Rental Assistance Demonstration
Attachment to Annual Plan

The Boston Housing Authority (BHA) has been a successful applicant in the Rental Assistance Demonstration (RAD) program, and to date BHA has successfully converted several former public housing communities to RAD. (Please see past Annual Plans for details regarding properties that have already converted to RAD.) The purpose of this current Attachment is to provide details regarding upcoming or proposed RAD conversions.

BHA is pursuing conversion of public housing dwelling units at several sites to Project Based Vouchers or Project Based Rental Assistance under the guidelines of H-2019-09 PIH 2019-23, REV-4 and any successor Notices. In addition to conversions of existing public housing, BHA is pursuing opportunities to convert newly constructed (and unoccupied) public housing to be developed using BHA's "Faircloth" capacity. In July 2023, HUD issued Supplement Notice 4B to its RAD Notice (H-2023-08 PIH-2023-19) which, among other things, provided guidance about how housing authorities could use their Faircloth capacity in conjunction with RAD to create new project-based voucher units through a Faircloth-to-RAD mechanism. In November 2024, HUD rebranded Faircloth-to-RAD as "Restore Rebuild."

One particular goal is to leverage publicly owned land as sites for Restore-Rebuild housing development. BHA has worked closely with the City of Boston to identify opportunities at what the City considers "High Opportunity Sites" as identified in its 2022 Public Land for Public Good: Citywide Land Audit." In addition, through a series of public procurements beginning in December 2023, BHA has solicited proposals from private developers to create new Restore-Rebuild housing units. BHA is pursuing many of the resulting proposals both at publicly owned and at privately owned sites.

RAD conversion, whether using Project Based Voucher (PBV) subsidy or Project Based Rental Assistance (PBRA), entails adoption and implementation of certain rights and protections for residents and applicants. Upon conversion of a public housing unit to a PBV unit, the BHA will adopt the resident rights, participation, waiting list and grievance procedures listed in Section 1.6 of H-2019-09 PIH 2019-23, REV-4 and H-2016-17/PIH-2016-17; upon conversion to a PBRA unit, the BHA (or the property owner as applicable) will adopt the resident rights, participation, waiting list and grievance procedures listed in Section 1.7 of H-2019-09 PIH 2019-23, REV-4 and H-2016-

17/PIH-2016-17. These resident rights, participation, waiting list and grievance procedures are appended to this Attachment. Additionally, the BHA certifies that it is currently compliant with all fair housing and civil rights requirements.

In addition, BHA recognizes the important provisions included in RAD Supplemental Notice 4C, which is also appended to this Attachment.

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing public housing authorities with access to private sources of capital to repair and preserve its affordable housing assets. (The Restore-Rebuild mechanism further allows public housing authorities to develop brand new public housing assets that will convert to RAD.) Please be aware that upon conversion, the Authority's public housing Capital Fund will be reduced by the pro rata share attributable to the Public Housing Developments converted through RAD. BHA may borrow funds to address capital needs, and BHA may also contribute Capital Funds towards the RAD conversions. BHA currently has debt under the Capital Fund Financing Program and will be working with its bond trustee to address outstanding debt obligations, which may result in additional reductions of Capital Funds. The BHA currently has debt under an Energy Performance Contract (EPC) and will be working with that bond trustee and its EPC partner, Ameresco, to address outstanding debt obligations, which may result in additional reductions of Capital or Operating Funds.

Below, on the following pages, please find specific information related to the Public Housing Development(s) and proposed Restore-Rebuild housing developments for which BHA is currently pursuing RAD conversions. (Please see past Annual Plans for details regarding properties that have already converted to RAD.)

In addition, the BHA is also engaged in the conversion of Moderate Rehabilitation/Rent Supplement Sites pursuant to Component II of the RAD notice. As an integral part of these conversions the BHA is partnered with the Developer/Owner as the subsidy administrator and provides choice mobility to these residents. Following the Public Housing Developments listed below, is a list of the Moderate Rehabilitation sites which have or will be converted to Project Based Section 8 via RAD.

The information referenced above regarding resident rights, participation, waiting list and grievance procedures is appended following the information related to each development.

Development 1

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Ausonia	MA002000261	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
100	Elderly/Disabled	Elderly/Disabled	$389,516
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	93	93	
1BR	7	7	
2BR			
3BR			
4BR			
5BR			
6BR			

Notes

- Due to high capital needs, BHA separately pursued a Section 18 disposition, and that application was in fact approved by HUD. The final conversion may nevertheless involve a RAD/Section 18 Blend—and for that reason we are mindful to keep Ausonia in this RAD Attachment.
- CHAP date: 02/20/2018
- Closing date: Expected 2027

Development 2

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Orchard Gardens (Phases 1&2, and 3)	MA002002113 MA002002115	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
282	Family	Family	$519,814
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency			
1BR	73	73	
2BR	87	87	
3BR	94	94	
4BR	23	23	
5BR	5	5	
6BR			

Notes

- Orchard Gardens is an existing mixed-finance property that is not owned by the BHA.
- There are currently 282 public housing units and 49 non-public housing units at Orchard Gardens; all 282 public housing units will convert to PBV RAD/Section 18 Blend pursuant to Notice PIH 2021-07.
- CHAP date: 7/11/2023
- Closing date: Expected 2027

Development 3

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Mildred C. Hailey Apartments	MA002107119	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
516	Family	Family	$2,212,654*
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency			
1BR	67	67	
2BR	202	202	
3BR	182	182	
4BR	51	51	
5BR	12	12	
6BR	2	2	

Notes

- BHA received Section 18 Demo/Dispo approval for these 516 units in October 2023.
- BHA is keeping the 516 units listed in this RAD Attachment solely to preserve flexibility if for any reason a partial RAD conversion becomes helpful.
- BHA intends to continue to own (through affiliated entities) and operate the modernized buildings.
- CHAP date: TBD
- Closing date: TBD

*516 units times $4,288.09/unit FY25 CFP allocation

Development 4

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
General Warren	MA002000241	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
96	Elderly/Disabled	Elderly/Disabled	$349,849
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	56	56	
1BR	36	36	
2BR	4	4	
3BR			
4BR			
5BR			
6BR			

Notes

- RAD/Section 18 Blend pursuant to Notice PIH 2021-07
- In the event of high capital needs, BHA would separately pursue a Section 18 disposition that would result in a 100% PBV conversion
- BHA plans to pursue a RAD conversion on its own without a development partner.
- CHAP date: 10/1/2025
- Closing date: Expected 2027

Restore-Rebuild Site 1

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
West End Library	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	N/A	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency			
1BR	N/A	28	
2BR	N/A	4	
3BR	N/A		
4BR	N/A		
5BR			
6BR			

Notes

- In 2022, BHA and the City of Boston issued a join Request for Proposals for the redevelopment of the City-owned property that is the current site of the West End Library branch of the Boston Public Library. The RFP called for development proposals that include Faircloth public housing units; pursuant to Supplement Notice 4B to the RAD Notice (H-2023-08 PIH-2023-19) BHA proposes to convert any newly develop~~m~~ed~~nt~~ Faircloth public housing units at the West End Library to RAD upon completion and prior to occupancy through HUD's Restore-Rebuild mechanism.

Restore-Rebuild Site 2

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Faneuil Gardens	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	N/A	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	Zero federal units		
1BR		54	
2BR		72	
3BR		45	
4BR		9	
5BR			
6BR			

Notes

- Faneuil Gardens is a 258-unit state public housing community in Brighton. BHA and its procured developer, The Community Builders, in collaboration with the Faneuil Gardens Tenant Task Force, have developed a master plan to redevelop the site. Up to three-quarters of the replacement units may be created through the Restore Rebuild process. Phase one (out of five phases) is projected to include 85 Restore Rebuild units.

Restore-Rebuild Site 3

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Parcel P-12C	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	N/A		
1BR		2	
2BR		14	
3BR		13	
4BR			
5BR			
6BR			

Notes

- This is private development being undertaken by a joint venture of two local nonprofits (The Community Builders and Asian Community Development Corporation) on a parcel in the Chinatown neighborhood.

Restore-Rebuild Site 4

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Allston Senior Housing	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	N/A		
1BR		47	
2BR		3	
3BR			
4BR			
5BR			
6BR			

Notes

- This is private development being undertaken by the Allston-Brighton Community Development Corporation in the Allston neighborhood.

Restore-Rebuild Site 5

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Our Lady's Guild House	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	10	10	
1BR	10	10	
2BR			
3BR			
4BR			
5BR			
6BR			

Notes

- This is private development being undertaken by a joint venture of two local nonprofits (The Planning Office for Urban Affairs and the Fenway Community Development Corporation) in the Fenway neighborhood.

Restore-Rebuild Site 6

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
Building 104	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency			
1BR	20	20	
2BR			
3BR			
4BR			
5BR			
6BR			

Notes

- This is private development involving the renovation of an existing apartment community being undertaken by nonprofit developer The Community Builders in the Charlestown neighborhood.

Restore-Rebuild Site 7

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
290 North Beacon St	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	N/A		
1BR		42	
2BR		50	
3BR		22	
4BR		19	
5BR			
6BR			

Notes

- BHA has been designated by the City of Boston to redevelop this City-owned parcel adjacent to BHA's Faneuil Gardens state public housing community. It will be a mixed-use redevelopment including musician rehearsal/studio space and other complementary arts-and-culture space in addition to RAD rental units.

Restore-Rebuild Site 8

Development Name	PIC Development ID	Conversion Type	Transfer of Assistance
120 George St Boston, MA 02119	N/A	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
TBD	TBD	TBD	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
Studio/Efficiency	Zero federal units		
1BR		6	
2BR		9	
3BR		5	
4BR		1	
5BR			
6BR			

Notes

- This is a property BHA currently owns and which is in BHA's state public housing "Scattered Site" portfolio. BHA is replacing those state-funded units at a new location, which will permit new development of 21 RAD units at 120 George Street through HUD's Restore-Rebuild program.

Moderate Rehabilitation/Rent Supp. Site ~~5~~1

	PIC Development ID	Conversion Type	Transfer of Assistance
Tuttle House	TBD	PBV	N/A
Total Units	**Pre-RAD Unit Type**	**Post-RAD Unit Type**	**FY25 CFP Allocation**
26	Moderate Rehabilitation	PBV-Supportive Services	N/A
Bedroom Type	**Units pre-conversion**	**Units post-conversion**	**Change**
SRO/Studio/Efficiency	26	26	
1BR			
2BR			
3BR			
4BR			
5BR			
6BR			

Notes

- RAD Moderate Rehabilitation conversion pursuant to (PIH) H-2019-09 PIH-2019-23 (HA), Rental Assistance Demonstration – Final Implementation, Rev 4.
- CHAP date: N/A
- Closing date: TBD

APPENDICES

~~Resident Rights, Participation, Waiting List and Grievance Procedures~~

Copies of the documents referenced ~~in the third fourth paragraph of~~on pages 1-2 of this RAD ~~addendum~~ Attachment to Annual Plan are ~~attached~~ appended hereto in their entirety:

1. RAD Fair Housing, Civil Rights and Relocation Requirements (Notice H 2016-17/PIH 2016-17)
   ~~Posted by HUD to its RAD Resource Desk on 12/02/16 and downloaded by BHA on 10/26/24~~

2. RAD Notice H-2019-09 / PIH 2019-23 REV-4 as amended by Supplemental Notice 4B
   ~~Posted by HUD to its RAD Resource Desk on 7/23/24 and downloaded by BHA on 10/26/24~~

3. Notice H 2025-01 / Notice PIH 2025-03: Rental Assistance Demonstration – Supplemental Notice 4C

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Public and Indian Housing
Office of Housing

Special Attention of:	**Notice** H 2016-17 PIH 2016-17 (HA)
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 RAD Transaction Managers Regional Relocation Specialists	Issued: November 10, 2016 Effective: November 10, 2016 Expires: This Notice remains in effect until amended, superseded, or rescinded Supplements: PIH Notice 2012-32 (HA) REV-2 Supersedes: H 2014-09/PIH 2014-17

SUBJECT: Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.[1]

SECTION 1. Purpose, Applicability and Major Provisions of this Notice

1.1. Purpose

This notice (Notice) provides PHAs,[2] Project Owners, and their RAD development partners with guidance regarding key fair housing and civil rights statutory and regulatory requirements, explains the situations in which HUD is requiring front-end fair housing and civil rights reviews, and provides information regarding the types of information that must be submitted to facilitate HUD's review of certain fair housing and civil rights requirements in connection with public housing conversions under the First Component of RAD. This Notice also includes guidance

[1] While this Notice addresses fair housing and civil rights requirements and relocation requirements, the fair housing and civil rights requirements are not limited to relocation issues.
[2] Consistent with PIH Notice 2012-32 (HA) REV-2 (PIH 2012-32 (HA) REV-2) (the "RAD Notice"), this Notice uses the term "PHA" to refer to the owner of the project prior to the RAD conversion and "Project Owner" to refer to the owner of the project after the RAD conversion.

regarding key relocation statutory and regulatory requirements, and details relocation requirements under RAD. This Notice only applies to projects converting under the First Component of RAD; it does not apply to the Second Component of RAD.[3]

The RAD program was established as a tool for preserving and improving low-income housing stock. RAD is intended to facilitate reinvestment in or redevelopment of the long-term-affordable stock of HUD-assisted housing properties. RAD also provides mobility benefits for assisted residents of converted properties through the choice mobility option, allowing these households to access tenant-based Housing Choice Vouchers. In some cases, RAD can be a tool for transfer of rental assistance from distressed or poorly selected sites to new sites in high opportunity areas. In all cases, the objective is to better serve low-income residents and the broader community in complying with fair housing, other civil rights, and relocation laws.

This Notice provides PHAs and Project Owners with guidance relating to planning and implementing public housing (First Component) RAD conversions in a manner consistent with existing fair housing and other civil rights requirements, including, but not limited to, those associated with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act, the Architectural Barriers Act of 1968, and their implementing regulations. Section 4 of this Notice summarizes key provisions of existing law applicable to RAD transactions.

To further compliance with these existing requirements, PIH 2012-32 (HA) REV-2, issued June 15, 2015 (the "RAD Notice") established that specific PHA decisions and activities planned to be part of a First Component RAD conversion must be reviewed by HUD prior to implementation (the "front-end" fair housing and civil rights reviews). Through a front-end review of the enumerated PHA decisions, HUD seeks to assist PHAs and Project Owners in meeting their fair housing, other civil rights, and relocation obligations. Section 5 of this Notice explains the situations in which HUD is requiring front-end fair housing, other civil rights, and relocation reviews, details the procedures for HUD's front-end review and the type of information that must be submitted for these reviews, and the timeframes for these reviews.

Finally, in Sections 6 and 7 this Notice provides PHAs and Project Owners with guidance regarding RAD program and other statutory and regulatory relocation assistance requirements when planning for or implementing resident moves as a result of a conversion of a public housing project under RAD. This guidance includes reiterated and new requirements, the corresponding required reviews, and explanation of the interaction between RAD relocation procedures and certain existing public housing requirements. PHAs and Project Owners implementing RAD transactions may be subject to (a) the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA),

[3] Important fair housing, other civil rights, and relocation considerations apply also to the Second Component of RAD as provided in the RAD Notice. Participants in the Second Component of RAD must continue to comply with applicable fair housing, civil rights, and relocation statutes and regulations, and HUD may, at any time, initiate compliance or enforcement actions in connection with such requirements. The RAD Notice will continue as the primary source of information on fair housing and other civil rights requirements covering the Second Component of RAD without any change until further notice.

(b) the requirements of Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)) if CDBG or HOME funds are included as part of the project, (c) fair housing and other civil rights considerations implicated by relocation activities, and (d) requirements for relocating residents under the RAD Notice.

1.2. PHA and Project Owner Responsibilities

This Notice explains RAD's front-end fair housing and other civil rights review requirements in greater detail than was provided in the RAD Notice and this Notice restates and revises RAD's relocation requirements. However, the fair housing, other civil rights, and relocation requirements that apply to RAD conversions are neither limited to those discussed in this Notice, nor to those specifically reviewed by HUD in the front-end review.

MEETING HUD'S PROCESS AND REVIEW REQUIREMENTS NEVER CONSTITUTES COMPLIANCE WITH SUCH LAWS. THE OBLIGATION TO COMPLY WITH APPLICABLE FAIR HOUSING, OTHER CIVIL RIGHTS, AND RELOCATION LAWS REMAINS WITH THE PHA AND PROJECT OWNER.

The fair housing and civil rights requirements that apply to RAD conversions are not limited to those discussed in this Notice. PHAs and Project Owners are responsible at all times for ensuring that their RAD activities (including those activities implemented by their agents, consultants, contractors, or other RAD team members) comply with all applicable fair housing and civil rights requirements. PHAs and Project Owners shall be accountable for all fair housing and civil rights compliance issues with respect to their RAD activities, whether those activities are undertaken directly or through agents, consultants, contractors, or other RAD team members. While HUD provides this non-exhaustive guidance to assist PHAs and Project Owners during transactions, complying with the requirements set forth in this Notice does not necessarily mean that they, or their agents or consultants, are in compliance with fair housing and civil rights requirements.[4]

This Notice is not intended to, and shall not be construed to, reduce or in any way limit the application of fair housing, other civil rights, and relocation laws and regulations to RAD transactions. For example, HUD's reliance on a PHA's certification that a site meets the site and neighborhood standards required by the RAD Notice is not a determination of compliance with the duty to affirmatively further fair housing or other fair housing and civil rights requirements. As another example, HUD's approval of a site for new construction does not, by itself, constitute a determination of the PHA's compliance with all provisions of Title VI and its duty to affirmatively further fair housing found in the Fair Housing Act and other fair housing and civil rights requirements, nor indicate HUD's approval of the PHA's or locality's overall housing strategy. HUD's approval of a RAD conversion after front-end review reflects only that the project may proceed through the RAD conversion process; it does not constitute a determination

[4] The PHA's or Project Owner's agents, consultants, contractors, and other RAD team members may also have fair housing and other civil rights obligations (whether under this Notice or otherwise) and the forgoing does not, in any way, limit the independent obligation of any such parties to ensure their own compliance with applicable fair housing and other civil rights laws.

that the project is in compliance with applicable fair housing, civil rights, and relocation requirements.

HUD's approval of a front-end review submission is based on limited information and is intended to assist the PHA or Project Owner in meeting their fair housing, civil rights, and relocation obligations.[5] The PHA is responsible for ensuring that its RAD conversion is consistent with its certification to affirmatively further fair housing and complies with applicable civil rights laws.[6] The front-end reviews described in this Notice shall not be construed to limit other fair housing and civil rights investigations that HUD may conduct. HUD retains all compliance and enforcement authority.

HUD's determination that the PHA or Project Owner has failed to meet submission, certification, or approval requirements with respect to fair housing, other civil rights, or relocation requirements is grounds for terminating a Commitment to enter into a Housing Assistance Payments Contract (CHAP), denying the issuance of a RAD Conversion Commitment (RCC), or denying authority to convert under RAD.

1.3. Applicability

The content of this Notice should not be relied upon in carrying out any other activities funded under any other HUD program, except where specifically directed by HUD.

This Notice supplements the RAD Notice with respect to fair housing and civil rights requirements applicable to public housing properties converting under RAD and with respect to all matters related to the relocation of residents as a result of RAD public housing conversions. To the extent that there is a conflict between this Notice and the RAD Notice, this Notice shall govern. This Notice replaces and supersedes Notice H 2014-09/PIH 2014-17 (issued July 14, 2014).

Upon issuance, the terms of this Notice will apply to all projects that have applied for conversion of assistance under the First Component of RAD but have not yet converted. As this Notice provides guidance, clarification, and explanation regarding fair housing and civil rights requirements that are already applicable to RAD conversions, this Notice shall not affect any front-end civil rights approvals provided by HUD prior to the effective date of this Notice and otherwise shall be effective with respect to front-end civil rights approvals without exception. However, with respect to relocation activities for Converting Projects under the First Component where a PHA has already submitted a Financing Plan pursuant to the RAD Notice at the time of issuance of this Notice, and provided that the Financing Plan has been accepted for full review after initial screening for completeness, the PHA may, within sixty (60) days after issuance of this Notice, request (in writing uploaded to the RAD Resource Desk) to be governed by H 2014-

[5] For example, the front-end review is specific to an individual site. 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, even if the specific site is approved based on the information provided and pursuant to the front-end review of the PHA's site and neighborhood standards submission.

[6] See 24 C.F.R. § 5.105 and, as applicable, 24 C.F.R. § 983.57(b)(2) or Appendix III of the RAD Notice.

09/PIH 2014-17. For such projects and where otherwise appropriate in cases of hardship as determined by HUD, HUD may apply the terms of H 2014-09/PIH 2014-17 with respect to relocation activities, but not with respect to fair housing and civil rights requirements.

RAD projects which have been awarded Choice Neighborhoods Implementation (CNI) grants are subject to the provisions of the applicable Choice Neighborhoods Notice of Funding Availability (NOFA) and grant agreement regarding site and neighborhood standards and are not subject to the RAD front-end civil rights transaction reviews described in this Notice. For properties being redeveloped with funding under a CNI grant, the relocation requirements set forth in this Notice are superseded by guidance regarding relocation included in the CNI NOFA. Permanent involuntary displacement of public housing or Section 8 assisted residents may not occur as a result of a Choice Neighborhood project's conversion of assistance.

1.4. Explanation of Major Provisions

This Notice adds to and revises pre-existing guidance related to fair housing, civil rights, and relocation (as contained in the RAD Notice and H 2014-09/PIH 2014-17) with respect to RAD transactions. Among the key provisions and changes are the following:

<u>Fair Housing & Civil Rights</u>

- Reaffirms the applicability of fair housing and civil rights requirements to all RAD-related activities (see, e.g., Section 3.3 and Section 4);
- Reiterates when HUD front-end civil rights review (originally outlined in the RAD Notice) is required in addition to the PHA's analysis and certification of compliance, to assist the PHA and Project Owner to comply with fair housing and civil rights requirements (see Section 5.3);
- Outlines certain conditions under which HUD will conduct a front-end review to determine whether the site is in an area of minority concentration relative to the site's housing market area (see Section 5.4(A));
- Provides guidance, for purposes of the RAD front-end civil rights review, on the concepts of "area of minority concentration" and "housing market area" that are reviewed when determining whether a site is in an area of minority concentration (see Section 5.4(B));
- Elaborates on specific information that HUD will consider, and that PHAs should provide evidence of, in order for a proposed site to meet the existing exceptions to permit new construction in an area of minority concentration, identifies presumptions for meeting the sufficient comparable opportunities exception and describes factors that HUD may consider in evaluating the overriding housing needs exception (see Section 5.4(C) and Section 5.4(D));
- Articulates issues that HUD will consider in completing the front-end civil rights review for transfers of assistance, including, for example, accessibility and minority concentration (see Section 5.5);
- Outlines the information to be submitted for HUD's front-end civil rights review of transactions where unit reductions, unit reconfigurations, or changes in occupancy are proposed (see Section 5.6);
- Identifies the situations where front-end civil rights reviews are required when changes in the accessibility features of a site are made (see Section 5.7(B)); and

- Prohibits the Project Owner of a Converted Project with a PBRA HAP contract from initiating any new leasing or marketing activities (other than leasing and outreach to households holding a right to return to the Covered Project), including the solicitation, distribution or acceptance of applications or development of a waiting list, until HUD has approved the Affirmative Fair Housing Marketing Plan ("AFHMP") (see Section 5.8).

Relocation

- Requires PHAs or Project Owners to prepare a written relocation plan for all transactions that involve permanent relocation or temporary relocation anticipated to exceed 12 months (see Section 6.1);
- Requires PHAs to provide residents with a RAD Information Notice (RIN) in order to ensure that residents are informed of potential project plans and of their rights in connection with RAD prior to submission of the RAD application (see Section 6.6(A));
- Clarifies that the General Information Notice (GIN), when applicable, should be provided as soon as feasible and no later than 30 days following the issuance of the CHAP (see Section 6.6(B));
- Requires Project Owners to provide a notification of Return to the Covered Project, when applicable (see Section 6.6(F));
- Moves the date before which PHAs are prohibited from beginning any physical relocation earlier in the conversion process (specifically, from the date of Closing to the later of the effective date of the RCC and the expiration of the 30- or 90-day RAD Notice of Relocation period, as applicable) (see Section 6.8);
- Clarifies the specific requirements applicable to different types of relocation (e.g., moves within a property, temporary relocation of less than 12 months, etc.) (see, e.g., Section 6.4);
- Provides enhanced guidance on the right to return requirements, any offers of alternative housing options and the documentation that must be retained when tenants choose an alternative housing option and decline their right to return (see, e.g., Section 6.2 and Section 6.10);
- Describes how HUD has administratively implemented URA requirements and URA relocation assistance and payments for displaced persons, when applicable, to residents who choose to decline the right of return and, instead, choose voluntary permanent relocation (see, e.g., Section 6.4(C) through (F) and Section 6.10);
- Requires PHAs to maintain detailed data regarding each household that will be relocated, with key dates of notices and moves (see Section 6.9); and
- Identifies key fair housing and civil rights requirements applicable during relocation (see, e.g., Section 4).

1.5. Request for Public Comment

HUD acknowledges the complexity of the issues addressed in this Notice. This Notice is effective immediately upon issuance, but HUD also seeks comment from the public regarding the clarity and organization of the Notice and regarding areas where the policies and procedures described are unclear or ambiguous. HUD will consider whether changes in response to comments are justified and will implement any appropriate changes in a revision of this Notice. Please submit all comments to RAD@hud.gov within 30 days of the issuance of this Notice.

1.6. 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 information collection forms will be posted on the RAD website and the Federal Register.

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SECTION 3. Background

3.1. RAD Authority

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. No. 112-55, enacted November 18, 2011), as amended by the Consolidated Appropriations Act, 2014 (Public Law 113-76, enacted January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, enacted December 6, 2014), and the Division L, Title II, Section 237 of the Consolidated Appropriations Act (Public Law 114-113, enacted December 18, 2016), collectively and as it may be further amended from time to time, the "RAD Statute." RAD allows certain eligible properties to convert assistance to long-term project-based Section 8 contracts and has two separate components. 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 different Section 8 housing assistance programs: project based vouchers (PBVs) or project-based rental assistance (PBRA). The "Second Component" of RAD allows owners of projects funded under the Rent Supplement (Rent Supp), Rental Assistance Payment (RAP), and Moderate Rehabilitation programs to convert certain units to PBV or PBRA Section 8 units following certain contract expirations or terminations. The RAD Statute is implemented by the RAD Notice.

3.2. Definitions

All capitalized terms defined in the RAD Notice, as amended, shall have the definitions ascribed to them therein unless otherwise specifically noted in this Notice.[7] Pre-conversion projects whose assistance is converting from public housing to Section 8 under RAD are referred to in the RAD Notice and in this Notice as "Converting Projects." Post-conversion projects are referred to in the RAD Notice and this Notice as "Covered Projects."

3.3. Applicable Legal Authorities

Appendix I to this Notice identifies key legal authorities with respect to fair housing, civil rights, and resident relocation. Part 2 of Appendix I provides greater detail regarding federal accessibility requirements set forth in three of the legal authorities described in Appendix I,

[7] Many of the fair housing and civil rights concepts used throughout this Notice are terms of art that are defined in applicable statutes and regulations identified in Appendix I of this Notice, while others have been developed through judicial interpretation. PHAs and Project Owners should familiarize themselves with these terms of art and should consult 42 U.S.C. § 3602 (Fair Housing Act); 24 C.F.R. §§ 5.152-100.20 (Fair Housing Act); 42 U.S.C. §§ 2000d-2000d-4a (Title VI of the Civil Rights Act of 1964); 24 C.F.R. § 1.2 (Title VI); 29 U.S.C. § 705 (Rehabilitation Act); 24 C.F.R. § 8.3 (Section 504); 42 U.S.C. §§ 12102, 12132, 12181 (Americans with Disabilities Act (ADA)); 28 C.F.R. § 35.104 (Title II of the ADA); and 28 C.F.R. § 36.104 (Title III of the ADA). In addition, many of the relocation concepts are terms of art that are defined in 42 U.S.C. § 4601 *et seq*. (Uniform Relocation Act (URA)), Section 104(d) of the Housing and Community Development Act of 1974 codified at 42 U.S.C. § 5304(d), and their implementing regulations at 49 C.F.R Part 24 and 24 C.F.R. Part 42 subpart C.

Part 1. PHAs and Project Owners must be familiar with these legal authorities and must evaluate, based on the facts of their situation, which legal authorities are applicable in which situations. **Failure to comply with any legal authority as applicable to the PHA's or Project Owner's actions or inactions may result in liability under such authority.** Appendix I does not attempt to provide a complete and exhaustive explanation of the legal authorities, nor to fully inventory the situations in which each legal authority is applicable. Instead, Appendix I is an overview intended to serve as a general introduction or reminder for PHAs and Project Owners of these fair housing, other civil rights, and relocation authorities and to facilitate their identification of appropriate topics for further research or expert counsel. The recitation of these legal authorities neither expands nor diminishes their applicability to the PHA's and Project Owner's activities in connection with their RAD conversion.

The RAD Statute authorizes the Secretary of HUD to waive or specify alternative requirements for certain provisions of law, except for requirements related to, among others, fair housing and nondiscrimination.[8] In addition to the general application of various federal statutes and their implementing regulations as discussed in Appendix I, below, HUD regulations at 24 C.F.R. § 5.105 apply such authorities to all HUD programs, including RAD.

3.4. Further Information

Because each RAD proposal varies in its scope, this Notice may not address each PHA's or Project Owner's specific circumstances. PHAs and Project Owners should carefully review the laws, regulations, notices, and guidance material referenced in this Notice. Any questions related to the administration of the RAD program should be referred to the appropriate RAD Transaction Manager (TM) or may be emailed to rad@hud.gov.

SECTION 4. Generally Applicable Fair Housing and Civil Rights Requirements Relevant Throughout the RAD Conversion Process

This Section provides a summary overview of key principles regarding program implementation and an overview of generally applicable fair housing and civil rights requirements. Appendix I identifies the key legal authorities from which these principles are derived. These key principals, together and with the legal authorities identified in Appendix I, frame the PHA's efforts to implement a RAD conversion. In some cases, these requirements are particularly relevant to the process of planning the RAD conversion, while in others they have particular relevance for the structure of the RAD transaction itself, and in yet other cases, both. 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, new construction, occupancy policies, changes in unit configuration, increases or reductions 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 and communicating with persons with Limited English Proficiency (LEP) and persons with disabilities, reasonable accommodation policies, and Affirmative Fair

[8] *See* Pub. L. No. 112-55, as amended.

Housing Marketing Plans (AFHMPs). All PHAs must consider civil rights when structuring these and other elements of their RAD transaction.

