation" (generally defined as meeting Level 3 Alterations per the 2012 International Building Code for Existing Buildings); or
        iii. Projects that will be financed with Low Income Housing Tax Credits ("tax credits").
    b. For FHA transactions, Owners should follow applicable requirements in the MAP Guide governing exemptions.

  Exemptions should be confirmed with HUD. There are no transactions exempt from completing the portions of the Excel Tool (existing RAD PCA or the CNA eTool) necessary for the appropriate Tool to produce the 20 Year Reserve Schedule and no transactions are exempt from completing the appropriate utility consumption tool (either the existing RAD PCA or the CNA eTool).

[79] PIH Notice 2012-32 REV-1 used the terminology "Physical Condition Assessment," or PCA. This terminology has been changed with this revised Notice to "Capital Needs Assessment," or CNA.

[80] The PCA tool and Statement of Work described in Revision 1 can be accessed at www.hud.gov/rad.

- **Utility Consumption Baseline.** For any CNA submitted six months after publication of the CNA eTool, the Owner must submit the Statement of Energy Performance or the Statement of Energy Design and Intent (SEDI), as applicable for New Construction or Gut Rehabilitation, or Statement of Energy Performance (SEP) for other levels of rehabilitation, from the Environmental Protection Agency's Portfolio Manager for UCB compliance. Both must be prepared to the standards cited in the MAP Guide, regardless of source of financing.

B. Green Building and Energy Efficiency. For all projects retrofitted under a RAD conversion, if systems and appliances are being replaced as part of the initial repairs identified in the approved Financing Plan, at a minimum Owners shall complete replacements with Energy Star®, WaterSense® or Federal Energy Management Program (FEMP)-designated products and appliances.[81] Additionally, Owners shall utilize the most energy- and water-efficient options that are financially feasible and that are found to be cost-effective by the CNA described above. The CNA will provide detailed analyses of energy-saving alternatives and other green building components, including payback and cost/saving analyses. Owners are strongly encouraged, for all RAD conversion projects, to scope rehabilitation and ongoing replacements and operations that utilize the components that the CNA indicates make financial sense, and other components that the CNA indicates will improve indoor air quality and/or reduce overall environmental impact where those components have little or no cost premium, consistent with the principles and best practices of the green building industry.

C. Financing. An owner's Financing Plan (as described in Section 2.8.4 below) must demonstrate the availability of resources adequate to address all current and ongoing capital needs identified in the CNA.

D. Environmental Reviews. Under Federal environmental review requirements, proposed RAD projects are subject to environmental review. Environmental documents are required to be submitted as part of the applicant's overall Financing Plan. A Financing Plan cannot be approved by HUD if the project plan does not meet environmental review requirements. Please see Attachment 2A for a discussion of the environmental review requirements applicable to RAD transactions.

E. Relocation and Right to Return. The right to remain or return applies to both PBV and PBRA. Under RAD, any resident residing in the property prior to conversion has a right to

[81] For Energy Star®, see http://www.energystar.gov/. For WaterSense®, see http://www.epa.gov/watersense/. For FEMP, see http://www1.eere.energy.gov/femp/.

remain in, or in the event that rehabilitation will result in the relocation of residents, return to an assisted unit at the Covered Project. Any relocation as a result of acquisition, new construction, or rehabilitation is subject to requirements of the Uniform Relocation Act (URA). Permanent involuntary displacement of residents may not occur as a result of a project's conversion of assistance. If proposed plans for a project would preclude a resident from returning to the Covered Project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the Owner must alter the project plans to accommodate the resident in the converted project. If a resident agrees to such plans, the Owner must secure informed, written consent from the resident to receive permanent relocation assistance and payments consistent with URA and acknowledgement that acceptance of such assistance terminates the resident's right to return to the Covered Project. In obtaining this consent, Owners must inform residents of their right to return, potential relocation, and temporary and permanent housing options at least 30 days before residents must make a decision. The Owner cannot employ any tactics to pressure residents into relinquishing their right to return or accepting permanent relocation assistance and payments.

F. Accessibility Requirements. Federal accessibility requirements apply to all conversions. The laws that most typically apply to rehabilitation include Section 504 of the Rehabilitation Act of 1973(Section 504), and in some cases, the Americans with Disabilities Act (ADA). Although the requirements of each of these laws are somewhat different, Owners must comply with each law that applies. Section 504 and the ADA apply to alterations and substantial rehabilitation as defined in 24 CFR 8.22 and 8.23 and to existing, unaltered facilities (24 CFR 8.24). See also 28 CFR 35.151(b) and 28 CFR 36.

When a project's rehabilitation meets the definition of a "substantial alteration" under 24 CFR Part 8.23, a PHA must comply with all applicable accessibility requirements under Section 504. For some projects, "other alterations" are made over time. If other alterations, considered together, amount to an alteration of an entire dwelling unit, the entire dwelling unit shall be made accessible.

Owners are encouraged to use universal design principles, visitability principles, and active design guidelines in planning any construction, wherever feasible. However, adherence to universal design principles does not replace compliance with the accessibility requirements of Section 504, the ADA, and the Fair Housing Act.

G. Site Selection and Neighborhood Standards. Where an owner is planning to convert assistance under RAD, the owner must comply with all applicable site selection requirements, including those of the PBV 24 CFR § 983.57 and Appendix III of this Notice for PBRA, and of the Fair Housing Act and Title VI of the Civil Rights Act of 1964,

including implementing regulations at 24 CFR § 1.4(b)(3), and of Section 504 of the Rehabilitation Act of 1973, including implementing regulations at 24 CFR § 8.4(b)(5).

H. Change in Unit Configuration. Owners may change the unit configuration following conversion (e.g., combine SRO units into efficiencies or one-bedroom apartments, however the Owner must ensure that the change in bedroom distribution will not result in the involuntary permanent displacement of any resident (see Section 2.4.E on Relocation and Right to Return) and will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status. For SRO projects that are converting, such changes will require a letter of support from the Continuum of Care (CoC) in which the project participates. See Section 2.7(B) of this Notice.

I. Transfer of Assistance. In order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, there are three scenarios under which assistance converted pursuant to RAD may be transferred off of the existing parcel of land (for the purposes of this paragraph, transfer of assistance does not include transfers to an adjacent site): (1) where the Owner requests assistance to be transferred as part of the conversion from Converting Project to Covered Project; (2) post-conversion where a Project Owner requests a partial or full transfer of assistance, or (3) where, as a result of a default of the Use Agreement or HAP Contract, HUD terminates the HAP Contract.

HUD will assess that the transfer does not occur in neighborhoods with highly concentrated poverty based on the criteria formulated for transfers under 8(bb) of the Act.[82] Further, HUD will consider whether conversion on-site is economically non-viable; whether the Converting Project is physically obsolete or severely distressed; how the transfer would affect the Converting Project's residents; and all applicable fair housing and civil rights requirements.[83] Owners are strongly encouraged to request HUD approval of the proposed site prior to submission of the Financing Plan.

[82] The analysis can be found in Section VIII B.1 of H-2014-14 "Transferring Budget Authority of Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act." A copy of the criteria is available at www.hud.gov/rad. At a minimum, projects that are located in neighborhoods that meet these criteria will meet the requirement under this Notice that transfers not occur to neighborhoods of concentrated poverty. HUD may modify these criteria as appropriate to fit the purposes of RAD and will post the applicable criteria at www.hud.gov/rad.

[83] Any transfers of assistance must comply with requirements detailed in this Notice on Site and Neighborhood Standards (see Section 2.4G), Changes in Unit configuration (see Section 2.4H), and Accessibility requirements (see 2.4F). For PBV conversions, PHAs will be responsible for this determination.

After initial conversion, a Project Owner may only request a transfer of assistance after 10 years from the effective date of the initial HAP Contract (unless a transfer is needed sooner as a result of unforeseen events such as a natural disaster). If applicable, any lender and/or investor of the Converted Project, or the PHA, must approve the transfer of the assistance.

2.5 Special Provisions Affecting Conversions to PBVs

Certain PBV statutory provisions have been waived or altered consistent with the authority Congress has provided for Second Component conversions. In these cases, HUD also notes the corresponding regulatory provisions that are waived or altered. Additionally, HUD has waived certain regulatory provisions (that are not statutorily based) and established alternative requirements in order to prevent displacement of certain residents and otherwise serve the purposes of this Demonstration. All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 and section 8(o)(13) of the Act shall apply, including resident choice, environmental review, and fair housing requirements.

The modified or alternative requirements that pertain solely to PBV conversions under the Demonstration are described below.

A. Length of Contract. By choosing to participate in the RAD program, the PHA and owner agree to a 15-year initial term for the HAP. Consistent with requirements of 24 CFR 983.205(b), a PHA may agree to enter an extension of the initial 15-year HAP contract term with the Owner at any time during the initial term. The extension may be for a maximum period of 15 additional years. The PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding.

B. Maximum Amount of PBV Assistance. Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which is 20 percent of the amount of budget authority allocated to a PHA under the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6. As a result, a PHA that is administering RAD PBV assistance does not take the Budget Authority (BA) attributable to the RAD PBV into consideration when calculating the 20 percent limitation for any non-RAD PBV actions. In other words, the BA committed to RAD PBV is excluded from both the numerator and the denominator when calculating the percent of available BA that may be project-based for non-RAD PBV.

C. Cap on the Number of PBV Units in Each Project. The 25 percent limitation on the number of units that may receive PBV assistance in a project is increased to 50 percent under the Demonstration. An assisted household cannot be involuntarily displaced as a result of this

provision i.e., eligible assisted households in units that exceed the cap must be provided tenant-based vouchers, which they may use to remain at the project or move to a new unit.[84] An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families eligible to receive supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).[85]

For purposes of RAD, HUD is modifying the requirement that a family must actually receive services to reside in the excepted unit. Households living in units subject to a proposed RAD conversion must instead be offered the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household will not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR§§ 983.56, 983.257(c), and 983.261(a) and (d).

To implement these provisions, HUD is providing the above alternate requirements for section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), and 983.261(a) and (d) for initial occupancy in the RAD converted project.

D. **Site selection –Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c)(2)**. HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

E. **Owner Proposal Selection Procedures, 24 CFR § 983.51.** Projects are selected in accordance with program requirements detailed in this Notice. HUD is waiving 24 CFR § 983.51. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in this Notice.

[84] Residents may, however, be temporarily relocated to facilitate rehabilitation or conversion. In such cases, any resident that may need to move out of the project to facilitate rehabilitation or construction will have a right to return.

[85] It is not required that the services be provided at or by the project (a third-party organization may provide the supportive services).

F. Limitation on Screening of Residents upon conversion. At conversion, current households are new admissions into the PBV program. However, as a condition of participation in the Demonstration, PHAs may only screen households for the mandatory screening requirements established by statute and may not apply any other discretionary screening requirements. PHAs must modify their Administrative Plan to implement this alternative requirement.

G. Initial Rents Initial rents for PBV contracts are determined by the PHA, in accordance with 24 CFR 983 Subpart G. Such rents generally cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR 983.301 for program requirements on establishing initial rents).

H. Re-Determined Rents. The rent to owner will be redetermined in accordance with 24 CFR 983.302. The rent to owner may be redetermined at the owner's request for a rent increase at the annual anniversary date of the HAP contract. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR. Re-determined rents may result in a downward adjustment in certain circumstances, however, PHAs may elect in the HAP contract to establish the initial contract rent as the rent floor as described in 24 CFR 983.30(c)(2).[86]

I. Under-Occupied Units. Otherwise-eligible households of two or more individuals occupying a unit determined by the PHA under HUD regulations to be under-occupied shall, upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-size unit becomes available in the project. This protection also extends to single elderly and disabled individuals regardless of the unit size. When an appropriate-size unit becomes available, the family living in the oversized unit must move to the appropriate-size unit within a reasonable time, as determined by the PHA . If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate-size unit is available. If or when a smaller-size unit becomes available, the family must move to the smaller-size unit. In order to effectuate this provision, HUD is waiving 24 CFR §983.259(b)(1) & (2) and (c).

[86] The rent to owner may fall below the initial contract rent: 1) to correct errors in calculations in accordance with HUD requirements; 2) if additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55 (Prohibition of excess public assistance); or 3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

For households consisting of single individuals who are not elderly or disabled, the under-occupied unit cannot be included in the PBV HAP contract. The PHA shall provide an enhanced voucher (at Mod Rehab projects) or a tenant protection voucher (at Mod Rehab SRO projects) to such individuals, who will have the statutory right to remain in the project (see PIH Notice 2001–41 for enhanced voucher requirements and PIH Notice 2008–12 for guidance on enhanced voucher requirements for overhoused households). If the resident moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD, since the funding to support the converted unit is no longer available.

J. Davis-Bacon. For those projects with 9 or more assisted units where rehabilitation or construction will occur, Davis-Bacon will apply. For more information addressing Davis-Bacon and RAD Second Component transactions, please see PIH Notice entitled 'Applicability of Davis-Bacon Labor Requirements to Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program – Guidance,' 80 Fed. Reg. 12511, March 9, 2015.

2.6 Special Provisions Affecting Conversions to PBRA

For Mod Rehab projects converting assistance to PBRA under the Demonstration, 24 CFR Part 880, Section 8 Housing Assistance Payments Program for New Construction (and applicable standing and subsequent Office of Housing guidance[87]) will apply, except for the provisions listed below. Where applicable, reference is made to the affected statute and/or regulation. For additional background purposes, HUD has provided Appendix I, which is a copy of the existing Part 880 regulation with the provisions stricken that will not apply to covered projects.

A. **Length of Contract.** Pursuant to the RAD statute, covered projects shall have an initial HAP term of 20 years. Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, will not apply.

B. **Contract Renewal.** Pursuant to the RAD statute, after the initial term of the HAP contract, the owner is eligible for renewal of the contract under section 524 of MAHRAA, subject to the terms and conditions applicable at the time of renewal and the availability of appropriations for each year of such renewal.

C. **Initial Contract Rent Setting**. No additional or incremental funding is associated with this conversions to PBRA. Based on the requirements of section 8(c)(1) of the Act, the initial

[87] Examples of Office of Housing guidance include handbooks such as "Occupancy Requirements of Subsidized Multifamily Housing Programs" (4350.3) and "Multifamily Asset Management and Project Servicing" (4350.1).

contract rents will be capped at the lesser of: (a) current contract rent or (b) 120 percent of the applicable Section 8 FMR minus any utility allowance.[88] Current contract rent refers to the rent schedule contained in the active Mod Rehab contract. However, where a decrease in the number of assisted units will result from a reconfiguration (i.e., combination) of units, the project will retain the subsidy attributable to those units and the contract rents for the dwelling units will increase by a share of the foregone subsidy and per unit rents will be increased subject to the 120% of FMR cap.[89]

D. **Method of Adjusting Contract Rents.** Contract rents will be adjusted by HUD's OCAF at each Anniversary of the HAP Contract, subject to (a) the availability of appropriations for each year of the initial term of the HAP contract, and (b) the Maximum Rent, as defined below.

The Maximum Rent is the higher of 120% of FMR (less utility allowances) or the market rents, as demonstrated by an RCS procured and paid for by the Project Owner. Where an RCS has been used to justify an OCAF adjusted rent that exceeds 110% of the FMR, the RCS will remain valid for five years, the Maximum Rent will not apply for the next four annual rent adjustments, and rents will be adjusted only by the OCAF.

E. **Distributions.** Converted projects will not be subject to any limitation on distributions, contingent on the availability of surplus cash as determined by year-end audited or certified financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205, which, among other provisions, establishes certain limitations on distributions for profit-

[88] HUD's annual publication of FMRs notes that FMRs for single-room occupancy units are 0.75 times the zero bedroom (efficiency) FMR.

[89] For example, a ten-unit SRO property has rents of $500 per month, giving the project a total monthly gross rent potential of $5,000. The Project Owner currently receives $2,000 per month in tenant rent ($200 per unit) and $3,000 per month in HAP subsidy ($300 per unit). The Project reconfigures the ten SRO units into six efficiencies, thus eliminating four of the ten SRO units. HUD will take the $1,200 per month ($200 per remaining unit) in HAP subsidy that the Project Owner would have received from the four SRO units that were eliminated as a result of the reconfiguration and increase the contract rents for the remaining six efficiencies by that amount, subject to the 120% of FMR cap. Thus, the initial contract rent for each of the six efficiencies becomes $700 a month ($500 plus $200), or 120% of FMR if $700 exceeds the FMR.

HUD will post a tool on HUD's website that allows Owners to estimate the contract rents that would result from a reconfiguration. However, Owners should contact HUD at RAD2@hud.gov to get a final determination on resulting rents due to a reconfiguration

motivated owners and authorizes HUD to require not-for-profit and certain for-profit owners to establish a residual receipts account.