RAD transactions are governed by the same civil rights authorities that govern HUD-assisted activities generally.[9] Converting Projects are subject to civil rights and equal opportunity requirements under the public housing regulations, and Covered Projects are subject to civil rights and equal opportunity requirements under the PBV regulations or the PBRA regulations, as applicable.[10] As described further below, the Fair Housing Act prohibits discrimination in housing[11] 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.[12] In addition, all programs or activities receiving Federal financial assistance are subject to Title VI of the Civil Rights Act of 1964 forbidding discrimination on the basis of race, color, and national origin[13] and Section 504 of the Rehabilitation Act of 1973, which forbids discrimination on the basis of disability and requires that programs or activities receiving Federal financial assistance make such programs or activities "when viewed in its entirety" readily accessible to persons with disabilities and make reasonable accommodation to the needs of persons with disabilities.[14] RAD transactions are also subject, as applicable, to the requirements of Titles II and III of the Americans with Disabilities Act, Executive Order 11063, and HUD regulations at 24 C.F.R. 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 the RAD program. PHAs must not implement actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing.[15] Note, in particular, the following requirements:

- **Affirmatively Furthering Fair Housing (AFFH):** The Fair Housing Act requires that HUD administer its programs and activities in a manner that affirmatively furthers the purposes of the Fair Housing Act. The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD's recipients, including PHAs, to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination. Through various statutes, regulations, and executive orders, PHAs must take various actions in accordance and in conjunction with their Fair Housing Act obligation to affirmatively further fair housing. For example, under regulations implementing the United States Housing Act of 1937 (the Act), HUD recipients must, among other requirements, certify that they will affirmatively further fair housing. In addition, under HUD's Affirmatively Furthering Fair Housing (AFFH) rule promulgated July 16, 2015, PHAs must periodically conduct an Assessment

[9] *See* 24 C.F.R. § 5.105.
[10] *See, e.g.*, 24 C.F.R. §§ 880.601, 881.601 and 983.8 for civil rights related regulations applicable to PBV and PBRA transactions.
[11] *See* 42 U.S.C. §§ 3601 *et seq*., and HUD regulations in 24 C.F.R. part 100
[12] 42 U.S.C. § 3608(d) and (e).
[13] *See* 42 U.S.C. §§ 2000d *et. seq*., and HUD regulations in 24 C.F.R. part 1.
[14] *See* 29 U.S.C. §§ 701 *et seq*., and HUD regulations in 24 C.F.R. part 8.
[15] *See* 24 C.F.R. part 1 and part 100 subpart G.

of Fair Housing (AFH) as set out by the rule, either individually or in collaboration with other program participants.[16] Under the AFFH rule, in order to develop a successful affirmatively furthering fair housing strategy, the PHA must assess the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs. PHAs must ensure that their activities in connection with a RAD conversion are consistent with their AFH, including any applicable joint or regional AFH in which they are a joint participant, and with any applicable Analysis of Impediments to Fair Housing Choice (AI), Fair Housing Equity Assessment, PHA 5-Year Plan, PHA Annual Plan, Moving to Work (MTW) Plan, or related planning documents and other regulatory and programmatic requirements implementing the obligation to affirmatively further fair housing to which they are a party.[17]

- **Nondiscriminatory Site Selection:** HUD's site and neighborhood standards require that the proposed site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provision of Title VI of the Civil Rights Act, the Fair Housing Act, Executive Order 11063, and Department regulations implementing these authorities. The site must meet the Section 504 site selection requirements in 24 C.F.R. § 8.4(b)(5). Additional provisions appear in 24 C.F.R. § 983.57(b) of the PBV rules and, for PBRA, in Appendix III of the RAD Notice. HUD's Title VI regulation specifically prohibits site selection that has the "purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination" on the basis of race, color, or national origin.[18] The Title VI regulations also impose an obligation on the part of an applicant or recipient of HUD financial assistance to take actions to overcome the effect of prior discrimination or conditions that limit participation by persons of a particular race, color, or national origin.[19] In addition, HUD's Section 504 regulation prohibits recipients from selecting sites the purpose or effect of which would (1) exclude qualified individuals with disabilities from or deny them the benefit of a program or activity, or otherwise subject them to discrimination; or (2) defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with disabilities.[20] ADA regulations likewise prohibit site selections that have the purpose or effect of excluding individuals with disabilities (including members of the public with disabilities), denying them benefits, or subjecting them to discrimination.[21] Finally, the Fair Housing Act prohibits discriminatory site selection, including perpetuation of segregation in transfers of assistance and new construction.

- **Meaningful Access for Persons with Limited English Proficiency (LEP):** The PHA or Project Owner is required to take reasonable steps to ensure (a) they provide meaningful access to programs and activities for persons who have a limited ability to read, speak, or understand English; (b) any person with LEP who will be temporarily relocated or

[16] 24 C.F.R. § 5.150 *et seq.*
[17] *See* 24 C.F.R. § 5.150 *et seq*. and 24 C.F.R. §§ 91.225, 91.325, or 91.425.
[18] *See* 24 C.F.R. § 1.4(b)(3).
[19] *See* 24 C.F.R. § 1.4(b)(6).
[20] *See* 24 C.F.R. § 8.4(b)(5).
[21] *See* 28 C.F.R. § 35.130(b)(4); 28 C.F.R. § 36.301.

permanently displaced has meaningful access to any public meetings regarding the project; and (c) they provide meaningful access to LEP persons to any information provided to residents including, but not limited to, any relocation notices. Generally, the PHA or Project Owner will be responsible for providing oral interpreters at meetings, including ensuring their competence, and covering any associated translation and interpretation costs.[22]

- **Effective Communication for Persons with Disabilities:** Communications and materials must be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (24 C.F.R. § 8.6) and with 49 C.F.R. § 24.5, and as applicable, the Americans with Disabilities Act. This includes ensuring that, unless such actions would result in undue financial and administrative burdens or fundamental alterations, notices and resident meetings are provided in appropriate alternative formats as needed, e.g., Braille, audio, large type, accessible electronic communications, assistive listening devices, and sign language interpreters. Even in cases where the proposed actions may result in undue financial and administrative burdens or fundamental alterations, certain actions must still be taken. Specifically, appropriate auxiliary aids and services that would not result in such undue burdens or fundamental alterations must still be provided to ensure effective communication.

- **Accessible Meeting Facilities for Persons with Disabilities:** Pursuant to regulations implementing Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as applicable, all programs and activities must be held in accessible locations unless doing so would result in an undue financial and administrative burden on the PHA and/or Project Owner, in which case the PHA or Project Owner must take any action that would not result in such undue burden but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity, e.g., briefings at an alternate accessible site or in-home briefing.[23] Individuals with disabilities must receive services in the most integrated setting appropriate to their needs. The most integrated setting appropriate to the needs of qualified individuals with disabilities is a setting that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible.[24]

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[22] For more information about LEP obligations, see HUD's Limited English Proficiency (LEP) Frequently Asked Questions guidance at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq#q26.

[23] In selecting locations for consultation with residents, the PHA and/or Project Owner shall be guided by the goal of maximizing participation in an integrated setting so that residents with disabilities and residents without disabilities may hear and consider each other's views. Priority shall be given to using on-site accessible locations (including, e.g., TV rooms or informal gathering places), even if doing so may require multiple sessions with smaller groups of residents. In addition, Title III of the Americans with Disabilities Act requires private entities that operate places of public accommodation, including social service establishments, leasing offices of private housing developments, and certain private housing providers, to comply with certain physical accessibility requirements which are similar to the requirements under Section 504 and Title II.

[24] *See* 28 C.F.R. part 35, Appendix B.

- **Accessibility for Persons with Disabilities Throughout the Planning and Implementation Process:** A number of accessibility requirements, including but not limited to site selection, apply to all RAD conversions, as they do to the PHA's activities regardless of the PHA's participation in RAD.[25] PHAs and Project Owners should also be aware that state or local laws, regulations, and codes may contain greater accessibility requirements. This Notice provides, in Appendix I, Part 2, an overview of accessibility requirements under existing law. The information in Appendix I, Part 2 is intended to assist with the PHA's or Project Owner's compliance with accessibility requirements. PHAs and Project Owners must review Appendix I, Part 2 early-on in planning for the RAD transaction. PHAs and Project Owners may determine that it is most efficient to address accessibility matters early in the project planning. In addition, PHAs and Project Owners must evaluate, throughout the transaction and based on the facts of their situation, which requirements are applicable in which situations to ensure they appropriately address accessibility requirements. PHAs and Project Owners are responsible for ensuring that the architectural drawings and construction comply with the PHA's and Project Owner's obligations and all Federal civil rights requirements, including accessibility requirements under the Fair Housing Act, Section 504, and the ADA.

  Accessibility requirements also apply during all stages of a RAD transaction, including during relocation. Existing information (e.g., resident characteristics forms, including identification of the need for accessible unit features; records of approved reasonable accommodations; and records of the presence of accessible unit features) and the residents themselves should be consulted throughout the process of developing and implementing a RAD conversion. Related activities include, but are not limited to:

  - Identifying and maintaining existing and pending reasonable accommodations, including the need for larger units to accommodate live-in aides or special equipment;
  - Determining what direct services may be needed as a reasonable accommodation (e.g., packing, moving, identification of temporary housing);
  - Identifying accessible unit features and assuring that temporary or permanent replacement housing contains comparable features;
  - Budgeting appropriately to ensure that reasonable accommodations are addressed.

  For more information about compliance with accessibility requirements, the PHA or Project Owner should refer to appropriate notices concerning civil rights requirements and may contact HUD's Office of Fair Housing and Equal Opportunity in either the Washington, D.C. or applicable field offices for more specific guidance. For additional, non-exhaustive guidance on providing relocation assistance to persons with disabilities, see Exhibit 3-1 in HUD Handbook 1378.

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[25] For more detailed information on these laws and their requirements, see PIH Notice 2010-26, issued July 26, 2010 (available at http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf). While this notice has an expiration date in 2011, because the notice summarizes and discusses regulatory requirements, the information in the notice provides helpful guidance.

- **Reasonable Accommodations in Rules, Policies, Practices and Services**: Under the Fair Housing Act, the PHA or Project Owner must make reasonable accommodations in rules, policies, practices, and services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.[26] Under Section 504, the PHA or Project Owner must also make reasonable accommodations to residents with disabilities, which may include providing and paying for structural modifications to dwelling units and public or common use areas. Titles II and III of the ADA provide similar requirements. Common examples of reasonable accommodations that may occur during relocation are permitting an individual with a disability to relocate near public transportation, providing a unit larger than otherwise permitted for a live-in aide, and making exceptions to no-animal rules for assistance and service animals. Accommodations generally need not be made where providing such an accommodation would be an undue financial and administrative burden or a fundamental alteration of the nature of the service. However, reasonable accommodations must be made to the extent the accommodation does not impose an undue financial and administrative burden or a fundamental alteration of the nature of the service. Reasonable accommodations must follow the individual with the disability throughout the RAD process, including during relocation. Furthermore, PHAs and Project Owners may be required to provide particular reasonable accommodations during relocation, such as assistance moving household items.[27]

- **Physical Changes to Dwelling Units, Public and Common Use Areas and Other Facilities for Accessibility**: Under the Fair Housing Act, the PHA or Project Owner may be required to permit reasonable modifications. A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. When relocating an individual with a disability who has such modifications in their dwelling unit or public and common use areas because of the individual's disability, regardless of who made them, the PHA or Project Owner has an obligation to provide and pay for such modification in the new dwelling. When considering requests by individuals with disabilities for structural changes to units or public and common use areas, PHAs and Project Owners should take particular note that they may be required to make and pay for such structural modifications as reasonable

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[26] For additional information regarding reasonable accommodations under the Fair Housing Act, *see* the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (May 17, 2004), at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

[27] *See* 49 C.F.R. part 24, Appendix A, § 24.2(a)(8)(vii), which states that under the URA, "Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs."

accommodations under Section 504 and because of similar requirements under the ADA even though the Fair Housing Act may only require the owner to allow such changes to be made and paid for by the individual with a disability. Before determining that they are not required to make or pay for structural changes, PHAs and Project Owners are encouraged to consider carefully their obligations under each applicable statute.

SECTION 5. Application of Key Fair Housing and Civil Rights Requirements to RAD Transactions

The generally applicable fair housing and other civil rights requirements described above, and in Appendix I, apply throughout the planning and implementation of a RAD transaction and the PHA is responsible for ensuring compliance with these requirements. As key requirements may be misunderstood, the RAD program has established specific additional procedures to assist RAD participants to ensure they comply with the applicable requirements. Specifically, the RAD Notice established a civil rights eligibility review and criteria for front-end civil rights reviews.

This Section elaborates on these requirements from the RAD Notice. The front-end review procedures described below establish procedures and criteria for the supplemental front-end review and technical assistance, criteria which are specific to the RAD program. Criteria for this supplemental front-end review are informed by, but not the same as, fair housing or civil rights rules and policies generally.

This Section is organized to loosely follow the stages of a RAD conversion transaction, beginning with RAD eligibility and continuing through site selection, transfer of assistance, unit design requirements and marketing. In addition, this Section describes the timing and procedures for submitting data and documents to HUD so that HUD may complete its front-end review. The submission procedures are also designed to serve as a tool for PHAs to identify issues of potential concern at appropriate stages of the RAD conversion and as a tool for HUD to identify potential needs for technical assistance.

5.1. RAD Eligibility Review

To be eligible for RAD, the PHA must meet all eligibility requirements set forth in Section 1.3 of the RAD Notice, including the civil rights threshold requirements found at Section 1.3.G of the RAD Notice. A PHA must not have a charge, cause determination, lawsuit, or letter of findings, referenced in Section 1.3.G of the RAD Notice, against the PHA itself, its transferees, proposed development partners, or sub-recipients that has not been resolved, or is not in the process of being resolved, to HUD's satisfaction. This determination shall be made prior to issuance of the CHAP.

The CHAP may be revoked by HUD 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. 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 voluntary compliance agreement.

HUD may terminate an approval to proceed with a RAD conversion 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 voluntary compliance agreement.

5.2. PHA's Proposed Site Selection and Certification

For all RAD conversions, the PHA must comply with all applicable site selection requirements as set forth in this Notice and the RAD Notice and in accordance with any additional applicable published guidance provided by HUD. As set forth in the RAD Notice, conversions of assistance to PBV involving new construction, whether on a new site or on a current site, are subject to the site selection standards set forth in 24 C.F.R. § 983.57(a), (b), (c) and (e), but excluding 24 C.F.R. § 983.57(b)(1) and (c)(2). All other conversions to PBV, including transfers of assistance to an existing property other than the Converting Project, are subject to the standards set forth in 24 C.F.R. § 983.57(a), (b), (c) and (d), but excluding 24 C.F.R. § 983.57(b)(1) and (c)(2).[28] Site selection requirements set forth at Appendix III of the RAD Notice apply to RAD conversions to PBRA assistance, as does the requirement not to place housing in neighborhoods with highly concentrated poverty based on the criteria formulated for transfers under Section 8(bb) of the United States Housing Act of 1937.[29] PBV and PBRA site selection must also be consistent with the requirements of the Fair Housing Act, Title VI, Section 504, the ADA and their implementing regulations.

It is the PHA's responsibility to ensure that the site selection complies with all applicable site selection requirements, including the requirements of this Notice and the RAD Notice. Pursuant to the RAD Notice, the PHA must certify with the submission of its Annual Plan, Significant Amendment to its Annual Plan, or MTW Plan that it complies with the applicable site selection requirements and must maintain records of its analysis and the data relied upon in making its determination of compliance. The PHA must also determine and subsequently state in the certification that the site 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."[30] Although this Notice provides detail regarding certain civil rights-related site and neighborhood standards, PHAs must certify compliance with <u>all</u> applicable site and neighborhood standards.[31]

The PHA must also certify that, in conducting its review of site selection for the proposed project, the PHA completed a review with respect to accessibility for persons with disabilities and that the proposed site is consistent with applicable accessibility standards under the Fair Housing Act, Section 504, and the ADA. The site and neighborhood standards for PBV and PBRA require the site to be "suitable from the standpoint of facilitating and furthering full compliance with" the Fair Housing Act and require the site to meet the Section 504 site selection

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[28] *See* the provisions of Section 1.6.A.4 of the RAD Notice.
[29] 42 U.S.C. § 1437f(bb).
[30] For RAD conversions to PBRA, the RAD Notice uses the term "the site and neighborhood is suitable," rather than "the site is suitable." *See* Appendix III of the RAD Notice, paragraph (a).
[31] *See* 24 C.F.R. § 983.57 and the RAD Notice at Section 1.4(A)(7)

requirements described in 24 C.F.R. § 8.4(b)(5).[32] The Fair Housing Act, as implemented at 24 C.F.R. § 100.205, requires "covered multifamily dwellings" built for first occupancy after March 13, 1991, to contain accessible design features. HUD's Section 504 regulations at 24 C.F.R. § 8.4(b)(5) require that, in determining the site or location of a federally assisted facility, an applicant for assistance or recipient may not make selections the purpose or effect of which would: (i) exclude qualified individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from HUD, or (ii) defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with disabilities. Title II of the ADA contains a similar requirement that a public entity, such as the PHA, may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.[33] Factors relevant to a site review under these standards may include, among others:

- Site features, such as inaccessible slopes in routes, lack of accessible sidewalks, curb ramps, accessible parking spaces, and placement of dumpsters or other physical features that would impede access to and movement within the site;
- Building features, such as inaccessible building entrances, other methods of ingress and egress, public and common use areas (e.g., the rental office, parking areas, mail areas, trash areas, community rooms, shared use toilet rooms, laundry facilities and walkways inside and outside that connect these public and common use areas to units), and barriers to access by members of the public; and
- Lack of accessible transit or para-transit and accessible public sidewalks and accessible transportation stops.

When such conditions are present at the site and would exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination, or would defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to individuals with disabilities, the site must not be selected unless the proposal includes remediation of the barriers to achieve compliance with accessibility requirements (including identification and remediation of any nonconforming design and construction conditions in "covered multifamily dwellings" under the Fair Housing Act). Remediation of the barriers may include, for example, physical accessibility improvements to the site, arrangements for access to accessible supportive services, or reasonable accommodations for current or prospective residents with disabilities, including members of the public. The Financing Plan submitted to HUD must describe and document resources sufficient to pay for the remediation of accessibility barriers.[34]

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[32] *See* 24 C.F.R. § 983.57(b)(2) (PBV conversions); *see also,* Appendix III (a) of the RAD Notice (PBRA conversions).

[33] *See* 28 C.F.R. § 35.130(b)(4).

[34] In conducting its review prior to certification, and in preparing for the certification, PHAs and Project Owners may find it useful to consult with their local or regional FHEO office, the United States Access Board, local or state

While all PHAs must certify their compliance with applicable site selection requirements as described in this Section, some RAD transactions will also be subject to a front-end review of the site selection. For transactions involving activities that present site selection issues of greater complexity, as described in Sections 5.3 through 5.5 below, front-end review will allow HUD's Office of Fair Housing and Equal Opportunity (FHEO) to assist the PHA to consider relevant laws and regulations while completing its site selection review and certification.

5.3. RAD Front-End Civil Rights Transaction Review

Fair Housing Act and other civil rights issues may arise throughout a RAD transaction. Under the Fair Housing Act, an assessment of site suitability includes an analysis of the impact that the siting of the project would have on patterns of segregation for protected classes. The Fair Housing Act is of particular importance when a RAD proposal concerns site selection for new construction or reconfiguration of housing on the original public housing site – for example, the unit size distribution (e.g., conversion of larger bedroom size units to one-bedroom units, which may have an adverse impact on housing opportunities for families with children) or a reduction in the number or distribution of accessible units (which may have an adverse impact on housing opportunities for persons with disabilities). RAD conversions involving new construction must also comply with the Fair Housing Act's accessibility requirements.

Compliance with all applicable fair housing and civil rights requirements is the responsibility of both the PHA and the Project Owner. However, to assist with compliance, HUD's Office of Fair Housing and Equal Opportunity (FHEO) will conduct a front-end civil rights review of project proposals containing activities identified as particularly at risk of violating applicable fair housing and civil rights laws. The activities that must be submitted for front-end civil rights review are listed in Section 5.3(A), below.

A) Activities Subject to Front-End Civil Rights Review

All RAD conversions that include one or more of the activities listed below (Sections 5.3(A)(1) through 5.3(A)(9)) are subject to a front-end review for compliance with certain civil rights and fair housing requirements. The specific items that HUD will review in the front-end review will depend on which activities are involved in the specific transaction. A RAD conversion may not include one of the activities below without prior written approval from HUD. All Financing Plans 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:

(1) Conversions of assistance involving new construction, whether on a new site or on a current site, in an area of minority concentration. Front-end review of this activity shall be pursuant to Section 5.4(B), below and, in addition, the PHA shall

architectural access board or other accessibility authority for information on accessibility standards. Other sources of information on accessibility requirements may include protection and advocacy organizations or independent living centers. In addition, the non-HUD resources may provide advice on how to assess accessibility needs and formulate physical accessibility strategies.

certify in its Annual Plan compliance with site and neighborhood standards applicable to new construction as described in Section 5.2.

(2) Transfers of assistance where all or a portion of the Converting Project's assistance is transferred to a new site(s) (either new construction or to an existing project) as part of the subject transaction. Front-end review of this activity shall be pursuant to Section 5.5(B), below and, in addition, the PHA shall certify in its Annual Plan compliance with site and neighborhood standards applicable to existing housing as described in Section 5.2.

(3) 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). Front-end review of this activity shall be pursuant to Section 5.6.

(4) Conversions of assistance where the Covered Project's unit configuration is different from the unit configuration of the Converting Project. Front-end review of this activity shall be pursuant to Section 5.6.

(5) Conversions involving a change in occupancy, 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 or introduction of restrictions or preferences based on age or disability that will change the occupancy of the property). Front-end review of this activity shall be pursuant to Section 5.6.

(6) Conversions of assistance in which the construction schedule indicates that relocation is likely to exceed 12 months. Front-end review of this activity shall be pursuant to Section 5.7(A).

(7) Conversions of assistance involving new construction or substantial alteration,[35] as those terms are defined in Section 504 of the Rehabilitation Act of 1973. Front-end review of this activity shall be pursuant to Section 5.7(B).

(8) Conversions of assistance involving a Converting Project subject to a Voluntary Compliance Agreement or Conciliation Agreement with HUD or a Consent Decree or Settlement Agreement with the U.S. Department of Justice or HUD, or where the PHA is subject to such an agreement affecting its entire housing portfolio or otherwise related to the Converting Project. Front-end review of this activity shall be pursuant to Section 5.7(C).

[35] Section 504 defines substantial alteration of a housing project as alterations where a housing project has 15 or more units, and the rehabilitation costs will be 75% or more of the replacement cost of the completed facility. *See* 24 C.F.R. § 8.23 (a).

(9) Conversions of assistance where HUD has identified potential fair housing and civil rights concerns or a history of such concerns. Front-end review of this activity shall be pursuant to Section 5.7(C).

PHAs should note that a proposed RAD conversion may trigger front-end review regarding more than one of the activities listed in subsections (1) through (9) of this Section. For example, depending on the details of the proposal, a new construction on-site project could require review under subsections (1), (3), (4), (5), (6), and (7), or could require review under only subsections (1) and (7).

As part of HUD's review of these elements of the RAD conversion plans, HUD may require that PHAs that are carrying out 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.

B) Fair Housing, Civil Rights, and Relocation Checklist

In connection with HUD's front-end fair housing and civil rights and relocation reviews described in this Section 5 and in Section 6, HUD is requiring submission of a Fair Housing, Civil Rights, and Relocation Checklist (the "Checklist"). The Checklist will facilitate the PHAs' and Project Owners' submission of necessary information to complete these reviews.[36] HUD anticipates that a revised Checklist, when available following Paperwork Reduction Act approval, will be separated into parts which can be submitted incrementally as the PHA and Project Owner develop the RAD transaction plans, with different elements of the Checklist applicable at different stages of the transaction planning process. For example, submissions regarding site selection for a RAD transaction involving new construction may occur well before submissions regarding a proposal to change the unit configuration.

The Checklist will outline the minimum information or documentation which HUD will need in order to review each part of the Checklist. After HUD's initial review of any portion of the Checklist, HUD may determine that the data provided in the Checklist is insufficient for HUD to complete its review, in which case HUD may require the PHA or Project Owner to provide supplemental information. The PHA should submit each part as early as possible once the information covered in the applicable part is known. All information specified in the applicable

[36] The Checklist is available at www.hud.gov/rad. As of the publication of this Notice, references to the Checklist refer to the existing FHEO Accessibility and Relocation Plan Checklist under OMB Approval 2577-0276. The PHA shall use the existing Checklist to provide information related to demonstrating compliance with fair housing, other civil rights, and relocation requirements (including accessibility requirements) and, as necessary, may require additional materials for HUD to complete its review, which the PHA may provide in such form as the PHA determines appropriate. Also at www.hud.gov/rad, HUD has provided a listing of information that, depending on the circumstances, HUD may require to complete different components of its front-end review. The Checklist is being revised to fully capture the submission requirements described in this Notice. The revised Checklist will be subject to Paperwork Reduction Act approval and will be posted at the website listed above when available for use.

part of the Checklist must be submitted to HUD for HUD to begin its civil rights review – partial submissions of any applicable part of the Checklist will not be accepted.[37]

C) Timing of Front-End Review Submissions

PHAs and Project Owners are encouraged to submit applicable portions of the Checklist and information associated with a particular activity subject to front-end review as early as possible in the development of their plans. The PHA must ensure that HUD has approved all applicable parts of the Checklist prior to submission of the Financing Plan. Upon request from the PHA, HUD may, at HUD's sole discretion, permit submission of the Financing Plan prior to receipt of approval of the applicable parts of the Checklist and conditioned upon subsequent receipt of such approvals, in which event the PHA and Project Owner may proceed at their own risk.

Early approval of the site of the Covered Project is critical for RAD transaction proposals subject to front-end civil rights review involving site selection standards, specifically new construction in areas of minority concentration (see Section 5.3(A)(1)) and transfers of assistance (see Section 5.3(A)(2)). The PHA must conduct its own assessment of the site during the early stages of planning its RAD transaction. The guidance in this Notice and the Checklist are tools intended to assist the PHA in conducting its own assessment of the site.

The PHA must provide HUD with the Checklist and backup information sufficient for HUD to review the site with respect to the applicable standards. The site selection information should be provided to HUD no later than ninety (90) days following the issuance of the CHAP or, if the CHAP has already been issued as of the publication of this Notice, within ninety (90) days following publication of this Notice. In the event of a change in plans for the Converting Project that would require a front-end review of the site selection standards, the PHA must provide the Checklist and backup documentation within sixty (60) days of the change in plans. PHAs are strongly encouraged to provide front-end review submissions and secure HUD approval prior to applying for LIHTCs or taking action the reversal of which (in the event of non-approval of the site) would be detrimental to the PHA or the Project Owner. PHAs are also encouraged to contact FHEO for technical assistance prior to submission of these materials.

All PHAs shall submit a certification consistent with the requirements of Section 5.2, above. This certification may be prepared specifically in connection with the Checklist or as part of the PHA Annual Plan or Significant Amendment. However, HUD will not consider a submission complete for front-end civil rights review without this certification. All RAD conversions must submit the PHA certification described in Section 5.2 no later than at the time of submission of the Financing Plan.

D) Completion of HUD's Front-End Review

HUD will not approve a RAD conversion if HUD determines that the conversion would operate to discriminate in violation of applicable fair housing and civil rights laws. HUD will not approve proposals that have the purpose, intent, or effect of discriminating on the basis of

[37] The Checklist refers to the existing FHEO Accessibility and Relocation Checklist until a revised Checklist is approved for use pursuant to the Paperwork Reduction Act.

protected class (*i.e.*, race, color, national origin, religion, sex, disability, and familial status). If HUD does not approve a proposed activity based on a front-end review, then it will provide a written description of concerns or deficiencies. The PHA may resubmit the front-end review materials with a changed proposal and/or with additional information addressing HUD's concerns and any deficiencies in the proposal or the submission.

In some circumstances, a special condition to the transaction's RCC will be necessary to ensure that a RAD transaction conforms to fair housing and civil rights requirements. Special conditions to the RCC reflect the conditions necessary in order to complete the RAD conversion. For example, if there is an outstanding remedial agreement or order requiring particular development activities or operating policies to correct a violation of a fair housing or other civil rights requirement, the RCC generally will condition participation in RAD upon agreement by the PHA or the Project Owner, as applicable, to comply with the provisions of such agreements or orders after conversion.

5.4. Front-End Civil Rights Review for RAD Transactions Involving New Construction

A) Conditions Triggering Review

If the proposed project is located in an area of minority concentration, the new site may be approved only if it falls under a permitted exception and meets the other site selection requirements described in Section 5.2. Under the PBV and PBRA site and neighborhood standards, HUD may approve new construction in an area of minority concentration, consistent with the regulatory requirements cited above, only if:

a. Sufficient, comparable housing opportunities for minority families in the income range to be served by the proposed project exist outside areas of minority concentration; or
b. The project is necessary to meet overriding housing needs that cannot be met in that housing market area.[38]

As described in the RAD Notice and in Section 5.3(A) of this Notice, above, HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. This Notice specifies that for conversions of assistance involving new construction where there are indications that the site may be located in an area of minority concentration per the criteria in subsections (i), (ii), or (iii), below (whether the construction is located 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 the site is in an area of minority concentration and, if so, whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA shall submit for HUD front-end review the PHA's findings, together with backup documentation, regarding site selection when the site meets any of the following criteria:

i. The PHA self-identifies the area of the site as an area of minority concentration,

[38] 24 C.F.R. § 983.57(e)(3) and Appendix III of the RAD Notice, paragraph (e).

ii. The census tract of the site meets the extent of minority concentration described in Section 5.4(B)(1), below, or
iii. An area comprised of the census tract of the site together with all adjacent census tracts, analyzed as a whole, meets the extent of minority concentration described in Section 5.4(B)(1), below.

If any of these three criteria is applicable, HUD will conduct a review to determine whether the site is in an area of minority concentration and, if applicable, whether the proposed site fits one of the exceptions permitting new construction in an area of minority concentration described in this Section 5.4. A proposed RAD transaction which does not meet one of these triggers must still be evaluated by the PHA and the PHA must certify compliance with the site selection requirements as described in Section 5.2, above.

A PHA seeking to undertake new construction must receive written approval from HUD of any site selection subject to front-end review prior to entering into any construction contract for that new construction.

B) Analysis of Areas of Minority Concentration

This Section sets forth the methodology that HUD will use in the analysis of the extent of minority concentration, the area of the site, and the housing market area for purposes of the RAD front-end civil rights review. As noted below, this analysis is fact specific and PHAs may submit documentation to inform HUD's analysis in cases where there is strong evidence that an alternative methodology would be more appropriate.

(1) For purposes of RAD, a site is considered to be in an area of minority concentration when either (i) the percentage of persons of a particular racial or ethnic minority within the area of the site is at least 20 percentage points higher than the percentage of that minority group in the housing market area as a whole or (ii) the total percentage of minority persons within the area of the site is at least 20 points higher than the total percentage of minorities in the housing market area as a whole.[39]

(2) For purposes of RAD, the analysis of an area of minority concentration will use census tracts to approximate the "area" of the site but the analysis may consider alternate proposed geographies instead of the census tract in instances where there is strong evidence that such geography is more appropriate. Strong evidence that an alternative geography is more appropriate includes: (i) that the site is close to the edge of the census tract, (ii) that the population of the census tract is heavily influenced by the size of the Converting Project, or (iii) that the local community

[39] The percentage of minorities shall be calculated by subtracting the percentage of White Non-Hispanic persons in the relevant area from 100%. The analysis shall be based on the most recently available decennial census data found at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&src=pt. However, if such data is more than five years old, and if either the PHA or HUD requests the use of more recent data based on such party's awareness of significant and material shifts in the demographics of the relevant area in the intervening years, the analysis shall be based on the most recent American Communities Survey data.

understanding of the immediate neighborhood dictates a different boundary. Local community understanding of the immediate neighborhood is often informed by factors such as patterns of housing stock (such as different residential densities in different areas or differential housing prices for similar properties), community facilities and amenities (such as schools and commercial areas) or major geographic barriers (such as rivers or interstate highways), among other factors.[40] HUD will determine the site's "area" using the best available evidence and following the legal standards set forth in applicable case law.

(3) For purposes of the RAD analysis under this Section 5.4, a "housing market area" is the geographic region from which it is likely that residents of housing at the proposed site would be drawn for a given multifamily housing project. A housing market area generally corresponds to, as applicable: (i) the Metropolitan Statistical Area (MetroSA); (ii) the Micropolitan Statistical Area (MicroSA); or (iii) if the site is in neither a MetroSA nor a MicroSA, either (x) the county or statistically equivalent area, or (y) the PHA's service area, whichever is larger.[41] The analysis may consider a larger or smaller housing market area in instances where there is strong evidence that such housing market area is more appropriate. Strong evidence that an alternative housing market area is more appropriate may include factors such as regional employment centers and commuting patterns serving such employment centers. A PHA seeking to use an alternative housing market area must consult with HUD and establish to HUD's satisfaction that the methodology for identifying and documenting the alternative housing market area is warranted and sound.

C) The Sufficient Comparable Opportunities Exception

As required by the RAD Notice and noted in Section 5.4(A), one of the exceptions under which the site and neighborhood standards permit new construction in areas of minority concentration is if sufficient, comparable housing opportunities for low-income minority families exist outside areas of minority concentration. This section clarifies HUD's procedures for assessing comparable housing opportunities and evaluating how the proposed new construction will impact the balance of housing choices within and outside areas of minority concentration. It also includes a list of the information PHAs should submit to inform HUD's assessment of relevant factors, and key considerations guiding HUD's analysis of each factor.

Under the governing PBV and PBRA requirements, units are considered comparable opportunities if they are the same household type (e.g., elderly, disabled, family, large family), tenure type (owner, renter), require approximately the same total tenant payment toward rent,

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[40] For further explanation, *see, e.g., King v. Harris*, 464 F.Supp.827, 839-41 (E.D.N.Y. 1979).

[41] Items (i) and (ii) are consistent with a Core Based Statistical Area as defined by the Office of Management and Budget. For reference, a Core Based Statistical Area consists of the county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core.

serve the same income group, are located in the same housing market area, and are in standard condition.[42]

It is important to note that the sufficient comparable housing opportunities exception "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, that, over a period of several years, will approach an appropriate balance of housing choices 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 low-income minority families and in relation to the racial mix of the locality's population."[43]

HUD will assess "the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice."[44] Under this exception, it is not sufficient for one factor to be present, nor is it required that all factors be present, as the analysis must consider all relevant facts and evaluate the totality of the circumstances.

- "A significant number of assisted housing units are available outside areas of minority concentration."[45] While HUD must consider all factors relevant to housing choice, 30% or more of deeply subsidized housing units for very low-income persons would be a significant number. To facilitate HUD's consideration of this factor, a PHA should provide the number, occupancy type, and location of all comparable assisted units.[46]
- "There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population."[47] To facilitate HUD's consideration of this factor, a PHA should provide the name and location of assisted housing projects constructed or rehabilitated in the PHA's jurisdiction in the past 10 years and the demographic characteristics of the residents of each of these projects;
- "There are racially integrated neighborhoods in the locality."[48] To facilitate HUD's consideration of this factor, a PHA should provide the name and census tracts where these racially integrated neighborhoods are located. In general, HUD will consider a neighborhood racially integrated if the neighborhood does not have a high concentration of persons of a particular race or ethnicity when compared to the housing market area in which the neighborhood is located.

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[42] *See* 24 C.F.R. § 983.57(e)(3)(iv) and Appendix III of the RAD Notice, paragraph (e)(1)(A).
[43] 24 C.F.R. § 983.57(e)(3)(iii); *see also* Appendix III of the RAD Notice, paragraph (e)(1).
[44] 24 C.F.R. § 983.57(e)(3)(v); *see also* Appendix III of the RAD Notice, paragraph (e)(1)(B).
[45] 24 C.F.R. § 983.57(e)(3)(v)(A) and Appendix III of the RAD Notice, paragraph (e)(1)(B)(i).
[46] Note that this factor is in reference to comparable assisted units that may or may not be in the PHA's portfolio. The presumption stated at the end of this Section (i.e., that sufficient comparable opportunities exist if at least 50% of the comparable hard units in the PHA's portfolio, including PBV developments using the PHA's subsidy, are outside areas of minority concentration) is focused on units within the PHA's portfolio.
[47] 24 C.F.R. § 983.57(e)(3)(v)(B) and Appendix III of the RAD Notice, paragraph (e)(1)(B)(ii).
[48] 24 C.F.R. § 983.57(e)(3)(v)(C) and Appendix III of the RAD Notice, paragraph (e)(1)(B)(iii).

- "Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration."[49] Such programs may include measures such as increasing payment standards in excess of 110% of FMR or the use of Small Area FMRs, including in setting exception rents, or reservation of a percentage of HCVs dedicated to support choice mobility selections or implementation of proven mobility counseling and supports for residents, provided the PHA provides sufficient evidence that it will continue such measures. To facilitate HUD's consideration of this factor, a PHA should provide the names of the applicable program(s); the entity responsible for implementing the program(s) (e.g., city, county, state government); and any information demonstrating that the program(s) has been successful or predictably will achieve success in assisting persons who wish to move to non-concentrated areas.
- "Minority families have benefited 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 families outside of areas of minority concentration."[50] To facilitate HUD's consideration of this factor, a PHA should provide the names of the applicable activity(s); the entity responsible for implementing the activity(s) (e.g., city, county, state government); and any information demonstrating that the activity(s) has been successful in expanding choice for minority families outside of areas of minority concentration;
- "A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs" (e.g., the Housing Choice Voucher programs).[51] To facilitate HUD's consideration of this factor, a PHA should provide the number of minority households receiving Housing Choice Vouchers; the number of minority households using HCVs in non-minority areas; and the non-minority census tracts where the HCVs are being used. While each local situation is distinct and HUD must consider all factors relevant to housing choice, 30% or more of new leases signed by minority heads of household using HCVs located in non-minority areas over a period greater than three years prior to the date of HUD's analysis would be a significant proportion.
- "Comparable housing opportunities have been made available outside areas of minority concentration through other programs."[52] To facilitate HUD's consideration of this factor, a PHA should describe the opportunities that have been made available, the location of those opportunities, and the number of minority families that have benefitted from the program in recent years. Such programs could include choice mobility strategies, acquisition strategies to acquire and add to the PHA's portfolio existing apartments in high opportunity areas and transfers of assistance to high opportunity areas.

HUD may consider evidence based on a reliable housing market analysis in evaluating the foregoing factors, along with other factors relevant to housing choice. In the event HUD

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[49] 24 C.F.R. § 983.57(e)(3)(v)(D); *see also* Appendix III of the RAD Notice, paragraph (e)(1)(B)(iv).
[50] 24 C.F.R. § 983.57(e)(3)(v)(E); *see also* Appendix III of the RAD Notice, paragraph (e)(1)(B)(v).
[51] 24 C.F.R. § 983.57(e)(3)(v)(F); *see also* Appendix III of the RAD Notice, paragraph (e)(1)(B)(vi).
[52] 24 C.F.R. § 983.57(e)(3)(v)(G) and Appendix III of the RAD Notice, paragraph (e)(1)(B)(vii).

determines such an analysis would assist in this evaluation, HUD will consult with appropriate parties to establish or accept an appropriate methodology for such an analysis to address HUD's civil rights concerns and to ensure appropriate independence between the analyst and the PHA or Project Owner commissioning and paying for the study.

Absent information to the contrary, for purposes of HUD's front-end review of the PHA's analysis, HUD will apply a presumption that sufficient comparable opportunities exist if at least 50% of the comparable hard units in the PHA's portfolio, including PBV developments using the PHA's subsidy, are outside areas of minority concentration.[53] The PHA's portfolio includes all public housing, PBV and PBRA hard units (including those developed under HOPE VI or Choice Neighborhoods) controlled by the PHA and its instrumentalities or funded using PHA-controlled subsidy. Upon adequate documentation of this presumption, the PHA need not provide additional documentation for HUD's front-end review of the sufficient comparable opportunities exception. This presumption may be rebutted by information to the contrary, including information regarding the preceding factors. In assessing whether sufficient comparable opportunities exist when the presumption does not apply, HUD will consider the factors listed above.

Absent information to the contrary, for purposes of HUD's front-end review of the PHA's analysis, HUD will apply a presumption that sufficient comparable opportunities exist if a set of RAD conversions from a single public housing property, individually or in a combination of transactions, will result in the creation of as many similarly-affordable housing units outside areas of minority concentration as are constructed on the original public housing site. To evaluate the creation of similarly-affordable units, HUD will compare (i) the number of affordable units that will be redeveloped on site, to (ii) the number of similarly-affordable housing units that will be created through new construction, imposition of new long-term affordability restrictions or transfer of RAD assistance to one or more sites outside areas of minority concentration.[54] Similarly-affordable shall mean RAD units compared to RAD units and LIHTC/non-RAD units compared to LIHTC/non-RAD units. The newly created similarly-affordable units must be owned, controlled, sponsored, under common ownership, control or sponsorship, or financially supported by the PHA or by an entity with a managing ownership interest in the Project Owner. When a PHA seeks to claim this exception, HUD prefers that the transaction creating the similarly-affordable units on the site outside areas of minority concentration close (with an immediate or delayed HAP effective date, if applicable) prior to the closing of the RAD conversion in the area of minority concentration. However, if the PHA determines that such a sequence is not reasonably possible, unless otherwise approved by HUD the PHA must provide evidence to HUD that the transfer of assistance to a site outside areas of

[53] When determining the percentage of units outside of areas of minority concentration, the PHA must include the number of units planned at the proposed site in its calculations. While not required, PHAs or Project Owners may assist HUD in consideration of this presumption by submitting to HUD a map produced by the Affirmatively Furthering Fair Housing Data and Mapping Tool ("AFFH-T"), as may be available on the HUD website from time to time, showing the location of publicly assisted housing.

[54] For example, if the PHA proposes to build 25 RAD units, 20 non-RAD LIHTC units and 15 unrestricted units on-site, such a plan could be acceptable if paired with creation of 15 RAD units at one site and 10 RAD units plus 20 non-RAD LIHTC units at a second site. The 15 unrestricted units in the minority concentrated area are not part of the analysis as they are not affordable units.

minority concentration is highly likely to occur and the PHA must contractually agree with HUD to create such units. Evidence that the transfer is highly likely to occur must include:

- The project name and property address of the site of the similarly-affordable units to be created,
- The census tract and data to confirm that it is not in an area of minority concentration,
- Evidence of site control,
- Evidence of zoning to permit construction of the similarly-affordable units if the affordable units are to be created through new construction,
- A reasonable and feasible sources and uses statement for the transaction, and
- Evidence of financing commitments exceeding 90% of the necessary sources to complete the transaction. Evidence of financing commitments must include an LIHTC allocation if the use of LIHTCs is projected.

D) The Overriding Housing Needs Exception

As noted in Section 5.4(A), the second exception under which the site and neighborhood standards permit new construction in areas of minority concentration is if the project is necessary to meet overriding housing needs that cannot be met in that housing market area. The new construction site selection standards under RAD[55] outline two examples of circumstances, consistent with fair housing and other civil rights objectives, that would permit the application of the overriding housing needs exception: (1) when the site is "an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood;" or (2) when the site is "located in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a "revitalizing area")."[56]

(1) Establishing that a Site is an Integral Part of an Overall Local Strategy for the Preservation or Restoration of the Immediate Neighborhood

To establish that a site is an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood, a PHA must document that the locality has a demonstrated commitment to revitalization that includes or is in addition to the RAD conversion, as demonstrated by the following:

i. The site is located in a defined geographic area that is the subject of an official, currently operational and realistically achievable plan for the improvement or revitalization of the immediate neighborhood (which plan may include areas beyond the immediate neighborhood); and
ii. The Covered Project conforms to, and the site is integral to, the goals, strategies, and objectives of the improvement or revitalization plan.

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[55] *See* 24 C.F.R. § 983.57(e)(2) for PBV transactions and paragraph (e) of Appendix III of the RAD Notice for PBRA transactions.

[56] 24 C.F.R. § 983.57(e)(3)(vi); *see also* Appendix III of the RAD Notice, paragraph (e)(1)(B)(viii)(2). In demonstrating an overriding housing need, the "neighborhood" is determined in each situation based on the overall facts and circumstances and cannot be mechanically determined. The "immediate neighborhood" is generally a smaller geographic area than the "neighborhood."

In determining whether such an official, currently operational and realistically achievable plan for the improvement or revitalization of the area exists, HUD will consider relevant factors including, for example, whether:

- The strategy itself, or a plan supporting the strategy, has been enacted, adopted, or ratified by a municipal, county, or state legislative body;
- There has been progress to implement the plan, or the strategy as a whole.[57]
- The plan or strategy as a whole, or the elements applicable to the Covered Project, are consistent with the jurisdiction's land use or zoning code, development regulations, or other official body of laws or rules;
- Strategies or activities under the plan are incorporated in current public, quasi-public agency or major institutional work plans;
- The plan, or the strategy as a whole, includes objectives and initiatives related to the preservation or restoration of a geography larger than the Converting Project and any associated public housing site;
- A jurisdiction has published solicitations or incentives for development projects in the improvement or revitalization area;
- The plan is incorporated in the applicable jurisdiction's Consolidated Plan or other comprehensive community development plan;
- A jurisdiction has explicitly designated the geographic area for improvement or revitalization (e.g., Business Improvement District; Enterprise Zone designation; Promise Zone designation; Choice Neighborhoods designation);
- An implementing agency has retained a construction firm to break ground on the improvement or revitalization; and/or
- An implementing agency has secured financing, such as the issuance of bonds or final approval for tax increment financing.

(2) Establishing that the Site is Located in a "Revitalizing Area"

Evidence that the site is located in a revitalizing area experiencing significant private investment that is demonstrably improving the economic character of the area is also an example of a site which meets an overriding housing need. HUD will consider all relevant factors in making a determination that the site is located in a "revitalizing area" but in particular will consider whether:

i. The neighborhood has demonstrated signs of revitalization, through indicators such as low or declining census tract poverty rates, low or declining violent crime rates or evidence of high or increased educational opportunity, high or increasing median

[57] Indicators of progress should be appropriate to the amount of time since the plan or strategy was developed and there must be a reasonable, supportable expectation that the plan will continue to be implemented. For example, if a plan was launched 3-4 years prior and the initial steps of the plan required implementation of an initiative (such as real estate development) which has a long pre-development planning period, HUD may consider whether there has been activity to seek land development approvals or to develop construction drawings or to secure funding commitments or other activities providing evidence that one or more material elements of the plan or strategy are actually being implemented.

household income, high or increasing homeownership rates and/or high or increased employment; and

ii. There is high private and public investment in retail, commercial, or housing development that has occurred or will imminently occur in the area which may include, among other considerations:
   - Evidence of new or improved retail centers, grocery stores, pharmacies, healthcare facilities, community centers, educational and recreational facilities, municipal services, and transportation serving the neighborhood;
   - Evidence of private and public investment or housing development that has occurred or will imminently occur in the area;
   - Evidence of economic conditions that are impacting the preservation of affordable housing in the neighborhood, including indicators of gentrification such as housing costs rising more sharply in the neighborhood than in the jurisdiction overall, accelerated rates of homeownership in the neighborhood, and disproportionate depletion of larger dwellings for families with children.

(3) Circumstances in Which an Overriding Housing Needs Exception Does Not Apply

A PHA cannot establish that a site meets the overriding housing needs exception if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability 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.[58] For example, the overriding housing needs exception may not be applied if the reason that the project cannot be sited outside of an area of minority concentration is due to community opposition to the project based on the actual or perceived protected characteristics of the residents or prospective residents of the project. In addition, a recipient may not exclusively rely on this exception as a means of siting projects without creating housing opportunities outside of areas of minority concentration or without preserving existing housing outside of areas of minority concentration.

5.5. Front-End Civil Rights Review for RAD Transactions Involving Transfer of Assistance

A) Applicable Standards

Transfers of assistance are subject to the site selection standards for existing or rehabilitated housing set forth in 24 C.F.R. § 983.57(a)-(d), with the exception of 24 C.F.R. § 983.57(b)(1) and (c)(2), for PBV conversions and Appendix III of the RAD Notice for PBRA conversions. All transfers of assistance to a new site(s) are subject to front-end review by HUD, as required by the RAD Notice and noted in Section 5.3(A)(2) of this Notice. Conversions involving a transfer of assistance may also involve one or more of the other activities which trigger front-end review as described in Section 5.3(A). In transfers of assistance involving any of these activities, HUD

[58] 24 C.F.R. § 983.57(e)(3)(vi) and Appendix III of the RAD Notice, paragraph (e)(2). The PBRA site and neighborhood standards use the phrase "on the basis of race, color, creed, sex or national origin." See Appendix III of the RAD Notice.

will conduct a front-end review based on the requirements applicable to each activity. A PHA must submit documentation for the front-end civil rights review of each specific activity as required by the relevant sections of this Notice.

B) Analysis of Transfers of Assistance

Through the front-end review of transfers of assistance by FHEO, HUD seeks to assist the PHA in avoiding discrimination on the basis of race, color, national origin, religion, sex, disability or familial status. The front-end review of transfers of assistance will apply the site selection standards for existing/rehabilitated housing.[59] This review shall consider:

(1) The accessibility of the proposed site for persons with disabilities;

(2) The ability of the RAD conversion to remediate accessibility concerns;

(3) Whether the transfer of assistance would result in assisted units being located in an area where the total percentage of minority persons is significantly higher than the total percentage of minority persons in the area of the original public housing site or in an area where the percentage of persons of a particular racial or ethnic minority is significantly higher than the percentage of that minority group in the area of the original public housing site.[60] For purposes of this analysis, HUD will examine the minority concentration of:

(a) the census tract of the original public housing site compared to the census tract of the proposed site; and
(b) an area comprised of the census tract of the original public housing site together with all adjacent census tracts compared to an area comprised of the census tract of the proposed site together with all adjacent census tracts.

(4) Whether the site selection has the purpose or effect of:

(a) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under the RAD program or the applicable rental assistance program;
(b) Excluding qualified individuals with disabilities from or denying them the benefit of the RAD program or the applicable rental assistance program, or otherwise subjecting them to discrimination;
(c) Defeating or substantially impairing the accomplishment of the objectives of the RAD program or the applicable rental assistance program with respect to qualified individuals with disabilities; and

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[59] 24 C.F.R. § 983.57(d) and Appendix III of the RAD Notice, paragraphs (a) through (d). The site selection standards for existing/rehabilitated housing do not apply the minority concentration test used for new construction found at 24 C.F.R. § 983.57(e)(3) and Appendix III of the RAD Notice, paragraph (e).

[60] While this review is not explicitly called out in 24 C.F.R. § 983.57(d) and Appendix III of the RAD Notice, it is derived from HUD's and the PHA's obligations to comply with civil rights laws and regulations, including those referenced in 24 C.F.R. § 983.57(b)(2) and Appendix III of the RAD Notice.

(d) Excluding individuals with disabilities (including members of the public with disabilities), denying them benefits or subjecting them to discrimination.

Under the RAD Notice, there are other standards for review of a transfer of assistance which are not examined as part of the front-end civil rights review but are examined as part of the RAD Financing Plan review (e.g., criteria formulated for transfers under Section 8(bb) of the United States Housing Act of 1937 regarding neighborhoods with highly concentrated poverty). Identification of considerations for the front-end review do not preclude review by HUD of all standards referenced in the RAD Notice.

5.6. Front-End Civil Rights Review for RAD Transactions Involving Reduction in Number of Units, Changes in Bedroom Distribution of Units and Changes in Occupancy Requirements

The RAD Notice allows PHAs to reduce the number of units, change the bedroom distribution of units, or change the occupancy of projects as part of their RAD conversion.[61] However, the RAD Notice also provides that such changes (including de minimis changes) must undergo a front-end civil rights review and receive approval from HUD prior to submission of the Financing Plan. The Checklist will require data for review along with an explanation, backed by sufficient evidence, of how the PHA determined that that the proposed change will not result in discrimination on the basis of race, color, national origin, religion, sex, disability, familial status, actual or perceived sexual orientation, gender identity or marital status.[62]

A) Review of Reductions in the Number of Units, Reductions or Increases in the Number of UFAS Accessible Units or Changes in Bedroom Distribution

This Section describes the considerations relevant to a front-end review of reductions in units, changes in the number of UFAS accessible units or changes in bedroom distribution. Such changes must not be the result of an intentional effort to discriminate against members of a protected class. For example, reductions or changes, including reductions in UFAS accessible units or which would impede residents with disabilities from having live-in aides, that intended to exclude persons with disabilities would be unlawful discrimination because of a disability.

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[61] *See* Sections 1.4.A.4 and 1.4.A.10 of the RAD Notice.

[62] Reductions in the number of units, changes in the bedroom distribution of units, or changes in occupancy violate the Fair Housing Act (the Act) if they have a discriminatory effect on the basis of race, color, national origin, religion, sex, disability, or familial status. Unlawful housing discrimination may be established by a policy's or practice's discriminatory intent or by its discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in 24 C.F.R. § 100.500. A policy or practice can have an unjustified discriminatory effect, even when the provider had no intent to discriminate. Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. In addition, the policy or practice violates the Act if the housing developer or provider intentionally discriminates, including for example, by reducing the number of bedrooms with the intent of limiting families with children. Furthermore, the policy or practice may also violate the Act where it creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin. In addition, any changes must conform with the Equal Access rule requirement that determinations of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the FHA shall be made in accordance with program eligibility requirements, and the housing must be made available, without regard to actual or perceived sexual orientation, gender identity or marital status. 24 C.F.R. § 5.105(a)(2).

Similarly, replacing larger units with smaller units so as to exclude families with children would be unlawful discrimination because of familial status.

Additionally, reductions in units or changes in bedroom distribution must not have an unjustified discriminatory effect on members of a protected class. For example, a reduction in units could have a discriminatory impact if it excludes members of a particular race or religion. Reductions or changes that have a disparate impact on a protected class are unlawful under the Fair Housing Act if they are not necessary to achieve a substantial, legitimate, nondiscriminatory interest of the developer or housing provider, or if such interest could be served by another practice that has a less discriminatory effect.

The RAD Notice allows for a de minimis reduction in units at Converting Projects, which includes both a small number of units as well as the reduction of certain units that have been vacant for 24 months prior to application, that are being or will be used for social service delivery, or efficiencies that will be reconfigured to one-bedroom units.[63] In addition, a PHA converting multiple properties can consolidate the de minimis reductions derived from multiple properties at a small number of sites. The RAD Notice also allows for changes in bedroom distribution. Such de minimis reductions are still subject to front end civil rights review and applicable fair housing and civil rights laws.

HUD shall conduct a front-end civil rights review if the plan for a Converting Project results in:

- A reduction in the number of dwelling units in any of the following categories: (i) units with two bedrooms, (ii) units with three bedrooms or (iii) units with four or more bedrooms.
- A reduction in the number of UFAS accessible units;
- An increase in the number of UFAS accessible units for persons with mobility impairments beyond 10% of the units in the Covered Project or 1 unit, whichever is greater.
- An increase in the number of UFAS accessible units for persons with vision and hearing impairments beyond 4% of the units in the Covered Project or 1 unit, whichever is greater.

When a Converting Project is subject to a front-end civil rights review under this subsection, the PHA shall submit to HUD the relevant part of the Checklist together with a justification which must demonstrate that the changes are not the result of discriminatory intent and will not have a discriminatory effect on members of protected classes, particularly families with children and individuals with disabilities. Relevant data for this analysis of the proposed change at the project may include the PHA's overall affordable housing stock, the demand for affordable housing in the market as evidenced by information such as the overall jurisdiction and regional demographic data available from the AFFH Data and Mapping Tool (e.g., both basic demographic and disproportionate housing needs data), the PHA's waiting list or a reliable market study of households seeking assisted housing, compared to the relative proportions of

[63] *See* Section 1.4.A.4 of the RAD Notice.

units serving any particular household type in the proposed project, the PHA's total housing stock or all assisted housing in the area.

For any increase in UFAS units subject to front-end review, HUD will assess indicators of local need (see Section 5.7(B), below) and whether the change would operate to concentrate individuals with disabilities in a particular property or to exclude individuals with certain types of disabilities from a particular property.

B) Review of Changes in Occupancy Type

RAD conversions that result in the implementation of an admissions preference (e.g., residency preferences or restrictions) at the Covered Project that would alter the occupancy of the property (e.g., family units converting to elderly units, elderly/disabled units converting to elderly only units) are subject to a front-end civil rights review by HUD pursuant to the RAD Notice and Section 5.3(A). A PHA must demonstrate that the proposed change in occupancy type is consistent with the demand for affordable housing in its jurisdiction as demonstrated by factors such as the demographics of its current occupancy, the demographics of its waiting list or a market study. Such preferences, restrictions, or geographic residency preferences must be reflected in a PBRA project's Affirmative Fair Housing Marketing Plan (AFHMP) or, for a PBV project, the PHA's Administrative Plan.

5.7. Other Front-End Civil Rights Review for RAD Transactions

A) Conversions of Assistance in Which the Construction Schedule Indicates that Relocation is Likely to Exceed 12 Months.

The front end civil rights review shall focus on whether the relocation will result in discrimination on the basis of race, color, national origin, religion, sex, disability, and familial status, based primarily, but not exclusively, on the data required in the Checklist.

B) Conversions of Assistance Involving New Construction or Substantial Alteration, as those terms are defined by Section 504.

While the PHA is responsible for compliance with all requirements described in Section 4, above and in this subsection, the front-end review will be conducted based on a review of the Checklist and shall include confirming the provision of any required accessible units and confirming the PHA is applying the appropriate accessibility standards. HUD will require the PHA to provide information regarding the provision of at least the minimum number of units accessible for persons with mobility impairments and units accessible for persons with hearing and vision impairments as required by applicable law (generally 5% of units accessible for persons with mobility impairments and an additional 2% of units accessible for persons with hearing and vision impairments). For purposes of establishing an upper threshold of accessible units below which RAD front-end review will not be required, HUD will accept that up to 10% of units accessible for persons with mobility impairments and up to 4% of units accessible for persons with hearing and vision impairments is consistent with local need, without further review, absent information to the contrary. HUD will consider a PHA's request for higher percentages based, to HUD's satisfaction, on reliable indicators of local need, such as census data or other available current data. HUD is available to assist PHAs in determining appropriate indicators of local

need for units with accessible features. The RAD conversion scope of work submitted with the Financing Plan must reflect the construction or retrofitting of residential units and public and common use areas to comply with all applicable accessibility requirements.

C) Remedial Agreements and Orders.

Front-end review in situations where the Converting Project or PHA is subject to enforcement actions or binding voluntary compliance agreements, settlement agreements, conciliation agreements, or consent decrees or orders of the nature described in Sections 5.3(A)(8) and 5.3(A)(9) shall be conducted on a case-by-case basis as appropriate to the specific situation.

5.8. Affirmative Fair Housing Marketing Plan (AFHMP) Requirements for Projects Converting to PBRA Assistance

For all projects converting to PBRA assistance, a PHA or Project Owner must complete form HUD-935.2A, the Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing, and submit it to HUD for approval with the RAD Financing Plan.[64] Affirmative Fair Housing Marketing requirements are designed to achieve a condition in which individuals of similar income levels in the same housing market area have similar housing choices available to them regardless of their race, color, national origin, religion, sex, disability, or familial status.[65] They are also a means to carry out the mandate of Section 808(e)(5) of the Fair Housing Act that HUD administer its programs and activities in a manner to affirmatively further fair housing. These requirements mandate that PHAs or Project Owners identify groups that are least likely to apply for upcoming housing opportunities and to implement special marketing and outreach activities to ensure that these groups are aware of these opportunities.

The AFHMP must be submitted to HUD with the Financing Plan. A separate AFHMP is required for each distinct PBRA HAP contract. The PHA must submit an AFHMP even if the project has an existing waiting list and is not accepting new applicants. The PHA or Project Owner should consult the instructions in the form HUD 935.2A and HUD's Implementing Affirmative Fair Housing Marketing Requirements Handbook (HUD Handbook 8025.1) for guidance on completing the AFHMP and carrying out an affirmative marketing program. The Handbook provides a detailed resource on the content of the AFHMP, which includes marketing activities, residency preferences, and staff training.

When submitting an AFHMP for HUD approval, the PHA or Project Owner must ensure that the occupancy designation and any residency preferences are consistent with the PHA Plan or Significant Amendment to the PHA Plan, that such designation and preferences are consistent with the Checklist submitted to HUD and that the AFHMP includes affirmative marketing

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[64] The most recent version of the AFHMP is HUD Form 935.2A, OMB Approval Number 2529-0013. *See* 24 C.F.R. § 880.601(a)(2) and 24 C.F.R. § 200.615; *see also* Section 10.8 of the Multifamily Accelerated Processing (MAP) Guide. The PHA or its management agent should consult the instructions in the form HUD 935.2A and HUD's Implementing Affirmative Fair Housing Marketing Requirements Handbook (HUD Handbook 8025.1) for guidance on completing the AFHMP and carrying out an affirmative marketing program. The Handbook provides a detailed resource on the content of the AFHMP, which includes marketing activities, residency preferences, and staff training.

[65] *See* 24 C.F.R. § 200.610.

activities that are consistent with its occupancy designation and the populations identified as least likely to apply. Any subsequent changes to occupancy designation or residency preferences shall be proposed, submitted and reviewed in accordance with standard PBRA requirements. If a PHA or 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).

The Multifamily Housing Office of Asset Management and Portfolio Oversight and the Office of Fair Housing and Equal Opportunity ("FHEO") review the AFHMP. FHEO issues HUD's official letter of approval or disapproval. Disapproval letters will specify the reason a plan was rejected and the revisions required. The PHA or Project Owner must make the required changes and resubmit a corrected plan to HUD for approval.

The PBRA contract becomes effective on the first day of a month, following closing. Approval of the AFHMP is not a condition to closing of the RAD conversion. When the project is preparing to accept applications, it must follow its approved AFHMP to ensure that groups least likely to apply are aware of the housing opportunities. The Project Owner is responsible for ensuring that the AFHMP is in place throughout the life of any FHA mortgage or PBRA contract. The Project Owner may not market or lease any unit not occupied by a household exercising its right to remain in or return to the Covered Project prior to approval of the AFHMP. Marketing or leasing includes the solicitation, distribution or acceptance of applications or development of a waiting list.

SECTION 6. RELOCATION REQUIREMENTS

In some cases, as explained in this Section, the activities associated with the RAD transaction may require the relocation of residents. In the event of acquisition, demolition, construction or rehabilitation activities performed in connection with a RAD conversion, the PHA and/or Project Owner[66] should plan such activities to reasonably minimize any disruption to residents' lives, to ensure that residents are not exposed to unsafe living conditions and to comply with applicable relocation, fair housing and civil rights requirements. As discussed in Section 6.1, below, a written relocation plan is required in some circumstances and strongly encouraged for any conversion resulting in resident moves or relocation. Further, the obligations due to relocating residents under RAD are broader than URA relocation assistance and payments and RAD specifies requirements which are more protective of residents than standard URA requirements, including additional notices (see Section 6.6) and a right to return (see Section 6.2). This Notice requires that certain information be provided to all households, beginning prior to submission of the RAD application.

Any resident who moves as a direct result of acquisition, rehabilitation or demolition for an activity or series of activities associated with a RAD conversion may, depending on the circumstances and length of time of the relocation, be eligible for relocation assistance and payments under the URA. Additionally, Section 104(d) relocation and one-for-one replacement

[66] Under the URA, the term "displacing agency" refers to the agency or person that carries out a program or project which will cause a resident to become a displaced person. Projects vary and, for any specific task described in this Notice, the displacing agency may be either the PHA or the Project Owner, as determined by the allocation of roles and responsibilities between the PHA and Project Owner.

housing requirements may also apply when CDBG- or HOME-funds are used in connection with a RAD conversion. The applicability of the URA or Section 104(d) to RAD conversions is fact-specific, which must be determined in accordance with the applicable URA and Section 104(d) regulations.[67]

Eligibility for specific protections under this Notice applies to any person residing in a Converting Project who is legally on the public housing lease, has submitted an application to be added to an existing lease, or is otherwise in lawful occupancy at the time of the issuance of the CHAP and at any time thereafter until conversion of assistance under RAD. All such residents of a Converting Project have a right to return and are eligible for relocation protections and assistance as provided by this Notice. The eligibility criteria set forth in this paragraph apply to the protections under this Notice regardless of whether residents or household members meet the statutory and regulatory requirements for eligibility under URA.[68]

6.1. Planning

If there is a possibility that residents will be relocated as a result of acquisition, demolition, or rehabilitation for a Converting Project, PHAs must undertake a planning process in conformance with the URA statutory and regulatory requirements in order to minimize the adverse impact of relocation (*see* 49 § C.F.R. 24.205). PHAs must also ensure that their relocation planning is conducted in compliance with applicable fair housing and civil rights requirements.