F. **Limitation on Rescreening of Residents upon conversion.** At conversion, current residents are considered new admissions into the PBRA program. However, Project Owners may only rescreen these households for the mandatory screening requirements established by statute (see, e.g., 24 CFR §§ 5.854, 5.856, and 5.857) and may not apply any discretionary screening requirements (see, e.g., 24 CFR §§ 5.852 and 5.855).

G. **Davis Bacon.** Davis-Bacon applies to Second Component PBRA conversions to the same extent it would apply if the conversion were a PBV conversion. See PIH Notice entitled "Applicability of Davis-Bacon Labor Requirements to Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program – Guidance," in 80 Federal Register 12511, March 9, 2015.

H. Under-occupied Units Converting to PBRA. If at the time of conversion, an eligible family assisted under the HAP contract is occupying a unit that is larger than appropriate because of the family's composition, the family will be permitted to continue to occupy the unit until such time as an appropriate-sized unit becomes available in accordance with 24 CFR § 880.605. When an appropriate-sized unit becomes available, the family living in the oversized unit must move to the appropriate-sized unit within a reasonable amount of time. This protection to single persons who are elderly or disabled, regardless of the unit size. Residents of under-occupied units that are single individuals who are not elderly or disabled cannot be included in the HAP contract.

I. Physical Inspection for PBRA. Under current regulations at 24 CFR Part 5 Subpart G, a unit covered under a PBRA HAP contract must meet the Uniform Physical Condition Standards (UPCS) before assistance can be paid on behalf of a household. Under RAD, however, only after the PBRA HAP contract is executed, HUD will order a REAC inspection of the project to ensure conditions meet the UPCS. HUD is waiving and establishing this alternative requirement to 24 CFR Part 5 Subpart G.

J. Choice Mobility. HUD seeks to provide all residents of covered projects with viable Choice-Mobility options. Owners that are applying to convert the assistance of a project to PBRA are required to provide a Choice-Mobility option to residents of covered projects (through a voucher agency willing to provide vouchers to covered projects) in accordance with the following:

1. **Resident Eligibility.** Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of (a) 24 months from date of execution of the HAP or (b) 24 months after the move-in date.

2. **Voucher Inventory Turnover Cap.** Recognizing the limitation on the availability of turnover vouchers from year to year, the voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if implemented the voucher agency must create and maintain a waiting list in the order in which the request from eligible households were received.
3. **Project Turnover Cap.** Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the project, in any year, an owner may limit the number of Choice-Mobility moves exercised by eligible residents to 15 percent of the assisted units in the project. (For example, if the project has 100 assisted units, the owner could limit the number of families exercising Choice-Mobility to 15 in any year but not less than 15). While a voucher agency is not required to establish a project turnover cap, if implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

HUD recognizes that not all Mod Rehab Owners will have access to sufficient vouchers to support this effort. HUD will provide voucher agencies that make a commitment to converting properties bonus points under the Section Eight Management Assessment Program (SEMAP) for deconcentration.

Project owners should include in their Financing Plan their intention to provide Choice Mobility at the project and submit all required documentation. Additionally, HUD will grant a good-cause exemption for no more than 10 percent of units in the Demonstration. All Mod Rehab owners are eligible to request a good-cause exemption in their Financing Plan, unless the project owner administers, directly or through an affiliate, a Housing Choice Voucher program.

2.7 Special Provisions Affectng Conversion of SROs

As the purpose of the conversion of SRO assistance to assistance under a PBV or PBRA contract is to place the properties on a more sustainable footing while retaining and preserving the original purpose of SRO properties to serve the homeless, the following requirements apply specifically to SRO conversions:

A. **Homeless preference.** All properties converted shall follow procedures under the PBV and PBRA programs to establish an admissions preference for converted properties for homeless individuals or families. The preference for the homeless must apply to individuals or families that fall within the definition for homeless established by the HEARTH Act, unless the CoC

provides a letter of support to cover a homeless population not included in that definition.[90] For PBV, the preference shall be established by the PHA. For PBRA, the Owner shall establish the preference consistent with 24 CFR § 5.655(c)(5), Housing Handbook 4350.3 REV-1, Chapter 4; and Housing Notice 2013-21 (July 15, 2013). The preference shall not apply to current residents because these residents will generally continue to be assisted after conversion, but will otherwise be an absolute preference with higher priority than any other preference that the owner adopts (for PBRA) or that the PHA establishes (for PBV). For PBV, the PHA must establish the preference in their Administrative Plan, pursuant to 24 CFR 982.54. For PBRA, the owner must establish the preference through their Tenant Selection Plan as described in Housing Notice 2013–-21. This requirement shall apply for the term of the contract and any renewal contract.[91]

B. **Consultation with Continuum of Care (CoC).** Owners must meet with their CoC to explain the conversion of assistance, project rehabilitation plans, the ongoing requirement for a preference for homeless individuals or families, to discuss coordinated entry for new homeless participants, and any plans to modify the means by which the project will provide housing for homeless individuals or families (e.g., reconfiguring SRO units into efficiency or 1-bedroom units, or using a broader definition of homelessness than established by the HEARTH Act). To the extent that project plans entail: 1. A reconfiguration of units or 2. Serving a population not covered under the HEARTH Act, owners must secure a letter of support from the CoC for these actions.

C. **Screening Requirements.** Prior to screening, to identify new homeless participants for converted SRO properties, owners are encouraged to follow the CoC's established coordinated entry process.

A PHA administering the PBV contract for a converted SRO project may establish distinct admission screening requirements from those in place for its HCV program. Specifically, the PHA may choose not to apply discretionary screening criteria (see in particular 24 CFR 982.552 and 24 CFR 982.553) to admission policies for converting SRO properties. If the PHA chooses to exercise this discretion, it must have a consistent policy in its administrative plan with respect to RAD SRO PBV projects. In administering its regular PBV program, PHAs generally may not choose to apply different screening criteria within its HCV program. HUD is authorizing this limited exception for SRO conversions under RAD. (Project

[90] The definition of homeless established by the HEARTH Act can be found at: https://www.hudexchange.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf

[91] The intent of the preference is simply to ensure that the group that these conversions are designed to benefit (namely homeless individuals and families) are the recipients of converted SRO assistance.

Owners under PBRA already have the discretion to apply distinct screening requirements for any individual assisted project).

The Administering PHA or Project Owner must apply **all** mandatory screening criteria to homeless individuals and families (e.g., sex offender screening under 24 CFR 982.553(a)(2)(i) or 24 CFR § 5.856). All discretionary admission policies must be applied to all applicants uniformly. Administering PHAs and Project Owners should be aware that some discretionary criteria can have the effect of screening out homelessness individuals or families, who may be more likely to have past convictions, past evictions, or previous debts. HUD strongly encourages Administering PHAs and Project Owners to carefully consider their discretionary admission policies and ensure that they are free of such barriers. **Further, as a condition of participation in RAD, Administering PHAs and Project Owners are prohibited from adopting discretionary screening requirements that have the effect of circumventing the homeless preference described above such that no homeless individuals or families would be eligible for admission.**

D. **Reporting Requirements.** In order to maintain data on the project's ongoing housing of formerly homeless persons, the project will continue to be required to report under the CoC's Homeless Management Information System (HMIS) and the annual Housing Inventory Count (HIC). Collaboration with the CoC will be critical in meeting these requirements.

2.8 Conversion Requirements

Conversion of a Mod Rehab project will generally entail:

- An initial submission of interest
- Resident consultation
- CoC consultation (for SROs only)
- Selection of PHA (PBV conversions only)
- Financing Plan submission and approval
- Closing of financing and HAP execution

2.8.1 Initial Submission of Interest to HUD

Prior to submitting a Financing Plan, an owner must make an initial submission to HUD indicating the owner's interest in conversion under this Notice. The submission must include:

- Project name;
- Project address;
- Owner's name;
- Owner's physical address;
- Owner's contact information;

- The Mod Rehab HAP contract number(s);
- A copy of the current HAP contract(s);
- Total number of units covered under the Mod Rehab HAP contract(s), by bedroom size;
- If reconfiguring, the proposed post-conversion unit configuration;
- Name of PHA currently administering the Mod Rehab contract(s);
- A statement of known environmental conditions; and
- Estimated submission date of Financing Plan.

HUD has developed a sample Excel template owners can use to make this initial submission.[92] The initial submission must be submitted electronically to RAD2@hud.gov including both an Excel and signed PDF copy.

HUD will provide the owner a confirmation of successful submission. HUD will use the initial submission in order to:

1. Provide owners with access to the RAD Resource Desk, where owners will upload and submit the required components of the Financing Plan (see Section 2.8.3); and
2. For PBV conversion, initiate the process to identify a PHA willing to administer the new PBV contract.
3. For PBRA conversion, provide owners with a letter that includes the PBRA rents in accordance with Section 2.6.C.

There is no fee associated with the initial submission, and there is no cap on the number of projects for which an owner may submit. HUD will take no adverse action against an owner who makes an initial submission, but does not later submit a Financing Plan.

2.8.2 PHA Administration of the PBV Contract

A. Selection of a PHA. For PBV conversions only, HUD will need to identify a PHA able and willing to administer the PBV contract, and the PHA will need to accept the responsibility. For prospective conversions, HUD will generally select the PHA that currently administers the Mod Rehab contract, unless, based on documented capacity concerns, HUD finds the PHA to be unfit for this role. In such cases, HUD will make a reasonable effort to find a PHA, in consultation with the owner, with operational jurisdiction willing to enter into a PBV contract with the owner for eligible units at the project. For retroactive conversions, only the PHA whose ACC the vouchers are under may administer the PBV contract. Within 30 days of the initial submission, HUD will identify an eligible PHA and request that the PHA provide written consent to administer the PBV contract or to decline the request

[92] A sample Initial Submission template is available at www.hud.gov/RAD.

within 30 days of HUD's request. HUD will communicate the PHA's response to the owner. If no PHA consents to enter into the PBV contract, the project cannot convert to PBV, and the owner may consider conversion to PBRA instead. Applicants must wait until a PBV HAP contract administrator has been identified before submitting their Financing Plan, as the PHA who will act in this capacity must be identified in that plan.

B. Role of Administering PHA. The PHA that agrees to administer the PBV contract is responsible for administrative duties described in 24 CFR 983 and this Notice. Prior to conversion, the PHA's key roles will include:

a. **Pre-Selection Inspection.** The PHA must ensure that the units substantially meet HQS, as defined in the PHA's Section 8 administrative plan.. The converting units must qualify as existing housing in order to be eligible.
b. **Initial rents.** See Section 2.5.G.
c. **Income eligibility.** The PHA will determine which families are eligible for assistance under a PBV contract.
d. **HQS inspections.** The project must fully meet HQS prior to execution of the HAP contract, and must substantially meet HQS prior to being selected for the PBV program.

2.8.3 Resident Notification and Consultation

A. Resident Notification – All conversions.

For all conversions, an owner is required to notify residents in writing of its intent to participate in the Demonstration and to hold two meeting with residents.[93] The Notification letter must

1. be delivered to all project residents, including each Mod Rehab–assisted household, as well as posted in the project office or other common area, and at no fewer than three prominent locations on the project site;
2. include the date and time of resident briefings;
3. include an estimated (for prospective) or actual (for retroactive) date of contract expiration or termination and the units that would be covered under a new PBV or PBRA HAP contract;
4. state the owner's plan for relocation, if applicable as a result of rehabilitation or construction, including the expected length of the relocation, household's right to return, and the owner's responsibility for covering relocation costs; and
5. supply information on the method to submit comments to the owner and provide for a 30-day comment period.

The owner must conduct two resident meetings with all affected residents and provide the residents with an opportunity to comment on the conversion. The purpose of the resident meeting

[93] Sample resident notification letters are available at www.hud.gov/rad.

is to provide residents with greater detail related to the conversion, including rehabilitation plans (if applicable), relocation (if applicable), and PBV or PBRA program rules that may differ from Mod Rehab rules.

When providing resident notification and meetings, an Owner must use effective communication for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act of 1990. Effective communication includes, but is not limited to, providing written materials in appropriate alternative formats (e.g., Braille, large type), as needed, and providing sign language interpreters and assistive listening devices at resident meetings, as needed (24 CFR Part 8.6). Additionally, resident meetings must be held in facilities that are physically accessible to persons with disabilities. Where physical accessibility is not achievable, an Owner must use alternative methods to meet with qualified individuals with disabilities, such as holding meetings at an alternate accessible site or offering in-home meetings. Such meetings must be provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities in a setting that enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible (28 CFR part 35, Appendix B).

Additionally, an Owner must provide meaningful access to its programs and activities for persons who have a limited ability to read, speak, or understand English. For projects undergoing RAD conversion, an Owner must provide language assistance to residents of the project who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings. Such language assistance may include, but is not limited to, providing written translation of notices regarding the plans for the project and relocation and oral interpretation at resident meetings. For guidance on providing language assistance to persons with LEP, please see Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732).

The owner must submit a copy of all comments received with their Financing Plan, along with a description of how the residents' comments will be addressed in the conversion. HUD will consider all resident comments and the owner's plan to address the comments before approving the Financing Plan. For prospective conversions, if more than 50 percent of written resident comments disapprove of the conversion of assistance, HUD will contact the owner to discuss options for proceeding with the conversion request or may decline the request.

Upon Financing Plan approval, the owner must notify each affected family that the project has been approved.

B. Resident Notification — Additional Requirements Specific to Retroactive PBV Conversions. For retroactive conversions, where families have EV or TPV assistance and have decided to remain at the project, the additional purpose of the resident meeting is to inform the households that only if they voluntarily relinquish their EV or TPV assistance can the owner place their unit under the PBV contract. Units occupied by households that consent to the conversion are eligible for PBV assistance, provided all other requirements are satisfied. Whether to relinquish their assistance is solely the decision of the assisted household. As such, the owner must explain and provide written documentation that completely and accurately describes how the proposed conversion will affect resident rights, rent payments, and mobility. Households must be made aware that if they elect to remain in the unit with EV or TPV assistance, the unit would be ineligible for the conversion. A household currently assisted with an EV would retain the right to move from the project with tenant-based voucher assistance. Further, if the household were to move prior to the execution of the PBV HAP contract, the unit would not receive PBV assistance.

The owner must provide each household that would be affected by a retroactive conversion with a form that they can use to indicate their consent or non-consent to the conversion. The owner must give families at least 30 calendar days from the date of the briefing to submit the completed form. The form must be signed by the head of household and returned to the PHA. Units occupied by households that affirmatively withhold consent are ineligible for conversion and shall not be included in the PBV contract. If a household does not reply within the timeframe outlined, the PHA must attempt to contact the household; if the PHA is unsuccessful at obtaining the household's consent, the unit shall not be included in the PBV contract.

The owner may not employ any tactics to pressure a household during the notification and comment period and may not terminate a household's lease based on a household's comments or failure to submit a completed form.

C. Compliance with Applicable Notices Regarding Contract Expiration or Termination. Section 8(c)(8)(A) of the Act requires that not less than <u>one year</u> before the termination or expiration of any contract under which assistance payments are received under section 8, which includes both Mod Rehab and SRO HAP contracts, the owner must provide written notice of the impending HAP contract expiration to residents assisted under the Mod Rehab or SRO HAP Contract. An owner requesting conversion under this Section of the Notice must comply with this requirement. Section 8(c)(8)(a) also requires that the owner submit the notice to HUD; however, since local PHAs administer the Mod Rehab program, the owner shall submit the notice to the appropriate PHA instead of HUD. If the owner has not provided residents with the one-year statutory notification at the time of the owner's request to convert

assistance under this Notice, the owner must provide such notice prior to submitting its application for conversion.

Conversion under this Notice may be processed during the one-year notification period, as the conversion will adequately protect residents from displacement and from an increase in the resident portion of the rent. However, if the owner decides not to pursue a RAD conversion, they are still subject to compliance with 8(c)(8)(A).

2.8.4 Financing Plan, RAD Approval, and Closing

A. **Financing Plan.** The Owner must submit to HUD through the RAD Resource Desk a complete Financing Plan that satisfies all HUD underwriting standards and program requirements. (See Attachment 2.A for Financing Plan Requirements). HUD will have 60 calendar days from the date of submission of the Financing Plan to approve or reject the plan, or request additional information. HUD's decisions regarding the acceptance of the Financing Plan will be made in HUD's sole discretion. If HUD determines that a Financing Plan is not feasible or that the requirements of the Financing Plan as set forth in Attachment 2A have not been met, then the owner may either make corrections that satisfactorily address HUD's concerns or appeal the decision to HUD within 30 days of notification. If a Financing Plan is disapproved, HUD's letter of disapproval will discuss changes, if any, that would result in an acceptable Financing Plan.

B. **Conversion Approval.** An owner will be notified of HUD's acceptance of the Financing Plan via issuance of an approval letter, conditioned upon a firm commitment(s) of financing on substantially the same terms as those presented with the Financing Plan.[94] The approval letter will outline the key components of the planned RAD conversion and will discuss the conditions that need to be satisfied in order to close the conversion.
Once the approval letter is issued, HUD expects that the RAD conversion will close in a timely manner. The approval letter will allow 90 calendar days (from the date the approval letter is issued to the owner) in which to close the RAD conversion transaction. The owner and financing partners will need to work diligently to achieve closing within the timeframe required under this Notice in order to avoid rescission of the RAD approval.

C. **Closing.** Execution of the new PBV or PBRA HAP contract occurs when the financing is closed. In the event that construction or bridge financing will be used as part of the

[94] "Substantially the same terms" means that loan proceeds and other financing sources remain sufficient to cover immediate capital needs and, in comparison to the terms put forth in the original application, the debt service coverage ratio does not decrease by more than 0.05%, the amortization and term (maturity) of financing remain the same, and the interest rates are competitive with the market.

transaction financing, HUD will require evidence at closing of firm commitment of take-out or permanent financing conditional only to the completion of construction or term of the bridge financing. In transactions with outside financing, a successful closing will also include evidence that financing sources have closed and will be providing the contemplated funding. If the project is being financed with an FHA-insured loan, the closing requirements listed under the MAP guide will apply.

2.9 Additional Information

For additional information on this section of the Notice, please check **www.hud.gov/rad** or email questions to **RAD2@hud.gov.**

Attachment 2A: Financing Plan Requirements and Feasibility Benchmarks

A Financing Plan will not be reviewed until all required documentation is submitted. HUD will complete an initial review for document completeness within five business days of submission. Once HUD has determined that all required documents have been received, HUD will review the documents submitted.

HUD's purpose in reviewing Financing Plans is to ensure the long-term physical and financial viability of the Covered Project. If a Financing Plan fails one or more feasibility benchmarks, the HUD reviewer may still accept the Financing Plan if HUD determines that, taken as a whole, the Financing Plan is consistent with the long-term physical and financial viability of the project and/or the owner can adequately support, through historical data or other means, the presented figures. HUD reserves the right to reject any Financing Plan if the information provided is not complete, accurate, or in compliance with the submission requirements listed below. HUD will not accept the Financing Plan if the project does not meet environmental review requirements, as described below.

Below are all the required components of a complete Financing Plan and the requirements of each component. Please note that for RAD conversions that will utilize FHA mortgage insurance, the submission requirements and feasibility benchmarks are primarily found in the FHA Multifamily Accelerating (MAP) Guide as revised by Mortgagee Letter 2012-20. The end of this Attachment lists the submissions that must be made separate and apart from the FHA-insured loan application.

HUD reserves the right to streamline any or all of these requirements for classes of project, e.g., no debt-transactions or small projects.

A. Type of conversion. Identify whether the Covered Project will convert to PBV or PBRA assistance.

i. For PBV conversions, identify the PHA that will administer the PBV HAP contract.

ii. For PBRA conversions, include

- a fully executed Choice Mobility Letter of Agreement signed by the owner converting units and the PHA that has agreed to administer the vouchers in order to comply with the Choice Mobility requirement or
- a request for a good-cause exemption for Choice-Mobility

B. Resident Notification. The owner must provide a PDF attachment of all **comments received from residents** as described in Section 2.8.3. Owners must provide a certification that they

have held the required meetings with residents and have provided residents with a reasonable time period to submit comments on the conversion. The owner must also provide a description of how the residents' comments will be addressed in their plan for conversion.

C. A copy of the current **Mod Rehab HAP contract(s)**, including all exhibits;

D. Number of proposed units of each bedroom type. If a reconfiguration of units is proposed, the owner must submit a narrative explanation of the proposal, including a description of the units to be removed, an explanation of why the project can better serve assisted residents at the reduced number and a letter of support from the COC if the project is a Mod Rehab SRO project.

E. **Capital Needs Assessment.** A CNA must be submitted. See section 2.4(A).

F. **Scope of Work.** The scope of work must

1. Identify and address all repairs required in the CNA (including all items identified in the CNA as not functioning at the time of the site visit) or provide a written justification why those items are not included. Briefly discuss any differences between the conclusions / recommendations of the CNA provider; the levels of immediate rehabilitation needs; and the owner's choices for replacement components.
2. Include quantities and costs. Rehabilitation estimates must be based upon reasonable market estimates of actual costs, confirmed either by cost estimating completed by the architect/engineer, or through actual competitive bids for major rehabilitation or construction items, in compliance with HUD requirements.
3. Include a summary of environmental issues known at that time, and a discussion of any planned environmental remediation (including post-closing Operations & Maintenance plans), and a summary of accessibility features that are required pursuant to fair housing law and regulations and the Americans with Disabilities Act and implementing regulations.
4. Include a description of how the owner will replace all utility consuming components that are past estimated useful life at the time of the RAD application (or that are not functioning at the time of the CNA inspection) with the most financially efficient alternative (taking into account initial cost and utility savings), as documented in the CNA.
5. Include a construction contingency of 10 percent (HUD may require a higher contingency on a case-by-case basis).
6. Include a reasonable timeline for completion of all rehabilitation items acceptable to HUD, generally 12 to 18 months from the date of closing the conversion and any financing, depending on the scope of rehabilitation funded.

G. Environmental Review. HUD can neither accept nor approve an applicant's Financing Plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. The following describes the submission and approval steps for securing a completed environmental review.

RAD transactions will either be reviewed under 24 CFR Part 50 or 24 CFR Part 58, i.e., "Part 50 Reviews" or "Part 58 Reviews."[95] All PBRA and FHA transactions require Part 50 Reviews, which are conducted by HUD staff. Non-FHA PBV transactions require Part 58 Reviews, which are conducted by a Responsible Entity (RE), except in accordance with 24 CFR 58.11, when HUD may determine to conduct the review under Part 50.

Transaction Type	Required Environmental Review
Non-FHA with PBRA	Part 50
FHA insured	Part 50
Non-FHA with PBV	Part 58

For multi-phase developments, the environmental documents submitted with the Financing Plan during the first phase must be submitted for the entire site, i.e. all of the phases of the multi-phase development, and the environmental review conducted during the first phase will cover the entire site. Further, requests to transfer assistance from the Converting Project to a new location are subject to environmental review.

For all Part 50 reviews, the applicant must submit reports and documentation to HUD in accordance with 24 CFR Part 50, as discussed in Chapter 9 of the MAP guide, except as follows:[96, 97]

1. For PBRA conversions, (or where HUD has determined to conduct the PBV conversion review under Part 50) Owners are not required to follow the radon testing requirements of HN 2013-03. However, HUD strongly recommends testing for all projects and mitigation of any structures with elevated radon (4 pCi/L or above).

[95] Please see the Environmental Review for RAD Transactions guidance document, available at https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/.

[96] Additional guidance on environmental review requirements is available on the HUD Environmental Review website, at https://www.hudexchange.info/environmental-review/.

[97] The MAP Guide is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430.

2. For PBRA conversions (or where HUD has determined to conduct the PBV conversion review under Part 50) that do not include substantial rehabilitation or new construction activities, Owners shall provide HUD with one of the following:[98,99]
   - A transaction screen in accordance with ASTM E 1528-14 (or the most recent edition). A transaction screen will identify potential environmental concerns based on questionnaires, owner/occupant inquiry, site visit, government records inquiry and historical sources inquiry. The transaction screen must be prepared by a qualified professional, in accordance with 24 CFR 50.3(i)(4). As the definition of preparer in ASTM E 1528-14 does not meet this requirement, the professional must have either (a) a science degree and at least one year of practical environmental assessment experience in the field, or (b) three years of practical environmental assessment experience in the field performing site assessments for site contamination. If any potential environmental concerns are identified, an ASTM Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) must be provided; OR
   - A Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition).

HUD staff will carefully review the submissions and may require additional information in order to complete their review. When HUD conducts the environmental review under Part 50, it documents the review using HUD Form 4128, Environmental Assessment and Compliance Findings for the Related Laws.[100] HUD's review will result in a determination, which may stipulate the rejection of the site for this demonstration or may require the completion of mitigation measures. The approval letter will include any conditions required to carry out any and all mitigation measures as may result from the environmental review. Any conditions that cannot be satisified before the execution of the HAP contract will be captured in a Rider to the HAP contract, and those mitigation measure conditions must be completed in a timely manner.

[98] Substantial rehabilitation is any rehabilitation that does not meet the conditions in 24 CFR 50.20(a)(2) for exclusion from review under the National Environmental Policy Act.

[99] Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-13.

[100] The current HUD Form 4128 will soon be replaced with an online system for conducting environmental reviews, called the HEROS system. HUD is currently piloting the HEROS system, and RAD is one of the programs involved in the pilot.

When a Responsible Entity (RE) completes an environmental review under Part 58, the Financing Plan must include either Form 7015.16 or a letter with the Responsible Entity's (RE's) finding of exempt activity in order to consider the environmental review to be complete. The RE should use HUD recommended formats to document the environmental review record.[101] The PHA should submit an environmental report to the RE, in such form as prescribed by the RE, to enable the RE to complete their analysis. Once the review is completed, the PHA must submit *either*:

- Form HUD-7015.15, Request for Release of Funds, to their local PIH field staff.[102] After the PIH Field Director approves the RROF, the Director sends a completed HUD Form 7015.16 to the PHA, approving the release of funds. The PHA must submit the completed Form 7015.16 to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR 58.34, the PHA must submit the RE's finding of exempt activity with their RAD application. A finding of exempt activity is a statement of the result of the RE's environmental review, and is required even when form HUD-7015.15 is not required. A letter from the RE indicating that the project converts to Exempt under 24 CFR 58.34 is sufficient.

H. Accessibility and Relocation Plan Checklist. All owners shall complete and submit the Accessibility and Relocation Plan Checklist provided by HUD. The checklist shall include a certification that the relocation plan complies with all applicable HUD requirements, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 **(**URA) and its implementing regulations (49 CFR Part 24) as well as Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §8.23). The cost of the relocation must be fully funded in the Development Budget.

I. Development Budget (Sources and Uses of Funds). The Development Budget must:

i. Include a reasonable, balanced and comprehensive presentation of sources and uses of funds, entered into the Transaction Log on the RAD Resource Desk, and which is in accordance with all applicable HUD requirements.

ii. Demonstrate that existing loans or debt will be paid off at the closing or supported through Net Operating Income.

[101] HUD recommended formats are available at https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/ and https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/.

[102] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

iii. Demonstrate that any Identity of Interest (IOI) loans or advances will be converted to unsecured Surplus Cash Notes (IOI loans may not be paid off from the proceeds of new financing).

iv. Include narrative that discusses any aspects of the planned rehabilitation that may result in an initial operating deficit during the rehabilitation and how that deficit will be funded, including any operating deficit escrow or similar fund.

v. Include a Subsidy Layering Review (SLR) if one has been performed by another agency. If no SLR is provided, HUD will complete a SLR whenever multiple federal sources are proposed.

J. Development Team. The owner must include the following information:

i. Identification of all participants, including the PHA, the general contractor, the legal entity that will own the project, the proposed management agent, and all "principals" of those entities.

ii. Evidence of recent successful experience with similar rehabilitation or construction projects. For properties requiring substantial rehabilitation or new construction, the Project Owner is required to engage a general contractor, unless recent and comparable experience managing rehabilitation can be demonstrated or if the development team is using the FHA-insured Section 223(f) program or a repair program approved by HUD. If multiple funding sources will be used for the Covered Project, the development team must demonstrate that it has experience with at least three transactions with multiple sources of financing.

iii. For PBRA conversions, evidence that all principals have Previous Participation Certification in the Active Partners Performance System (APPS) (formerly the Form 2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.[103]

K. Proposed Financing. For each proposed loan, equity contribution, or grant, the PHA must include a:[104]

[103] The APPS/2530 applies to all FHA transactions and transactions in which 20% of the units in the Covered Project will be covered under a PBRA contract (PBV transactions without FHA financing are exempt). The PHA and any entities wholly owned by the PHA are not subject to 2530/APPS. For LLCs and LPs, non-PHA members and partners, respectively, with 25% or more of the ownership interests are subject to approval provided that for LIHTC transactions, limited partners or investment members are exempt. For non-profit entities, 2530s are required for Board Officers but not Board Members. Management agents are subject to 2530 unless wholly-owned.

[104] HUD has created templates that are available on the RAD Resource Desk that PHAs can use to provide all required information on each loan, equity contribution, and grants.

i. Recent lender, investor or grant engagement letter, dated no later than 60 days prior to Financing Plan submission, with key terms identified (including amount, repayment terms, interest rate, amortization, maturity, prepayment restrictions, pay-in schedule, etc.) from all financing provider(s). Key terms for any permanent financing must comply with the conditions under Section 1.4(B)(1) of this Notice (fixed rate of interest, for a fixed term, and fully amortized over that term; balloon payments not permitted before year 18; amortization term cannot exceed 40 years; etc.). Additionally, all subordinate (or secondary) financing must be disclosed and then approved by the first-mortgage lender as well as HUD in accordance with section 8.9 of the Mortgage Credit and Underwriting and Processing Requirements of the MAP guide and any subsequent revisions or updates to the MAP guide.
ii. Brief discussion of conditions / milestones to be satisfied prior to closing;
iii. Documentation that the first mortgage lender has consented to the Use Agreement and that the lien of the new first mortgage loan will be subordinate to the Use Agreement;
iv. Estimation of projected closing date for all proposed financing. Discuss any known impediments to closing within the timeframe required under the Notice. Include a discussion of key milestones with estimated milestone completion dates. The terms for all seller take-back financing must also be disclosed.

L. Operating Pro Forma. The Operating Pro-Forma must:

i. Be entered into the Transaction Log of the RAD Resource Desk (stabilized cash flow)
ii. In an owner provided template, project out for the term of the initial contract.
iii. Include an attached discussion of the extent of energy and water savings that are anticipated as a result of the rehabilitation or construction and the basis for those estimates. The discussion must explain to what extent anticipated savings in utility costs have been included in the pro forma operating expenses.
iv. Comply with at least the following feasibility benchmarks:
   a. Rents shall not exceed the amounts permitted under program rules;
   b. All other sources of income must be supported with a narrative or must not exceed the average for the last three years (other income should not include interest income on the replacement reserve account, which must remain in the reserve and is not available for other purposes);
   c. Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent;
   d. Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent;
   e. Real estate taxes for Mod Rehab shall be no less than the most recent tax bill amount;
   f. Insurance costs must be documented, such as quotes from an insurance agent based on actual recent premiums for similar projects;

g. All other operating expenses shall be no less than 85 percent of the average for the last three years;

h. The annual replacement reserve deposit should be equal to that amount which, if deposited annually, will be sufficient to fund all capital needs, as identified in the CNA, arising during the first 20 years and otherwise not addressed upfront in either the rehabilitation or an initial deposit to the replacement reserve account, and sufficient to maintain a minimum balance at the end of each year during that 20-year period that is at least 5 percent of the total, aggregate projected capital needs for that period.

i. For non-leveraged transactions, the stabilized cash flow should not be less than $12 per unit monthly. For leveraged transactions, the debt-coverage ratio should not be less than 1.11 over a ten year period using 2% growth in revenue and 3% growth in expenses.

M. Market Study. A market study will only be required at HUD's request, e.g., in cases where the project is currently experiencing a high vacancy rate, or when project plans include unit configuration or inclusion of market-rate units. For projects using an FHA insured mortgage, please see the Multifamily Accelerated Processing (MAP) Guide for instruction on when a market study is, and is not, required.

N. Certification of Compliance with Site and Neighborhood Standards. The owner (for PBRA) or the voucher administering agency (for PBV) shall include a certification that the site complies with applicable Site and Neighborhood Standards (see Section 2.4.G).

O. Affirmative Fair Housing Marketing Plan. For PBRA conversions, evidence that a completed AFHMP (HUD 935.2A) has been submitted for approval to the local Multifamily Regional Center. Typically, the management agent or the entity responsible for marketing (if different) is responsible for completing and submitting the AFHMP. If an Project Owner plans to adopt any local or residency preferences, the Project Owner must submit its Tenant Selection Plan along with the AFHMP (see HUD Handbook 4350.3, page 4-4). Each Covered Project must have a HUD-approved AFHMP prior to closing.