The PHA shall prepare a written relocation plan if the RAD conversion involves permanent relocation (including, without limitation, a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than one year. While a written relocation plan is not required for temporary relocation lasting one year or less, HUD strongly encourages PHAs, in consultation with any applicable Project Owners, to prepare a written relocation plan for all RAD conversions to establish their relocation process clearly and in sufficient detail to permit consistent implementation of the relocation process and accurate communication to the residents. Appendix II contains recommended elements of a relocation plan.

During the planning stages of a RAD transaction and based on the results of this planning process, a PHA must submit applicable portions of the Checklist described in Section 5.3(B) to HUD, together with any required backup documentation, as early as possible once the information covered in the applicable part is known.[69] All parts of the Checklist must be submitted to HUD prior to submission of the Financing Plan. The Checklist will allow HUD to assist the PHA to comply, and to evaluate the PHA's compliance, with relocation requirements, including civil rights requirements related to relocation.

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[67] 42 U.S.C. § 4601 *et seq*., 42 U.S.C. § 5304(d), and their implementing regulations at 49 C.F.R Part 24 and 24 C.F.R. Part 42 subpart C.

[68] A nonexclusive listing of persons who do not qualify as displaced persons under URA is at 49 C.F.R. 24.2(a)(9)(ii). See also, Paragraph 1-4(J) of HUD Handbook 1378. See Section 6.5 of this Notice for discussion of the date of "initiation of negotiations."

[69] The Checklist refers to the existing FHEO Accessibility and Relocation Checklist until a revised Checklist is approved for use pursuant to the Paperwork Reduction Act.

The following presents a general sequencing of relocation planning activities within the RAD conversion process for informational and planning purposes only. Specific requirements are set forth in the provisions of this Notice.

Stage	Activities
1. Prior to submission of RAD application	• Determine potential need for relocation in connection with proposed conversion plans. • Meet with residents to discuss proposed conversion plans, communicate right to return, and solicit feedback. • Provide the *RAD Information Notice* (RIN) to residents as described in Section 6.6(A) of this Notice.
2. After submission of RAD application	• Assess the need for relocation planning in connection with proposed conversion plans. Determine if technical assistance would be beneficial to ensuring compliance with relocation requirements. • Survey residents to inform relocation planning and relocation process. • Develop a relocation plan (see Appendix II for recommended content). • Prepare Significant Amendment to PHA Plan and engage with the Resident Advisory Board, residents and the public regarding Plan amendment.[70]
3. Following issuance of the CHAP, or earlier if warranted	• Provide the *General Information Notice* (GIN) to residents when the project involves acquisition, rehabilitation, or demolition as described in Section 6.6(B) of this Notice and relocation may be required.
4. While preparing Financing Plan	• Discuss the outlines of the conversion plans and their impact on relocation with the HUD transaction manager. • Refine the plan for relocation and integrate the construction schedule into the relocation strategy; seek to minimize off-site or disruptive relocation activities. • Identify relocation housing options . • Budget for relocation expenses and for compliance with accessibility requirements. • Submit the Checklist and, where applicable, the relocation plan. • If the conversion involves acquisition, at the discretion of the Project Owner issue Notice of Intent to Acquire (NOIA). • If a NOIA is issued, at the discretion of the Project Owner provide residents with appropriate relocation notices as

[70] Alternatively, the PHA may submit a new PHA Five-Year or Annual Plan, especially if it is on schedule to do so. Under any scenario, the PHA must consult with the Resident Advisory Board and undertake the community participation process.

Stage	Activities
	described in Section 6.6(C) through 6.6(E) of this Notice at this time.
5. From RAD Conversion Commitment (RCC) to Closing	• Meet with residents to describe approved conversion plans and discuss required relocation. • The effective date of the RCC marks the date of "Initiation of Negotiations" (ION), as defined in the URA (49 § C.F.R. 24.2(a)(15)). • If no NOIA was provided while preparing the Financing Plan, provide residents with appropriate relocation notices as described in Section 6.6(C) through 6.6(E) of this Notice. • Resident relocation may begin following the effective date of the RCC, subject to applicable notice requirements.
6. Post-Closing	• Ongoing implementation of relocation • Notify the residents regarding return to the Covered Project as described in Section 6.6(F) of this Notice • Implementation of the residents' right to return

6.2. Resident Right to Return

Any public housing or Section 8 assisted resident that may need to be relocated temporarily to facilitate rehabilitation or construction has a right to return to an assisted unit at the Covered Project once rehabilitation or construction is complete.[71] Permanent involuntary displacement of public housing or Section 8 assisted residents may not occur as a result of a project's conversion of assistance. The Project Owner satisfies the RAD right to return to a Covered Project if the Project Owner offers the resident household either: a) a unit in the Covered Project in which the household is not under-housed; or b) a unit in the Covered Project which provides the same major features as the resident's unit in the Converting Project prior to the implementation of the RAD conversion. In the case of a transfer of assistance to a new site, residents of the Converting Project have the right to reside in an assisted unit meeting the requirements set forth in this paragraph at the Covered Project (the new site) once the Covered Project is ready for occupancy in accordance with applicable PBV or PBRA requirements.

If proposed plans for a Converting 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. Examples of project plans that may preclude a resident from returning to the Covered Project include, but are not limited to:

- Changes in bedroom distribution which decrease the size of units such that the resident would be under-housed;[72]

[71] The right to return is not a right to any specific unit in the Covered Project. Tenancies other than public housing or Section 8 assisted residents (such as commercial tenants) do not hold a right to return and are subject to standard relocation requirements applicable to such tenants under the URA.

[72] See the RAD Notice for a description of the procedures that must be undertaken if a resident is over-housed.

- Where a) the PHA is reducing the number of assisted units at a property (if authorized to do so under Section 1.5.B of the RAD Notice) and b) the resident cannot be accommodated in the remaining assisted units;
- The imposition of income eligibility requirements, such as those associated with LIHTC or other program financing, under which the current resident may not be eligible;[73] and
- Failure to provide reasonable accommodation to an individual with disabilities, in violation of applicable law, which reasonable accommodation may include installation of accessibility features that are needed by the individual with disabilities.[74]

If the resident who would be precluded from returning to the Covered Project objects to such plans, the PHA must alter the project plans to accommodate the resident's right to return to the Covered Project.

If the resident who would be precluded from returning to the Covered Project prefers to voluntarily and permanently relocate rather than object to the project plans, the PHA must secure informed, written consent to a voluntary permanent relocation in lieu of returning to the Covered Project and must otherwise comply with all the provisions of Section 6.10, below, regarding alternative housing options. The PHA cannot employ any tactics to pressure residents into relinquishing their right to return or accepting alternative housing options. A PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

In the case of a multi-phase transaction, the resident has a right to return to the Covered Project or to other converted phases of the property which have converted and are available for occupancy at the time the resident is eligible to exercise the right to return. A relocated resident should get the benefit of improvements facilitated by the resident's relocation and conversion and completion of future phases cannot be assured. In most cases, this means that the resident's right to return must be accommodated within the Covered Project associated with resident's original unit. However, in those cases where improvements to multiple phases of a site are occurring simultaneously, the PHA or Project Owner may treat multiple Covered Projects on the same site as one for purposes of the right to return. If the PHA or Project Owner seeks to have the resident exercise the right of return at a future phase, the PHA or Project Owner would need to secure the resident's consent to such plan as an alternative housing option pursuant to Section 6.10, below.

In implementing the right of return, the Project Owner shall comply with all applicable fair housing laws and implementing regulations, including, but not limited to, the Fair Housing Act,

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[73] In these cases, a PHA may elect to exclude some units from the applicable financing program, for example, claiming LIHTC for a subset of the units and not claiming tax credits in connection with the units occupied by households over the LIHTC maximum eligibility of 60% of AMI.

[74] Refer to the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications Under the Fair Housing Act (March 5, 2008), at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf for additional detail regarding applicable standards for reasonable accommodations and accessibility features which must be provided. If the resident has paid for installation of accessibility features in the resident's prior unit, the PHA or Project Owner shall pay for the installation of comparable features in the new unit. Violations of law may also result in other sanctions.

Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act.

6.3. Admissions and Continued Occupancy Requirements

Resident households may not be denied relocation housing or the right to return based on rescreening, income eligibility, or income targeting. PHAs may only offer housing options with screening, income eligibility or income targeting requirements if the impacted residents meet the admission and occupancy policies applicable to such housing. However, whether or not in a temporary relocation situation, the household remains subject to the applicable program policies regarding continued occupancy of an assisted unit by an incumbent resident of the unit.

6.4. Types of Moves and Relocation

Any time project plans require a resident to move from their current unit, the resident is eligible for assistance as described in this Notice. Assistance may vary depending on the options provided to residents, whether the relocation is temporary or permanent and, if applicable, the length of time the resident is in temporary accommodations.[75] In all circumstances, the move or relocation must be in compliance with applicable requirements of this Notice and consistent with applicable fair housing and civil rights requirements. Each type of move is discussed below.

A) Moves within the same building or complex of buildings[76]

Temporary or permanent moves within the same building or complex of buildings may be appropriate given the extent of work to be completed to permit phasing of rehabilitation or construction. Moves within the same building or complex of buildings are not considered relocation under RAD and a tenant generally does not become displaced under the URA. Whether permanent (i.e., the tenant will move to and remain in an alternative unit) or temporary (i.e., the tenant will move to another unit and return to their original unit), the PHA or Project Owner must reimburse residents for all reasonable out-of-pocket expenses incurred in connection with any move and all other terms and conditions of the move(s) must be reasonable.[77] The final move must be to a unit which satisfies the right to return requirements specified in Section 6.2 of this Notice.

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[75] PHAs should note that the definitions of "permanent" vary between the URA and RAD. For example, "permanent displacement" under the URA includes moves from the original building or complex of buildings lasting more than one year. The RAD Notice, meanwhile, considers "permanent relocation" to be separation from the RAD-assisted unit upon completion of the conversion and any associated rehabilitation and construction. The duration of a temporary move may exceed one year. In the case of a transfer of assistance, it is not permanent relocation under RAD when the resident must move from the original complex of buildings to the destination site in order to retain occupancy of the RAD-assisted unit.

[76] An example of relocation within the same building or complex of buildings would be if one floor of a multi-story building is vacant, and the PHA is moving residents from another floor to the vacant units.

[77] Failure to reimburse residents for moving or other out-of-pocket expenses and any other terms and conditions of the move which may be unreasonable may result in the resident becoming a displaced person under the URA if the resident subsequently moves from the property.

B) Temporary relocation lasting one year or less

If a resident is required to relocate temporarily, to a unit not in the same building or complex of buildings, for a period not expected to exceed one year in connection with the RAD conversion, the resident's temporarily occupied housing must be decent, safe, and sanitary and the resident must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses include, but are not limited to, moving expenses, increased housing costs (e.g., rent and utilities), meals if the temporary housing lacks cooking facilities (e.g., during a short hotel stay, whether or not on an emergency basis) and other applicable expenses.[78]

C) Temporary relocation initially expected to last one year or less, but which extends beyond one year

In the event that a resident has been temporarily relocated, to a unit not in the same building or complex of buildings, for a period which was anticipated to last one year or less but the temporary relocation in fact exceeds one year, the resident qualifies as a "displaced person" under the URA and as a result immediately becomes eligible for all permanent relocation assistance and payments as a "displaced person" under the URA, including notice pursuant to Section 6.6(E). This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.

In such event, the PHA or Project Owner shall offer the resident the opportunity to choose to voluntarily permanently relocate with the offered URA assistance or to choose to remain temporarily relocated based on updated information from the PHA or Project Owner about when they can return to the completed RAD unit. The PHA or Project Owner must present this opportunity to the resident when the temporary relocation extends beyond one year and each time thereafter that the temporary relocation extends beyond the previously anticipated duration. In presenting such opportunity, the PHA or Project Owner must inform the resident in writing that his or her acceptance of voluntary permanent relocation, with the associated assistance, would terminate the resident's right to return to the Covered Project. The PHA or Project Owner must provide the resident with at least 30 days to decide whether to remain in temporary relocation status or to voluntarily relocate permanently.

D) Temporary relocation anticipated to last more than one year

When the PHA anticipates that the temporary relocation, to a unit not in the same building or complex of buildings, will last more than one year, but the resident is retaining the resident's right to return to the Covered Project, the resident is considered temporarily relocated under RAD and is eligible to receive applicable temporary relocation assistance and payments. Under the URA, the resident becomes eligible to receive applicable relocation assistance and payments as a "displaced person" when the temporary relocation period exceeds one year and each time thereafter that the temporary relocation extends beyond the previously anticipated duration, at

[78] HUD Handbook 1378, Chapter 2, Section 2-7 governs activities subject to URA requirements and informs, but is not binding upon, any RAD activities not governed by the URA. PHAs may also refer to HUD Form 40030.

which time the PHA or Project Owner shall offer the resident the opportunity to choose to voluntarily permanently relocate or to remain temporarily relocated, as described in Section 6.4(C), above.

In order to allow residents to make the election earlier than required under the URA (thereby avoiding a year in temporary relocation housing prior to electing voluntary permanent relocation), if the PHA or Project Owner anticipates that temporary relocation will last more than one year, the PHA or Project Owner shall provide the resident with an initial option to (a) be temporarily relocated, retain the right to return to the Covered Project when a unit becomes available and receive assistance, including temporary housing and reimbursement for all reasonable out-of-pocket expenses associated with the temporary relocation, or (b) accept RAD voluntary permanent relocation assistance and payments equivalent to what a "displaced person" would receive under the URA. The PHA or Project Owner must inform the resident in writing that his or her acceptance of voluntary permanent relocation, with the associated assistance, would terminate the resident's right to return to the Covered Project. The PHA or Project Owner must provide the resident with at least 30 days to decide whether to remain in temporary relocation status or to voluntarily relocate permanently.

E) Permanent moves in connection with a transfer of assistance

In cases solely involving a transfer of assistance to a new site, resident relocation from the Converting Project to the Covered Project is not, by itself, generally considered involuntary permanent relocation under RAD. However, the URA and/or Section 104(d) is likely to apply in most cases. In cases of a transfer of assistance to a new site where it has also been determined that the URA and/or Section 104(d) apply to the transfer of assistance, residents may be eligible for all permanent relocation assistance and payments for eligible displaced persons under the URA and/or Section 104(d). If the URA applies to a move of this type, the PHA or Project Owner must make available at least one, and when possible, three or more comparable replacement dwellings pursuant to 49 C.F.R. § 24.204(a). However, provided the transfer of assistance unit meets the URA definition of a comparable replacement dwelling pursuant to 49 C.F.R. § 24.2(a)(6), that unit could in fact represent the most comparable replacement dwelling as determined by the agency for purposes of calculating a replacement housing payment, if any, under 49 C.F.R. § 24.402.

Whether or not the URA and/or Section 104(d) apply, under RAD the residents are entitled to relocation assistance and payments, including counseling in preparation for the relocation, written notices of the relocation (including a 90-day RAD Notice of Relocation), and reimbursement for all reasonable out-of-pocket expenses, including moving expenses, incurred in connection with the move. It should be noted that the RAD relocation assistance and payments provided to transferring residents in this paragraph differ from those required under the URA and/or Section 104(d) as described above. Where both frameworks apply, the residents must receive the more extensive protections offered under either framework.

If HUD determines that the distance from the Converting Project to the site of the Covered Project is significant and the resident could not reasonably be required to move to the new site, then HUD will require the PHA to adjust project plans to accommodate the resident in an assisted unit (e.g., a public housing unit, some other project-based Section 8 unit or a market unit

with a housing choice voucher) within a reasonable distance of the site of the Converting Project. HUD will evaluate whether this requirement applies on a case by case basis, considering whether the distance would impose a significant burden on residents' access to existing employment, transportation options, schooling or other critical services. Accommodating the resident may also be satisfied by the resident's consent to an alternative housing option pursuant to Section 6.10. The requirement set forth in this paragraph is in addition to all protections, including, for example, the offer of comparable replacement dwellings, which are required in all instances where a transfer of assistance is subject to the URA and/or Section 104(d).

F) Voluntary permanent relocation

A resident may elect to relinquish their right of return and consent to voluntary permanent relocation pursuant to an alternative housing option offered and accepted according to the procedures described in Section 6.10, which Section specifies protections to ensure the resident's decision is fully informed. By selecting voluntary permanent relocation, the resident is electing to receive RAD permanent relocation assistance and payments which are equivalent to the relocation payments and assistance required to be provided to a "displaced person" pursuant to the regulations implementing the URA.

6.5. Initiation of Negotiations (ION) Date

Eligibility for URA relocation assistance is effective on the date of initiation of negotiations (ION) (49 C.F.R. § 24.2(a)(15)). For Converting Projects, the ION date is the effective date of the RCC. The ION date is also typically the date when PHAs can begin to issue RAD Notices of Relocation (except in the case of acquisitions when the PHA can issue a Notice of Intent to Acquire and RAD Notices of Relocation prior to the ION date). Any person who is in lawful occupancy on the ION date is presumed to be entitled to relocation payments and other assistance.

PHAs and Project Owners should note that prior to the ION date, a resident may be eligible as a displaced person for permanent relocation assistance and payments under the URA if HUD determines, after analyzing the facts, that the resident's move was a direct result of the project. However, resident moves taken contrary to specific instructions from the PHA or Project Owner (for example, contrary to instructions not to move if contained in a General Information Notice) are generally not eligible as a displaced person under the URA.

6.6. Resident Relocation Notification (Notices)

PHAs and Project Owners are encouraged to communicate regularly with the residents regarding project plans and, if applicable, the resulting plans for relocation. When residents may be relocated for any time period (including, without limitation, a move in connection with a transfer of assistance), written notice must be provided to the resident heads of households, including the notices listed below as applicable.[79] PHAs and Project Owners are also encouraged to provide

[79] The notices required under Sections 6.6(B) through 6.6(E) must be delivered in accordance with URA resident notification requirements, including the requirement that the notice be personally served or delivered by certified or registered first class mail return receipt requested. All notices must be delivered to each household (i.e., posting in

additional relocation notices and updates for the residents' benefit as appropriate for the specific situation.

To ensure that all residents understand their rights and responsibilities and the assistance available to them, consistent with URA requirements at 49 C.F.R. § 24.5 and civil rights requirements, PHAs and Project Owners must ensure effective communication with individuals with disabilities, including through the provision of appropriate auxiliary aids and services, such as interpreters and alternative format materials. Similarly, PHAs and Project Owners are required to take reasonable steps to ensure meaningful access for LEP persons in written and oral materials. Each notice shall indicate the name and telephone number of a person to contact with questions or for other needed help and shall include the number for the telecommunication device for the deaf (TDD) or other appropriate communication device, if applicable, pursuant to 24 C.F.R. §8.6(a)(2).

The purpose of these notifications is to ensure that residents are informed of their potential rights and, if they are to be relocated, of the relocation assistance available to them. Two initial notices launch this effort and provide critical information regarding residents' rights. The first, the RAD Information Notice, is to be provided at the very beginning of the RAD conversion planning process in order to ensure residents understand their rights, to provide basic program information and to facilitate residents' engagement with the PHA regarding project plans. The GIN, meanwhile, provides information specifically related to protections the URA provides to impacted residents. Subsequent notices provide more detailed information regarding relocation activities specific to the household, including tailored information regarding eligibility and timelines for relocation.

PHAs should note that a resident move undertaken as a direct result of the project may be eligible to receive relocation assistance and payments under the URA even though the PHA has not yet issued notices to them. Sample notices which may be used as-is or modified to fit the peculiarities of each situation are provided on the RAD website at www.hud.gov/rad.

A) RAD Information Notice

The RAD Information Notice is to be provided to residents at the very beginning of the RAD conversion planning process in order to convey general written information on potential project plans and residents' basic rights under RAD, and to facilitate residents' engagement with the PHA regarding the proposed RAD conversion. The PHA shall provide a RAD Information Notice to all residents of a Converting Project prior to the first of the two meetings with residents required by the RAD Notice, Section 1.8.2, and before submitting a RAD Application. This RAD Information Notice shall be provided without regard to whether the PHA anticipates any relocation of residents in connection with the RAD conversion. The RAD Information Notice must do the following:

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common areas is insufficient) and methods of delivery (e.g., certified mail, U.S. mail, or hand delivery) must be documented in the PHA's or Project Owner's files.

- Provide a general description of the conversion transaction (e.g., the Converting Project, whether the PHA anticipates any new construction or transfer of assistance, whether the PHA anticipates partnering with a developer or other entity to implement the transaction);
- Inform the resident that the early conceptual plans are likely to change as the PHA gathers more information, including, among other items, resident opinions, analysis of the capital needs of the property and financing options;
- Inform the resident that the household has a right to remain in the unit or, if any relocation is required, a right to return to an assisted unit in the Covered Project (which may be at the new site in the case of a transfer of assistance);
- Inform the resident that they will not be subject to any rescreening as a result of the conversion;
- Inform the resident that the household cannot be required to move permanently without the resident's consent, except in the case of a transfer of assistance when the resident may be required to move a reasonable distance, as determined by HUD, in order to follow the assisted unit;
- Inform the resident that if any relocation is involved in the transaction, the resident is entitled to relocation protections under the requirements of the RAD program and, in some circumstances, the requirements of the URA, which protections may include advance written notice of any move, advisory services, payment(s) and other assistance as applicable to the situation;
- Inform the resident that any resident-initiated move from the Converting Project could put any future relocation payment(s) and assistance at risk and instruct the resident not to move from the Converting Project; and
- Inform the resident that the RAD transaction will be completed consistent with fair housing and civil rights requirements, and provide contact information to process reasonable accommodation requests for residents with disabilities during the relocation.

B) General Information Notice (49 C.F.R. § 24.203(a))

The purpose of the General Information Notice (GIN) is to provide information about URA protections to individuals who may be displaced as a result of federally-assisted projects involving acquisition, rehabilitation or demolition. A GIN provides a general description of the project, the activities planned, and the relocation assistance that may become available.

A GIN shall be provided to any person scheduled to be displaced *as soon as feasible* based on the facts of the situation. In certain instances, such as when the PHA knows that a project will involve acquisition, rehabilitation or demolition, "as soon as feasible" may be simultaneous with issuance of the RAD Information Notice. For any RAD conversion involving acquisition, rehabilitation or demolition, "as soon as feasible" shall be no later than 30 days following the issuance of the CHAP. In instances where acquisition, rehabilitation or demolition is not anticipated at the time of the CHAP but project plans change to include such activities, pursuant to this Notice the PHA shall provide the GIN as soon as feasible following the change in project plans.

For RAD, the GIN must do at least the following:

- Inform the resident that he or she may be displaced for the project and generally describe the relocation payment(s) for which the resident may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
- Inform the resident that, if he or she qualifies for relocation assistance as a displaced person under the URA, he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced resident successfully relocate;
- Inform the resident that, if he or she qualifies for relocation assistance as a displaced person under the URA, he or she will not be required to move without 90 days advance written notice;
- Inform the resident that, if he or she qualifies for relocation assistance as a displaced person under the URA, he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
- Inform the resident that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child (see 49 C.F.R. § 24.208(h) for additional information);
- Describe the resident's right to appeal the PHA's determination as to a resident's eligibility for URA assistance; and
- Inform the resident that the RAD transaction will be completed consistent with fair housing and civil rights requirements, and provide contact information to process reasonable accommodation requests for residents with disabilities during the relocation.

Because of the potential confusion caused by evolving policy directions in the RAD program regarding delivery of the GIN, for actions taken prior to the issuance of this Notice, HUD will consider the facts and circumstances of each conversion, with emphasis on the underlying URA requirements, in monitoring and enforcing a PHA's compliance with this requirement.

C) Notice of Intent to Acquire (49 C.F.R. § 24.203(d))

For conversions involving acquisition, the Project Owner (the "acquiring agency") may provide to residents of the Converting Project a Notice of Intent to Acquire (NOIA).[80] The NOIA may be provided no earlier than 90 days prior to the PHA's reasonable estimate of the date of submission of a complete Financing Plan. While eligibility for URA relocation assistance is generally effective on the effective date of the RCC (the ION date), a prior issuance of a NOIA establishes a resident's eligibility for relocation assistance and payments on the date of issuance of the NOIA and prior to the ION date.

D) RAD Notice of Relocation

If a resident will be relocated to facilitate the RAD conversion, the PHA shall provide written notice of such relocation by means of a RAD Notice of Relocation. The RAD Notice of

[80] Acquisition includes a new ownership entity's purchase of the Covered Project from the PHA, such as a purchase by a single purpose entity, an affiliate or a low-income housing tax credit ownership entity.

Relocation may not be issued until: 1) the effective date of the RCC (the ION date) if the conversion does not involve acquisition; or 2) the earlier of the issuance of the Notice of Intent to Acquire (see Section 6.6(C)) or the effective date of the RCC (the ION date) if the conversion involves acquisition. Prior to issuance of the RAD Notice of Relocation, PHAs and Project Owners should meet with each resident household to provide preliminary relocation advisory services and to determine their needs and preferences.[81]

A RAD Notice of Relocation is not required for residents who will not be relocated. As a best practice, PHAs or Project Owners should notify residents that they are not being relocated once that determination has been made if they were previously informed by the GIN and/or by other methods that relocation was a possibility.[82]

A RAD Notice of Relocation shall provide either: 1) 30-days' notice to residents who will be relocated for twelve months or less; or 2) 90-days' notice to residents who will be relocated for more than twelve months.[83] The RAD Notice of Relocation must conform to the following requirements:

(1) The notice must state the anticipated duration of the resident's relocation.

(2) The notice must specify which entity (the PHA or the Project Owner) is primarily responsible for management of the resident's relocation and for compliance with the relocation obligations during different periods of time (i.e., before vs. after Closing).

(3) For residents who will be relocated for twelve months or less:

- The PHA or Project Owner must provide this notice a minimum of 30 days prior to relocation.[84] PHAs or Project Owners may deem it appropriate to provide longer notice periods for persons who will be temporarily relocated

[81] PHAs and Project Owners should note the URA relocation advisory services requirement for personal interviews. *See* Section 6.7 of this Notice. In sequencing the RAD Notice of Relocation, PHAs and Project Owners wishing to offer alternative housing options pursuant to Section 6.10 should also note the additional complexity in the timeline of notices. Pursuant to Section 6.10(D), the resident can consent to an alternative housing option only after issuance of the NOIA or the effective date of the RCC and 30 days after presentation of the alternative housing options. In some cases, for example, when the resident would not otherwise be relocated for over twelve months, the RAD Notice of Relocation must include both the information described in Section 6.6(D)(3) and the information in Section 6.6(D)(4). The PHA or Project Owner should consider discussing the alternative housing options prior to issuing the RAD Notice of Relocation so that the RAD Notice of Relocation can be tailored to the resident's situation.

[82] The RAD program does not require a "notice of non-displacement," which HUD relocation policy generally uses for this purpose.

[83] The 90-day notice is required for residents relocated for more than twelve months, whether or not they intend to return to the Covered Project and whether or not they are eligible for assistance and payments as a displaced person under URA. Recipients of the 90-day notice would include those residents who have voluntarily accepted a permanent relocation option as well as those residents who are relocated within the same building or complex of buildings.

[84] Note that residents may elect to move to the relocation housing before the 30 days have elapsed. However, a PHA may not require a resident to move prior to this time.

for an extended period of time (over 6 months), or if necessary due to personal needs or circumstances.

- The notice must explain that the PHA or Project Owner will reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with any temporary move (including, but not limited to, increased housing costs and moving costs).
- The notice must explain the reasonable terms and conditions under which the resident may exercise the right to return to lease and occupy a unit in the Covered Project.

(4) For residents who will be relocated for more than twelve months, including for residents who may wish to voluntarily accept a permanent relocation option:

- The PHA or Project Owner must provide this notice a minimum of 90 days prior to relocation of residents.[85]
- The notice must offer the choice to be temporarily relocated, thereby preserving the resident's right to return, or the choice to be voluntarily permanently relocated pursuant to the procedures set forth in Section 6.10, together with guidance that the resident has at least thirty (30) days to consider the choice.
- For residents who voluntarily elect to be permanently relocated, the 90-day notice period may only begin once the PHA or Project Owner has made available at least one comparable replacement dwelling consistent with 49 C.F.R. § 24.204(a).[86]
- The notice must describe the available relocation assistance, the estimated amount of assistance based on the individual circumstances and needs, and the procedures for obtaining the assistance. The notice must be specific to the resident and his or her situation so that the resident will have a clear understanding of the type and amount of payments and/or other assistance the resident household may be entitled to claim.
- The notice must comply with all requirements for a URA Notice of Relocation Eligibility as described in 49 C.F.R. § 24.203(b).

(5) The notice must inform the resident that the relocation will be completed consistent with fair housing and civil rights requirements, and it must provide contact information to process reasonable accommodation requests for residents with disabilities during the relocation.

For short-term relocations, the RAD Notice of Relocation may also contain the information required in the Notice of Return to the Covered Project (see Section 6.6(F)).

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[85] Note that residents may elect to move to the relocation housing before the 90 days have elapsed. However, a PHA may not compel a resident to move prior to this time.

[86] PHAs should note that URA regulations also require, where possible, that three or more comparable replacement dwellings be made available before a resident is required to move from his or her unit.

E) URA Notice of Relocation Eligibility – for residents whose temporary relocation exceeds one year (49 C.F.R. § 24.203(b))

After a resident has been temporarily relocated for one year, notwithstanding a prior issuance of a RAD Notice of Relocation, the PHA or Project Owner must provide an additional notice: the notice of relocation eligibility in accordance with URA requirements ("URA Notice of Relocation Eligibility"). The URA Notice of Relocation Eligibility is not required if the resident has already accepted permanent relocation assistance.[87]

The URA Notice of Relocation Eligibility must conform to URA requirements as set forth in 49 C.F.R. part 24 and shall:

- Provide current information as to when it is anticipated that the resident will be able to return to the Covered Project.
- Give the resident the choice to remain temporarily relocated based upon the updated information or to accept permanent URA relocation assistance at that time instead of exercising the right to return at a later time.

If the resident chooses to accept permanent URA relocation assistance and this choice requires the resident to move out of their temporary relocation housing, the URA requires that the PHA or Project Owner make available at least one, and when possible, three or more comparable replacement dwellings pursuant to 49 C.F.R. § 24.204(a), which comparability analysis is in reference to the resident's original unit. The URA further requires that the resident receive 90 days' advance written notice of the earliest date they will be required to move pursuant to 49 C.F.R. § 24.203(c).

[87] To illustrate, consider the following examples.

- Example 1: The household is expected to be relocated for 11 months. The resident would receive a RAD Notice of Relocation offering only temporary relocation. Construction delays result in the extension of the relocation such that, in fact, it exceeds 12 months. When the temporary relocation exceeds 12 months, the resident must receive a URA Notice of Relocation Eligibility offering a choice between continuation in temporary relocation status and permanent relocation.
- Example 2: The household is expected to be relocated for 14 months. The resident would receive a RAD Notice of Relocation offering a choice between temporary relocation status and permanent relocation. If the household elects temporary relocation, the URA Notice of Relocation Eligibility is required as an additional notice following twelve months in temporary relocation status.
- Example 3: The household is expected to be relocated for 14 months. The resident would receive a RAD Notice of Relocation offering a choice between temporary relocation status and permanent relocation. If the household elects permanent relocation, the URA Notice of Relocation Eligibility is not required.
- Example 4: The household can be accommodated with temporary relocation of 3 months, but has been offered and seeks to accept permanent relocation pursuant to an alternative housing option. This resident would receive a RAD Notice of Relocation under Section 6.6(D)(4) offering a choice between temporary relocation status (the default option) and permanent relocation (the alternative housing option), instead of the RAD Notice of Relocation under Section 6.6(D)(3) which would be expected absent a permanent relocation option. The URA Notice of Relocation Eligibility is not required in either case because a temporary relocation exceeding 12 months was never anticipated nor experienced.