The purpose of affirmative marketing is to ensure that individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, national origin, religion, sex, disability, or familial status.

<u>Financing Plan Requirements for Transactions Utilizing FHA-Insurance</u>

For RAD conversions that will utilize FHA mortgage insurance, the submission requirements and feasibility benchmarks are primarily found in the FHA Multifamily Accelerated Processing (MAP) Guide

as revised by Mortgagee Letter 2012-20. Following submissions made in an FHA insured loan application for Firm Commitment, Owners must also upload the following items to the RAD Resource Desk (Unless otherwise indicated, the Owner must submit all of the items listed in the cited paragraph):

- A. Type of Conversion
- B. Resident Notification
- C. Mod Rehab HAP contract(s)
- D. Proposed Units
- G. Environmental Review (Part 50), as completed by HUD Multifamily Housing Production
- H. Accessibility and Relocation Plan Checklist
- I. Development Budget (Sources and Uses of Funds).
    - Sources and Uses submitted with the FHA Application must be entered into the Transaction Log on the RAD Resource Desk.
- K. Proposed Financing
- L. Operating Pro Forma.
- M. Market Study
- N. Certification of Compliance with Site and Neighborhood Standards.

SECTION III: RENT SUPPLEMENT AND RENTAL ASSISTANCE PAYMENT PROJECTS

3.1 Purpose

Section III of this Notice provides instructions to owners of Rent Supplement (Rent Supp) and Rental Assistance Payment (RAP) projects seeking to convert assistance of a Rent Supp or RAP project under RAD.

3.2 Note on Effective Date

PIH Notice 2012-32, Rev. 1 (technical correction) was published February 6, 2014. Any owners that submitted a complete request to the Office of Recapitalization that met all requirements for conversions of Rent Supp or RAP assistance prior to the issuance of this second revision of PIH Notice 2012-32 will be governed by the February 6, 2014 technical correction. All conversion requests under this Section (Section III) that are received after publication of this second revision are subject to the instructions issued in this Notice.

3.3 General Program Description

Owners may choose between two forms of long-term Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). Conversions may be prospective (when an owner still has an active Rent Supp or RAP contract at the project) or retroactive (when the Rent Supp or RAP contract has already expired at the project). Owners pursuing a prospective conversion may choose from either a PBV contract or a PBRA contract. Owners who are pursuing a retroactive conversion will be limited to PBV conversions only.

A. PBV Conversions. An owner may request to enter into a Section 8 PBV HAP contract with an eligible PHA to administer the contract. With the exception of provisions identified in this Notice (as well as retained flexibilities of Moving to Work (MTW) agencies, all regulatory and statutory requirements of the PBV program in 24 CFR Part 983, and applicable standing and subsequent Office of Public and Indian Housing guidance, including related handbooks, shall apply.

1. **Prospective Conversions** Projects are eligible for prospective conversions if the Rent Supp or RAP contract expiration or termination has not yet occurred. To be considered a prospective conversion, the expiration or termination date of the contract must be at least 60 days after the owner's conversion request to HUD (see Section 3.7.1). In a prospective conversion, the project will receive PBV assistance in lieu of the TPV assistance that would be otherwise provided to project residents. Prospective conversions to PBV may be suspended in a particular fiscal year if HUD does not have sufficient TPV appropriations to fund all of the demands on the TPV account due to conversions.

If the contract termination will occur within 60 days of the owner's initial submission to HUD, an owner of an expiring Rent Supp or RAP contract may seek a short-term extension of the contract at current funding levels, subject to the availability of appropriations. This short-term extension may be used in conjunction with RAD to provide adequate time for an owner to prepare and submit a request under RAD before the contract reaches its expiration date. Short-term extension requests are made to the Multifamily Hub or Regional Center with jurisdiction over the project. The short-term extension contract may be terminated early if the RAD conversion occurs prior to the short-term extension contract expiration. If a Rent Supp or RAP contract extension is not provided, the Rent Supp or RAP contract will expire, and the provision of TPVs will occur. The owner may then proceed with a retroactive conversion.

In accordance with HUD policy and subject to the availability of appropriations, special administrative fees will be provided to PHAs in connection with the administration of TPVs for a Housing Conversion Action, (e.g., mortgage prepayment, or expiration of a Rent Supp or RAP contract). In order to obtain such fees, the PHA must submit the information requested in Notice PIH 2015-03 or any successor notice regarding the implementation of funding provisions for the Housing Choice Voucher program.

At the closing of the conversion of assistance: the Rent Supp or RAP contract will be terminated (due to prepayment or expiration), the PHA that has agreed to administer the PBV HAP contract will have the vouchers added to its Annual Contribution Contract (ACC), and the PBV HAP contract will be executed.

2. **Retroactive Conversions** Where contract expiration has occurred and TPVs or EVs have already been issued to project residents or where TPVs or EVs have been requested and processed for project residents (i.e., the PHA’s ACC has been amended reflecting the new increment of TPVs or EVs), projects may be eligible for a retroactive conversion to PBV assistance. The contract expiration and issuance of EVs or TPVs must have occurred on or after October 1, 2006.

   As described above, HUD will not process prospective conversions in projects where the contract termination will occur in fewer than 60 days following the owner's initial submission to HUD. If the contract termination will be fewer than 60 days from the owner’s initial submission, or if TPV funding has been requested by the Office of Public and Indian Housing on behalf of eligible project residents and processed, (i.e., the PHA’s ACC has been amended reflecting the new increment of TPVs) TPVs will be issued to the eligible residents, and the conversion request will be processed as a retroactive conversion to PBVs.

Only the units occupied by eligible low-income residents who either are receiving TPV or EV assistance at the time of contract expiration or termination, who continue to reside in the project, and who consent to the conversion, may be assisted under the PBV HAP contract. For retroactive conversions, as required under the RAD statute, the "Administering PHA" must approve a request for retroactive conversion to a PBV HAP contract. If the actively Administering PHA does not consent to long-term conversion of the contract to PBV assistance, the project is not eligible for retroactive conversion.

The table below summarizes key characteristics of prospective and retroactive conversions.

Conversion Type	Characteristics Determining Conversion Type
Prospective	1. Termination or expiration occurs at least 60 days after the owner's request; or 2. Termination or expiration occurs less than 60 days after the owner's request, but the owner receives a short-term extension from the Office of Multifamily Housing and the new expiration date is 60 days or more after the owner's request.
Retroactive	1. Termination or expiration occurred on or after 10/1/2006 and TPVs were issued to eligible project residents; 2. Termination or expiration occurs within 60 days of the owner's request for conversion, and the owner does not receive a short-term contract extension to pursue a prospective conversion; or 3. Funding for TPVs has been requested on behalf of eligible project residents and processed by the Office of Public and Indian Housing.

B. PBRA Conversions. An owner may request to enter into a 20-year Section 8 PBRA HAP contract (subject to annual appropriations); the HAP contract will be executed by HUD's Office of Housing. Initial contract rents will be determined by an RCS and be limited to 110% of FMR and will be adjusted only by an OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term and the requirements of section 3.6 D. At expiration of the initial contract, the owner is eligible

to renew the contract under section 524 of MAHRAA, subject to the terms and conditions applicable at the time of renewal and to the availability of appropriations for each year of such renewal. Regulatory and statutory requirements of the PBRA program in 24 CFR Part 880, with the exception of provisions identified in this Notice, and applicable standing and subsequent Office of Housing guidance, including handbooks, shall apply.

Retroactive conversions are not permitted under PBRA.

C. Right to Remain or Return. The right to remain or return applies to both PBV and PBRA. Under RAD, any resident residing in the project prior to conversion has a right to remain in, or in the event that rehabilitation will result in the relocation of residents, return to an assisted unit at the Covered Project. Any relocation as a result of acquisition, new construction, or rehabilitation is subject to requirements of the Uniform Relocation Act (URA). Permanent involuntary displacement of residents may not occur as a result of a project's conversion of assistance. If proposed plans for a project would preclude a resident from returning to the Covered Project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the Owner must alter the project plans to accommodate the resident in the converted project. If a resident agrees to such plans, the Owner must secure informed, written consent from the resident to receive permanent relocation assistance and payments consistent with URA and acknowledgement that acceptance of such assistance terminates the resident's right to return to the Covered Project. In obtaining this consent, Owners must inform residents of their right to return, potential relocation, and temporary and permanent housing options at least 30 days before residents must make a decision. The Owner cannot employ any tactics to pressure residents into relinquishing their right to return or accepting permanent relocation assistance and payments.

3.4 Eligibility

Owners of Rent Supp and RAP projects that meet all eligibility requirements described below may submit a request to convert under the Second Component of RAD.

3.4.1 Eligible Owners

A. Compliance with HUD and the PHA. For prospective conversions, the owner must either demonstrate a rating of Satisfactory or higher on the most recent Management and Occupancy Review or certify that the management company is being replaced by a management agent with a record of successful operation of HUD-assisted multifamily housing. The HUD Departmental Enforcement Center must have no active referrals attributable to the owner. If a contract terminates due to an enforcement action, then the project is ineligible, unless the request is in the context of an acquisition. If the request to enter into a PBV or PBRA contract is in the context of an acquisition, the purchaser must provide evidence of successful experience owning and operating HUD-assisted or other

affordable multifamily housing properties. Examples of the standard for this review may be found in HUD Handbook 4350.1, Chapter 13 Transfer of Physical Assets.

For retroactive conversions, the owner must be in good standing with the PHA administering the TPVs at the project and must receive the consent of the PHA and affected residents to convert the TPV assistance to PBV.

B. Fair Housing Compliance for PBV and PBRA Conversions.

An owner must be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a). An owner will not be eligible to participate in RAD if it has any of the charges, cause determinations, lawsuits, or letters of findings referenced in sub-paragraphs (1)-(5) below against the owner, its transferees, proposed development partners, or sub-recipients, unless they have been resolved to HUD's satisfaction.:

1. A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status;
2. A Fair Housing Act lawsuit filed by the Department of Justice (DOJ) alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. § 3614(a);
3. A letter of findings or lawsuit filed by DOJ identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974;
4. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation or gender identity; or
5. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

Applicants may still be eligible for conversion under RAD if such a charge, cause determination, lawsuit, or letter of findings referenced in subparagraphs 1, 2, 3, 4, or 5 above has been resolved to HUD's satisfaction. However, if the matter has not been so resolved, then the applicant is ineligible to participate in RAD.

HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to current compliance with a:

- Voluntary compliance agreement (VCA) signed by all the parties;
- HUD-approved conciliation agreement signed by all the parties;
- Conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Consent order or consent decree; or
- Final judicial ruling or administrative ruling or decision.

Additionally, an owner may be required to demonstrate that its proposed activities under RAD are consistent with any applicable VCA, conciliation agreement, consent order or consent decree, final judicial ruling, or administrative ruling or decision. HUD may terminate an approval if it determines that the terms of the conversion would be inconsistent with fair housing or civil rights laws or a fair housing or civil rights court order, settlement agreement, or VCA. Furthermore, if a project is subject to a VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision, it must ensure that the ownership agreement or other appropriate document makes the new owner subject to the remedial provisions contained in such documents. It is the owner's obligation to disclose such VCAs, etc., to the prospective owner. The extent of the owner's responsibilities, including whether the responsibilities are appropriately limited to the development, maintenance, or operation of the particular RAD project, must be appropriately documented. The owner will follow any requirements for the modification of such VCAs, etc. If HUD is a party to the VCA, etc., the RAD project will not close without HUD's express approval of the transfer of obligations to the new owner.

3.4.1 Eligible Properties and Units

A. Eligible Properties for PBV and PBRA Conversions. Eligible properties are those with an active Rent Supp or RAP assistance contract at the project, or for retroactive conversions the project must have previously received Rent Supp or RAP assistance that expired or terminated on or after October 1, 2006. In addition, the project must have experienced (on or after October 1, 2006) an event that triggered the provision of TPVs, or anticipate a triggering event that would provide TPVs to eligible residents at the project. Under RAD, a triggering event is defined as the termination (or expiration) of a Rent Supp or RAP contract, at which time regular Housing Choice Vouchers will be or have been provided, or in some cases EVs will be or have been provided in the context of certain prepayments (discussed in C.2, below).

Typically, when the underlying mortgage on a Rent Supp or RAP project is prepaid, the prepayment terminates the Rent Supp or RAP contract. In some cases, however, the underlying mortgage may have been prepaid, but the contract may not have been terminated. This happens, for example, when an owner intends to undertake an Interest Reduction

Payment (IRP) decoupling and requests a waiver from HUD to leave the Rent Supp or RAP contract in place. Otherwise-eligible projects that have received such a waiver are eligible for RAD, but only if HUD and the owner agree to terminate the existing Rent Supp or RAP contract, thereby triggering issuance of TPVs.

B. Physical Conditions for PBV Conversions. The owner must provide evidence that the project meets one of the following standards:

1. **For prospective conversions**, the most recent Real Estate Assessment Center (REAC) score at the project must be 60 or above.

   Unless provided explicit approval by HUD, the converting units must qualify as existing housing in order be selected for conversion under Second Component of RAD. The PHA must ensure that the units substantially meet HQS, as defined in the PHA's Section 8 administrative plan. Prior to entering into a PBV HAP contract, the Administering PHA will inspect the units proposed for conversion to ensure that the units fully comply with HQS. The HAP Contract will not be executed until and unless the converting units fully meet HQS.

2. **For retroactive conversions**, units to be converted must meet HUD's HQS as determined by the PHA. The PBV contract will not be executed until and unless the units meet HQS.

C. Physical Conditions for PBRA Conversions. The owner must provide evidence that the project has received a score of 60 or above on the most recent Real Estate Assessment Center (REAC) inspection at the project. Those properties that do not meet this minimum threshold will not be eligible to convert under this notice.

D. Eligible Units for PBV Conversion.[105] Units eligible for conversion may include a combination of units under a Rent Supp or RAP contract and other (i.e., unassisted) units at the project. Eligibility of Rent Supp or RAP contract units and other units is discussed below. All owners who wish to include other units at the project within their RAD conversion will receive a determination from OGC to ensure that the prepayment at the project will trigger the issuance of Enhanced Vouchers.

[105] Please note that for PBV conversions, the PHA makes the final determination of eligibility to be included on the PBV HAP; this includes a determination that the household is income eligible for the PBV program and that the tenant's total payment (TTP) of rent does not exceed the contract rent at the project.

1. **Rent Supp and RAP contract units.** For prospective conversions, all units on the original Rent Supp or RAP contract that are occupied at contract expiration or termination are eligible for conversion to PBV under RAD. Note that the number of units on the original contract may be higher than the number of units "actively billing" at the project.[106]

   For retroactive conversions, eligible Rent Supp or RAP contract units are those that are occupied at the time of the RAD conversion by households who received TPV assistance as the result of the expiration or termination of the contract.

2. **Other Units at the Rent Supp or RAP project.** In certain cases, the prepayment of a mortgage on a project with a Rent Supp or RAP contract may trigger the provision of EVs to *assisted* (in the case of HCV participants) and *unassisted* project residents. Units occupied by such residents may qualify for conversion to PBV under RAD. These units are eligible to include in the PBV conversion only if the prepayment meets all conditions of PIH Notice 2001-41, Section 8 Tenant Based Assistance (Enhanced and Regular Housing Choice Vouchers) for Housing Conversion Actions – Policy and Processing Guidance, and if the following conditions are met:

   a. The project falls within the definition of "eligible low-income housing" set out in section 229 of the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA), and discussed below, which means that the prepayment triggers provision of EVs to eligible families residing in the unassisted units at the project. This includes units that are not assisted by a Section 8 HAP contract, or a Rent Supp or RAP contract. To be included as eligible units in the RAD conversion, the EVs must be provided or already have been provided in the context of a qualifying preservation-eligible mortgage prepayment.

      Qualifying preservation-eligible prepayments in eligible low-income housing, for the purposes of Rent Supp and RAP properties, include only the following cases:

      - Prepayment of an underlying FHA-insured mortgage at a RAP project;[107]

[106] In some cases, the amount of units that are actively billing on a Rent Supp or RAP contract has decreased over time. For example, a Rent Supp or RAP contract may have been funded for 40 units originally, but over time the amount of units that this funding can support has decreased. HUD will allow the conversion to cover all occupied units indicated on the original Rent Supp or RAP contract.