F) Notification of Return to the Covered Project

With respect to all temporary relocations, the PHA or Project Owner must notify the resident in writing reasonably in advance of the resident's expected return to the Covered Project, informing the resident of:

- The entity (the PHA or the Project Owner) with primary responsibility for managing the resident's relocation;
- The address of the resident's assigned unit in the Covered Project and, if different from the resident's original unit, information regarding the size and amenities of the unit;
- The date of the resident's return to the Covered Project or, if the precise date is not available, a reasonable estimate of the date which shall be supplemented with reasonable additional notice providing the precise date;
- That the PHA or Project Owner will reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the return relocation; and
- The resident's options and the implications of those options if the resident determines that he or she does not want to return to the Covered Project and wants to decline the right of return.[88]

Reasonable advance notice shall be 15% of the duration of the resident's temporary relocation or 90 days, whichever is less. For short-term relocations, the PHA or Project Owner may include this information within the RAD Notice of Relocation.

6.7. Relocation Advisory Services

Throughout the relocation planning process, the PHA and Project Owner should be in communication with the residents regarding the evolving plans for relocation. Notwithstanding this best practice, certain relocation advisory services, described below, are required by the URA.

The URA regulations require the PHA or Project Owner to carry out a relocation assistance advisory program that includes specific services determined to be appropriate to residential or nonresidential displacements. The specific advisory services to be provided, as determined to be appropriate, are outlined at 49 C.F.R. § 24.205(c). For residential displacement under the URA, a personal interview is required for each displaced resident household to determine the relocation needs and preferences of each resident to be displaced. The resident household shall be provided an explanation of the relocation payments and other assistance for which the resident may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. Advisory counseling must also inform residents of their fair housing rights and be carried out in

[88] If the resident declines to return to the Covered Project upon completion of the period of temporary relocation, the resident shall be considered to have voluntarily moved out of the property, without the benefit of further relocation assistance. For example, a PHA or Project Owner may have rented a market-rate apartment as a temporary relocation resource for a six-month period. In such a situation, the resident may decline to return to the Covered Project and choose to remain in the market-rate apartment at the expiration of the six-month period, but shall not be eligible for any further relocation assistance and payments (including rent differential payments) under this Notice, the URA or Section 104(d), if applicable, in connection with the resident's decision to remain in the temporary housing and not return to the Covered Project.

a manner that satisfies the requirements of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063 (49 C.F.R. § 24.205(c)(1)).[89] Such advisory services under the URA may include counseling to ensure that residents affected by the project understand their rights and responsibilities and the assistance available to them (49 C.F.R. § 24.205(c)). In addition, the PHA or Project Owner should inform residents that if they believe they have experienced unlawful discrimination, they may contact HUD at 1-800-669-9777 (Voice) or 1-800-927-9275 (TDD) or at http://www.hud.gov.

6.8. Initiation of Relocation

PHAs and Project Owners **may not initiate any involuntary physical relocation until both the RCC is in effect and the applicable RAD Notice of Relocation period has expired** (i.e., after either 30 or 90 days' notice as applicable depending on nature of the relocation, as described above). This prohibition applies to all types of RAD transactions, regardless of whether the RAD Notice of Relocation is provided after issuance of a NOIA (for conversions involving acquisition) or following the effective date of the RCC (for all other conversions). PHAs are advised to account for the required 30-day or 90-day written notice periods in their planning process, to ensure that notices which satisfy all applicable requirements are issued prior to taking any action to initiate relocation.

Neither involuntary nor voluntary relocation for the project shall take place prior to the effective date of the RCC, unless moves are authorized under Section 7, below ("Applicability of HCV and Public Housing Requirements") or unless HUD provides explicit approval which will only be provided in extraordinary circumstances. The PHA must wait until the RAD Notice of Relocation period has expired before it may initiate any involuntary relocation. However, a resident may request to move voluntarily, and the PHA may honor a resident's request to move, before the applicable 30-day or 90-day period has elapsed, provided that the PHA may not take any action to encourage or coerce a resident to make such a request. If a resident has elected an alternative housing option, PHAs are advised to ensure that any consent to voluntary permanent relocation does not expire prior to the date of the relocation, as described in Section 6.10.

HUD may use administrative data to identify and investigate projects where relocation may be occurring prior to RCC.

6.9. Records and Documentation; Resident Log

HUD may request from the PHA or Project Owner written records and documentation in order to evidence the PHA's and/or Project Owner's compliance, as applicable, with this Notice and the URA.[90] HUD may request to review some or all of such records in the event of compliance

[89] For example, under fair housing and civil rights laws, the PHA and Project Owner may be required to inform residents about and provide reasonable accommodations for individuals with disabilities, such as search assistance; take appropriate steps to ensure effective communication with individuals with disabilities, such as through the provision of auxiliary aids and services, such as interpreters and alternate format documents; provide advisory counseling services in accessible locations and in an accessible manner for individuals with disabilities; and take reasonable steps to ensure meaningful access for LEP persons. See Section 4 of this Notice for more information on these requirements.

[90] Chapter 6 of HUD Handbook 1378 includes guidance on URA recordkeeping requirements.

concerns, in the event a project is identified for additional review based on administrative data, in the event of audits for purposes of monitoring the RAD program as a whole, upon selection of a random sample of projects and/or at other times at HUD's sole discretion. The records shall include resident files for all households relocated in connection with RAD and a resident log as described in this Section.

As part of such written record, the PHA or Project Owner must maintain data sufficient to deliver to HUD a resident log of every household that resides at the Converting Project at the time of the first required resident meeting on the proposed conversion pursuant to Section 1.8 of the RAD Notice (the "First Resident Meeting") and of every household that moves into the Converting Project after the First Resident Meeting and before the conversion of assistance under RAD. If any relocation is required, the log shall track resident status through completion of rehabilitation and construction, including re-occupancy after relocation. The resident log must include, but need not be limited to, the following information:

- Name of head of household
- PHA's resident identification number and/or the last four digits of the head-of-household's Social Security Number
- The head of household's race and ethnicity as reported on the HUD Form 50058 or the HUD Form 50058 MTW (the "Form 50058"). For purposes of the resident log, all references to the Form 50058 shall be to the form most recently prepared at the time of the First Resident Meeting or, for residents who moved in after the First Resident Meeting, the form most prepared at the time of the resident's initial occupancy.
- A Yes/No indication if there is any household member reported as having a disability on the Form 50058.
- A Yes/No indication if there is any household member reported as under the age of 18 on the effective date of action of the Form 50058;
- The household's relevant unit address, unit size and household size at the following times:
    - The time of the First Resident Meeting or the time of a resident's initial occupancy if after the First Resident Meeting
    - The time of the issuance of the CHAP or the time of a resident's initial occupancy if after the issuance of the CHAP
    - Proximate and prior to the PHA or Project Owner having authority to initiate involuntary relocation activities (i.e., at the time of issuance of the RCC unless otherwise approved by HUD upon extraordinary circumstances)
    - Completion of the relocation process following construction or rehabilitation and with return of all households exercising the right of return
- The household's residence status at the time of issuance of the RCC (e.g., in residence at the Converting Project, transferred to other public housing, moved out, evicted or other with explanation)
- The household's residence status upon completion of re-occupancy (e.g., in residence at the Covered Project/never relocated, in residence at the Covered Project/temporarily relocated and returned, transferred to other public housing, moved out, evicted, permanently relocated or other with explanation)
- The following dates for each resident household, as applicable:
    - Date of the RAD Information Notice

    - Date of the GIN
    - Date of the CHAP
    - Date of NOIA
    - Date of RAD Notice of Relocation
    - Date of URA Notice of Relocation Eligibility
    - Date of most recent consent to voluntary permanent relocation[91]
    - Date of relocation away from the Converting Project or Covered Project
    - Dates of any intermediate relocation moves
    - Date of return to the Covered Project or to the household's post-closing permanent address.[92]
- The following information for each resident household, as applicable:
    - The type of move (e.g., the types identified in Section 6.4, above)
    - The form of any temporary relocation housing (e.g., hotel, assisted housing, market-rate housing)
    - The address and unit size of any temporary relocation housing
    - Whether alternative housing options were offered consistent with Section 6.10, below
    - Any material terms of any selected alternative housing options
    - The type and amount of any payments for
        - Moving expenses to residents and to third parties
        - Residents' out-of-pocket expenses
        - Rent differential payments or other payments for temporary or permanent rental assistance, together with the rent and utilities (if applicable) that were the basis for the calculations
        - Any other relocation-related compensation or assistance

6.10. Alternative Housing Options

Under the RAD Notice, "involuntary permanent relocation" is prohibited and each resident must be able to exercise his or her right of return to the Covered Project. A PHA or Project Owner is permitted to offer a resident alternative housing options when a resident is considering his or her future housing plans, provided that at all times prior to the resident's decision, the PHA and Project Owner preserve the resident's ability to exercise his or her right of return to the Covered Project.

A) Requirements for Any Offer of Alternative Housing Options

All residents who are similarly situated must be given the same offer of alternative housing options. If the PHA or Project Owner seeks to limit the number of households that accept the

[91] The most recent consent must be within 180 days of the actual relocation date, as discussed in Section 6.10(D).
[92] In the case of voluntary permanent relocation, the date of "return" may be the same as the date of relocation away from the Converting Project.

offer of alternative housing options, the PHA or Project Owner shall determine a fair and reasonable method for selection among similarly situated residents.[93]

In connection with any offer and acceptance of alternative housing options, the PHA or Project Owner must ensure that the residents' decisions are: 1) fully informed; 2) voluntary; and 3) carefully documented. Any alternative housing option must include, at a minimum, all relocation assistance and payments required under this Notice, the URA and Section 104(d), as applicable, and may include other elements. Funds administered by HUD may not be used to pay any monetary elements not required under this Notice, the URA or Section 104(d).

Acceptance of an alternative housing option is considered voluntary permanent relocation and the accompanying RAD relocation assistance and payments for which the resident may be eligible must be administered in accordance with all requirements for an eligible displaced person under the URA and its implementing regulations and, where applicable, Section 104(d) and its implementing regulations.

PHAs may not propose or request that a displaced person waive rights or entitlements to relocation assistance under the URA or Section 104(d). The PHA must provide a written notice of URA or Section 104(d) relocation assistance and payments for which the resident may be eligible so that the resident may make an informed housing choice. The resident must be provided at least thirty (30) days to consider the offer of voluntary permanent relocation and the resident's acceptance of the PHA's offer of voluntary permanent relocation must be in writing signed by the head of the household for that unit.

B) Assisted Housing Options as Alternatives

Alternative housing option packages may include a variety of housing options and PHAs and Project Owners shall take particular care to ensure program compliance with the regulations applicable to the alternative housing options. Examples of alternative housing options may include:

- Transfers to public housing
- Admission to other affordable housing properties subject to the program rules applicable to such properties
- Housing Choice Vouchers (HCVs) subject to standard HCV program administration requirements. PHAs must operate their HCV programs, including any HCVs offered as an alternative housing option, in accordance with their approved policies as documented in their Section 8 Administrative Plan and HUD regulations at 24 C.F.R. part 982. Any offer of an HCV as an alternative housing option must be made consistent with the

[93] For example, if the RAD conversion is financed by LIHTC and a few residents would not meet LIHTC program requirements, the PHA and Project Owner may want to offer these household alternative voluntary permanent relocation options. However, they must offer the same alternative housing options to all such households. As a second example, if the PHA and Project Owner seek to create two on-site vacancies of a particular unit size in order to facilitate temporary relocation on-site, the PHA may offer an alternative housing option of a housing choice voucher to all residents of applicably sized units (assuming that to do so is consistent with the PHA's voucher administration policies), and conduct a lottery to select the two households which will receive the vouchers.

PHA's admission preferences and other applicable policies and procedures set forth in the Section 8 Administrative Plan.
- Homeownership programs subject to the applicable program rules
- Other options as may be identified by the PHA and/or Project Owner

C) Monetary Elements Associated With Alternative Housing Options

A PHA or a Project Owner may include a monetary element in an alternative housing option package, provided that:

- Any monetary element associated with the alternative housing option shall be completely distinct from and in addition to any required RAD, URA or Section 104(d) relocation payments and benefits for which the resident is eligible ("Required Relocation Payments").
- No funds administered by HUD may be used to pay for any monetary element associated with the alternative housing option other than Required Relocation Payments.
- Any monetary element associated with the alternative housing option other than Required Relocation Payments must be the same amount offered to all similarly situated households.[94]
- Any alternative housing option package must comply fully with the disclosure and agreement provisions of this Notice.

D) Disclosure and Agreement to Alternative Housing Options

In providing an offer of alternative housing options to a resident, the PHA or Project Owner must inform the resident in writing of: a) his or her right to return;[95] b) his or her right to comment on and/or object to plans which would preclude the resident from returning to the Covered Project; c) the requirement that if the resident objects to such plans, the PHA or Project Owner must alter the project plans to accommodate the resident in the Covered Project; and d) a description of both the housing option(s) and benefits associated with the right of return and the alternative housing options and benefits being offered. In the description of the available housing options and benefits, the PHA or Project Owner shall include a description of any temporary housing options associated exercising the right of return and a description of any permanent alternative housing options as well as a reasonable estimate of the financial implications of all temporary and permanent options on the resident long-term.

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[94] Monetary payments other than Required Relocation Payments are considered "temporary, nonrecurring or sporadic income" pursuant to 24 C.F.R. § 5.609(c)(9) and consequently are excluded from income for purposes of eligibility and assistance calculations under certain HUD programs. Residents should be reminded that monetary payments other than URA relocation payments may be taxable under the Internal Revenue Code, that monetary payments, including required relocation payments, may affect residents' eligibility for other assistance programs and that the resident should seek knowledgeable guidance on these matters, including guidance on the taxation of monetary payments under state law.

[95] In the case of a transfer of assistance to a new site a significant distance from the Converting Project as described in Section 6.4(E), the resident shall be informed of the resident's right to return to the Covered Project at the new site and of the resident's right to an assisted unit within a reasonable distance of the site of the Converting Project, as described in Section 6.4(E).

The written notification may request written consent from the resident to exercise the alternative housing option and receive permanent relocation assistance and payments pursuant to RAD, the URA and/or Section 104(d), as applicable, in addition to any benefits associated with the alternative housing option. As part of any voluntary consent, the resident head of household must acknowledge in writing that acceptance of such assistance terminates the resident's right to return to the Covered Project. In order to ensure that the resident has sufficient time to seek advice and consider the alternative housing options, any consent to an alternative housing option executed within 30 days of the written presentation of the options shall be invalid.

Any offer of alternative housing options must be made in writing and the acceptance of the alternative must be voluntary and in writing. The offer of an alternative housing option must contain the following elements:

- The resident is informed of his or her right to return to the Covered Project and that neither the PHA nor the Project Owner can compel the resident to relinquish his or her right to return. The offer of alternative housing options must clearly state that acceptance of any alternative would relinquish the resident's right to return to the Covered Project.
- The offer of an alternative housing option must be accompanied by identification of comparable housing units which the resident may use to understand the nature of housing options available to them and the rent and estimated utility costs associated with such housing options. This information must also be accompanied by a reasonable estimate of any replacement housing payment or "gap payment" for which the resident may be eligible.
- The offer of an alternative housing option must be accompanied by information regarding moving payments and assistance that would be available if the resident exercises the right of return and if the resident accepts the alternative housing option.
- Residents must be offered advisory assistance to consider their options.
- To be fully informed, the offer must outline the implications and benefits of each alternative housing option being made available (i.e., of accepting each alternative housing option as compared to exercising his or her right to return) as well as a reasonable estimate of when the resident's relocation might occur. Implications and benefits include payment amounts, differences in rent calculations, differences in program rules, housing location, and potential long-term implications such as household housing expenses multiple years in the future.
- To be fully voluntary, the resident must have at least thirty (30) days following delivery of the written offer to consider their options. LEP persons must be provided a written translation of the offer and oral interpretation of any meetings or counseling in the appropriate language. In addition, PHAs must comply with their obligation to ensure effective communication with persons with disabilities.
- The resident cannot be asked to make a decision which will be implemented at a distant future time. Consequently, the resident may not provide written consent to an alternative housing option (and consequently, consent to voluntary permanent relocation) until after

the earlier of issuance of the NOIA or the effective date of the RCC.[96] If a resident signs a written consent to accept an alternative housing option, that written consent is valid for 180 days. If relocation (after the applicable notice periods) has not occurred within this 180 day period, then the PHA or Project Owner must secure a new consent to accept an alternative housing option. New relocation notices are generally not required.

- The acceptance must be in writing signed by the resident head of household, including a certification of facts to document that the household is relinquishing its right to return and that the decision and the acceptance of the alternative housing option was fully informed and voluntary.
- Residents accepting alternative housing options to relinquish their right to return will be considered to have voluntarily and permanently relocated. Such residents are to be provided applicable RAD, URA and/or Section 104(d) relocation assistance and payments.

The information included with the offer of alternative housing options is to aid the resident in making decisions regarding the desirability of the alternative housing options and neither satisfies nor replaces the relocation notices and information required to be provided to residents pursuant to this Notice, the URA or Section 104(d).

While HUD does not require PHAs to submit documentation of alternative housing options offered to residents or the residents' elections, PHAs must keep auditable written records of such consultation and decisions. HUD may request this documentation at any time, including as part of a review of the Checklist or if relocation concerns arise.

6.11. Lump Sum Payments

PHAs and Project Owners should note that certain relocation payments to displaced residential tenants may be subject to 42 USC § 3537c ("Prohibition of Lump-Sum Payments") and must be disbursed in installments. The PHA or Project Owner may determine the frequency of the disbursements which must be made in installments. Handbook 1378, Chapter 3-7(D) provides guidance on the manner and frequency of disbursing payments subject to this requirement.

Any monetary element beyond Required Relocation Payments which may be associated with an alternative housing option described in Section 6.10, above, is not relocation assistance and is therefore not subject to the requirements regarding lump sum payments.

SECTION 7. APPLICABILITY OF HCV AND PUBLIC HOUSING REQUIREMENTS

7.1. HCV Waiting List Administration Unrelated to the RAD Transaction

From time to time, a resident of a Converting Project may place themselves on the PHA's waiting list for HCVs independent of any planned RAD transaction. With respect to residents of a Converting Project prior to the effective date of the HAP contract, PHAs should continue to

[96] The PHA and Project Owner should note that securing resident consent to an alternative housing option may delay the issuance of the RAD Notice of Relocation. The RAD Notice of Relocation must be specific to whether the resident will be temporarily or permanently relocated.

administer their HCV waiting list in accordance with their Section 8 Administrative Plans. Residents who rise to the top of the HCV waiting list independent of any preference for relocating RAD residents or other RAD provisions and accept an HCV are not considered to be relocated as a result of the RAD conversion. Standard administration of the PHA's HCV waiting list is not considered relocation.

7.2. HCV Waiting List Administration Related to the RAD Transaction

From time to time, a PHA may wish to use HCV resources as a relocation option in connection with a RAD transaction. In order to do so, a PHA must modify its Section 8 Administrative Plan to provide a preference for relocating RAD residents and the PHA is subject to Section 6.8 of this Notice relating to initiation of relocation. Further, if a PHA provides a preference for relocating RAD residents, the PHA must be explicit regarding the nature of the HCV as a relocation resource. If the PHA anticipates using the HCV as a temporary relocation resource, the PHA must recognize that it cannot rescind an HCV once issued to the resident (i.e., the family would have to voluntarily relinquish their voucher and may choose to remain in the HCV program indefinitely). The PHA must also provide a preference for admission to the Covered Project in order to satisfy the right to return. Alternatively, if the PHA anticipates using the HCV as a voluntary permanent relocation resources, the PHA must comply with the alternative housing options provisions of Section 6.10.[97]

7.3. Public Housing Transfers Unrelated to the RAD Transaction

From time to time, a resident of a Converting Project may request a transfer to another public housing property independent of any planned RAD transaction. With respect to residents of a Converting Project prior to the effective date of the HAP contract, PHAs must continue to administer their admissions and occupancy procedures as adopted. Any prohibitions in this Notice on implementing relocation do not apply to residents requesting public housing transfers, moves pursuant to the Violence Against Women Act (VAWA)[98] or reasonable accommodation moves. Standard administration of the PHA's admissions and occupancy policy is not considered relocation.[99] Transfers not undertaken for the RAD project are not subject to URA. However, it is recommended that the PHA document the transfer carefully, including an acknowledgement by the resident that the transfer is not undertaken for the RAD project, is not

[97] PHAs and Project Owners should note that while in most cases, there is no rent differential between the tenant paid rent in a public housing unit and in an HCV, there are some situations (such as flat rent households) where a difference does exist. Rental assistance payments under the URA are required if there is a difference between these two amounts.

[98] Title IV, section 40001-40703.

[99] Standard administration of the PHA's admissions and occupancy policy is permitted. However, HUD is sensitive to concerns that discussion of the planned RAD conversion and construction activities may cause residents to perceive a pressure to transfer without the counseling and moving assistance which would be available were the household to wait until relocation. If relocation at the Converting Project is planned, PHAs are strongly advised to document any such transfers carefully and to provide any households moving under standard admissions and occupancy policies with additional notices referencing the assistance and payments which would be available if the household were to remain in place until the relocation plan is implemented.

subject to URA requirements and that the resident is moving notwithstanding the guidance in the GIN or other relocation guidance from the PHA.

7.4. Resident Initiated Public Housing Transfers Related to the RAD Transaction

Pursuant to Section 1.8 of the RAD Notice, households in the Converting Project who do not want to transition to the Section 8 program may be offered, if available, the opportunity to move to other public housing owned by the PHA. Such move shall be implemented as a transfer and shall be prioritized equivalent to a "demolition, disposition, revitalization or rehabilitation transfer" as described in Section 11.2 of the applicable Public Housing Occupancy Guidebook. Transfers for this purpose do not require any modification to the PHA's admissions and occupancy policy and may occur at any time pursuant to the PHA's admissions and occupancy policy. Transfers for this purpose, while initiated by the resident, are the result of the PHA-initiated RAD transaction and the PHA must bear the reasonable costs of transfer. The reasonable cost of the transfer includes not just the cost of packing, moving, and unloading, but also the cost of disconnecting and reconnecting any existing resident-paid services such as telephone and cable television. The PHA must also document that the resident's transfer request is fully informed and fully voluntary, which documentation must include an acknowledgement by the resident that the transfer is not undertaken at the request of the PHA or under pressure from the PHA, that the resident is moving notwithstanding the guidance in the GIN or other relocation guidance from the PHA and that the resident is withdrawing from participation in the RAD program and consequently losing rights, including the right to return, which accrue to residents participating in the RAD program. A public housing resident who voluntarily seeks a public housing transfer is generally not considered to be displaced under the URA or Section 104(d), where applicable.

7.5. Public Housing as a Temporary Relocation Resource

PHAs and Project Owners may wish to mitigate the relocation budget associated with the RAD conversion by using units within the PHA's portfolio as relocation resources. In light of its mission to serve as many low-income households as possible, including its need to accommodate emergency transfers (such as moves pursuant to VAWA), the PHA should minimize the use of the public housing units not converting under RAD for temporary relocation of RAD impacted residents. HUD has a strong preference that the PHA use the units within the PHA's Converting Projects as a temporary relocation resource prior to using units in the remainder of the PHA's public housing portfolio. PHAs may elect not to lease units within the Converting Projects or, if necessary, the remainder of its portfolio, for this purpose only to the extent reasonably necessary to facilitate construction or rehabilitation.

Upon the effective date of the HAP contract (usually also the effective date of the RAD conversion), each resident of a Covered Project becomes a participant in the Section 8 program and is no longer part of the public housing program. A PHA may use public housing as a temporary relocation resource if approved by HUD, which approval shall depend on the proposed structure. PHAs wishing to use public housing units as a temporary relocation resource must consult with HUD's Office of Public and Indian Housing (PIH) prior to the formal request for HUD approval. It is unlikely that HUD would approve a request to use public housing units

as a relocation resource for a period exceeding one year after the effective date of the HAP contract.

If HUD grants approval, HUD shall provide alternative requirements regarding PIH Information Center (PIC) documentation of the occupancy of these temporary relocation resources. PHAs must follow any guidance or instructions regarding treatment of the public housing units in HUD's data systems as may be provided from time to time.

PHAs and Project Owners should note that, absent written approval, if a resident seeks to occupy a public housing unit after the effective date of the HAP contract, the resident would need to be readmitted to public housing in a manner consistent with the waitlist and admissions policies and must exit the Section 8 program.

7.6. Terminations (Including Evictions) and End of Participation Unrelated to the RAD Transaction

Public housing program requirements related to continued occupancy and termination, including rules on grievances and related hearings, remain in effect until the effective date of a new PBV or PBRA HAP contract. If a resident is evicted in accordance with applicable state and local law and the eviction is not undertaken for the purpose of evading the obligation to make available RAD relocation and URA payments and other assistance, the resident is generally not entitled to relocation assistance and payments under this Notice or the URA (49 C.F.R. § 24.206). If a resident voluntarily ends his or her participation in the public housing program, in the absence of evidence that the end of participation was induced by the PHA for the purpose of evading the obligation to make available RAD relocation and URA payments and other assistance, the resident is generally not entitled to relocation assistance and payments under this Notice or the URA.

7.7. Right-Sizing

Public housing, PBV and PBRA requirements mandate that, upon the availability of a unit which is appropriate for the household size, the PHA or Project Owner must transfer a household that is under- or over-housed into the unit appropriate to the household's size. However, accommodating all residents pursuant to the right of return has primacy over right-sizing requirements and may, in some cases, require temporarily over-housing households. In such circumstances, the PHA or Project Owner shall subsequently transfer the household to an appropriate size unit when available, as is required by the applicable program regulation. Such actions shall be governed by the applicable program regulation and shall not be considered relocation under this Notice.

Lourdes Castro-Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

Edward L. Golding
Principal Deputy Assistant Secretary for
Housing

APPENDIX I: Applicable Legal Authorities

APPENDIX II: Recommended Relocation Plan Contents

APPENDIX I: Applicable Legal Authorities

Part 1

This Appendix to the Notice identifies key legal authorities with respect to fair housing, civil rights, and resident relocation. This Appendix is not exhaustive of applicable legal authorities, which authorities may also include other Federal statutes, regulations and Executive Orders, and civil rights provisions related to other programs (including funding programs) associated with the RAD transaction.

Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended)

The Fair Housing Act, 42 U.S.C. § 3601 et seq., and its implementing regulations, 24 C.F.R. part 100, prohibit discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, disability, or familial status. The Fair Housing Act applies to for-sale and rental housing, whether the housing is privately or publicly funded, including housing supported by tax credits. Single family homes, condominiums, apartment buildings, time-shares, dormitories, transitional housing, homeless shelters that are used as a residence, student housing, assisted living housing, and other types of housing are all covered by the Fair Housing Act.

Among its substantive provisions, the Fair Housing Act requires "covered multifamily dwellings," designed and constructed for first occupancy after March 13, 1991, to be readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are subject to the Act's design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to the Act's design and construction requirements.[100] In addition, the Fair Housing Act requires that housing providers make reasonable accommodations in rules, policies, and services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas, and that housing providers permit reasonable modifications of existing premises for persons with disabilities.

The Fair Housing Act also requires HUD to administer HUD programs and activities in a manner that affirmatively furthers fair housing (42 U.S.C. § 3608(e)(5). HUD's affirmatively furthering fair housing ("AFFH") rule in 24 C.F.R. §§ 5.150-5.180 will apply to PHAs (except for qualified PHAs) for the PHA's fiscal year that begins on or after January 1, 2018 for which a new 5-year plan is due, as provided in 24 C.F.R. § 903.5. The affirmatively furthering fair housing regulations will apply to qualified PHAs, for the PHA's fiscal year that begins on or after January 1, 2019 for which a new 5-year plan is due, as provided in 24 C.F.R. § 903.5.[101]

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[100] *See* 42 U.S.C. § 3604(f)(3)(c) and 24 C.F.R. § 100.205.

[101] For purposes of the AFFH rule, "[a]ffirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing under the AFFH rule means taking meaningful actions that, taken together, address

Additional detail and discussion of the interplay between the Fair Housing Act, Section 504, and Titles II or III of the Americans with Disabilities Act as these authorities relate to accessibility requirements is described in Part 2 of this Appendix.

United States Housing Act of 1937 (1937 Act)

The United States Housing Act of 1937 (1937 Act) (42 U.S.C. § 1437c-1(d)(15)) requires PHAs to submit a 5-year plan and an Annual Plan. Pursuant to HUD regulations, the Annual Plan includes a certification by the PHA that the PHA will affirmatively further fair housing.

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and HUD's implementing regulation (24 C.F.R. part 1) prohibit recipients of Federal financial assistance from discriminating, excluding from participation, or denying benefits to, any person on the basis of race, color, or national origin. In addition, Title VI regulations prohibit HUD recipients of Federal financial assistance from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin (24 C.F.R. § 1.4(b)(2)(i)). When determining the site or location of housing, recipients may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, or national origin (24 C.F.R. § 1.4(b)(3)). An applicant or recipient of HUD financial assistance also has an obligation to take reasonable action to remove or overcome the consequences of prior discriminatory practices regardless of whether the recipient engaged in discriminatory conduct (24 C.F.R. § 1.4(b)(6)).

Recipients of Federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities for persons who have limited ability to read, speak, or understand English – i.e., individuals who have limited English proficiency (LEP). This includes oral and written communications during relocation and throughout a RAD transaction. 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 meetings. Otherwise, LEP persons may be denied participation in, and the benefit of, the recipients' program or activity. On January 22, 2007, HUD issued "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**"** (LEP Guidance), available at: http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.[102]

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significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws." 24 C.F.R. § 5.150. Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity. See 24 C.F.R. § 5.152.

[102] *See also* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, which requires recipients of Federal financial assistance to take reasonable steps to provide meaningful access to

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 provides: "No otherwise qualified individual with a disability in the United States … shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving Federal financial assistance."[103]

Among other things, HUD's regulations implementing Section 504 (in 24 C.F.R. part 8) prohibit recipients of Federal financial assistance, in determining the site or location of a facility receiving such assistance, from making site selections the purpose or effect of which would (1) exclude qualified individuals with disabilities from or deny them the benefits of a program or activity, or otherwise subject them to discrimination; or (2) defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with disabilities.[104] These prohibitions apply to both determining the site of permanent facilities and a site for relocation of residents.

Furthermore, HUD's implementing regulations prohibit discrimination, the denial of benefits, or the exclusion of participation of individuals with disabilities from the programs or activities of recipients of federal financial assistance because a recipient's facilities are inaccessible. Such recipients must provide qualified individuals with disabilities with program access, which may require modification of architectural features of facilities in RAD transactions for individuals with disabilities to have access to the program. Certain architectural specifications apply to facilities that are altered or newly constructed with HUD financial assistance, such as facilities where assistance is transferred and facilities used as temporary or permanent relocation sites for residents of a project undergoing a RAD conversion. If alterations are made to a housing facility, the alterations to dwelling units in the facility are required, to the maximum extent feasible (i.e., if doing so would not impose undue financial and administrative burdens on the operation of the project), to be made readily accessible to and usable by individuals with disabilities. If alterations taken to a development that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility (except when it requires removal of structural load-bearing members), or if the facility is newly constructed, then a minimum of 5% of the total dwelling units, or at least one unit in a development, whichever is greater, must be made accessible for persons with mobility impairments. An additional 2% of the units, but not less than one unit, in a development must be accessible for persons with hearing and vision impairments.

In addition, regulations implementing Section 504 require recipients to make reasonable accommodations for persons with disabilities. A reasonable accommodation is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. Section 504 also includes effective communication requirements, such as

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their programs and activities for LEP persons. E.O. 13166 directs all Federal agencies, including HUD, to issue guidance to help recipients of Federal financial assistance in providing such meaningful access to their programs.

[103] 29 U.S.C. § 794. HUD's Section 504 regulation that applies to recipients of Federal financial assistance, including PHAs and Project Owners, is located at 24 C.F.R. part 8.

[104] 24 C.F.R. § 8.4(b)(5).

providing interpreters and alternate format documents (e.g., Braille, large print, accessible electronic communications) for persons with disabilities.

Additional detail and discussion of the interplay between Section 504, the Fair Housing Act, and Titles II or III of the Americans with Disabilities Act as these authorities relate to accessibility requirements is described in Part 2 of this Appendix.