[107] Please note: for properties with FHA-insured mortgages, this applies only to properties assisted with RAP contract, not Rent Supp contracts. Prepayment of an FHA-insured mortgage on a Rent Supp property does not

- Prepayment of a mortgage held by a state agency as a result of a sale by HUD without insurance, which immediately before the sale would have been eligible for low-income housing under LIHPRHA; which mortgage (1) for LIHPRHA projects is, or is within 2 years of being, eligible for prepayment by contract or regulation in effect before February 5, 1988 without HUD's prior approval; or (2) for Emergency Low Income Housing Preservation Act (ELIHPA) projects is, or is within 1 year of being, eligible for prepayment under regulation or contract in effect before February 5, 1988;
- Prepayment of a mortgage for a state-assisted project that is eligible for preservation assistance under LIHPRHA or ELIHPA[108]; or
- Prepayment of a mortgage for a project that has a Flexible Subsidy Loan with a HUD determination that the project meets the requirement of Section 536 of the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act.

b. The families that would receive EVs must meet the income requirements for the PBV program. The income eligibility requirements for EVs provided due to the mortgage prepayment may be different from the income eligibility requirements for the PBV program. Some moderate-income families may be eligible for EVs (or in the case of a retroactive conversion, may have already received EVs), but may be over-income with respect to PBV assistance. To be eligible for the PBV program, project residents must be very low-income as described in 24 CFR 982.201, unless specified in the PHA's Section 8 Administrative Plan. In the case of a prepayment of a mortgage on eligible low income housing, only units occupied by families that meet the income requirements (and all other voucher eligibility requirements) for PBV will receive assistance under the PBV contract.[109] Income eligibility will be determined in accordance with voucher program requirements.

3. **Timing concerning the issuance of EVs.** In the case of a retroactive conversion, the PBV contract may include those units occupied at the time of the RAD conversion by families that received EV assistance as the result of a preservation eligible

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trigger the provision of EVs and therefore no units beyond the Rent Supp units would be eligible for the RAD conversion.

[108] Rent Supp or RAP contracts must be expiring or in the process of being terminated in order for state-held mortgages to be eligible under RAD.

prepayment in eligible low-income housing described in paragraph 2.i above. These families must have accepted the EVs at the time of the mortgage prepayment, and the families must be in residence at the project and receiving the EV assistance at the time of the RAD conversion. However, the conversion may also include units occupied by residents who have been offered and accepted vouchers, have not leased up with such vouchers, and the PHA has not used the allocated funds to assist other applicants on the PHA's HCV waiting list.

4. **Adding contract units.** As described above, a resident may be eligible for an enhanced voucher at the time of the RAD conversion, but not be eligible for an assistance payment at the time that the PBV contract is executed. In such cases, the unit the family is residing in may not be included onto the PBV contract. The tenant continues to be eligible for enhanced voucher assistance for three years from the date of the eligibility event and the PHA must ensure that such assistance remains available for such tenants if during the three year period the family's income decreases or the rent for the unit increases thereby generating a housing assistance payment (See PIH Notice 2001-41, Part II, Paragraph A(4)). If during the three year period, the family would be eligible for an assistance payment and remains eligible for the voucher program, the unit may be added to the PBV contract upon the PHA's and tenant's consent. The retroactive conversion requirements for notice to tenant and consent in accordance with Section 3.8 of this Notice must be followed. If the family or the PHA withholds its consent, the family is either: 1.) issued an enhanced voucher and may lease up an unassisted unit at the property in which case the special requirements for enhanced vouchers would apply as outlined in PIH Notice 2001-41, or 2.) the family may move with its voucher and the voucher would lose the enhanced features, in which case the regular requirements for HCV assistance would apply (see 24 CFR Section 982).

5. **Housing Choice Voucher (HCV) program participant residing at the project.** A resident who is already receiving housing choice voucher assistance on the date of the eligibility event may be included in the PBV contract, but only if the triggering event for the RAD conversion provides the opportunity for the HCV assistance to become enhanced (e.g. a prepayment) and if the resident consents to convert their assistance to PBV assistance. In the case of a RAD conversion where a prepayment occurs, the resident has several options. The resident may accept the enhanced voucher protections (See Part II, Paragraph D of PIH Notice 2001-41); the resident may choose to reject the enhanced voucher protections and retain its regular HCV assistance, or the resident may agree to relinquish their voucher after being briefed by the PHA and only if they provide written consent to convert their HCV assistance to PBV assistance under RAD. Notice PIH 2001–41 addresses circumstances under

which an HCV program participant residing in a project undergoing a preservation prepayment may remain in the project and receive enhanced voucher assistance.

E. Eligible Units for PBRA Conversion. All units that are currently covered by a Rent Supp or RAP contract may be included in the PBRA conversion. Additionally, all units that would receive TPVs in the form of EVs after a qualifying prepayment, as discussed in Section 3.4, C, 2 above, may also be included in the PBRA conversion. HCV holders at the project will be allowed to be included in the PBRA contract, but only if the triggering event for the RAD conversion provides the opportunity for the HCV assistance to become enhanced (e.g. a qualifying prepayment) and if the resident consents to convert their assistance to PBRA assistance. Owners should follow the procedures discussed in Section 3.4, C, 4 above in order to include HCV assistance on their PBRA contract.

3.5 Special Provisions Affecting Conversions to PBVs

As discussed above in Section 3.3 of this Notice, certain PBV statutory provisions have been waived or altered consistent with the authority Congress has provided for Second Component conversions. In these cases, HUD also notes the corresponding regulatory provisions that are waived or altered. Additionally, HUD has waived certain regulatory provisions (that are not statutorily based) and established alternative requirements in order to prevent displacement of certain residents and otherwise serve the purposes of this Demonstration. All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 and section 8(o)(13) of the Act shall apply, including resident choice, environmental review, Davis-Bacon and fair housing requirements.

The modified or alternative requirements that pertain solely to PBV conversions under the Demonstration are described below.

A. Length of Contract. By choosing to participate in the RAD program, the PHA and owner agree to a 15-year initial term for the HAP. Consistent with requirements of 24 CFR 983.205(b), a PHA may agree to enter into an extension of the initial 15-year HAP contract term with the Owner at any time during the initial term. The extension may be for a maximum period of 15 additional years. The PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding.

B. Maximum Amount of PBV Assistance. Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which is 20 percent of the amount of budget authority allocated to a PHA under the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6. As a result, a PHA that is administering RAD PBV assistance does

not take the Budget Authority (BA) attributable to the RAD PBV into consideration when calculating the 20 percent limitation for any non-RAD PBV actions. In other words, the BA committed to RAD PBV is excluded from both the numerator and the denominator when calculating the percent of available BA that may be project-based for non-RAD PBV.

C. **Cap on the Number of PBV Units in Each Project.** The 25 percent limitation on the number of units that may receive PBV assistance in a project is increased to 50 percent under the Demonstration. An assisted household cannot be involuntarily displaced as a result of this provision i.e., eligible, assisted households in units that exceed the cap must be provided tenant-based vouchers, which they may use to remain at the project or move to a new unit.[110] An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families eligible to receive supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services except, see 24 CFR 983.56(b)(2)(II)(B).[111]

For purposes of RAD, HUD is modifying the requirement that a family must actually receive services to reside in the excepted unit. Households living in units subject to a proposed RAD conversion must instead be offered the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household will not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR 983.56, 983.257(c), and 983.26(a) and (d).

To implement these provisions, HUD is implementing alternative requirements for section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the Covered Project.

D. **Site selection –Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c)(2)**. HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site. However, HUD reserves the right to assess and consider as part of the RAD

[110] Residents may, however, be temporarily relocated to facilitate rehabilitation or conversion. In such cases, any resident that may need to move out of the project to facilitate rehabilitation or construction will have a right to return.

[111] It is not required that the services be provided at or by the project (a third-party organization may provide the supportive services).

request the impact of the proposed RAD conversion on deconcentration of poverty or concentration of assistance in properties where the RAD conversion would result in an increase in the number of units at the project receiving project-based rental assistance.

E. **Owner Proposal Selection Procedures, 24 CFR § 983.51.** Projects are selected in accordance with program requirements detailed in this Notice. HUD is waiving 24 CFR § 983.51. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in this Notice.

F. **Adding contract units.** 24 CFR 983.207(b) does not apply. A PHA may only add units to the converted project as described in Section 3.4D.

G. **Limitation on Screening of Residents upon conversion.** At conversion, current households are new admissions into the PBV program. However, as a condition of participation in the Demonstration, PHAs may screen households only for the mandatory screening requirements established by statute and may not apply any other discretionary screening requirements. PHAs must amend their Administrative Plan to implement this alternative requirement.

H. **Initial Rents.** Initial rents for PBV contracts are determined by the PHA, in accordance with 24 CFR 983 Subpart G. Such rents generally cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR 983.301 for program requirements on establishing initial rents).

I. **Re-Determined Rents.** The rent to owner will be redetermined in accordance with 24 CFR 983.302. The rent to owner may be redetermined at the owner's request for a rent increase at the annual anniversary date of the HAP contract. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR. Re-determined rents may result in a downward adjustment in certain circumstances, however, PHAs may elect in the HAP contract to establish the initial contract rent as the rent floor as described in 24 CFR 983.30(c)(2).[112]

[112] The rent to owner may fall below the initial contract rent: 1) to correct errors in calculations in accordance with HUD requirements; 2) if additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55 (Prohibition of excess public assistance); or 3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the resident.

J. Decoupled Projects and PBV Rents. Many owners who pursue a RAD Second Component conversion also prepay and decouple their underlying 236 mortgage in conjunction with their RAD Second Component conversion. To facilitate a prepayment of their 236 mortgage, owners obtain new financing to pay off their 236 mortgage and to rehabilitate the project. The increased debt service often necessitates an increase in the 236 rents at the project, which are determined by a budget-based calculation. Section 219(b) of the 1999 Appropriations Act (the Wellstone Amendment) prohibits rent increases on a prepaid 236 mortgage for 60 days following prepayment.

24 CFR 983.304(c) prohibits the PBV contract rent from exceeding the 236 basic rent at the project in decoupled projects. This causes an inherent conflict when owners convert to a PBV contract in a RAD Second Component conversion. Owners are expected to execute their PBV HAP at the time of the triggering event, but at the time of the triggering event basic rents cannot yet be increased.

The procedures described above create a special problem for projects subject to a Rent Supp or RAP contract, which would terminate at the time of the prepayment of the 236 mortgage, and owners of these projects would not be able to sign a PBV HAP with the appropriate rents for the transaction. To address this situation, HUD is waiving 24 CFR 236.725 for all projects with Rent Supp or RAP that are pursuing a decoupling in conjunction with their RAD Second Component conversion. This waiver will allow the Rent Supp or RAP contract to remain in place after prepayment during the 60 days following prepayment. The PBV HAP must be signed when the basic rent increase goes into effect, and the Rent Supp or RAP contract will be terminated at the time of PBV HAP execution. Note: The PBV contract rents will still be subject to the initial determination of rents as described above.

K. Under-Occupied Units Converting to PBV. Otherwise-eligible households of two or more individuals occupying a unit determined by the PHA under HUD regulations to be under-occupied shall, upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-size unit becomes available in the project. This protection also extends to single elderly and disabled individuals regardless of the unit size. When an appropriate-size unit becomes available, the family living in the oversized unit must move to the appropriate-size unit within a reasonable time, as determined by the PHA . If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate-size unit is available. If or when a smaller-size unit becomes available, the family must move to the smaller-size unit. In order to effectuate this provision, HUD is waiving 24 CFR §983.259(b)(1) & (2) and (c).

For households consisting of single individuals who are not elderly or disabled, the under-occupied unit cannot be included in the PBV HAP contract. The PHA shall provide an enhanced voucher (in the case of a preservation-eligible prepayment) or a tenant protection

voucher (in the case of a rent supplement or RAP expiration) to such individuals, who will have the statutory right to remain in the project (see PIH Notice 2001–41 for enhanced voucher requirements and PIH Notice 2008–12 for guidance on enhanced voucher requirements for overhoused households). If the resident moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD, since the funding to support the converted unit is no longer available.

L. Davis-Bacon. For those projects with 9 or more assisted units where rehabilitation or construction will occur, Davis-Bacon will apply. For more information addressing Davis-Bacon and RAD Second Component transactions, please see PIH Notice entitled 'Applicability of Davis-Bacon Labor Requirements to Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program – Guidance,' 80 Fed. Reg. 12511, March 9, 2015.

3.6 Special Provisions Affecting Conversion to PBRA

For Rent Supp and RAP projects converting assistance to PBRA under the Second Component of RAD, 24 CFR Part 880, Section 8 Housing Assistance Payments Program for New Construction (and applicable standing and subsequent Office of Housing guidance) will apply, except for the provisions listed below.[113,114] Where applicable, reference is made to the affected statute and/or regulation. For additional background purposes, HUD has provided Appendix I, which is a copy of the existing Part 880 regulation with the provisions stricken that will not apply to covered projects.

A. Length of Contract. Pursuant to the RAD statute, covered projects shall have an initial HAP term of 20 years. Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, will not apply.

B. Contract Renewal. Pursuant to the RAD statute, after the initial term of the HAP contract, the owner is eligible for renewal of the contract under section 524 of MAHRAA, subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal.

[113] Examples of Office of Housing guidance include handbooks such as "Occupancy Requirements of Subsidized Multifamily Housing Programs" (4350.3) and "Multifamily Asset Management and Project Servicing" (4350.1).

[114] These include fair housing requirements related to planning, siting, admissions and occupancy, accessibility for persons with disabilities, nondiscrimination and equal opportunity and affirmatively furthering fair housing.

C. Initial contract rent setting. Initial rent levels for the PBRA contract are subject to section 8(c)(1) of the 1937 Act. For projects that will not undergo initial repairs, 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[115] and submitted with the request for prospective conversion; and (2) 110 percent of the applicable fair market rent (FMR), less utility allowances.

For projects with units that will be undergoing initial repairs, the contract rents will be established at the lesser of the following rent levels: (1) the "post-rehabilitation" rents, as determined by an RCS; and (2) 110 percent of the applicable FMR, less utility allowances. For owners who wish to establish rents using this method, the owner must submit the following: (1) An RCS that includes both "as-is" rents at the project and "post-rehab" rents at the project and (2) A proposed scope of work. The contract will include both an "as-is" rent schedule and a "post-rehabilitation" rent schedule in one or more exhibits to the PBRA contract. The HAP contract will reflect a date for the completion of the repairs. The owner will be required to submit for HUD approval a cost-certification prepared for the third-party financing source once the repairs have been completed.

If the repairs are not completed by the date reflected in the HAP contract, unless HUD agrees to extend the deadline for completion of repairs, on the first day of the month following the date for the completion of repairs as reflected in the HAP contract, HUD will reduce the rents to those reflected in the "as-is" rent schedule starting on the first day of the month when the repairs were to have been completed. Further, HUD will consider the difference between the "as-is" and the "post-rehab" rents from the date of the effective date of the HAP contract until the date by which the repairs were to have been completed as an overpayment and will offset future HAP payments until the overpayment has been repaid.[116] Effective on the date repairs are completed, HUD will resume providing the rents that are reflected in the "post-rehab" rent schedule. For transactions where initial rents will be set at the "post-rehab" rents, the PBRA HAP contract will be effective on the first day of the month following the closing

[115] See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8

[116] For example: a project has established a timeframe of completing construction within 12 months of the effective date of the PBRA HAP with $1,000 post-rehab rents and $800 as-is rents for 10 units. At the end of 12 months, construction is not completed, and HUD does not grant an extension. The contract rents will be reduced to the rents reflected in the "as-is" rent schedule, and the owner will owe HUD $24,000, which will be repaid by offsetting future HAP payments. Once the construction is completed in accordance with the scope of work and the owner has submitted evidence of such completion that HUD determines is acceptable, HUD will resume providing the rents as reflected in the "post-rehabilitation" rent schedule, subject to the required offsetting until the full $24,000 is repaid to HUD.

on the construction financing. Owners will be required to submit evidence that they have successfully closed on the construction financing to their transaction manager.

D. Method of Adjusting Contract Rents. Contract rents will be adjusted by HUD's OCAF at each Anniversary of the HAP Contract, subject to (a) the availability of appropriations for each year of the initial term of the HAP Contract and (b) the Maximum Rent, as defined below.

The Maximum Rent is the higher of 110% of FMR (less utility allowances) or the market rents, as demonstrated by an RCS procured and paid for by the Project Owner. Where an RCS has been used to establish initial rents or to justify an OCAF adjusted rent that exceeds 110% of the FMR, the RCS will remain valid for five years, the Maximum Rent will not apply for the next four annual rent adjustments, and rents will be adjusted only by the OCAF.