Titles II and III of the Americans with Disabilities Act

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in all services, programs, and activities provided or made available by public entities. Title II of the ADA applies to housing developed or operated by state and local governments, which includes a PHA. Title III of the ADA prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with established accessibility standards. For example, Title III applies to rental offices, sales offices, homeless shelters, hotels and motels, and commercial spaces associated with housing, such as daycare centers, social service offices, and sales and retail establishments. Titles II or III also will generally apply to community spaces and facilities, such as neighborhood networks, to computer centers (including the computers in the centers), and to transportation services and conveyances provided by PHAs and Project Owners.

Additional detail and discussion of the interplay between Titles II and III of the Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act as these authorities relate to accessibility requirements is described in Part 2 of this Appendix.

Section 109

Section 109 of the Housing and Community Development Act of 1974 (HCDA of 1974), Title I, prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex in Community Development Block Grant (CDBG) programs and activities. Section 109 applies to RAD projects that receive CDBG or other assistance under Title I of the HCDA of 1974.

In addition to its responsibility for enforcing other Federal statutes prohibiting discrimination in housing, HUD has a statutory obligation under Section 109 to ensure that individuals are not subjected to discrimination on the basis of race, color, national origin, disability, age, religion, or sex by recipients of CDBG funds. Section 109 charges HUD with enforcing the right of individuals to live in CDBG-funded housing and participate covered programs and activities free from such discrimination. However, this additional statutory authority only applies to programs authorized under Title I of the HCDA of 1974, such as CDBG and programs, such as Section 108 loan guarantees and the Historically Black Colleges and Universities program.

Equal Access to HUD-assisted or HUD-insured Housing

HUD requires its housing programs to be open to all eligible individuals and families regardless of sexual orientation, gender identity or marital status. HUD recipients and subrecipients must comply with 24 C.F.R. § 5.105(a)(2) when determining eligibility for housing assisted with HUD

funds or subject to an FHA-insured mortgage, and when making such housing available. This includes making eligibility determinations and making housing available regardless of actual or perceived sexual orientation, gender identity, or marital status, and prohibiting inquiries about sexual orientation or gender identity for the purpose of making eligibility determinations or making housing available. Applicants are encouraged to become familiar with these requirements, HUD's definitions of sexual orientation and gender identity at 24 C.F.R. § 5.100, clarifications to HUD's definition of family at 24 C.F.R. § 5.403, and other regulatory changes made through HUD's Equal Access Rule, published in the Federal Register at 77 FR 5662 (Feb. 3, 2012).

Section 3: Economic Opportunities for Low- and Very Low-income Persons.

Certain HUD programs require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. § 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 C.F.R. part 135. The regulations at 24 C.F.R. part 135 implementing Section 3 ensure, to the greatest extent feasible, that training, employment, contracting and other economic opportunities be directed to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low-and very low-income persons where proposed project is located. Recipients of funds covered by Section 3 must comply with 24 C.F.R. part 135, particularly subpart B-Economic Opportunities for Section 3 residents and Section 3 Business Concerns, and Subpart E-Reporting and Recordkeeping. HUD encourages recipients to search the national Section 3 Business Registry to find local businesses that prioritize hiring Section 3 residents.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC § 4601 *et seq.* (URA) is a Federal law that establishes minimum standards for programs or projects receiving Federal financial assistance that include the acquisition of real property (real estate) and/or displace persons from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition.[105] The URA implementing Federal regulations can be found at 49 C.F.R. part 24. Project-Based Voucher (PBV) and Project-Based Rental Assistance (PBRA) are considered Federal financial assistance for purposes of the URA. As a result, the URA will apply to acquisitions of real property and relocation of persons from real property that occur as a direct result of acquisition, rehabilitation or demolition for a project that involves conversion of assistance to PBV or PBRA programs under RAD.

[105] For additional guidance, see HUD Handbook 1378 Tenant Assistance, Relocation, and Real Property Acquisition), available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378.

Section 104(d) of the Housing and Community Development Act of 1974

Section 104(d) of the Housing and Community Development Act of 1974, as amended, 42 USC § 5304(d), (Section 104(d)), is a Federal law that applies when a lower-income dwelling is demolished or converted (as conversion is defined in accordance with 24 C.F.R. § 42.305) to a use other than lower-income housing in connection with a Community Development Block Grant Program (CDBG) or HOME Investment Partnerships Program (HOME) funded activity. Under Section 104(d), a lower-income person is considered displaced and, therefore eligible for Section 104(d) relocation assistance if the person permanently moves from real property or permanently moves personal property from real property as a direct result of the demolition or conversion of a lower-income dwelling to a use other than lower-income dwelling unit in connection with a CDBG or HOME funded activity. The Section 104(d) one-for-one replacement housing requirements may apply with respect to occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than lower-income dwelling units in connection with CDBG or HOME funded activity. Section 104(d) implementing regulations can be found at 24 C.F.R. part 42, Subpart C. Additional HUD policy and guidance for Section 104(d) is available in HUD Handbook 1378, Chapter 7.

Part 2 – Accessibility Requirements

Federal accessibility requirements apply to all RAD projects – whether they include new construction, alterations, or existing facilities. Applicable laws include, but are not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II or III of the Americans with Disabilities Act (ADA). A PHA or Project Owner must comply with each law that applies to its project and with the requirement that provides the most accessibility when two or more laws apply. All three laws include new construction requirements. Substantial alterations, additions, rehabilitation and existing facilities must be in compliance with applicable requirements of Section 504 and the ADA.[106] All three laws may also require reasonable accommodations or modifications.

Accessibility Requirements for New Construction

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991, to be readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas must meet the Fair Housing Act's design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas must meet the Fair Housing Act's design and construction requirements. The Fair Housing Act requires that all covered multifamily dwellings be designed and constructed so that public and common use areas are readily accessible to and usable by persons with disabilities; all doors are sufficiently wide to allow passage by persons using wheelchairs; all units contain accessible routes into and through the dwelling unit; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements are installed in bathroom walls to allow later installation

[106] *See* 24 C.F.R. § 100.205 (Fair Housing Act) and 24 C.F.R. §§ 8.22 and 8.23 (Section 504). *See also* 28 C.F.R. § 35.151(b) and 28 C.F.R. part 36 (ADA Titles II and III regulations, respectively).

of grab bars; and kitchens and bathrooms are usable such that a person in a wheelchair can maneuver about the space.[107] These design and construction requirements apply whether the housing is privately or publicly funded, including housing supported by tax credits.[108]

New construction of a multifamily housing project containing five or more dwelling units is also subject to physical accessibility requirements under Section 504. Under Section 504, a "project" includes all residential and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application for Federal financial assistance, or are treated as a whole for processing purposes, whether or not they are located on a single site.[109] The accessibility standards for new construction under Section 504 are the Uniform Federal Accessibility Standards (UFAS).[110] HUD recipients may also use the 2010 ADA Standards for Accessible Design under title II of the ADA, except for certain specific identified provisions, as detailed in HUD's Notice on "Instructions for use of alternative accessibility standard," published in the Federal Register on May 23, 2014 ("Deeming Notice"). This option exists until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard. Refer to HUD's Deeming Notice for more information.

Section 504 also requires that a minimum of 5% of the total dwelling units or at least one unit, whichever is greater, is required to be accessible for persons with mobility impairments. An additional 2% of the total dwelling units or at least one unit, whichever is greater, is required to be accessible for persons with vision and hearing impairments.[111] HUD may prescribe a higher percentage or number of units upon request by any affected recipient or by any State or local government or agency based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data, or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without disabilities.[112]

Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities provided or made available by public entities. Title II of the ADA applies to housing programs, including housing developed or operated by state and local governments, which includes PHAs. Title III of the ADA prohibits discrimination on the basis of disability by public accommodations, including rental offices, and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with established accessibility standards. All newly constructed or altered facilities, including facilities altered to

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[107] *See* 24 C.F.R. § 100.205.
[108] For more information about the design and construction provisions of the Fair Housing Act, see www.fairhousingfirst.org. See also the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act (April 30, 2013), available at: www.hud.gov/offices/fheo/library/hudjointstatement.pdf.
[109] *See* 24 C.F.R. § 8.3.
[110] The UFAS are available at https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas). *See also* 24 C.F.R. § 8.32.
[111] *See* 24 C.F.R. § 8.22.
[112] *See* HUD regulation at 24 C.F.R. § 8.22(c).

comply with program access and readily achievable barrier removal obligations that exist under Titles II or III of the ADA, must comply with the U.S. Department of Justice's ADA architectural accessibility standards as described in the following U.S. Department of Justice Technical Assistance document ADA Requirements, Effective Date/Compliance Date (Feb. 2011), http://www.ada.gov/revised_effective_dates-2010.htm.

Accessibility Requirements for Alterations

If a building was constructed for first occupancy after March 13, 1991, the building must be in compliance with, and all alterations must maintain the building's accessible features so that the building continues to meet, the Fair Housing Act's accessibility requirements. In addition, without regard to the date of construction for first occupancy, certain alterations may be required under the Fair Housing Act if requested by a resident as a reasonable accommodation or modification or otherwise required to remediate accessibility deficiencies in the design and construction of the building.

Under HUD's Section 504 regulation, alterations include any structural change in a facility or a change to its permanent fixtures or equipment. If alterations are undertaken to a project that has fifteen or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility, this qualifies as "substantial alterations," in which the new construction provisions of 24 C.F.R. § 8.22 apply.[113]

When alterations are made that do not qualify as substantial alterations, alterations to dwelling units in a multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities.[114] If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once 5% of the dwelling units in a housing project are readily accessible to and usable by individuals with mobility impairments, no additional elements of dwelling units or entire dwelling units are required to be accessible under this provision. However, alterations to meet ongoing accessibility needs are always required, for example, in response to a reasonable accommodation request. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.[115]

All altered facilities covered by Titles II or III of the ADA must be altered in accordance with the U.S. Department of Justice's 2010 ADA Standards for Accessible Design and applicable ADA

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[113] *See* 24 C.F.R. § 8.23(a). The sole exception is that load bearing structural members are not required to be removed or altered.
[114] HUD may require a higher number or percentage of accessible units pursuant to 24 C.F.R. § 8.22(c) and 24 C.F.R. § 8.23(b)(2).
[115] 24 C.F.R. § 8.23(b).

regulations, unless subject to certain safe harbors identified in the 2010 ADA revised regulations for Titles II and III, as applicable.[116]

HUD will consider on a case-by-case basis a PHA's request to undertake limited new construction on the site of a Covered Project undergoing rehabilitation to comply with accessibility requirements on the site.

Additional Accessibility Requirements for Both New Construction and Alterations

Accessible units must be distributed throughout projects and sites and be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible under the same program.[117] This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade.

PHAs are encouraged to use universal design principles, visitability principles and active design guidelines in planning new construction or retrofit 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.

Program Accessibility Requirements

Under Section 504, recipients must operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. Title II of the ADA also includes a program access requirement, while Title III of the ADA requires readily achievable barrier removal.[118] Further, Section 504, the Fair Housing Act, and the ADA require that reasonable accommodations/modifications be granted to address disability-related needs of individuals with disabilities.[119]

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[116] *See* http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm.
[117] *See* 24 C.F.R. §§ 8.26 and 8.27.
[118] *See* 28 C.F.R. § 35.150; 28 C.F.R. § 36.304.
[119] For more information on reasonable accommodations, see the HUD/DOJ Joint Statement on Reasonable Accommodations Under the Fair Housing Act at http://portal.hud.gov/hudportal/documents/huddoc?id=JOINTSTATEMENT.PDF. While this joint statement focuses on the Fair Housing Act, the principles discussed in the statement generally apply to requests for reasonable accommodation under Section 504, except, for purposes of Section 504, HUD recipients are required to provide and pay for structural modifications as a reasonable accommodation.

APPENDIX II: Recommended Relocation Plan Contents

While RAD mandates written relocation plans only for projects which involve permanent relocation (including, without limitation, a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than one year, HUD strongly encourages PHAs to document their relocation planning process and procedures in a written relocation plan. The following provides suggested content for required and recommended relocation plans. In the case of any discrepancy between this description of the recommended relocation plan contents and the provisions of the Notice to which this Appendix is attached or any applicable laws or regulations with respect to the URA or Section 104(d), the provisions of the Notice or applicable laws and regulations shall govern.

The basic elements of the relocation plan include:

- A general description of the project and project elements that may create relocation needs;
- Information on residents of the project and eligibility for relocation assistance and payments;
- Information regarding how the project will address the RAD right to return requirements and the project's re-occupancy policies;
- A detailed discussion of plans for temporary relocation assistance;
- A detailed discussion of any transfer of assistance;
- A detailed discussion of any offers of alternative housing options and plans for voluntary permanent relocation assistance;
- A detailed discussion of compliance with fair housing and civil rights requirements, including accessibility requirements;
- The relocation budget; and
- The appeals process.

The plan as a whole should discuss the specific steps to be taken to minimize the adverse impacts of relocation on the residents.

I. Project Summary

The Relocation Plan should provide a general description of the property (e.g., year built, location, number of units, configuration, resident population served). The project summary should also identify the nature of the activities to be undertaken, including acquisition, demolition, rehabilitation, and construction activities and additional detail regarding the project scope (e.g., gut rehab, systems replacement, modest in-unit renovations, transfer of assistance). The project summary should also discuss how any construction activities are to be implemented (i.e., vacate the property entirely, vacate specific floors or buildings, rehabilitation with residents in place). The summary should also discuss the overall theory of relocation, for example, whether a few households will be relocated off-site and the vacant units will be used as temporary housing before other households move back to their original units (a "hoteling" approach), or whether the vacant units will be permanently occupied, with the residents vacating other units to be renovated (a "domino" approach).

The relocation plan should also identify the funding sources which may trigger relocation requirements, with particular attention to the potential presence of HOME or CDBG funds which may trigger Section 104(d) requirements.

II. Project Occupancy

The Relocation Plan should provide information on occupancy of the property including the number of residents, their household type (family, elderly), any non-residential (commercial) occupants, and should identify how any routine needs (such as continuation of utilities such as telephone service) and civil rights compliance issues (for example, limited English proficiency, disabilities, reasonable accommodations and unit modifications that have been or may be necessary) shall be identified and addressed. The Relocation Plan may specify the community meetings, interviews and/or other processes that will be undertaken to assess the residents' needs.

The Relocation Plan should also address eligibility for relocation assistance and payments, applying the rules of the Notice to the particularities of the project.

III. Resident Return and Re-occupancy Policies

The Plan should address how the project will honor the RAD right to return requirements and the "no re-screening upon conversion" policy. With respect to residents who will be temporarily relocated, the Plan should include the methodology that will be used to determine the sequence in which residents will re-occupy units at the project after rehabilitation, demolition, and/or construction is completed, and to determine how residents are matched with units if the residents are not able to return to their original unit. For example, if units will come online in stages, the plan should outline how the PHA or Project Owner will determine when each resident will return to the property.

IV. Temporary Relocation Assistance

The plan should detail the temporary housing resources to be used, the anticipated duration of temporary relocations, notices to be provided and the temporary relocation assistance the PHA or Project Owner will provide for residents (Paragraph 2-7 of HUD Handbook 1378). Topics to be addressed in the Plan include:

- Temporary Housing Resources. The Plan should identify the nature and availability of the temporary housing resources the PHA or Project Owner anticipates using. On-site resources are generally preferred. However, in some cases, PHAs or Project Owners may need to use hotel rooms for short-term relocations, or market-rate apartments. If the PHA or Project Owner anticipates using other assisted housing resources (such as HCVs, public housing or other properties with regulatory restrictions), the PHA or Project Owner should take particular care to address regulatory issues.
- Allocation of Temporary Relocation Resources. The Plan should describe a fair and reasonable methodology for allocating temporary relocation housing to residents on a nondiscriminatory basis.
- Duration of Temporary Relocation. In the event that the Plan includes relocation which is anticipated to exceed one year, it should detail the requirements which apply to those

residents (such as the issuance of a *Notice of Relocation* to the resident covering eligibility for URA relocation assistance, the offer of permanent relocation assistance and payments at URA levels and, if conditions warrant, the subsequent issuance of a *Notice of Eligibility*) as distinct from requirements that apply to residents who are not relocated for more than one year.

- Packing and Moving Assistance. The Plan should address how the PHA or Project Owner intends to provide or reimburse for packing and moving services and expenses. Considerations the Plan may want to address include:
    - Instructions and supplies (e.g., boxes, markers, tape) to be provided if residents prefer to pack their own personal possessions and items of value;
    - Assistance in packing to be provided if residents need assistance or prefer not to pack their personal possessions;
    - Guidance on how residents request to pack their own possessions or to receive packing assistance; and
    - How the PHA or Project Owner intends to provide or reimburse for moving services and expenses. The PHA or Project Owner can choose to do one or more of the following:
        - Undertake the moves itself, using employees of the PHA or Project Owner or "force account labor"[120]
        - Use a contractor or moving company
        - Reimburse residents for all actual, reasonable and necessary moving expenses.
- Storage. The Plan should address whether storage of the resident's personal property is necessary and the arrangements for such storage.
- Damage or Loss. The Plan should address Insurance for the replacement value of the property in connection with the move and necessary storage and/or the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Out-of-Pocket Expenses. The nature of out of pocket expenses vary based on the nature of the temporary relocation moves. For example, hotel stays or in-place renovation may trigger the need for reimbursement of meals while a kitchen is unavailable. The Plan should outline the anticipated out-of-pocket expenses and the PHA's or Project Owner's plans and budget with respect to these expenses.
- Leasing Arrangements. The Plan should address whether the resident will have a direct lease or other contractual relationship with the owner of the temporary relocation resource or whether the PHA or Project Owner will hold the lease and the resident will maintain a contractual relationship with the PHA or Project Owner.
- Utility Costs. The Plan should address whether residents will need to disconnect and reconnect necessary utilities and, if so, how the PHA or Project Owner anticipates managing this process and any associated expenses. Necessary utilities may include telephone, cable service, Internet access or other items. The Plan should address payment of utility deposits, if required at the temporary relocation housing (HUD Handbook 1378, paragraph 2-7(A)(3)).

[120] Defined at 24 C.F.R. 905.108.

- Reasonable Accommodations. The plan should address whether residents with disabilities will require reasonable accommodations during temporary relocation and, if so, how the PHA or Project Owner anticipates ensuring the provision of reasonable accommodations and any associated expenses. Reasonable accommodations may include, among other items, the provision of transportation assistance, relocation to locations which are physically accessible and located near public transportation, and modifications to policies to allow individuals with disabilities to reside with a live-in aide.

V. Transfer of Assistance

Relocation planning in the context of transfer of assistance is particularly complex. The PHA should address how RAD, URA and Section 104(d) requirements each apply, as the same activity may be treated differently under each regulatory framework. The Plan should specifically outline the PHA's procedures to ensure that the applicable requirements are applied to each situation appropriately. The Plan should also address whether relocation is required for any businesses or residents at the destination site. Finally, the Plan should address whether two moves – from the public housing site to an intermediate site and then to the transfer of assistance site – are necessary while the Covered Project is being constructed or rehabilitated.

VI. Alternative Housing Options and Voluntary Permanent Relocation Assistance

If the PHA or Project Owner seeks to offer alternative housing options, the Plan should identify those options and the manner in which they are presented to residents for decision. The plan should also outline the counseling the PHA or Project Owner will provide to assist the residents in determining what options may be available and the financial implications of those options, for example,

1. Discussion of whether units available in the market (either in the affordable market or the unrestricted market) will meet the financial and dwelling requirements of relocated residents;
2. The general area or location of unit(s);
3. Where applicable, the accessibility of such units for individuals with disabilities;
4. Criteria for receiving relocation assistance; and
5. Any other information that might benefit residents in their consideration of housing choices.

The Plan should identify how the PHA or Project Owner will work with any residents who have elected voluntary permanent relocation. The Plan should further include a description of the permanent relocation assistance the PHA or Project Owner will provide to such residents. Topics to be addressed in the Plan include:

- Replacement Housing. The Plan should address the availability of comparable replacement housing, the notices to be provided and the provisions to ensure that appropriate accessibility features are available in compliance with applicable laws and regulations.

- Fair housing considerations. The Plan should address referrals to housing not located in areas of minority concentration and compliance with requirements regarding accessible housing for persons with disabilities. The Plan should address how the PHA or Project Owner will determine if residents have paid for the acquisition and/or installation of accessible features in the housing from which they are being relocated and how the PHA or Project Owner will ensure that the replacement housing contains required and comparable accessible features or that the resident is appropriately compensated for the cost of acquiring and/or installing required and comparable accessible features.
- Packing and Moving Assistance. The Plan should address how the PHA or Project Owner intends to provide or reimburse for packing and moving services and expenses. Considerations the Plan may want to address include:
    - Instructions and supplies (e.g., boxes, markers, tape) to be provided if residents prefer to pack their own personal possessions and items of value;
    - Assistance in packing to be provided if residents need assistance or prefer not to pack their personal possessions;
    - Guidance on how residents request to pack their own possessions or to receive packing assistance; and
    - How the PHA or Project Owner intends to provide or reimburse for moving services and expenses consistent with 49 C.F.R. § 24.301 or, at the resident's option, 49 C.F.R. § 24.302.
- Storage. The Plan should address whether storage of the resident's personal property is necessary and the arrangements for such storage. See 49 C.F.R. § 24.301(g)(4).
- Damage or Loss. The Plan should address Insurance for the replacement value of the property in connection with the move and necessary storage and/or the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Dislocation Allowance. The Plan should address when the resident is entitled to a dislocation allowance and the amount of such dislocation allowance, consistent with the URA Fixed Residential Moving Cost Schedule available at: www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.
- Appliances. The Plan should address disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- Security Deposits and Utility Costs. The Plan should address how the PHA or Project Owner anticipates managing transfer of utility arrangements, security deposits and any associated expenses. Utilities may include telephone, cable service, Internet access or other items that may have been in place in the resident's original home. See 49 C.F.R. § 24.301(h)(12).
- Replacement Housing Payment. The Plan should address the circumstances in which displaced residents may be entitled to a replacement housing payment (RHP) to cover the

increase, if any, in monthly housing costs for a 42-month period pursuant to URA requirements or a 60-month period pursuant to Section 104(d).[121]

VII. Relocation Budget

Based on the results of the planning process, the PHA or Project Owner should create a relocation budget that includes the following six components:

1) The cost of administering the plan and providing assistance and counseling.

2) Reasonable moving expenses for a person with disabilities, which may include the cost of moving assistive equipment that is the personal property of the residents, the furnishings and personal belonging of a live-in aide, and/or other reasonable accommodations (HUD Handbook 1378, Paragraph 3-2).

3) The cost of the physical move of the residents' belongings. (It is suggested that the move costs be broken down by average cost per move type multiplied by the number of moves.) This physical move cost total should be based on the move scenarios anticipated or projected by the resident survey. The move costs should consider:

   For temporary relocation moves:
   - Number and cost of two-way moves (i.e., a move to another unit and then a return move) within the same building/complex.
   - Number and cost of two-way moves to a unit not in the same building/complex

   For permanent moves:
   - Number and cost of one-time moves into another unit in the same building/complex.
   - Number and cost of one permanent move to a unit not within the same building/complex
   - Any required dislocation allowance

4) The estimated cost of projected increases in monthly housing costs and other expenses for temporary relocation (if applicable).

5) The estimated cost of projected replacement housing payments (RHP) (42-month period for URA or 60-month period if Section 104(d) applies).

6) Contingency costs estimated for carrying out the relocation process necessary to complete the proposed project.

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[121] *See also,* CPD Notice 2014-09 "Effective Date of Moving Ahead for Progress in the 21st Century Act (MAP-21) Changes to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) Payment Limits and Replacement Housing Payment Eligibility Criteria."

VIII. Written and Oral Communications with Individuals with Disabilities and LEP Persons and Use of Accessible Meeting Locations

The Plan should identify how the PHA or Project Owner will take appropriate steps to ensure effective communication with residents and other individuals with disabilities involved in the relocation, such as through the provision of sign language and other interpreters and large print, Braille, accessible electronic, and other alternate format written communications. The Plan should identify the measures to be taken to ensure the most integrated meeting settings appropriate to individuals with disabilities. The Plan should identify how the PHA or Project Owner will ensure meaningful access for LEP persons, such as through written materials and oral communications provided in languages other than English.

IX. Appeal Process

The Plan should specify the procedures to be followed if a resident disagrees with the PHA's or Project Owner's decision as to the resident's eligibility to receive relocation assistance, the amount of a relocation payment, or the adequacy of a comparable replacement dwelling offered to a resident. These procedures should include the process for filing a written appeal to the displacing agency and the specific appeal procedures to be followed consistent with 49 C.F.R. 24.10 (and 24 C.F.R. § 42.390 if Section 104(d) is involved).

X. Certification

The Plan should contain a certification of compliance with this Notice (or H 2014-09/PIH 2014-17, if applicable), the URA, fair housing and civil rights requirements and, if applicable, Section 104(d).

Technical Assistance

For detailed technical assistance regarding the contents or provisions of a written relocation plan, the PHA or Project Owner should direct questions to their RAD Transaction Manager or email rad@hud.gov.

This document combines Notice H 2019-09 and Notice H 2023-05 for the convenience and ease of readers.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing
Office of Public and Indian Housing

Special Attention of: Public Housing Agencies Public Housing Hub Office Directors Public Housing Program Center Directors Multifamily Regional Center Directors Multifamily Regional Satellite Office Directors Regional and Field Office Directors Regional Administrators Performance Based Contract Administrators	**Notice** H-2019-09 PIH-2019-23 (HA) Issued: 09/05/2019 Supersedes: Notice PIH-2012-32 (HA) H-2017-03, REV-3 and Notice PIH 2018-11 (HA) H 2018-05 and Notice PIH 2018-22 H 2018-11 Expires: This Notice remains in effect until amended, superseded, or rescinded.

SUBJECT: Rental Assistance Demonstration – Final Implementation, Revision 4

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 (Pub. L. No. 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. No. 113-235, approved December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. No 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, approved March 23, 2018) 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 FY 2018 Appropriations Act authorizes up to 455,000 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 McKinney Vento 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 are processed exclusively under the Second Component of RAD, which is non-competitive.

- 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 to PBV or PBRA contracts upon contract expiration or termination occurring after October 1, 2006. The Second Component further allows owners of projects funded pursuant to Project Rental Assistance Contracts under the Section 202 Supportive Housing for the Elderly program (202 PRAC) to convert to PBV or PBRA contracts. 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. Section IV of this Notice provides instruction for owners of 202 PRAC 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:

[1] All references in this Notice to Mod Rehab include Mod Rehab SRO unless otherwise stated.

- Notice PIH 2012-18 (March 8, 2012, superseded by Notice PIH 2012-32)
- Notice PIH 2012-32 (July 26, 2012)
- Notice PIH 2012-32 REV-1 (July 2, 2013)
- Notice PIH 2012-32 REV-1 Technical Correction (February 6, 2014)
- Notice PIH 2012-32 REV 2 (June 15, 2015)
- Notice PIH 2012-32 (HA) H 2017-03, REV 3 (January 12, 2017)
- Notice PIH 2018-11 H 2018-05 (July 2, 2018)
- Notice PIH 2018-22 H 2018 11 (December 11, 2018)

The terms of the Notice in effect at the time of closing generally govern all projects converting assistance under either component of RAD, notwithstanding execution of a conditional approval or commitment for conversion. For all conversion types, HUD reserves the right, in its sole discretion and upon request from the applicant, to apply provisions from previous versions of this Notice to program participants that are near conversion.

Major Revisions in Revision 4

This revised Notice 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 (Public Housing Conversions

1. Extends all resident rights to households that will reside in non-RAD Project Based Voucher (PBV) units placed in a converted public housing project so as to facilitate the standard protection of residents (see Section 1.6);

2. Increases resident notice requirements to improve communication with residents throughout the conversion process (see Section 1.8);

3. Establishes a mechanism for public housing agencies (PHAs) to enter into partnerships in order to pool resources or capacity with each other so as to effectively convert properties through RAD (see Section 1.5.L.);

4. Allows limited rent increases for public housing conversions to Project Based Rental Assistance (PBRA) contracts in certain scenarios, including in designated Opportunity Zones (see Section 1.7.A.5);

5. Modifies the requirements for portfolio awards so as to provide PHAs greater flexibility in staging the conversion of their properties (see Section 1.9.C.);

6. Streamlines Capital Needs Assessment (CNA) requirements to eliminate the submission of the CNA Tool when certain conditions have been met (see Section 1.5.A.);

7. Introduces a "Concept Call" so that PHAs can receive confirmation that project plans are sufficiently advanced to submit a Financing Plan (see Section 1.12.C.);

8. Prohibits PHAs from entering debt into the Earned Income Verification "Debts Owed" module purely as a result of the 50058 End of Participations that is required to be submitted into Public and Indian Housing Information Center (PIC) as part of the conversion (see Section 1.13.B);

9. Broadens the use of "tiered" environmental reviews so that streamlined submissions are needed for certain 24 CFR Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions (see Attachment 1A);

10. Establishes policy that RAD rents will be updated every two years and the updated rents will be applied to new awards issued after those established dates (see Attachment 1C);

11. Establishes a priority for "Section 3" employment and other economic opportunities for residents of public housing or Section 8 assisted housing (see Section 1.4.A.18.).

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

1. Removing restrictions on certain HOPE VI properties that are under 10 years old; and

2. Eliminating the selection of applications based on previously established "Priority Categories" so that HUD reviews applications on a first-come, first serve basis. In the event that a waiting list forms, establishes the priority selection of applications for properties located in designated Opportunity Zones.

Second Component (Section 202 PRAC, Mod Rehab, Mod Rehab SRO, Rent Supp, RAP Conversions)

1. Implements the provision of the 2018 Appropriations Act authorizing the conversion of Section 202 PRAC projects to Section 8 PBRA or PBV contracts

2. Streamlines Capital Needs Assessment (CNA) requirements for Mod Rehab conversion to eliminate the submission of the CNA Tool when certain conditions have been met;

3. Broadens the use of "tiered" environmental reviews so that streamlined submissions are needed for certain Part 50 reviews; requires the use of the HUD Environmental Review Online System (HEROS) for Part 50 reviews; and requires radon testing for PBRA and PBV conversions

4. Streamlines the Conversion Plan (Financing Plan) requirements for Mod Rehab Conversion when certain criteria has been met

5. Creates an ability for Mod Rehab and SRO properties converting to PBRA to utilize contract rents based on the condition of the property following rehabilitation

6. Provides an ability for owners of converting SRO properties serving the homeless to establish a leasing or occupancy preference that facilitates permanent supportive housing;

7. Fully establishes resident right of return and the prohibition against re-screening for existing residents; and

8. Establishes a final date that any remaining RAP properties may make a submission of conversion under RAD.

Notice and Comment for Changes in Eligibility and Selection Criteria

This Notice is effective immediately except with respect to changes in the project eligibility and selection criteria, which are subject to a 30-day comment period commencing on the effective date for the remainder of the Notice. 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 effective seven calendar days following 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 four 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.

- **Section IV:** Provides instructions to owners of 202 PRAC 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 6-8 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 and public 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 conversions under the First Component, 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.) On September 30, 2014 HUD published "A Progress Report on the Rental Assistance Demonstration (RAD) Evaluation," which provides a summary of early program results and outlines the evaluation underway.[2] In addition, in September, 2016 HUD published the "Interim Report: Evaluation of HUD's Rental Assistance Demonstration (RAD)."[3]
- For conversions under the Second Component, 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.

Paperwork Reduction Act

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

[3] http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_InterimRpt_Final.pdf

Approved

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0612, 2529-0013, and 2506-0087. In accordance with the Paperwork Reduction Act, 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.

Pending

The information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0118. In accordance with the Paperwork Reduction Act, 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.

R. Hunter Kurtz,
Principal Deputy Assistant Secretary
for Public and Indian Housing

Brian D. Montgomery,
Assistant Secretary for Housing –
Federal Housing Commissioner

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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.

Affordable Housing Purposes. Activity that supports the pre-development, development or rehabilitation of other RAD conversions, public housing, housing assisted under Section 8 of the Act, properties subject to Low-Income Housing Tax Credits (LIHTC) use restrictions, or other federal or local housing programs serving households with incomes at or below 80% of area median income, or that provide services or amenities that will be used primarily by low-income households as defined by the Act.

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 written grant agreement between HUD and a PHA under which HUD agrees to provide funding for a program (e.g., public housing or 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, including lead-based paint. In accordance with Chapter 5 of the MAP Guide, the CNA identifies "Critical repairs," which include 1) "Life Safety" repairs that, in HUD's determination, are needed to address hazards to life and health and must be completed before residents can occupy or continue to occupy the affected units and 2) "Accessibility" repairs that are needed to correct accessibility deficiencies. The correction of accessibility deficiencies must take the minimum time reasonably possible given the physical characteristics of the repairs and construction process and given the reasonably anticipated impact of the deficiencies and the repairs on the tenants, including disruption or displacement of their occupancy and their safe and full enjoyment of the property.

Choice-Mobility. For residents of Covered Projects, the option to obtain an HCV from a PHA after a defined period of residency. (See Section 1.7.C.5 of this Notice for PBRA conversions, and 24 CFR § 983.261 and Section 1.6.D.8. 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 an 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, the assignee becomes 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. and 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 a project in accordance with the Act, HUD regulations, the ACC, the Mixed Finance ACC Amendment, the HOPE VI Grant Agreement (if applicable), and the Choice Neighborhoods Implementation 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. In some cases, a Declaration of Restrictive Covenants is used in lieu of a Declaration of Trust, which Declaration of Restrictive Covenants obligates the owner of the property to operate certain units as public housing in accordance with the ACC, the Act and HUD regulations and requirements. For purposes of this Notice, the defined term Declaration of Trust (DOT) shall refer to a Declaration of Trust and/or a Declaration of Restrictive Covenants, as applicable to the specific site.

Distributions. Any withdrawal or taking of Surplus Cash by the Project Owner (see definition for "Surplus Cash", below). Surplus Cash, once determined pursuant to applicable HUD requirements, is not subject to further federal restrictions.

Enhanced Vouchers (EVs). A type of tenant protection voucher 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. The use of the term "FMR" on its own refers to the metropolitan area-wide FMR.

Faircloth-to-RAD. The process by which PHAs develop additional public housing units pursuant to the Faircloth Limit using the public housing development process at 24 CFR Part 905, Subpart F with conditional pre-completion approval to convert these units to a long-term Section 8 contract through RAD following completion of construction, rehabilitation, or acquisition under the public housing development process.

Faircloth Limit. The limitation on the number of new public housing units a PHA may develop as described in Section 9(g)(3) of the Act.

Family Self-Sufficiency (FSS). FSS is a program authorized under section 23 of the Act and 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 salary and benefits 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 PBRA Covered Project from the Choice-Mobility component. (See Sections 1.7.C.5 and 2.6.I 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.)

Gross Rent. The Gross Rent shall equal the contract rent plus any utility allowance for the unit.

HOTMA Implementation Notice. Federal Register Notice Housing Opportunities Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provision, published January 18, 2017 at 82 FR 5458.

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.

Identity of Interest (IOI). A relationship where two parties have closely related business operations or other activities. An identity of interest must be disclosed and may be prohibited. Examples of Identity of Interest relationships include, but are not limited to, a financial or family relationship between the PHA or owner (which includes but is not limited to an officer, director, or partner of the PHA or owner) and general contractor, subcontractor, seller of the land or property, any consultants, or other parties to the transaction.

MAP Guide. Housing Guidebook 4430.G "Multifamily Accelerating Processing (MAP) Guide"

Mixed-Finance Project. A public housing project developed in accordance with 24 CFR part 905 subpart F using public housing, nonpublic housing, or a combination of public housing and nonpublic housing funds, where the public housing units are owned in whole or in part by an entity other than the PHA, pursuant to 905.604(a). A mixed-finance project may include 100 percent public housing (if there is an Owner Entity other than the PHA) or a mixture of public housing and non-public housing units.

Notice of Anticipated RAD Rents (NARR). Conditional commitment provided to the PHA for units the PHA proposes to develop under Faircloth-to-RAD that describes the terms under which HUD will issue a CHAP to the PHA once the units are developed and accepted into the public housing program.

Operating Cost Adjustment Factor (OCAF). An operating cost adjustment factor established by HUD that is applied to the 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 1.4.A.11 for a description of how to satisfy those requirements for PBV and PBRA conversions.

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. For purposes of determining a RAD transaction, a "project" is a structure or group of structures that in HUD's determination are appropriately managed as a single financial asset. In most cases, this corresponds to a grouping of residential units that are managed and marketed as a single entity and are geographically proximate. In determining whether multiple structures

constitute a project, HUD will take into account types of buildings, occupancy, location, market influences, management organization, financing structure or other factors as appropriate. For a RAD PBV conversion, the definition of "project" in 24 CFR 983.3 continues to apply for all references to the term in 24 CFR 983.[4]

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, pursuant to 24 CFR 983. 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(C) of the Act 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.

Project Owner. 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 Agency (PHA). A Public Housing Agency that administers programs under the Act, which could include public housing, Mod Rehab 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 the ACC units).

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 Act, other than assistance under 42 U.S.C. § 1437f of the Act (section 8). The term ''public housing'' includes dwelling units in a mixed finance project that are assisted by a PHA with public housing Capital Fund assistance or Operating Fund assistance. The term "public housing project" means housing

[4] For instance, 24 CFR § 983.202 provides, in part, "With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract." The definition of "project" in 24 CFR § 983.3 is used to determined how many PBV HAP Contracts must be entered into.

developed, acquired, or assisted by a PHA under the Act, and the improvement of any such housing. Each public housing project has a project identification number in the Public and Indian Housing Information Center (PIC), though a PHA may propose to convert individual sites within the public housing project..

RAD Conversion Commitment (RCC). For the First Component, the contract executed by HUD, the PHA and, as applicable, the pre-conversion owner (if not the PHA), and the post-conversion Project Owner. The RCC follows completion of HUD's review of the Financing Plan and describes the terms and conditions under which HUD will approve the proposed conversion and execute closing documents. (See Section 1.12 and Attachment 1A for further details on the RCC.)

RAD Fair Housing, Civil Rights, and Relocation Checklist or *Checklist.* The Accessibility and Relocation Checklist or its successor, the RAD Fair Housing, Civil Rights, and Relocation Checklist (when available) used in First Component transactions.

RAD Fair Housing, Civil Rights, and Relocation Notice. The "Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions," Notice H 2016-17; PIH 2016-17 (HA), as may be amended from time to time.[5]

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 and 1.7.A.4 for further details on the RAD Use Agreement.)

REAC. HUD's Real Estate Assessment Center.

Resident Opportunity and Self-Sufficiency Service Coordinators (ROSS-SC). Funding under this program is made available for Service Coordinators to 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.

[5] https://www.hud.gov/sites/documents/16-17HSGN_16-17PIHN.PDF.

Small Area FMR. The FMR established on a zip-code basis per 81 FR 80678, as published annually in the Federal Register.

Surplus Cash. For both PBV and PBRA, following completion of the Work, 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; the termination or expiration of a Mod Rehab or SRO contract; or HUD approval of public housing unit demolitions, dispositions, and conversions under Section 18, Section 22, or Section 33 of the Act. 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 as defined in 24 CFR Part 5.634 (public housing and PBRA) and 983.353 (PBV),

TTP. The total tenant payment as calculated pursuant to 24 CFR Part 5.

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

Uniform Relocation Act (URA). The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601 et seq.) and its implementing regulations (49 CFR part 24).

Utility Allowance. As defined in 24 CFR Part 5, 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 § 5.613), the tenant is reimbursed in the amount of such excess.

Voucher Agency. A PHA that administers an HCV program.

Work or Scope of Work. The improvements required by HUD to be performed within a defined period following the conversion and specified in the RCC or other RAD conversion documents.

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 the First 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) or a PHA-defined portfolio of projects (which may include a multi-phase conversion of a pre-existing public housing site). If a PHA applies for a portfolio award, HUD will reserve RAD conversion authority for the number of units covered by the award, and the PHA will be required to submit a RAD Application for each individual project. 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, issuance of an RCC 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. Converting Projects will be released from the public housing Declaration of Trust (DOT) and the Declaration of Restrictive Covenants (DORCs), if applicable, and a RAD Use Agreement will be placed on the Covered Project.

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 published 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 or prior to the expiration of the initial contract and each renewal contract thereafter, the Voucher Agency shall offer, and the Project Owner shall accept, a renewal contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the Project Owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Each project with a PBV HAP Contract will also be subject to a RAD Use

Agreement that will renew with the HAP Contract on the property assisted by 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.8. 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 published 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. 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 renewal contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the Project Owner and subject to HUD approval, at another site through a future transfer of assistance. The initial contract 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 on the property assisted by 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 of 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 that best meets 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. Resident Rights and Relocation. Equally important for the success of RAD are meaningful resident participation, procedural and relocation rights, and mobility, which are addressed in detail in various sections of the Notice and the RAD Fair Housing, Civil Rights, and Relocation 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. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. See HUD's general regulations at 24 CFR § 5.105. For example, the Fair Housing Act prohibits discrimination in housing (see 42 U.S.C. §§ 3601, et seq., and 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)). All Federally assisted programs and 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 24 CFR part 8), as well as Titles II and III of the Americans with Disabilities Act (12 U.S.C. §§ 12101, et seq., and 42 CFR parts 35). Executive Order 11063 (24 CFR part 107) was issued to prevent discrimination based on race, color, religion, sex, or national origin in Federally assisted housing property or facilities and to require program participants to provide information on race, color, religion, sex, or national original of applicants for and participants in Federally assisted housing.

HUD has issued a separate notice, the RAD Fair Housing, Civil Rights, and Relocation Notice, to provide more detailed guidance regarding certain civil rights requirements of RAD transactions. This Notice has been updated to remove civil rights guidance and requirements that are duplicative of the provisions of the RAD Fair Housing, Civil Rights, and Relocation Notice. The removal of this language does not modify any of the requirements contained in the RAD Fair Housing, Civil Rights, and Relocation Notice. PHAs should consult the RAD Fair Housing, Civil Rights, and Relocation Notice early in the planning process so that they are aware of RAD's civil rights related requirements for project construction and operation, site selection, submission of information to HUD, and HUD approval.

RAD conversions that include one or more of the circumstances described in the RAD Fair Housing, Civil Rights, and Relocation Notice must undergo a Front-End Civil Rights Review. The purpose of the review is early identification of the risk that elements of proposed RAD projects will be out of compliance with certain fair housing and civil rights requirements. When such circumstances are present, the PHA must obtain written approval from HUD.[6]

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 1.9 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:

1. Have public housing units under an ACC or have available authority to develop units pursuant to the Faircloth Limit;
2. Be classified as a Standard or High Performer under the Public Housing Assessment System (PHAS). If classified as "troubled" (Troubled) the PHA may still be eligible if the PHA is making substantial progress under its Recovery Agreement, Action Plan, Corrective Action Plan (CAP) or Memorandum of Agreement (MOA) or proposes a revision to such agreement or plan that incorporates conversion under RAD and that is acceptable to HUD. 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.
3. 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;

[6] Properties being redeveloped with funding under a Choice Neighborhoods Implementation (CNI) grant are not subject to the RAD Fair Housing, Civil Rights, and Relocation Notice, including the RAD front-end and civil rights transaction reviews.

4. Be 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;
5. Not have a debarment, suspension, or Limited Denial of Participation (LDP) in Federal programs lodged against the applicant, PHA Executive Director, Board members, or affiliates, unless HUD has determined that the RAD conversion is likely to place the property under the control of a more capable entity;
6. Submit a completed application that complies with all RAD Application instructions.
7. Resolve to HUD's satisfaction any outstanding civil rights matters prior to conversion. All pending legal processes must have been satisfied to meet this standard. If eligibility would be denied on this basis, HUD will notify the applicant of its determination and any actions necessary to permit a finding of eligibility.

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).

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 and public 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).** 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 to be included as a Scope of Work that will be completed as part of the RAD conversion and long-term capital needs to be addressed through a Reserve for Replacement Account. A CNA must be submitted with the Financing Plan and must have been completed no earlier than 180 days prior to submission of the Financing Plan, except with HUD approval.

- **CNA eTool.** The CNA eTool is required as part of any RAD Financing Plan (or application for FHA Firm Commitment), except as described below. The CNA eTool contains two major components – the narrative (the description of each component and its condition and may include an energy audit) and the financial model (the 20-year schedule and associated determination of the Initial Deposit to Replacement Reserve, or IDRR, and the Annual Deposit to Replacement Reserve, or ADRR).
- **Contractor Qualifications.** The CNA must be completed by a qualified, independent third-party professional as required by the MAP Guide.
- **Exemptions**. HUD may exempt the transaction types set forth below from CNA requirements, provided that the proposed exemption is confirmed with HUD prior to submission of the Financing Plan and eligibility for the exemption confirmed in HUD's review of the Financing Plan. Exemptions may apply to some or all portions of the CNA, including the assessment of immediate needs and the portions of the CNA eTool necessary to produce the 20 Year Reserve Schedule.
    - **a.** For non-FHA transactions, neither component of the CNA will be required as long as the Annual Deposit to the Replacement Reserve is no less than $450 per unit (or a lower amount if justified by an alternate form of CNA acceptable to HUD, typically one performed for an investor or lender), and the Project:
        - i. Has been newly constructed or financed with 9% LIHTC within the last five years, as calculated from the date the final certificate of occupancy was issued,[7] or
        - ii. Qualifies as new construction or will be financed with 9% LIHTC;
    - **b.** For non-FHA transactions, the narrative will not be required where the transaction will be financed with 4% LIHTC;
    - **c.** For non-FHA transactions, neither component of the CNA will be required where the total assisted units (e.g., RAD units and other PBV units) at the project will constitute less than 20% of the total units at the project (or a higher percentage at HUD's discretion, taking into consideration the absolute number of RAD units at the project).
    - **d.** For FHA transactions, PHAs should follow applicable requirements in the MAP Guide governing exemptions.

- **Utility Consumption Baseline.** No utility consumption baseline analysis is necessary as part of the CNA conducted for the RAD conversion.

[7] Prior to confirming an exemption from the CNA HUD will require a disclosure of any construction defects and a PHA certification that it conducted a site review/inspection of the project with respect to accessibility for persons with disabilities and that the property complies with federal accessibility requirements

2. **Energy Efficiency and Climate Resilience.** For all projects retrofitted under a RAD conversion, if systems and appliances are being replaced as part of the Work identified in the approved Financing Plan and RCC, 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. The use of Energy Star®, WaterSense® or Federal Energy Management Program (FEMP)-designated products and appliances replacements, if any such designation is available for the applicable system or appliance, is presumed to be the minimum threshold for meeting such requirement.[8] Where the CNA indicates a component will improve indoor air quality and/or reduce overall environmental impact at little or no cost premium, the PHA shall use such component 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 2021 International Energy Conservation Code (IECC) for single family or low-rise multifamily properties (three stories or fewer) or the ASHRAE 90.1-2019 standard for mid to high-rise multifamily projects, or any successor codes that are adopted by HUD under the requirements of the Energy Independence and Security Act of 2007. Additionally, all new construction projects are encouraged to meet or exceed the requirements for Energy Star for New Homes or Energy Star for Multifamily New Construction. Further, in new construction and applicable retrofit projects, HUD strongly encourages the use of industry-recognized, green building certifications that support net-zero and net-zero ready construction, such as DOE Zero Energy Ready Homes - Multifamily, Enterprise Green Communities Plus, Passive House Core or Zero, International Living Future Institute Core Green Building Certification or Zero Energy and Zero Carbon, National Green Building Standard with net zero energy badge, and LEED Zero Energy or Zero Carbon.

   As noted in Section 1.4.B.6, numerous state and local governments offer other funding programs which can be used as sources 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

[8] 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/.

energy-saving retrofit components. (http://www.dsireusa.org/ is one source of information on incentives and policies state.)

Renewable Energy. PHAs are also strongly encouraged to assess the viability and potential cost savings of renewable energy sources for the site and design roofs and other systems accordingly. For example, PHAs can use the National Renewable Energy Laboratory (NREL) REopt tool to evaluate the economic viability and cost savings of multiple renewable energy options.

Climate Resilience. All PHAs must:

1. Analyze likely hazard risk by entering property addresses into FEMA's National Risk Index (NRI) and identifying which hazards are "relatively high" or "very high" for their census tract. If a census tract hazard does not apply to their specific site (e.g., a site located on top of a hill may not face riverine flooding risk), the PHA should explain the non-applicability of the NRI rating. Applicants may also consider hazards identified in climate projection tools as applicable: Climate Explorer, Flood Factor, NOAA Sea Level Rise Viewer, Climate Central Coastal Risk Screening Tool (by year and/or water level), and Climate Mapping for Resilience and Adaptation (CMRA).

2. Provide a narrative description detailing how the scope of work addresses or mitigates against the identified climate hazard risks. PHAs are strongly encouraged to consider strategies to reduce the risk of resident injury and property damage when hazards strike. Hazard-specific resilience strategies to consider include, but are not limited to:
    - Potable water storage (one gallon per person for five to seven days);
    - Back-up power (generators or battery back-up for critical loads) to last five to seven days;
    - Indoor air quality: sensors and purifiers;
    - Flood protection: flood vents, water-resistant materials, roof sealing/water barrier, flood gates, flood doors, sandbags and other deployable barriers;
    - Floodwater control: backwater valves, sump pumps, permeable pavement, green roof, bioswales, dry wells;
    - Heat control: multi-pane and/or low-e coated windows, window shading, cool roofing products, enhanced roof and wall insulation;
    - Fire protection: compliance with 2021 International Wildland-Urban Interface Code, class A roof, noncombustible or fire-resistant materials, fine mesh vent screens, enclosed decks and eaves, tempered glass for first-floor windows; and

- Winter and Rain Storm protection: impact-rated windows, FORTIFIED Roof™, buried utility lines.

3. Informed by the climate hazard risks, PHAs must also create a property-wide disaster plan including an evacuation plan that describes safe egress route(s), plans for evacuating residents with disabilities and special needs, and clear communication of the evacuation plan and safety resources for residents. For residents with disabilities and special needs, this must include a plan for emergency evacuation and relocation, including discussion of facilities of like capacity that are equipped to provide critical needs-related care and services at a level like the originating facility.

3. Environmental Review. Under Federal environmental review requirements, proposed RAD projects are subject to environmental review under either Part 50 or Part 58, as applicable, and environmental documents are required to be submitted no later than the applicant's Financing Plan.[8] HUD will not issue an RCC if the project plan does not meet the environmental review requirements described in **Attachment 1A**. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.[9]

4. Substantial Conversion of Assistance. Conversions may not result in a reduction of the number of assisted units, except by a de minimis amount. A de minimis reduction of units may include any of the following:

a. The greater of five units or the number of units (rounded to the nearest whole number) corresponding to five percent of the number of ACC units in the Project (or RAD-converted portfolio, if both the portfolio and de minimis units are counted in the aggregate) immediately prior to conversion;

[8] Under Part 58 Review, the PHA submits a Request for Release of Funds (HUD-7015.15) or the local responsible entity's finding of exempt activity to the HUD Field Office. When the PHA submits a Request for Release of Funds, the HUD Field Office provides environmental clearance, using Form HUD-7015.16, if no valid objections are made and HUD has no knowledge of deficiencies cited in 24 CFR § 58.72(b). PHAs submit only the Form HUD-7015.16 with the Financing Plan, not the full environmental review record. Under Part 50, HUD staff complete the review in conjunction with the Financing Plan review and therefore the PHA should submit full environmental review documentation no later than the Financing Plan submission. HUD may require earlier submission in order to ascertain whether a conversion has sufficiently advanced (see Section 1.12 for discussion of the Concept Call).

[9] A choice limiting action means an action that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, real property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, ground disturbance, and leasing. For more information see the Environmental Review Requirements for RAD Conversions Quick Reference Guide: https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/

b. Any unit that has been vacant for more than 24 months at the time of RAD Application; and
c. Units that, if removed from assistance, 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), subject to HUD approval.

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

In all cases, the PHA shall submit within its 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 meets the exclusion criteria, and any supporting evidence. HUD may approve any reduction of units by project or portfolio. Any de minimis reduction request must be included in the approved Financing Plan prior to closing of the associated transaction.

The de minimis allowance may be calculated across portfolio conversions, but the number of de minimis units allowed must be calculated based on the RAD conversions closed prior to or simultaneous with the execution of the de minimis reduction. For example, a PHA that is converting 200 units across three properties is permitted to replace 190 RAD-assisted units (i.e. 95% of 200) across its portfolio and apply the unit reductions to a single property. However, the property that would have 10 fewer units assisted under a RAD HAP Contract must convert simultaneous with or after the first two properties, not before.

A PHA must demonstrate that any reduction in units better serves residents, the Covered Project, or the operating viability of the PHA's RAD or public housing portfolio, 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.

Any property or the proceeds received from the sale of any property that is released from the DOT under the de minimis exception must be used for Affordable Housing Purposes.

5. **Relocation Requirements.**
    a. **RAD Fair Housing, Civil Rights, and Relocation Notice.** Relocation

requirements related to public housing conversions under RAD are described in the RAD Fair Housing, Civil Rights, and Relocation Notice.[10] The RAD Fair Housing, Civil Rights, and Relocation Notice provides PHAs and their development partners with information and resources on RAD program requirements, Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended (Section 104(d)) when planning for or implementing resident moves in connection with a RAD conversion under the First Component of RAD. Specifically, the RAD Fair Housing, Civil Rights, and Relocation Notice provides guidance on relocation planning, resident right to return, relocation assistance, resident notification, initiation of relocation, and the fair housing and civil rights requirements applicable to these activities.

The appendices to the RAD Fair Housing, Civil Rights, and Relocation Notice include recommended relocation plan contents. Sample relocation notices for issuance to residents depending on RAD project characteristics are available on the RAD website at www.hud.gov/rad. The primary source for First Component relocation requirements and guidance is the RAD Fair Housing, Civil Rights, and Relocation Notice and not this Notice. In the event of a conflict between this Notice and the RAD Fair Housing, Civil Rights, and Relocation Notice, with regard to relocation requirements, the RAD Fair Housing, Civil Rights, and Relocation Notice controls.

b. Right to Return. Any resident that may need to be temporarily 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 1.4.A.12), residents of the Converting Project will have the right to reside in an assisted unit at the new site once rehabilitation or

[10] For properties being redeveloped with funding under a Choice Neighborhoods Implementation (CNI) grant, the RAD Fair Housing, Civil Rights, and Relocation Notice is superseded by requirements regarding relocation included in the applicable CNI NOFA and applicable CNI Grant Agreement.

construction is complete. For more information on how to implement these provisions see the RAD Fair Housing, Civil Rights, and Relocation Notice.

c. **Ineligibility of Tenant Protection Vouchers.** Conversion of assistance is not an event that triggers the issuance of Tenant Protection Vouchers to residents of public housing projects going through a RAD conversion.[11]

6. **Accessibility Requirements.** Federal accessibility requirements apply to all conversions, whether they entail new construction, alterations, or existing facilities. See the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17 PIH 2016-17 (HA)) for a full description of the applicability of accessibility requirements in RAD and the situations under which HUD will perform an up-front review.

   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. See the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17 PIH 2016-17 (HA)) for a full description of Site and Neighborhood Standards requirements in RAD and the situations under which HUD will perform an up-front review.

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

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, broadband infrastructure, senior fall prevention and aging in place design, occupant health and welfare, basic environmental stewardship, and climate change resilience.[12]

9. **Demolition.** Conversion plans may include the partial or complete demolition of the Covered Project and replacement of assistance on-site or off-site. Unless approved in writing by HUD,[13] a PHA may not demolish and/or dispose of units until after the closing of construction financing for the Covered Project.[14] Both the demolition action and new construction or rehabilitation (either on-site or off-site) are considered as part of a single Environmental Review. PHAs should be aware that the CDBG and HOME programs have additional requirements regarding demolition if those sources of funds are used.[15]

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 not in all cases, result in discrimination against families with children. See the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17 PIH 2016-17 (HA))

[12] PHAs may wish to reference additional product certifications and standards in their building specifications 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.

[13] Demolition prior to replacement is common in transactions utilizing Choice Neighborhood Implementation grants. Whenever approval is granted, a PHA cannot begin demolition before entering into a Converting Awaiting Transfer (CAT) agreement, which converts the public housing assistance and reserves the PHA's ability to place it under a HAP contract at a future date.

[14] Section 18 of the Act does not apply to RAD Conversions and is not needed for conversion plans involving demolition. Demolition approval pursuant to Section 18 is not sufficient to permit demolition of units under RAD and may cause the Converting Project to be ineligible for conversion under RAD. In rare cases, Section 18 approval (including an approval letter from the Special Application Center) is required for elements of certain transactions which cannot be implemented under RAD authority. See Section 1.5.B.

[15] The most relevant requirements are contained in Section 104(d) of the Housing and Community Development Act of 1974, as amended.

for a full description of the situations under which HUD will perform an up-front review when a PHA proposes to change the unit configuration of a project.

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. HUD may also 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 determines that the PHA or a non-profit entity preserves an interest in the property.

    Public or non-profit ownership or control, or preservation of an interest by a PHA or non-profit in a property owned by a tax-credit entity controlled by a for-profit entity, may be satisfied if the PHA, public entity or non-profit entity (or entities), directly or through a wholly owned affiliate: (1) holds a fee simple interest in the real property of the Covered Project; (2) is the lessor under a ground lease with the Project Owner; (3) 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 with respect to the RAD units; (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

    Control rights referenced in the examples above include 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, and consent rights over certain acts of the Project Owner (including, for example, disposition of the Covered Project, changing the number of affordable units or the affordability targeting, setting utility allowances or any unregulated tenant fees for the affordable units, selecting the management agent, setting the operating budget and making withdrawals from the reserves). Control may be established through the terms of the Project Owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD. Ownership and control structures are subject to HUD review to ensure compliance with statutory requirements.

If HUD, in its sole discretion, determines intervention is necessary in situations involving foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP Contract, HUD will first seek to require ownership or control of assisted units by a capable public or non-profit entity before considering another capable entity, as determined by the Secretary.

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 Voluntary Compliance Agreement (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 to ensure continued applicability of appropriate provisions of the VCA and related agreements to the property and its operations. 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 applicable 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,unless specifically stated otherwise, 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 considering the condition and needs of the Converting Project, the nature of the proposed Covered Project, and the impact on the Converting

Project's residents. The transfer shall not place housing in neighborhoods with highly concentrated poverty based on the criteria formulated for transfers under Section 8(bb) of the Act.[16] The transfer shall comply with all applicable fair housing and civil rights requirements and 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 Section 1.4.A.6). See the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17 PIH 2016-17 (HA)) for a full description of the an up-front civil rights review HUD will perform when a PHA proposes a transfer of assistance. Further, unless otherwise approved by HUD, a PHA may transfer units from a public housing project to an existing low-income housing tax credit project within its 15-year tax credit compliance period only if the transfer is necessary to help with the de-concentration of poverty and/or the de-densification of a public housing project. PHAs should be aware that acquisition of the transfer of assistance site for a Federally-funded project is generally subject to the URA and the commercial or residential occupant of such site may be eligible for relocation payments and assistance.

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

a. Transfer at Conversion. Where a PHA proposes assistance to be transferred to a new site as part of the conversion, this information must be included in the PHA's Five Year, Annual, or MTW Plan, or as an amendment to the Five Year or MTW Plan or significant amendment to the Annual Plan and must be consistent with the Consolidated Plan. In a conversion 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 PHA and Project Owner must submit a request with their Financing Plan to either a) enter into the HAP contract at the close of construction financing at the Covered Project and, if residents will continue to occupy the former public housing units until construction is complete, execute a Master Lease between the Project Owner (Lessee) and PHA (Lessor) for the units with lease payments made from Rehab Assistance Payments or other available funds or b) with HUD approval, enter into

[16] The analysis can be found in Section VIII B.1 of H-2015-03 "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 contractual agreement regarding delayed conversion ("Delayed Conversion Agreement"), pursuant to which the Converting Project will remain as public housing while occupied by public housing residents during construction of the new site and the entire HAP Contract will be executed and effective as construction is completed and units are ready for occupancy. Please note that a Delayed Conversion cannot accommodate "staged" effective dates for distinct clusters of units.[17] 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 execution of the HAP Contract (including to an adjacent site), the PHA must submit as part of the Financing Plan a brief narrative describing its plans for the Converting Property. Generally, a PHA's plans must propose for HUD's review one of the following:

i. Release the Declaration of Trust and place the property under an alternative restrictive covenant at closing that, generally, will:
    a) Be recorded in a superior position to all other liens on the property that could compromise the applicability or enforceability of the alternative restrictive covenant;
    b) Run for a period of twenty years after which it will extinguish by its terms;
    c) Require that either:
        i) the use of the property be restricted to Affordable Housing Purposes, which restriction shall apply to any successor owners of the property, or
        ii) where the property is not used for Affordable Housing Purposes, any net income generated from the property, including through lease agreements, be restricted to Affordable Housing Purposes, which restriction shall apply to any successor owners of the property;Require that for the duration of the use restriction, HUD approve any changes in ownership to confirm ongoing compliance with the use restriction;
    d) Require that, for the duration of the 20-year use restriction period or until the property is sold at Fair Market Value (whichever is shorter), the PHA retain records of and annually report to its board regarding the use of the property (including any use for Affordable Housing Purposes) and any proposed sale of the property; and further require that until any proceeds from the property are fully expended, the PHA retain records of and annually report to its board the net income generated from the

[17] Please see guidance available on www.RADresource.net "Master Lease vs. Delayed Conversion Agreement"

property, the proceeds of any sale of the property, and the use of such funds for Affordable Housing Purposes. HUD will require such records whenever HUD approval is needed for sale or transfer of the property or upon request; and

e) Permit a subsequent removal of the alternative restrictive covenant with HUD approval under the following situations:
   i) for sale of the property at Fair Market Value (or equivalent market valuation, e.g., negotiated sale) as long the as proceeds are restricted to Affordable Housing Purposes, or
   ii) when replaced with an alternative restrictive covenant (e.g., LIHTC extended use agreement) that, in HUD's determination, satisfies the Affordable Housing Purposes requirement.

ii. Retain the Declaration of Trust and separately demolish and/or dispose of the Converting Property under section 18 of the Act or dispose of (retain) the Converting Property under 2 CFR part 200 (see Notice PIH 2016-20); or

iii. Release the Declaration of Trust at conversion in order to imminently sell the original property at Fair Market Value (FMV) (or equivalent market valuation) with a plan to use the proceeds from the sale for Affordable Housing Purposes.

Until expended, the PHA must place any proceeds in an account subject to a HUD-51999, General Depository Agreement which specifies the insurance and security investment requirements.

b. Transfer After Conversion. In general, a Project Owner may only request a transfer of assistance to HUD after 10 years from the effective date of the initial HAP Contract. A Project Owner may submit a transfer request sooner if it is needed as a result of eminent domain proceedings, natural disasters, unforeseen events, or as otherwise approved by HUD (for example, if HUD provided approval of a future transfer prior to conversion). HUD may consider, and approve with such conditions as HUD determines appropriate, a partial or complete transfer of assistance to a new location if the new location complies with applicable site selection standards. Substantially all units covered by the initial HAP Contract must remain or be replaced as a result of the transfer. Residents of the original location at the time of the transfer request shall not experience a loss of rental assistance. PBV-assisted families living at the property upon termination of a PBV HAP Contract have a statutory right to receive a

tenant-based voucher and to certain tenancy protections.[18] (A family may voluntarily decline the tenant-based voucher and accept a PBV unit at the new location but may not be required to do so.) Termination of a PBV contract is not cause for issuance of additional tenant-based voucher assistance from HUD. PHAs and owners contemplating RAD PBV transfers after conversion must take the PBV families' right to tenant-based voucher assistance into consideration and ensure that there will be sufficient resources available to the PHA to both effectuate the transfer and meet the PHA's obligation to provide tenant-based vouchers to those families that wish to receive them. Subject to the availability of appropriations, PBRA-assisted families living at the property upon termination of a PBRA HAP Contract that meet the eligibility requirements for voucher assistance may receive tenant-based tenant protection vouchers (TPVs) in the event the termination of the original PBRA HAP Contract qualifies for issuance of such vouchers. If applicable, any lender to and/or investor in the Covered Project must approve the transfer of the assistance. In the event of a transfer of all RAD units, a RAD Use Agreement will be recorded encumbering the new location to which assistance is transferred and the original RAD Use Agreement on the Covered Project will be released. In the event of a partial transfer, a RAD Use Agreement will be recorded encumbering the new location to which assistance is transferred and HUD shall consider appropriate modifications to the original RAD Use Agreement.