E. Distributions. Converted projects will not be subject to any limitation on distributions of surplus cash, contingent on the availability of surplus cash as determined by year-end audited or certified financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205, which, among other provisions, establishes certain limitations on distributions for profit-motivated owners and authorizes HUD to require not-for-profit and certain for-profit owners to establish a residual receipts account. Note: Although the PBRA contract will have no limits on distributions, owners will still be subject to any limits on distributions that are established in other governing documents at the project (e.g. a 236(e)(2) Use Agreement).

F. Limitation on Rescreening of Residents upon conversion. At conversion, current residents are considered new admissions into the PBRA program. However, Project Owners may screen current residents only for the mandatory screening requirements established by statute (see, e.g., 24 CFR §§ 5.854, 5.856, and 5.857) and may not apply any discretionary screening requirements (see, e.g., 24 CFR §§ 5.852 and 5.855).

G. Davis Bacon. Davis-Bacon applies to Second Component PBRA conversions to the same extent it would apply if the conversion were a PBV conversion. See PIH Notice entitled "Applicability of Davis-Bacon Labor Requirements to Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program – Guidance," in 80 Federal Register 12511, March 9, 2015.

H. Under-occupied Units Converting to PBRA. If at the time of conversion, an eligible family assisted under the HAP contract is occupying a unit that is larger than appropriate because of the family's composition, the family will be permitted to continue to occupy the unit until such time as an appropriate-sized unit becomes available in accordance with 24 CFR § 880.605. When an appropriate-sized unit becomes available, the family living in the

oversized unit must move to the appropriate-sized unit within a reasonable amount of time. This protection to single persons who are elderly or disabled, regardless of the unit size. Residents of under-occupied units that are single individuals who are not elderly or disabled cannot be included in the HAP contract.

3.7 Processing Requirements for Prospective Conversions

Prospective Conversions generally entail the following steps, described in further detail below (see Section 3.8 for Retroactive Conversions):

- Initial contact with HUD
- Resident consultation and notification
- Selection of PHA (PBV conversions only)
- Conversion request submission and approval
- Funding request and reservation
- Verification of expiration or termination of Rent Supp/RAP contract and HAP execution

A. Initial Contact with HUD. For conversions to PBRA and prospective conversions to PBV, the first step is for the owner to contact HUD's Office of Recapitalization to express interest in a RAD conversion by emailing RAD2@hud.gov. For PBV conversions, the owner is not responsible for locating a PHA to administer the PBV contract. Upon initial contact with HUD's Office of Recapitalization, the transaction manager will work with the local Public Housing field office to identify an appropriate PHA to administer the PBV assistance.

In the owner's initial contact, the owner or owner's representative will discuss the RAD conversion with a member of HUD's Office of Recapitalization's staff and will develop a strategy for a successful conversion at the project.

B. Resident Notification. After making contact with HUD's Office of Recapitalization, the owner must complete the following: resident briefing, resident notification and resident comment activities prior to submission of the RAD conversion request. The owner is required to notify all project households and legitimate resident organizations (as defined in Section 1B.2 of this Notice) of the owner's request to provide PBV or PBRA assistance in lieu of TPV assistance. This notification must be done through a notification letter that meets all of the following requirements[117]:

1. The notification letter must offer the residents a description of the anticipated contract termination, the date of the termination, the units that are affected by the termination of the Rent Supp or RAP contract, and the units that would receive PBV (or PBRA)

[117] A sample notification letter for both PBV and PBRA conversions can be found at http://www.hud.gov/RAD

assistance in lieu of TPV assistance. The notification letter must also include a description of the different rights under the affected programs (Rent Supp or RAP, TPVs, and PBVs (or PBRA)) and how these programs impact resident rent payments and resident mobility.

2. The notification letter must provide a 30-day comment period, during which time residents and legitimate resident organizations will have the opportunity to comment. The letter must contain instructions on how to submit written comments (by email, in person etc.) and to whom to submit the comments. This 30-day comment period must begin within 5 days following the resident briefing.
3. The notification letter must specify which units are proposed for conversion and must be delivered to each unit in the project, with a copy to all legitimate resident organizations; it must also be posted in the project office and at least three prominent locations on the project site.
4. If relocation of households will be required due to rehabilitation, the notification letter must state the owner's plan for relocation, including the expected length of the relocation, and it must specify that all relocation costs will be the responsibility of the owner. All relocating households will have a right of first return.
5. The notification letter must indicate a date and time for the required residents' briefing and provide a contact name and method of contact for questions and comments.

The owner or owner's representative is also required to schedule two residents' briefings; the first will involve HUD staff and the second can be held only by the owner. For PBV conversions, the resident briefing will be held by Public Housing field office staff with participation from HUD Multifamily field office staff. For PBRA conversions, the briefing will be held by HUD Multifamily field office staff. The briefing is designed to fully inform residents and legitimate resident organizations of the features of TPV and PBV (or PBRA) assistance. The briefing will include information on the anticipated contract termination, the date of the termination, the units that are affected by the termination of the Rent Supp or RAP contract, and the units that would receive PBV (or PBRA) assistance in lieu of TPV assistance. The owner or owner's representative must attend the briefing and be available to respond to residents' questions and comments.

When providing resident notification and meetings, an Owner must use effective communication for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the Americans with Disabilities Act of 1990. Effective communication includes, but is not limited to, providing written materials in appropriate alternative formats (e.g., Braille, large type), as needed, and providing sign language interpreters and assistive listening devices at

resident meetings, as needed (24 CFR Part 8.6). Additionally, resident meetings must be held in facilities that are physically accessible to persons with disabilities. Where physical accessibility is not achievable, an Owner must use alternative methods to meet with qualified individuals with disabilities, such as holding meetings at an alternate accessible site or offering in-home meetings. Such meetings must be provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities in a setting that enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible (28 CFR part 35, Appendix B).

Additionally, an Owner must provide meaningful access to its programs and activities for persons who have a limited ability to read, speak, or understand English. For projects undergoing RAD conversion, an Owner must provide language assistance to residents of the project who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings. Such language assistance may include, but is not limited to, providing written translation of notices regarding the plans for the project and relocation and oral interpretation at resident meetings. For guidance on providing language assistance to persons with LEP, please see Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732).

3.7.1 Owner Submissions for Prospective Conversions

The owner must submit the items listed below via email to RAD2@hud.gov at least 60 days, but no more than 12 months, prior to the anticipated termination of the Rent Supp or RAP Contract. The owner is advised that early planning is critical to ensure the PBV or PBRA contract is effective upon termination of the Rent Supp or RAP Contract. If the Rent Supp or RAP contract is anticipated to expire or terminate fewer than 60 days following the date of application for the RAD conversion, the owner may request a short-term extension of the contract.

HUD will carefully review the owner's request to ensure it is eligible under the Notice and complies with RAD requirements. The owner's electronic application must include the following information:

A. Statement Requesting PBV or PBRA Assistance in lieu of TPV Assistance. This narrative statement must include:

1. **Project Information.** The Owner's submission request must contain a general project description (e.g. project name, project address, date project was built, total number of units)
2. **Transaction Description.** The owner's submission request must contain a description of the overall transaction for the PBV or PBRA Conversion that includes the information listed below:

i. Triggering Event. Description of the event that will trigger the termination of the Rent Supp or RAP contract (contract expiration, contract termination, or mortgage prepayment) including the Rent Supp or RAP contract number, expiration date, number of units on the original contract, and the number of actively billing units under the Rent Supp or RAP contract; as well as mortgage information, such as whether the existing mortgage is FHA insured or state-financed, and the mortgage maturity date.

ii. If the owner is prepaying the underlying mortgage, the statement must provide detail on the anticipated prepayment, including proposed closing date of the transaction, whether the transaction is an acquisition or a refinance, a summary of the proposed financing plan and must identify any external financing deadlines, for example Low Income Housing Tax Credit (LIHTC) bond closing or placed-in-service deadlines.

iii. HUD Approvals Needed. If the RAD conversion is part of a larger preservation transaction – i.e. the prepayment of a Section 236 mortgage in conjunction with a Decoupling, the 236 application must be submitted electronically via www.hudmfpreservation.net, with an indication on their 236 application that the owner is pursuing RAD. The RAD application should also indicate the nature of the preservation transaction and any anticipated approvals from HUD's Office of Recapitalization that will be needed in order to trigger the termination of the Rent Supp or RAP contract at the project.

iv. LIHTC Award or Allocation Information - If the proposed conversion request will involve LIHTC equity investment, the owner must submit with the RAD conversion request scanned, PDF copies of all award or allocation letters from the state LIHTC allocating agency evidencing the award/allocation, and information on related LIHTC deadlines affecting the project.

v. Rehabilitation Information. If any Rehabilitation will occur in conjunction with the site's proposed RAD conversion request, the following information must be provided: Per unit cost of rehabilitation, scope of work, relocation plan, and a certification by the Owner that Davis Bacon wages will be paid.

3. **Number of Units Proposed for the Conversion.** The statement must identify the number of units proposed for the RAD conversion. This includes project residents that would be eligible for TPVs due to a termination of the Rent Supp or RAP contract. To correctly identify the units eligible for conversion to PBV or PBRA assistance, the owner should refer to the following points:

i. **Number of Rent Supp or RAP contract units.** The owner should review the original Rent Supp or RAP contract to obtain the correct number of TPVs that would be provided. This is the total number of Rent Supp or RAP units on the

original rental assistance contract that are currently occupied by income-eligible (low-income) households. The final determination of income eligibility will be performed by the PHA. If the Rent Supp or RAP contract provides assistance to a project, it is likely that the number of actively billing Rent Supp or RAP units is less than the total number of Rent Supp or RAP units authorized in the original assistance contract. This is because, over time, the amount of Rent Supp or RAP funding has stayed constant while costs have increased, so the owner has reduced the number of units actively billing under the Rent Supp or RAP program.

ii. **Number of non-Rent Supp/RAP units at the project.** If the conversion involves a qualifying prepayment in an eligible low-income housing project, as defined above in Section 3.4(C), "Eligible Units," the RAD request may include units occupied at the time of the RAD conversion by residents who would otherwise receive EVs as a result of the mortgage prepayment. The request must list the total number of units proposed for conversion with residents that are eligible for EV assistance (subject to income eligibility as determined by the PHA for PBV conversions).

iii. **Number of Housing Choice Voucher (HCV) Units at the project**. If the conversion request involves units occupied by HCV holders, PBV assistance may be attached to units in the project only when the triggering event is an eligible prepayment and the conditions outlined in PIH Notice 2013-27: Voluntary Relinquishment of Enhanced or Regular Voucher in Exchange for PBV in Multifamily Conversion Actions are followed.

Additionally, for PBV conversions the following information must be submitted:

iv. ***Supportive services. The statement must clearly identify if more than 50 percent of the units in the project are proposed for conversion to PBV assistance***. If the assistance in more than 50 percent of the project units is proposed for conversion to PBV assistance and the project is a family project (not an elderly and/or disabled project) the requirements stated in Section 3.5(C) must be followed concerning supportive services.

v. ***Conversion of selected units in project***. If the owner proposes to convert more than 50 percent of the units in a project to PBV assistance, but the remainder of the units do not meet the exceptions described in 24 CFR 983.56 and discussed in Section 3.5 above, only 50 percent of the units may be assisted under the PBV HAP contract. For example, if the project has 100 units, 75 units are covered by a Rent Supp contract that is expiring, and the units do not qualify as excepted units, only 50 of the units may receive PBV assistance and the other 25 households are eligible to receive TPVs. In such a

case, in the RAD application, the specific units for which the owner proposes to attach PBV assistance must be identified. Because not all assistance at the project will convert to PBVs, and because the owner is proposing to convert assistance for some, but not all households, the owner must, in such a case, receive consent of all households where assistance is proposed for conversion to PBVs, following the guidelines for Retroactive Conversions in Section 3.8 of this Notice. The signed consent forms, as discussed in Section 3.8 of this notice, must be submitted with the owner's conversion request to RAD2@hud.gov for the prospective conversion.

B. Resident Notification and Comment . The owner must provide evidence that resident notification and comment procedures described in 3.7.B, above, have been met. *The RAD conversion request must include a copy of the notification letter, the date of the resident briefing and the names and titles of participating HUD staff, copies of all comments received, and a description of how the owner has considered the comments and addressed them in the plan for the conversion of TPV assistance to PBV assistance.* HUD will carefully consider the comments from residents and legitimate resident organizations as part of the review of the proposal, as discussed below.

C. **Statement of Compliance**. A statement of compliance with business practices detailed in Section 3.4(A) of this Notice for owner eligibility, along with evidence of the most recent REAC score and Management and Occupancy Review ratings that comply with Sections 3.4(E) and 3.4(A) of this Notice must be included in the materials as part of the conversion request to HUD. If the project does not meet the required Management and Occupancy Review standards, the statement should provide evidence that the transaction will put in place a qualified owner and management entity to successfully operate the project as affordable housing. If the project does not meet the required REAC score standards, the project will not be eligible for conversion.

D. **Project Agreements and Contracts**. Scanned, PDF copies of all relevant and applicable project legal agreements and documents, including: Rent Support RAP original contract documents; mortgage note; Use and/or Regulatory Agreement; IRP Agreement; and, other information necessary to evaluate the application that HUD may request at its discretion.

E. **Environmental Review.** HUD cannot issue an approval to convert assistance until and unless an environmental review has been completed and found to meet environmental review requirements. The following describes the submission and approval steps for securing a completed environmental review.

RAD transactions will either be reviewed under 24 CFR Part 50 or 24 CFR Part 58, i.e., "Part 50 Reviews" or "Part 58 Reviews."[118] All PBRA and FHA transactions require Part 50 Reviews, which are conducted by HUD staff. Non-FHA PBV transactions require Part 58 Reviews, which are conducted by a Responsible Entity (RE), except in accordance with 24 CFR 58.11, when HUD may determine to conduct the review under Part 50.

Transaction Type	**Required Environmental Review**
Non-FHA with PBRA	Part 50
FHA insured	Part 50
Non-FHA with PBV	Part 58

For all Part 50 reviews, the applicant must submit reports and documentation to HUD in accordance with 24 CFR Part 50, as discussed in Chapter 9 of the MAP guide, except as follows:[119, 120]

3. For PBRA conversions, (or where HUD has determined to conduct the PBV conversion review under Part 50) PHAs are not required to follow the radon testing requirements of HN 2013-03. However, HUD strongly recommends testing for all projects and mitigation of any structures with elevated radon (4 pCi/L or higher).
4. For PBRA conversions (or where HUD has determined to conduct the PBV conversion review under Part 50) that do not include substantial rehabilitation or new construction activities, PHAs shall provide HUD with one of the following:[121,122]
    - A transaction screen in accordance with ASTM E 1528-14 (or the most recent edition). A transaction screen will identify potential environmental concerns based on questionnaires, owner/occupant inquiry, site visit, government records inquiry and historical sources inquiry. The transaction screen must be prepared by a qualified professional, in accordance with 24 CFR 50.3(i)(4). As the definition of preparer in ASTM E 1528-14 does not meet this requirement, the professional must have either: (a) a science degree and at

[118] Please see the Environmental Review for RAD Transactions guidance document, available at https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/.

[119] Additional guidance on environmental review requirements is available on the HUD Environmental Review website, at https://www.hudexchange.info/environmental-review/.

[120] The MAP Guide is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430.

[121] Substantial rehabilitation is any rehabilitation that does not meet the conditions in 24 CFR 50.20(a)(2) for exclusion from review under the National Environmental Policy Act.

[122] Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-13.

least one year of practical environmental assessment experience in the field, or (b) three years of practical environmental assessment experience in the field performing site assessments for site contamination. If any potential environmental concerns are identified, an ASTM Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) must be provided; OR

- A Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition).

HUD staff will carefully review the submissions and may require additional information in order to complete their review. When HUD conducts the environmental review under Part 50, it documents the review using HUD Form 4128, Environmental Assessment and Compliance Findings for the Related Laws.[123] HUD's review will result in a determination, which may stipulate the rejection of the site for this demonstration or may require the completion of mitigation measures. The approval letter will include any conditions required to carry out any and all mitigation measures that may result from the environmental review. Any conditions that cannot be satisfied before the execution of the HAP contract will be captured in a Rider to the HAP contract, and those mitigation measure conditions must be completed in a timely manner.

When a Responsible Entity (RE) completes an environmental review under Part 58, they should use HUD recommended formats to document the environmental review record.[124] The PHA should submit an environmental report to the RE, in such form as prescribed by the RE, to enable the RE to complete their analysis. Once the review is completed, the PHA must submit *either*:

- Form HUD-7015.15, Request for Release of Funds, to their local PIH field staff.[125] After the PIH Field Director approves the RROF, the Director sends a completed HUD Form 7015.16 to the PHA, approving the release of funds. The PHA must submit the completed Form 7015.16 to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR 58.34, the PHA must submit the RE's finding of exempt activity with their RAD application. A finding of exempt activity is a statement of the result of the RE's environmental review, and is required even when form HUD-7015.15 is not required.

[123] The current HUD Form 4128 will soon be replaced with an online system for conducting environmental reviews, called the HEROS system. HUD is currently piloting the HEROS system, and RAD is one of the programs involved in the pilot.
[124] HUD recommended formats are available at https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/ and https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/.
[125] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

A letter from the RE indicating that the project converts to Exempt under 24 CFR 58.34 is sufficient.

The Owner submission must include either Form 7015.16 or a letter with the Responsible Entity's (RE's) finding of exempt activity in order to consider the environmental review to be complete.

Additionally, for PBRA conversions, owners will be required to submit the following:

F. **Rent Comparability Study.** In order to establish initial rents for a PBRA contract a Rent Comparability Study will be required.

G. **Capital Needs Assessment (CNA).** Except as noted below, each project that is applying for a PBRA conversion will be required to undergo a detailed physical inspection to determine short-term rehabilitation needs and long-term capital needs to be addressed through a Reserve for Replacement Account. A CNA must be submitted with the conversion request. The assessment will be used to size ongoing reserve deposits and may inform the timeline for any future refinancing.

1. **Transition to CNA eTool.** HUD is in the process of developing a standardized CNA eTool for multifamily housing that will also be required of all PBRA RAD conversions under this section. This new CNA eTool will be required as part of any prospective conversion request that wishes to convert to PBRA that is submitted six months after publication of the CNA eTool. Prior to the publication of the CNA eTool, an owner may submit any alternative form of CNA completed by a qualified, independent third-party professional.
2. **Exemptions.** HUD will exempt the following transaction types from completion of a Capital Needs Assessment:
    i. For non-FHA transactions:
        1. Projects that are undergoing rehabilitation and are providing a scope of work and an RCS to establish PBRA contract rents. The Project Owner must provide a copy of the CNA used to develop the Scope of Work, which HUD will use to establish reserve for replacement requirements.
        2. Projects that have had a PCA or CNA done in the last ten years will not have to produce a new CAN. However, the existing CNA should be included with their conversion request, which HUD will use to establish reserve for replacement requirements;
        3. Projects where the total assisted units at the project will comprise of less than 20% of the total units at the project.

ii. For FHA transactions, owners should follow applicable requirements in the MAP guide governing exemptions.

3. **Expiring Rent Supplement or RAP contracts.** For owners where the Rent Supp or RAP contract is expiring within six months of the RAD conversion request, there is no requirement to complete the CNA prior to conversion. However, HUD will require a rider to the PBRA contract that indicates that the owner must procure and submit a CNA within six months of the execution of the PBRA HAP contract.

3.7.2 PBV: HUD Review of Prospective Conversion Request, Selection of PHA, and Funding and Execution of HAP Contract

A. HUD Review. HUD will review the owner's request to verify that the conditions of this Notice are met. Specifically, the review will verify the following:

1. The owner has correctly identified the number of eligible units proposed for conversion and inclusion in the HAP Contract to be executed by the PHA and the owner (the final number is subject to determination of unit eligibility, family program eligibility and income verification by the PHA). This includes verifying that the owner has correctly identified all units that are currently covered by a Rent Supp or RAP contract, as well as any other units that may be eligible to convert their assistance following the requirements of Section 3.4(C) “Eligible Units for PBV Conversion;”

2. The owner has complied with the resident notice and briefing requirements in this Notice, and satisfactorily addressed resident comments;

3. The project and owner meet all eligibility requirements listed in Section 3.4 of this Notice;

4. If more than 50 percent of written comments from unique residents express disapproval for the conversion of assistance, HUD must contact the owner to discuss options for proceeding with the conversion request.

5. HUD reserves the right to deny the conversion request if the conditions of this Notice are not met, or if the owner does not satisfactorily address concerns raised in residents’ comments.

B. Selection of PHA. Once a transaction manager determines that the project meets all requirements outlined in this notice and that the project is eligible for conversion, HUD will forward the RAD project request to the HUD Public Housing Field Office Director. The field office will determine the appropriate PHA to administer the PBVs in accordance with established criteria for selection of PHA administration of TPVs, including, but not limited to,

jurisdiction to administer the voucher program in the area where the project is located and PHA administrative capacity (including any experience with operating a PBV program). The PHA will have the opportunity to accept or reject the offer to enter into a PBV HAP contract for eligible units at the project. In the case that the initially-selected PHA does not wish to enter into a PBV HAP contract, the HUD Public Housing Field Office Director will make a reasonable effort to find a PHA willing to enter into a PBV contract with the owner for eligible units at the project. If no PHA consents to enter into the PBV contract, the owner's conversion request will not be approved. The selected PHA must inform the local HUD Public Housing Field Office within 30 days of the date of its selection whether the PHA consents or does not consent to enter into the PBV contract at the Rent Supp or RAP project. Once a PHA has consented to administer the PBV contract, the local HUD Public Housing Field Office will inform the transaction manager in HUD's Office of Recapitalization that a PHA has been identified.

C. **Funding and Execution of the PBV HAP Contract**. Once the transaction manager has received confirmation that there is a PHA willing to administer the PBV contract at the project, the transaction manager will begin the process of finalizing the PBV HAP or contract at the project.

The transaction manager will also be responsible for identifying the anticipated number of converting units at the project and preparing the Housing Conversion Action worksheet to send to the Financial Management Division (FMD) to request funding for the conversion. The transaction manager will use the anticipated date of the triggering event as the anticipated effective date for the funding request. Once the funding request has been made, the FMD will work closely with the transaction manager to ensure that the correct number of vouchers has been requested before approving the funding request. Once the funding request has been approved, HUD will then amend the PHA's ACC, to provide tenant-protection funding for the conversion.

The PHA will also determine which units will be included in the PBV contract. In some cases, the number of actively billing Rent Supp or RAP units has reduced over time, so the number of units on the contract exceeds the number of actively billing units. The original contract specified the number of units to receive Rent Supp or RAP assistance, but did not specify which units were covered by the contract. This can create confusion in determining which families may receive assistance. For example, a 100-unit project may have a Rent Supp contract that covers 50 units, but may have only 30 actively billing units. The 30 families that reside in the actively billing units will receive TPV assistance (provided they are income-eligible), and an additional 20 households at the project would be eligible for TPV assistance (provided there are 20 income- eligible families). Once the Owner's submission is accepted by HUD and a PHA is selected to administer the PBV HAP contract, the PHA must

determine which 20 families of the 70 families residing in units not actively billing under the Rent Supp contract will receive voucher assistance. To determine which households will receive assistance, the PHA will perform income verification on all households that do not reside in the actively billing Rent Supp or RAP units, and will then hold a lottery among the income-eligible residents to select the families who will receive the vouchers. Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-065 and Appendix

For PBV conversions with environmental reviews conducted under 24 CFR Part 58, the Transaction Manager will ensure that either Form 7015.16 or a letter with the Responsible Entity's finding of exempt activity has been submitted with the application for prospective conversion. If the PBV conversion is FHA-financed or HUD has determined to conduct the environmental review under 24 CFR Part 50, the Transaction Manager will conduct the environmental review utilizing the environmental reports and analyses submitted as part of the application for prospective conversion and ensure the environmental review meets the standards of Part 50.[126]

Subsequent to the amendment of the PHA's ACC, confirmation of the environmental review being completed, and confirmation that the Rent Supp or RAP contract has been terminated or has expired, the PHA and owner will enter into a PBV HAP contract for projects that qualify as existing housing under the PBV program.[127] However, prior to the execution of the HAP contract, the units proposed for conversion must meet HQS, all income certifications must have been made, and the triggering event must have occurred. If the units do not meet HQS, the project will not be able to execute HAP until the units substantially comply with HQS.

3.7.3 PBRA: HUD Review of PBRA Request and Execution of Contract

HUD will review the owner's request to verify that the conditions of this Notice are met. Specifically, the review will verify the following:

- The owner has correctly identified the number of units proposed for conversion and inclusion in the PBRA HAP contract to be executed by HUD and the owner. This includes verifying that the owner has correctly identified all units that are currently covered by a Rent Supp or RAP contract and all units that would receive TPVs in the form of EVs at a qualifying Prepayment that may be converted to PBRA assistance following the requirements of Section 3.4(D), "Eligible Units for PBRA Conversion".

[126] See Section 3.7.1.E for more information on environmental review.

[127] The HAP Contract and Rider can be found at www.hud.gov/rad

- The owner has complied with the resident notice and briefing requirements in this Notice, and satisfactorily addressed resident comments;
- The project and owner meet all eligibility requirements listed in Section 3.4 of this Notice; and
- If more than 50 percent of written comments from unique residents express disapproval for the conversion of assistance, HUD must contact the owner to discuss options for proceeding with the conversion request.
- The RCS meets the standards set forth in Chapter 9 of the Section 8 Renewal Guide.
- If "post-rehab" rents are being utilized, evidence that the Owner has secured sources to finance the scope of work that would result in post-rehab rents.
- The Transaction Manager will conduct the environmental review utilizing the environmental reports and analyses submitted as part of the application for prospective conversion and ensure the environmental review meets the standards of 24 CFR Part 50.[128]
- Certification of Davis-Bacon wages if rehabilitation is being used.
- HUD reserves the right to deny the conversion request if the conditions of this Notice are not met, or if the owner does not satisfactorily address concerns raised in residents' comments.

After reviewing the Owner's submission, the Office of Recapitalization will send a letter to the owner informing them of its initial approval to convert assistance under PBRA. Recap staff will then begin the process of reserving funding for the PBRA contract. Conversion of assistance under PBRA will be conditioned on expiration or termination of the Rent Supp or RAP contract at the project. Once funds have reserved for the PBRA contract and the expiration or termination of the Rent Supp or RAP contract has occurred, the PBRA contract will be executed by the owner and the local HUD multifamily office.

3.8 Processing Requirements for Retroactive Conversions

Retroactive conversions are conversions of TPVs that have already been issued to project residents as a result of a Rent Supp or RAP contract expiration or the termination of a Rent Supp or RAP contract due to prepayment of a mortgage. Retroactive conversions will be limited to PBV Conversions only. The contract expiration or termination must have occurred on or after October 1, 2006. These TPVs may include EVs provided to eligible residents at the Rent Supp or RAP-assisted project as the result of a mortgage prepayment, as detailed in Section 3.4(C). In

[128] See Section 3.7.1.E for more information on environmental review.

such cases, EVs provided to all project residents as part of the mortgage prepayment may be converted to PBV assistance as part of the RAD proposal, provided that households that received these EVs are still residing at the project and are eligible for PBV assistance. To be eligible for the PBV program, project residents with EV assistance must be very low income (or low-income if the PHA allows admission of low-income tenants in accordance with their administrative plan) as described in 24 CFR § 982.201, and meet all program eligibility requirements of the PBV program.

For retroactive conversions, the owner will submit a conversion request directly to the PHA that administers the TPVs that were issued in response to the Rent Supp or RAP contract termination, with a complete copy to HUD Headquarters by email to RAD2@hud.gov. Only the TPVs originally provided to eligible residents at the time of contract termination, expiration, or prepayment are eligible for conversion to PBV assistance, and only the units occupied by households that received TPVs and are still residing at the project are eligible to have their assistance converted to PBV assistance.

As described in Section 3.3 A.1 General Program Description-Prospective Conversions, an owner may not submit a request for a prospective conversion if the Rent Supp or RAP contract is anticipated to expire or terminate fewer than 60 days following the date of application for the RAD conversion. If the Rent Supp or RAP contract is expected to expire or terminate within 60 days, the owner must pursue a retroactive conversion unless a short-term extension is approved. In these instances, eligible residents will receive TPVs in accordance with current practice described in PIH Notice 2001-41 or any subsequent guidance issued by the Office of Public and Indian Housing governing Multifamily Housing Conversion Actions. After the TPVs are issued to eligible residents, the owner may apply for a retroactive conversion of assistance.

Residents that were previously issued TPVs will be considered continuing participants and no re-certification must be done at the time of conversion, provided that the PHA has completed an income re-certification within the past 12 months from the date of conversion. However, if the assistance was provided as EVs due to a preservation-eligible mortgage prepayment, the PHA will perform income verification to determine whether the families that received EV assistance meet the low-income requirements for the PBV program.

The owner is advised that the final number of units where assistance is converted is determined after the receipt of resident consent and/ or non-consent, resident move out, or where voucher holders have decided not to relinquish their vouchers. Any household that has consented must relinquish its voucher at the time of conversion. However, residents retain the right to move from the project with voucher assistance or remain with EV assistance, up until the time the PBV HAP contract is executed. If a household with a TPV moves from the project prior to the execution of the PBV HAP contract, the unit that was occupied by that household will not be included in the PBV HAP contract. Only income-eligible households that consent to the conversion and who

reside in the project at the time of PBV HAP contract execution will receive assistance PBV assistance.

3.8.1 Submission of Requests for Retroactive Conversions

A Rent Supp or RAP project owner must submit their request to the PHA administering the TPVs to convert such assistance to PBV assistance, and submit a complete copy to HUD Headquarters by email to RAD2@hud.gov. Owners are strongly encouraged to contact the PHA early in the process to determine if the PHA administering the TPVs is interested in approving the PBV RAD request. The owner may request conversion of TPVs that were issued to residents of the project following a contract termination that occurred on or after October 1, 2006, or expires within 60 days of an owner's RAD conversion request, but did not receive an extension. The owner's request must include the following information:

A. Statement Requesting Conversion of TPV Assistance to PBV Assistance. This narrative statement must:

1. Identify the households for which a conversion of TPVs to PBV assistance is requested. The owner must list the specific households, by name and unit number, that received or will have received TPVs because of a contract termination due to prepayment or contract expiration that occurred on or after October 1, 2006 and who still reside at the project with HCV assistance. The PHA will verify the owner's list against the PHA's records. Additionally, the owner must supply supporting documentation that these households have consented to conversion of the TPV assistance to PBV assistance, as described below.

2. The statement must clearly identify whether more than 50 percent of the units in the project are proposed for conversion to PBV assistance. If so, and more than 50 percent of the units are not unassisted, within single-family buildings, or occupied by elderly and/or disabled families, the statement must detail the supportive services that the residents will be offered in accordance with the PBV program requirements at 24 CFR §§ 983.56 (b) and (c). Please refer to Section 3.5.C. If services are not being offered in such cases, no more than 50 percent of the units may be assisted by the PBV contract. In such a case, the owner must clearly identify the specific units where assistance is to be converted where the occupying households have consented to the conversion to PBVs

3. A statement verifying that the date of the contract termination/expiration was no earlier than October 1, 2006.

B. Documentation of Resident Consent. The owner is required to notify affected households of its plans to request conversion of TPV assistance to PBV assistance.[129] Additionally, the activities below must be documented and submitted with the owner's request:

1. The notification letter must be delivered to all project residents and legitimate resident organizations, including each eligible unit occupied by an eligible household; it must also be posted in the project office, the PHA office, and at least three prominent locations on the project site.

2. The notification letter must include a list of the potentially-affected units and must indicate that consent by each affected household must be obtained prior to any such conversion. The notification letter must also indicate that the administering PHA will schedule and hold resident briefings; the time and date of such briefings must be stated in the letter.

3. The administering PHA must conduct a briefing for affected residents and legitimate resident organizations, during which the PHA must explain and provide written documentation that completely and accurately describes the different rights under the affected programs, TPVs and PBV assistance, and the impact each type of assistance may have on the tenant portion of the rent and resident mobility. Households must be made aware that they may remain in the unit with the voucher assistance, and, if a household does not consent to the conversion of their voucher assistance to PBV assistance, they must not be made to move out of the unit. The owner cannot employ any tactics to pressure the household into relinquishing its HCV and may not terminate a household's lease on such a basis.

4. If relocation of households will be required due to rehabilitation, the notification letter and briefing must state the owner's plan for relocation, including the expected length of the relocation, and must specify that all relocation costs will be the responsibility of the owner. All relocating households will have a right of first return.

5. During the briefing, each affected household must be provided with a form to complete and return to the PHA to acknowledge their consent or non-consent; each household must be provided at least 30 days from the date of the PHA briefing to make the decision. The form must be signed by the head of household and returned to the PHA, with a copy to the owner.

[129] Sample Resident Notification language can be found on the RAD website.

6. TPV assistance will be converted to PBV assistance only for units where the household has signed a document consenting to the conversion of assistance. Households that do not provide consent will continue to receive HCV assistance and shall not be forced to relocate. Non-consent to the conversion is not grounds for lease termination by the owner.

C. Statement of Compliance. A statement of compliance with business practices for owner eligibility detailed in paragraph Section 3.4(A) of this Notice must be submitted, along with evidence that the project meets HQS. Note: if TPVs have not been issued, HQS inspections will be included in the TPV issuance process.

D. Environmental Review. See Section 3.7.1.E for the Environmental Review submission requirements applicable to PBV.

3.8.2 Review and Consent of PHA and Execution of PBV HAP Contract

The PHA will review the request of the owner and decide whether it is interested in participating in RAD and a retroactive conversion. The PHA must inform HUD within 15 days of the date of the owner's request to the PHA if the agency does not consent to the conversion. The consent or non-consent must be submitted to RAD2@hud.gov. If the PHA determines it will participate, the PHA will review the request of the owner to verify whether or not the owner has complied with all required resident notification and consent procedures, and to ensure that the PBV contract will only cover those units where residents have consented to the conversion.

Upon receipt of the PHA's consent, HUD will review the owner's submission as required under section 3.7.1 to ensure that it meets all Notice requirements and will notify the owner and the PHA within 15 calendar days whether the conversion request is approved. If the PHA does not consent, the conversion of assistance will not be authorized, and a rejection will be sent. Per the RAD statute, the PHA that is actively administering the TPVs for the project must consent to the conversion.

Following HUD approval, the PHA and owner will enter into a PBV HAP contract if the units meet the PBV regulatory requirements for existing housing. The term of the HAP contract is 15 years; by choosing to participate in the RAD program, the PHA agrees to enter into 15-year HAP. The owner is advised that the PBV HAP contract will only cover eligible units as described in Section 3.4. A PBV contract will not be entered into unless the units substantially meet HQS.

Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-65 and Appendix IV.

3.9 Additional Information

For additional information on this Section of the Notice, please check www.hud.gov/rad or email questions to RAD2@hud.gov.

APPENDIX I – 24 CFR PART 880 REGULATION, STRICKEN FOR PBRA CONVERSIONS

Title 24: Housing and Urban Development
PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

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Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Source: 44 FR 59410, Oct. 15, 1979, unless otherwise noted.

Subpart A—Summary and Applicability

§ 880.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

[61 FR 13587, Mar. 27, 1996]

§ 880.104 Applicability of part 880.

~~(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies~~

~~if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.~~

~~(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:~~

~~(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.~~

~~(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.~~

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

(d) ~~Notwithstanding the provisions of paragraph (b) of this section,~~ the provisions of 24 CFR part 5 apply to all projects~~, regardless of when an Agreement was executed~~.

[61 FR 13587, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

~~§ 880.105 Applicability to proposals and projects under 24 CFR part 811.~~

~~Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.~~

Subpart B—Definitions and Other Requirements

§ 880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

~~*Agency.* As defined in 24 CFR part 883.~~

~~*Agreement.* (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.~~

Annual income. As defined in part 5 of this title.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator ~~upon satisfactory completion of the project~~, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

~~*Elderly family.* As defined in part 5 of this title.~~

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

~~*Final proposal.* The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under §880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)~~

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a “vacancy payment” may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title “public accountant,” only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease ~~newly constructed~~ dwelling units assisted under this part. ~~The term owner also includes the person or entity submitting a proposal under this part.~~

~~*Partially-assisted Project.* A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.~~

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, ~~the Agreement and~~ the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, ~~the Agreement and~~ Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, ~~the Agreement and~~ Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

~~*Project Account.* A specifically identified and segregated account for each project which is established in accordance with §880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.~~

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

Secretary. The Secretary of Housing and Urban Development (or designee).

~~*Small Project.* A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.~~

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 6714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984; 49 FR 19943, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13587, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

~~§ 880.205 Limitation on distributions.~~

~~(a) Non-profit owners are not entitled to distributions of project funds.~~

~~(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:~~

~~(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in theFederal Register.~~

~~(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the Federal Register.~~

~~(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see §880.405) unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.~~

~~(d) Any short-fall in return may be made up from surplus project funds in future years.~~

~~(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.~~

~~(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.~~

~~(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.~~

~~(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.~~

~~(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 49 FR 6714, Feb. 23, 1984; 61 FR 5212, Feb. 9, 1996; 65 FR 61074, Oct. 13, 2000]~~

§ 880.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

~~(d) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;~~

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors* —(1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[44 FR 59410, Oct. 15, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998]

§ 880.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act;

(3) Mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and

(4) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the ~~Agreement,~~ Contract, and/or ACC. ~~Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:~~

~~(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.~~

~~(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.~~

~~(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811 subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.~~

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, ~~an Agreement,~~ Contract or ACC entered into pursuant to this part: *Provided, however,* That such financing is in connection with a project ~~constructed~~ pursuant to this part and approved by HUD. Any pledge of the ~~Agreement,~~ Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture or HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The ~~Agreement, the~~ Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a ~~newly constructed~~ manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with §207.33(b) of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

~~§ 880.211 Audit.~~

~~(a) Where a State or local government is the eligible owner of a project or a contract administrator under §880.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.~~

~~(b) Where a non-profit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.~~

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986; 57 FR 33256, July 27, 1992]

Subparts C–D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD ~~upon satisfactory completion of the project.~~

(b) [Reserved]

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in §880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in §880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in §880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with §5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13587, Mar. 27, 1996; 65 FR 16722, Mar. 29, 2000]

~~**§ 880.502 Term of contract.**~~

~~(a) *Term (except for Manufactured Home Parks).* The term of the contract will be as follows:~~

~~(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.~~

~~(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.~~

~~(b) *Term for Manufactured Home Parks.* For manufactured home units or spaces in newly constructed manufactured home parks, the term of the Contract will be 20 years.~~

~~(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]~~

~~(b) *Project Account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.~~

~~(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.~~

§ 880.504 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units

available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §880.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract* —(1) *Part 880 and 24 CFR part 881 projects.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

.(c) *Restoration.* For this part 880, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 31397, Aug. 7, 1984; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13652, Mar. 23, 1994; 60 FR 14841, Mar. 20, 1995; 61 FR 13587, Mar. 27, 1996; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

§ 880.505 Contract administration ~~and conversions~~.

(a) *Contract administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract. The PHA or HUD may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA fee for Contract administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract ~~except under certain circumstances (see 24 CFR part 883) where a state housing finance agency is the PHA and finances the project~~.

~~(c) *Conversion of Projects from one Ownership/Contractual arrangement to another*. Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:~~

~~(1) The owner, the PHA and HUD agree,~~

~~(2) HUD determines that conversion would be in the best interest of the project, and~~

~~(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.~~

§ 880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).

(a) *Rights of Owner if PHA defaults under ~~Agreement or~~ Contract.* The ~~ACC, the Agreement and the~~ Contract will provide that, in the event of failure of the PHA to comply with the ~~Agreement or~~ Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the ~~Agreement or~~ Contract and meet the obligations of the PHA under the ~~Agreement or~~ Contract including the obligations to enter into the Contract.

(b) *Rights of HUD if PHA defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default~~ and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract~~. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.

(c) *Rights of PHA and HUD if Owner defaults under Contract.* (1) The Contract will provide that if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

~~§ 880.508 Notice upon contract expiration.~~

~~(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.~~

~~(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the~~

~~owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.~~

~~(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.~~

~~(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.~~

~~(e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.~~

~~[49 FR 31283, Aug. 6, 1984]~~

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* ~~(1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.~~

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

(3) ~~With respect to non-elderly family units,~~ the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to ~~non-elderly~~ families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to ~~non-elderly~~ families expected to reside in the community by reason of current or planned employment.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

(c) *Contracting for services.* (1) For this part 880~~ and 24 CFR part 881 projects~~, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

~~(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.~~

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to the contract administrator:

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with §880.602 and to provide distributions to the owner~~ as provided in §880.205, §881.205 of this chapter, or §883.306 of this chapter~~, as appropriate.

~~(2) For this part 880 and 24 CFR part 881 projects:~~

~~(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.~~

~~(ii) Partially-assisted projects are exempt from the provisions of this section.~~

~~(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.~~

~~(3) For 24 CFR part 883 projects:~~

~~(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.~~

~~(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.~~

~~(Approved by the Office of Management and Budget under control number 2502–0204)~~

[44 FR 59410, Oct 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 1145, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39702, Sept. 27, 1989; 56 FR 7536, Feb. 22, 1991; 60 FR 14841, Mar. 20, 1995; 61 FR 13588, Mar. 27, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880* ~~*and 24 CFR part 881*~~ *projects.* ~~(i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.~~

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

~~(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.~~

~~(2) *Part 883 of this chapter projects.* (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:~~

~~(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or~~

~~(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.~~

~~(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.~~

~~(iii) All earnings, including interest on the reserve, must be added to the reserve.~~

~~(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.~~

~~(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.~~

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, ~~except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.~~

[61 FR 13588, Mar. 27, 1996]

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. For this part 880 ~~and 24 CFR part 881~~ projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. ~~For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.~~

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR

part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

(1) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5~~ and 813~~), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition* —(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family

income and composition, the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the contract rent plus any utility allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(Approved by the Office of Management and Budget under control number 2502–0204)

[61 FR 13589, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000; 70 FR 77744, Dec. 30, 2005]

§ 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

[49 FR 19943, May 10, 1984]

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of §880.611.

§ 880.606 Lease requirements.

(a) *Term of Lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form* —(1) *Part 880* ~~*and 24 CFR part 881*~~ *projects.* For this part 880 ~~and 24 CFR part 881~~ projects, the form of lease must contain ~~all required provisions, and~~ none of the prohibited provisions ~~specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.~~

~~(2) *24 CFR part 883 projects.* For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.~~

~~(i) *Required provisions (Addendum to lease).*~~

~~Addendum to Lease~~

~~The following additional Lease provisions are incorporated in full in the Lease between _____ (Landlord) and _____ (Tenant) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.~~

~~a. The total rent will be $____ per month.~~

~~b. Of the total rent, $____ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and $_____ will be payable by the Tenant. These amounts will~~

~~be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.~~

~~c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.~~

~~d. The Landlord will provide the following services and maintenance: _____~~

~~e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.~~

~~Landlord_____~~
~~By_____~~
~~Date_____~~
~~Tenant_____~~
~~Date_____~~

~~[End of addendum]~~

(ii) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

a. *Confession of Judgment.* Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. *Seize or Hold Property for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. *Waiver of Legal Notice.* Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease.

e. *Waiver of Legal Proceeding.* Agreement by the tenant to allow eviction without a court determination.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. *Waiver of Right to Appeal Court Decision.* Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit.* Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13590, Mar. 27, 1996]

§ 880.607 Termination of tenancy and modification of lease.

(a) *Applicability.* The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) *Entitlement of Families to occupancy* —(1) *Grounds.* The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any State landlord and tenant act;

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed “other good cause” under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) *Material noncompliance.* (i) Material noncompliance with the lease includes:

(A) One or more substantial violations of the lease; or

(B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) *Termination notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

(d) *Modification of Lease form.* The owner, with the prior approval of HUD ~~or, for a 24 CFR part 883 project, the Agency,~~ may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by §880.609 and other applicable HUD regulations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[44 FR 59410, Oct. 15, 1979, as amended at 51 FR 11225, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39703, Sept. 27, 1989; 56 FR 7537, Feb. 22, 1991; 60 FR 14842, Mar. 20, 1995; 61 FR 13590, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

~~§ 880.609 Adjustment of contract rents.~~

~~(a) *Automatic annual adjustment of Contract Rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR part 888.~~

~~(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.~~

~~(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 59 FR 22755, May 3, 1994; 61 FR 13591, Mar. 27, 1996]~~

§ 880.610 Adjustment of utility allowances.

In connection with annual ~~and special~~ adjustment~~s~~ of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502–0161)

[50 FR 39097, Sept. 27, 1985]

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with §880.601(a) and otherwise complied with §880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with §880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has ~~(for 24 CFR part 883 projects, the owner and the Agency have)~~ demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under §880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition:

(1)(i) For this part 880 ~~and 24 CFR part 881 private-owner/PHA~~ projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

~~(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.~~

(2) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

~~§ 880.612a Preference for occupancy by elderly families.~~

~~(a) *Election of preference for occupancy by elderly families* — (1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.~~

~~(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.~~

~~(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:~~

~~(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as "non-elderly disabled families") is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or~~

~~(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.~~

~~(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list on the basis of having made the election.~~

~~(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.~~

~~(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.~~

~~(b) *Determining projects eligible for preference for occupancy by elderly families* — (1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources (“primary” sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources (“secondary” sources) listed in paragraph (b)(1)(ii) of this section:~~

~~(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; *or*~~

~~(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of “elderly families”) from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of “elderly families” which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.~~

~~(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.~~

~~(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.~~

~~(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:~~

~~(i) The number of units equivalent to the higher of—~~

~~(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and~~

~~(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*~~

~~(ii) 10 percent of the number of units assisted under this part in the eligible project.~~

~~(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.~~

~~(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.~~

~~(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.~~

~~(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.~~

~~(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:~~

~~(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or~~

~~(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.~~

~~(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:~~

~~(1) Conduct marketing in accordance with §880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and~~

~~(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.~~

~~(g) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).~~

~~[59 FR 65850, Dec. 21, 1994, as amended at 61 FR 9046, Mar. 6, 1996; 65 FR 16722, Mar. 29, 2000]~~

APPENDIX II –THE U.S. HOUSING ACT OF 1937, WAIVED FOR PBRA CONVERSIONS

The following lists the sections of the Act that are waived for PBRA conversions under the first component of the Demonstration:

- Section 3(a)(1)
- Section 8(b)(1)
- Section 8(c)(1)
- Section 8(c)(2)
- Section 8(c)(4) (clause preceding the first comma)
- Section 8(c)(5)
- Section 8(d)(2)(A)
- Section 16(c)(2)

Please note that in addition to this list there are provisions of section 8 that are not germane to PBRA conversions under RAD and therefore do not apply.

APPENDIX III – PBRA SITE AND NEIGHBORHOOD STANDARDS

This Appendix III describes the site and neighborhood standards that apply to RAD projects converting to PBRA. These requirements are meant to mirror those established in Housing Notice 2014-14; any substantive conflicts between the requirements set forth herein and those set forth in Housing Notice 2014-14 are accidental and in the event of such conflict, the requirements set forth in Housing Notice 2014-14 shall control unless explicitly superseded by HUD.

Site selection for all covered projects (whether existing housing / rehabilitation or new construction) must meet the following requirements:

a. The site and neighborhood is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

b. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

c. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

d. It must meet all applicable accessibility requirements, including, but not limited to, the accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

To the extent the covered project involves new construction, the following site selection requirements must also be met:

e. The covered project may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area and may not be located in an area of minority concentration. If HUD determines that the covered project will be located in an area of minority concentration, additional supporting data (e.g., census data, evidence of local revitalization efforts, etc.) must be submitted in order for HUD to determine that they meet one of the exceptions below:

1. Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration. Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority households and in relation to the racial mix of the locality's population.

A. Units may be considered to be comparable opportunities if they have the same household type and tenure type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.

B. Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

i. A significant number of assisted housing units are available outside areas of minority concentration.

ii. There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

iii. There are racially integrated neighborhoods in the locality.

iv. Programs are operated by the locality to assist minority households that wish to find housing outside areas of minority concentration.

v. Minority households have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

vi. A significant proportion of minority households have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.

vii. Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

2. The project is necessary to meet overriding housing needs that cannot be met in that housing market area. Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

APPENDIX IV– NEW CODES FOR SPECIAL PROGRAMS REPORTED ON THE FAMILY REPORT (FORM HUD-50058) FOR THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM.

In order to implement the Demonstration, four new codes to be used with data submitted on Form HUD-50058 have been created to ensure proper monitoring and reporting. More specifically, the four new codes will allow the Department to track the project-based voucher (PBV) component of the Rental Assistance Demonstration (RAD) program. These codes must be entered in line 2n of the Form HUD-50058 in accordance with PIH Notice 2011-065.

The following codes have been assigned to the four types of housing eligible for the RAD.

- **RADPH** (Rental Assistance Demonstration/Public Housing)
- **RADMR** (Rental Assistance Demonstration/Moderate Rehabilitation)
- **RADRS** (Rental Assistance Demonstration/Rental Supplement)
- **RADRP** (Rental Assistance Demonstration/Rental Assistance Program)

Upon publication of this notice, public housing agencies must enter the appropriate program code on line 2n of the Family Report for families who are participating in the RAD program.