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. As to the events of breach of the RAD Use Agreement, HUD will avail itself of such legal actions as described in the RAD Use Agreement.

13. **RAD Use Agreement.** Pursuant to the RAD Statute, a Covered Project shall have a RAD Use Agreement that will be in such a form as prescribed by HUD including but not limited to the following:

[18] See the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices including the "January 18, 2017 HOTMA implementation notice, 82 Fed. Reg. 5458," and the "July 14, 2017 technical correction and clarification notice, 82 Fed. Reg. 32461." Also see Notice PIH 2017-21. Pursuant to applicable Housing Choice Voucher program requirements, upon PBV HAP Contract termination the family must be given the option to remain in their unit with HCV assistance if the unit remains rental housing, the rent is reasonable, and the unit meets housing quality standards.

a. Be recorded in a superior position to all other liens on the property that could compromise the applicability or enforceability of the RAD Use Agreement.[19] The Use Agreement shall be recorded prior to the Security Instrument or any other mortgage or security instrument relating to an FHA-insured loan or a Risk-share loan;
b. 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, unless the Secretary approves termination of the RAD Use Agreement in the case of a transfer of assistance;
c. 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
d. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing.

14. **Davis-Bacon prevailing wages.** The Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements) apply to all Work, including any new construction, that is identified in the Financing Plan and RCC to the extent that such Work qualifies 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 following the effective date 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.

[19] For projects being developed under a Choice Neighborhoods Implementation grant, the Choice Neighborhoods Declaration of Restrictive Covenants (DORC) may be recorded in a superior position to the RAD Use Agreement.

15. **Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Section 3 is codified at 12 U.S.C. 1701u and implemented by regulation at 24 CFR part 135 or successor part.
    a. Pursuant to such requirements, all pre-development conversion costs funded by public housing program funds pursuant to Section 1.5.A are subject to 12 U.S.C. 1701u(c)(1) and (d)(1), which sets forth Section 3 requirements applicable to public housing activities.
    b. While most RAD conversions do not utilize funding covered by Section 3, HUD has established the alternative requirement that any Work required by the conversion after the RAD Closing that involves housing rehabilitation or housing construction is subject to the Section 3 requirements applicable to housing and community development activities as set forth in 12 U.S.C. 1701u(c)(2) and (d)(2) and the regulations derived from such provisions, except that, with the exception of transactions receiving HUD housing and community development assistance, such as CDBG (24 CFR part 570) or HOME (24 CFR part 92), first priority for employment and other economic opportunities shall be given to residents of public housing or Section 8 assisted housing. Otherwise, the receipt of Section 8 rental assistance does not, in itself, trigger the applicability of Section 3.
    c. The Project Owner shall report Section 3 compliance through the post-closing completion certification to HUD described in Section 1.13.B.7 of this Notice upon completion of the Work. In addition, for any housing rehabilitation or housing construction assisted with HUD housing and community development assistance, such as CDBG (24 CFR part 570) or HOME (24 CFR part 92), Section 3 compliance shall be reported consistent with such program requirements.

16. **Lead Based Paint Hazards.** A property constructed before 1978 may contain lead-based paint and lead-based paint hazards unless abatement was previously completed, or a lead-based paint inspection determined that it was lead-based paint free. Pursuant to 24 CFR part 35 subpart L, a PHA is required to conduct a lead-based paint inspection and a lead risk assessment on a pre-1978 public housing property, and, subsequently, conduct ongoing lead-based paint maintenance and periodic re-evaluation for lead-based paint hazards. The PHA shall provide any documentation available to the PHA regarding lead-based paint and lead-based paint hazards to the firm preparing the CNA, if applicable, and to the Project Owner. The Project Owner must evaluate and control lead-based paint hazards in the Covered Project pursuant to 24 CFR Part 35 subpart H, including, among other things, completing a risk assessment if the multifamily property will receive more than $5,000 per unit in rental assistance subsidy. If the PHA has provided the report of a current risk assessment

(less than 12 months old), or an older risk assessment and reports of all subsequent periodic re-evaluations, that documentation shall satisfy the Project Owner's requirement to have completed a risk assessment under subpart H. If applicable, the CNA must incorporate the work necessary to meet the Project Owner's requirements to treat lead-based paint hazards under subpart H. (See subpart H if the multifamily property will receive $5,000 per unit or less in rental assistance subsidy.)

17. **Current PHA Employees.** HUD encourages PHAs and their partners to grant current workers whose employment positions are eliminated during conversion the right of first refusal for new employment openings for which they are qualified.

B. Financing Requirements and Considerations.

To the extent that a PHA lacks recent experience in accessing various forms of debt and/or equity capital, it may wish to 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. See Attachment 1A for full financing underwriting requirements. Except where public housing funds are used in the transaction (see paragraph 2 below), 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), Federal Home Loan Banks, and applicable private foundation financing. Other funding sources that may be available include Community Development Block Grants (CDBG), the Housing Trust Fund (HTF), 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, HOME funds can be used to assist RAD projects. The participating jurisdiction providing the HOME funds is responsible for ensuring that both the RAD project and

the specific use of the HOME funds meet the requirements of 24 CFR Part 92. Eligible costs that may be paid with HOME funds are established at 24 CFR § 92.206. However, PHAs and participating jurisdictions should be aware of the statutory prohibition on using HOME funds for public housing and must ensure that HOME funds are not expended for any cost of public housing (e.g., legal fees related to the release of the public housing declaration of trust or declaration of restrictive covenants).

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 Notice PIH 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 upon confirmation that the proposed use meets the Section 18 requirements. MTW agencies may use certain public housing and voucher funds authorized under their funding flexibilities ("MTW funds") as an additional source of capital to support conversion. These funds, whether provided as a loan, a grant, or a capital contribution, must be identified in the Financing Plan. If funds are contributed as a loan, except in extraordinary circumstances, the loan must be structured as a "soft" second mortgage payable from project cash flow. Financing proceeds in excess of transaction costs will not be allowed when public housing Capital, Operating, or MTW funds are contributed to the project conversion.

3. **Existing PHA Indebtedness and Contractual Obligations.** A PHA must address in its Financing Plan the amount of project debt associated with the Converting Project prior to conversion, including energy performance contracts, Capital Fund Financing (CFFP), Operating Fund Financing, Public Housing Mortgage Program, program debt (including ongoing repayment agreements related to audits or compliance reviews), or other debt. 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.

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 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), Historic Tax Credits (HTCs), and Opportunity Zones.** Applicants are encouraged to use LIHTCs and, if eligible, historic preservation tax credits, opportunity zones and state or local tax incentive structures, 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.[20] RAD does not prohibit excess equity proceeds from being used to support other Affordable Housing Purposes.

   Many states face excessive demand on an annual basis for allocations of 9% LIHTCs and 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

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

soon as possible with state or local tax credit issuing agencies to obtain guidance on how to compete for awards most effectively.

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.

6. **Grant Funding or Cash Flow Financing.** There are many sources of funding at the local, state, and federal level, which may be structured as grants or as debt with repayment only required from cash flow.[21] State and local CDBG and HOME funds may be utilized as "gap" financing for affordable housing developments.[22] Numerous state and local governments offer other funding programs which can be used as sources 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 funding in support of affordable housing development. Finally, the Federal Home Loan Bank's "Affordable Housing Program" has been a significant source of 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. Note that in LIHTC transactions, these funds are often structured as debt or granted to a sponsor entity and loaned from the sponsor to the Project Owner.

7. **Acquisition Proceeds.** For transactions involving the transfer of ownership from a PHA administering the public housing program to a new entity, a PHA is permitted to receive cash acquisition proceeds in excess of any seller take-back financing unless the PHA is using public housing Capital, Operating, or MTW funds as a source of funds for the transaction.[23] All such proceeds must be used for Affordable Housing Purposes. Until expended, the PHA must place the proceeds in an account subject to a

[21] PHAs and the source of the grant funds shall determine, based on local conditions, whether funds are structured as grants or as loans pursuant to the terms of Section 1.4(B)(1). The same source, such as CDBG funds, could be structured in either manner.

[22] For relocation requirements specific to CDBG and HOME-funded activities, see the applicable CDBG and HOME program regulations at 24 CFR part 570 and 24 CFR part 92. CDBG grantees, HTF grantees, and HOME participating jurisdictions must ensure that their relocation requirements are followed regardless of whether the PHA is fulfilling their requirements in accordance with the RAD Fair Housing, Civil Rights, and Relocation Notice.

[23] Where a PHA is using public housing funds as a source for the transaction, a de minimis level of cash acquisition proceeds in excess of any seller take-back financing is permitted with good cause.

HUD-51999, General Depository Agreement which specifies the insurance and security investment requirements.

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 upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective conversion of 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 (see 24 CFR 905.400(i)), and Demolition and Disposition Transitional Funding (DDTF) (see 24 CFR 905.400(j)), as a source of capital in the development budget to support conversion, whether for rehabilitation or new construction, as well as to increase initial contract rents. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs of the Covered Project, establishment of a capital replacement reserve or operating reserve, payment of Capital Fund Financing Program (CFFP), Operating Fund Financing Program (OFFP), or Energy Performance Contract (EPC) debt, and increase of the initial contract rent pursuant to Sections 1.6.B.5 and 1.7.A.5. In order to use such funds on a Covered Project, these funds must be identified in the Financing Plan and RCC. See also Section 1.4.B.2.

HUD may extend the PHA's obligation end date for Capital Funds used in the conversion for up to thirty-six months from the previous obligation end date. By extending the obligation end dates, the expenditure end dates will be correspondingly extended. Any such extensions must remain within the boundaries of the account closing law, including preserving sufficient time for administrative close-outs. 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 CHAP without HUD approval. Predevelopment assistance may be used to pay for materials and services related to proposed rehabilitation or development and may, with HUD approval, also be used for

preliminary development work, including critical repairs.[24] Public housing program funds spent prior to Closing as contemplated in the RCC are subject to public housing procurement rules.

Execution of Closing documents consistent with the RCC (as it may be amended) constitutes approval to use public housing funds in the conversion as referenced in the final approved Sources and Uses.

In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing, or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the Covered Project(s) through the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing. 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.

Following execution of the HAP Contract, 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 those funds have been identified in the RCC and converted at Closing for Section 8 RAD purposes.

Where a PHA has used public housing funds to support the development budget and structured the contribution as a loan, any repayment of the loan must be used for Affordable Housing Purposes. However, any prepayment of principal on such a loan that occurs within the first 10 years shall be considered program income and may only be used for public housing or Section 8 purposes.

B. Special Applications Center (SAC) Applications and RAD.

[24] Please note that certain predevelopment activity may be considered a choice limiting action and cannot be completed before completion of an environmental review.

1. **General.** HUD encourages PHAs to consider RAD as well as other tools that may be available to them to reposition and preserve their public housing inventories. Other available tools include application to the Special Applications Center (SAC) for Demolition or Disposition under Section 18 of the Act, Voluntary Conversion under Section 22 of the Act, including Streamlined Voluntary Conversion as described in Notice PIH 2019-05, Required Conversion under Section 33 of the Act, and Homeownership under Section 32 of the Act.
2. **Joint RAD and Section 18 applications.** A PHA may be able to combine RAD and Section 18 activities towards the preservation of a project. In certain circumstances as determined by HUD (for additional details see PIH Notice 2021-07, or any successor Notice), HUD will offer the PHA a streamlined process for securing HUD approval for the units eligible for Section 18 applications.

    a. If a PHA is combining the use of RAD and Section 18 activities at a project, all RAD relocation requirements (such as the resident notice and meeting requirements, the right to return and relocation assistance and payments as described in the RAD Fair Housing, Civil Rights, and Relocation Notice) shall apply to residents of the Section 18 units in lieu of the relocation requirements under 24 CFR part 970.21. The PHA may not provide different relocation rights and benefits to residents of the project on the basis of whether they will reside in a RAD Section 8 PBV or PBRA unit or a Section 18 unit to be assisted under Section 8 PBV.
    b. If, at a converting project, a PHA is using 24 CFR 970.17(b) or 970.17(c) to dispose of other units at the project justified on the grounds that disposition allows more efficient or effective on-site or off-site development (970.17(b)) or to dispose for reasons and goals of the PHA in its PHA plan (970.17(c)) (see Notice PIH 2021-07, as may be amended or succeeded, for more details), HUD may disapprove the conversion if HUD determines that the PHA's use of both RAD and disposition under sections 970.17(b) or 970.17(c) in a single project undermines the unit replacement requirements of the RAD program.
    c. Notice PIH 2021-07 provided that any PBV HAP contract created under a RAD/Section 18 Small PHA Blend must be administered by an HCV contract administrator with at least 250 HCV units under its HCV Consolidated ACC prior to the creation of such PBV contract. This Notice revises the 250-unit standard and instead provides that the proposed HCV contract administrator must have at least 250 units under its HCV Consolidated ACC prior to the creation of the PBV HAP contract unless the field office determines that the proposed contract administrator has sufficient capacity to administer the PBV contract. The field office will consider factors such as the proposed contract administrator's prior SEMAP scores, recent HCV-related

audit findings for the contract administrator, whether the contract administrator has updated its Section 8 Administrative Plan to administer project-based vouchers, and whether the proposed contract administrator will have sufficient voucher authority, (in addition to any existing RAD or Non-RAD PBV HAP Contracts) to adequately serve the tenant-based waiting list and provide mobility options for the PBV residents.

d. This Notice revises Section 3(A)(2)(e)(1)(a) of Notice PIH 2021-07, which defines high cost areas used for the purposes of defining the percentage of units that may be disposed of through Section 18 pursuant to a RAD/Section 18 Construction Blend, to state that if the hard construction costs are equal to or exceeds ninety percent (90%) of the Housing Construction Costs (HCC) as published by HUD for the given market area, at the PHA's discretion, up to sixty percent (60%) of the units in the Converting Project may be disposed of under Section 18. For high-cost areas, defined as those where HCC exceeds one hundred and twenty percent (120%) of the national average HCC or where the amount of construction necessary to convert the units from their current condition to the condition proposed as a result of the Work would cost in excess of two hundred percent (200%) of the national average HCC, at the PHA's discretion up to eighty percent (80%) of the units in the Converting Project may be disposed of under Section 18.

3. **Switching applications**. In some cases, after initiating a RAD or SAC application, a PHA may determine to pursue an alternative tool.
    a. After submitting a RAD Application or receiving a CHAP, a PHA must request to suspend its CHAP before submitting a SAC Application for the same units. HUD may subsequently reinstate the CHAP without the resubmission of a complete application described in Section 1.10.
    b. If a PHA that has submitted a SAC application decides to pursue RAD for eligible units, the PHA must first withdraw its SAC application, in writing with a Board Resolution to support the withdrawal.
    c. If a PHA that has been approved for a SAC application decides to pursue RAD for eligible units, the PHA must request that SAC rescind or conditionally rescind its approval of the application. If applicable, the SAC will conditionally rescind its SAC application approval contingent on the successful completion of the RAD transaction and will modify IMS/PIC accordingly. Units for which a PHA has received a SAC approval are ineligible for RAD if the PHA has taken any of the following actions to implement the SAC approval:
        i. executed a demolition contract;

ii. completed a disposition (i.e., transferring title and/or executing a ground lease);
iii. received TPVs from HUD as a result of an approval;[25] or
iv. Taken any steps to implement relocation under the approval (i.e., issuing the 90-day notice to residents).

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 § 905.400(i) and (j), respectively) for Converting Projects that are removed from public housing ACC. 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.

A PHA's Faircloth Limit will be reduced by the number of public housing ACC units removed from the public housing inventory as part of a RAD conversion. 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 processed 100 ACC units through RAD, resulting in 95 Section 8 units and 5 units removed from inventory under the de minimis authority.

Please note that prior versions of the RAD Notice excluded any de minimis units from the Faircloth Limit reduction. The change made in this Notice to include all public housing ACC units from the Faircloth reduction is retroactive to include all completed RAD conversions. However, any PHA that wishes to retain those de minimis units under its Faircloth Limit must contact HUD (PIHOCI@hud.gov) within 90 days of publication of this Notice.

E. Conversion is a Significant Action under a PHA's Annual/Five Year Plan. Conversion of assistance under the Demonstration is considered a significant action by the PHA. If not fully

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

discussed in a PHA's Five-Year Plan, Annual Plan or MTW Plan, the conversion of assistance must be presented in an 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 the MTW Plan for MTW PHAs with Standard MTW Agreements.[26] MTW PHAs subject to the MTW Operations Notice for the Expansion of the Moving to Work Demonstration Program, 83 Fed. Reg. 51474, ("Operations Notice") will include the conversion of assistance as a significant amendment to their Annual Plan or Five-Year plan, consistent with requirements applicable to non-MTW PHAs. 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 with Standard MTW Agreements 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 addressed in the PHA Five-Year Plan, Annual Plan, or MTW Plan, or 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. A PHA may fulfill this requirement by including the RAD-related provisions in its Five-Year Plan, Annual Plan, MTW Plan, or Significant Amendment (as applicable), or provide the information in any successor forms produced by HUD.

The Financing Plan must include a letter from HUD's Office of Public and Indian Housing approving the Five-Year Plan, Annual Plan, MTW Plan or Significant Amendment.

In addition, any substantial change to the conversion plan is required to undergo the significant amendment process or other HUD review if the substantial change involves 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

[26] 39 MTW PHAs are subject to the Standard MTW Agreement, which outlines their terms of participation in the MTW Demonstration. For more information, see https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mtw/mtwsa

provisions a MTW agency may not alter for properties converting under RAD).

Further, prior to conversion, MTW agencies with Standard MTW Agreements 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 its MTW coordinator and follow provided instructions to return an executed Attachment A amendment to HUD no later than the Financing Plan submission.

G. 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 and provisions in Section 23 of the Act that limits FSS to residents of public housing and the housing choice voucher program.

H. Public Housing Assessment System (PHAS). After the PHA submits an application in the PIC Inventory Removals Module (or successor module), as either "RAD Conversion PBV" or "RAD Conversion PBRA," for all units covered by the CHAP (see Section 1.12), the Converting Project shall not be issued PHAS scores beginning with the fiscal year in which the PIC removal application was accepted and continuing through subsequent fiscal years until conversion to Section 8. In order for the project to be excluded from PHAS scoring, HUD must accept the application in PIC by the fiscal year end for the project.

After HUD's acceptance of the application in PIC, but prior to conversion, all projects 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 and that the project will be subject to a physical inspection, a management assessment 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 an accepted application 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 issue the PHAS scores (or reassess and rescore all PHAS indicators, in its sole discretion) and issue the PHAS designation for the projects under the revoked CHAP for all fiscal years during which the application was pending in PIC.

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

I. Energy Performance Contract (EPC).[27] 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. Unless otherwise approved by HUD, 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 with 45 days 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. HUD will issue an amended EPC approval letter to the PHA.

J. Capital Fund Education and Training Community Facilities (CFCF) Program. CFCF provides Capital Funds 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 with or serving the residents of a Converting Project, residents of the Covered Project will continue to qualify as "PHA residents" for the purposes of CFCF program compliance and must have continued access to the facility. The community facility must continue to be available to public housing residents including "PHA residents."

K. Lease Termination at Conversion is Not an Adverse Action. 24 CFR § 966.4(e)(8)(i) classifies lease terminations as an adverse action 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.

L. PHA Partnerships. Two or more PHAs may coordinate efforts and pool resources or capacity with each other pursuant to a contractual agreement among the PHAs towards the

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

effective conversion of assistance of a public housing project. Section 1, below, describes new authorities created under RAD and Section 2, below, describes existing tools available to PHAs notwithstanding the use of RAD authorities.

1. Where the PHAs demonstrate to HUD mutual agreement under terms acceptable to HUD, participating PHAs may:
    a. Contribute Capital Funds, RHF, DDTF, and public housing Operating Reserves towards the conversion of another PHA's property consistent and in accordance with Section 1.5;
    b. Forego any anticipated RHF/DDTF funding (funds that have not been awarded and/or funds that have been awarded but not yet disbursed) to boost another PHA's RAD rents consistent and in accordance with Section 1.6.B.5.c. and 1.7.A.5.c;
    c. Rent bundle across the PHAs' RAD projects consistent and in accordance with Section 1.6.B.5.b. and 1.7.A.5.b. (PHA partnership rent bundles may not include non-RAD PBV projects);
    d. Transfer available land currently under DOT if the land is needed to facilitate the conversion; and/or
    e. Propose other partnership arrangements extending provisions permissible in this Notice which HUD may approve on a case-by-case basis.

2. In structuring such arrangements, PHAs may consider other resources already at their disposal, including the ability to:
    a. For PBV conversions, select another PHA with operational jurisdiction to receive the new increment of units under their HCV ACC and to serve as the contract administrator, with the attendant administrative responsibilities and fees, or enter into an agreement to share administrative duties (e.g., Housing Quality Standards inspections vs Subsidy Administration). Where the new increment will be added to the HCV ACC of an MTW agency to administer the PBV contract, the MTW agency may use the authority as detailed in Section 1.6.B.5.b. to augment rents of the property under contract;
    b. Transfer the RAD PBV or PBRA assistance for the converting project outside of their jurisdiction to a project and owner (including another PHA or its affiliate or instrumentality) that satisfies the ownership and control requirements described in Section 1.4.A.11 and all other RAD transfer of assistance requirements under 1.4.A.12;
    c. Provide development guarantees using non-federal funds;
    d. Serve as Developer;
    e. Serve as Management Agent; and/or

f. Undertake a voluntary transfer or consolidation of HCV programs (i.e. transferring budget authority and corresponding baseline units for the HCV program in accordance with Notice PIH 2015-22).

As an example, PHA A could seek to convert Property A in partnership with PHA B. PHA B could provide Capital Funds as a source of funds for the conversion and, in exchange, PHA A could agree to have PHA B serve as the PBV administering voucher agency for the Covered Project, even though PHA A might have a voucher program.

M. Section 33 Required Conversion Review.[28] 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 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 or a Portfolio Award.

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 and authorizes HUD to establish requirements for converted assistance under the Demonstration.

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, lead-based paint requirements, Davis-Bacon, and fair housing requirements.

MTW agencies will be able to apply activities impacting the PBV program that are approved in their MTW Plans or included in the MTW Supplement to an approved PHA plan to these properties as long as they do not conflict with RAD requirements. RAD requirements include RAD statutory requirements, provisions of the PBV program specifically addressed in this Notice (including provisions explicitly listed in Section 1.6 of this Notice as provisions of the PBV program that MTW agencies may not alter for properties converting under RAD), other

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

conditions and requirements of this Notice, or RAD contract forms or riders. With respect to any existing PBV regulations that are waived or modified in this Section 1.6 pursuant to RAD authority, 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 or included in the MTW Supplement to an approved PHA plan. All other RAD Requirements listed below or elsewhere in this Notice shall apply to MTW agencies.

So as to facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the Covered Project shall be subject to the same waivers and alternative requirements where noted below.

Finally, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices[29] ("HOTMA Implementation Notice") modified the PBV program in ways that partially or completely obviate the need for certain prior waivers or alternative requirements adopted in RAD. These are noted below.

A. <u>PBV Project Selection.</u>

1. **PBV Percentage Limitation.** RAD PBV units in Covered Projects do not count against the percentage limitation applicable to the PBV program. The HOTMA Implementation Notice excludes PBV units at formerly federally assisted properties from the percentage limitation, which means neither the RAD PBV units nor the non-PBV RAD units count against the PBV program cap when the Covered Project is located at the same site as the converting public housing project. Furthermore, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6 with respect to RAD PBV units and non-RAD PBV units within a Covered Project when such units are replacing public housing units at the time of the conversion at a new location. However, in such a case any additional PBV units subsequently placed at the former public housing site would not be exempt from the percentage limitation applicable to the PBV program. In other words, the number of PBV units excluded from the PHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a Covered Project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a PHA.

[29] See "January 18, 2017 HOTMA implementation notice, 82 Fed. Reg. 5458," and the "July 14, 2017 technical correction and clarification notice, 82 Fed. Reg. 32461." Also see Notice PIH 2017-21.

2. **Cap on the Number of PBV Units in Each Project.** There is no cap on the number of units that may receive RAD PBV assistance in each project. Under the HOTMA Implementation Notice, certain formerly assisted properties are excepted from the project cap. For any Covered Projects not covered under the HOTMA Implementation Notice, including transfers of assistance to a new location, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(b), 983.262(a) and (d). Accordingly, units under the contract may not be "excepted" for a specified purpose.

3. **Owner Proposal Selection Procedures.** In addition to situations already covered under the HOTMA Implementation Notice (e.g., cases where a PHA may attach PBV assistance to units in which the PHA has an ownership interest as part of an initiative to improve, develop, or replace public housing), HUD is waiving 24 CFR § 983.51 so that a RAD PBV HAP contract is never subject to competitive selection requirements. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in this Notice. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units in the same Covered Project, shall be subject to the terms of this provision.

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. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

B. PBV Contract Terms.

1. **Length of Contract.** Covered Projects shall have an initial HAP Contract 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 permits a minimum term of one year) 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 written HUD approval. Any HUD approval of a PHA's request post-conversion 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 the RAD Statute, at or prior to the 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. The renewal contract(s) shall be for the prescribed number and mix of units but may, upon request of the Project Owner and subject to HUD and Contract Administrator approval, be on one or more transfer of assistance sites in lieu of the project site subject to the expiring contract. 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, will not apply to the extent that these provisions make renewal or extension decisions purely discretionary. However, Contract Administrators and Project Owners may choose to extend the initial HAP Contract term consistent with these provisions and are encouraged to do so a minimum of one year prior to the expiration of the contract so as to avoid unnecessary notice to residents per 24 CFR 983.206. The ability to extend the HAP Contract term consistent with these provisions does not negate, in any way, the mandatory renewal provision detailed in the first sentence of this paragraph. MTW agencies may not alter this requirement.

3. **Ownership or Control.** This section has been moved to Section 1.4.A.11

4. **RAD Use Agreement.** This section has been moved to Section 1.4.A.13

5. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. All RAD applications, including applications for Portfolio Awards, will have initial contract rents based on their "RAD rent base year" described in Attachment 1C. PHAs have additional discretion in establishing initial contract rents using the following flexibilities:

    a. **MTW Fungibility.** MTW agencies may use their MTW funds to set the initial contract rents higher than the normally applicable contract rent cap that is based on the project's public housing subsidy. However, the initial contract rent set by the PHA is still subject to all other applicable program caps. The agency must use existing MTW funds to supplement the initial contract rents; HUD will only provide new incremental voucher funding for the first full calendar year following conversion using per unit costs (PUCs) based on normally applicable public housing subsidy initial rent caps. Any use of MTW funds in setting higher initial contract rents shall

be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in Notice PIH 2013-02, or successor notice.

b. Rent Bundling. Subject to HUD approval, 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. 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. This use, which HUD refers to as "bundled" rents, can occur under the following scenarios:

i. When a PHA is converting two or more properties within its public housing portfolio. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract;

ii. When PHAs have formed a Partnership in accordance with Section 1.5.M and are bundling rents between two or more converting projects. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract; and

iii. When a PHA bundles rents between a converting project and non-RAD Project-Based Vouchers. In such a case, the PHA must use its own voucher funding to supplement the higher RAD rent that is being offset by the lower PBV rent for the non-RAD PBV project or projects; no additional voucher funding will be provided through RAD. HUD will review the rents proposed for the non-RAD PBV HAP Contract to ensure that the PHA does not exceed the aggregate subsidy otherwise available for all of the rent-bundled projects. Except as provided in section 1.6.B.d below, the execution and effective date of the HAP Contract for the donor project must occur prior to or simultaneous with the effective date of the recipient HAP Contract.The owner of the property with the non-RAD PBV HAP Contract must request an initial rent (or redetermined rent if the contract has already been executed) in accordance with 24 CFR §§ 983.301(b)(3) and 983.302 that reflects the amount approved by HUD. To ensure

that aggregate HAP costs do not exceed the costs incurred absent this provision, the owner of the property with the non-RAD PBV HAP Contract must agree not to request, in accordance with 24 CFR § 983.301(b)(3), a redetermined rent that exceeds the OCAF-adjusted rent. This OCAF limitation is in addition to the existing PBV rent limitations in 24 CFR § 983.301(b) more generally. The donor HAP Contract must have a remaining contract term at least as long as the recipient HAP Contract.

iv. Where an Agreement to enter into a HAP Contract (AHAP) is used on the non-RAD PBV HAP Contract and the RAD and non-RAD PBV projects are subject to a single financing, the execution and effective date of the AHAP for the donor HAP Contract must occur prior to or simultaneous with the conversion of the recipient HAP Contract. The recipient RAD PBV HAP Contract will include rent schedules for both unadjusted rents and the anticipated rent bundled rents. The unadjusted rents are the initial effective rents for the RAD PBV recipient project. At the completion of rehab/construction of the donor project, where the terms of the AHAP have been satisfied and the PHA and owner of the donor property are ready to execute a HAP contract, the cost-neutral application of the bundled rents will occur. 1) the HAP for the non-RAD PBV HAP Contract will be determined based on the initial rent, which is the PBV rent the project would have been eligible for under the PBV initial rent requirements at 24 CFR § 983.301 reduced by the amount that has been bundled to the RAD HAP Contract. 2) Upon the effective date of the non-RAD PBV donor HAP Contract, the HUD-approved rent bundled rents at the RAD HAP Contract will become effective. For example, assume two 100 unit properties that will be redeveloped under a single financing transaction, one developed under standard PBV through an AHAP and another through RAD. The estimated rents for the standard PBV are $1,000 while the standard RAD rents are $500. The PHA plans to rent bundle to increase the RAD rents to $750. Construction will occur on the same timeline and the RAD PBV HAP Contract will close at the same time as the AHAP is executed. The RAD PBV HAP Contract will include unadjusted, pre-construction rents ($500) as well as adjusted, post-construction rents ($750). The AHAP will include estimated PBV rents, adjusted downward by $250. When construction is completed, the post-construction rents on

the RAD HAP Contract will take effect when the donor non-RAD PBV HAP Contract becomes effective. The PHA will determine the initial contract rents for the non-RAD PBV donor project in accordance with PBV requirements and deduct $250 from that amount.

Please note that per Section 1.13.B.5, regardless of the initial contract rents for the RAD HAP Contract, including as modified by this provision, in the year of conversion the Covered Project will only be assisted by the Operating and Capital Funds obligated to the PHA for that project.

c. Future Replacement Housing Factor (RHF) or Demolition Disposition Transition Funding (DDTF).[30] PHAs that are scheduled to receive ongoing RHF or DDTF funding (funds that have not been awarded and, with HUD permission, funds that have been awarded but not yet disbursed) may choose to forgo any ongoing RHF or DDTF grants for the purpose of offsetting an increase to the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may offset increased RAD rent.

d. PBV Site-Specific Utility Allowances. PHAs may elect to establish a site-specific Utility Allowance for any Covered Project. HUD is waiving 24 CFR 983.2(c)(6)(iii), which requires the PHA to apply the HCV Utility Allowance schedule for PBV properties, and HUD is establishing an alternative requirement. The Utility Allowance shall be calculated consistent with Notice H 2015-04 unless PIH promulgates guidance specific to the PBV program. The Project Owner may carry out all of the responsibilities associated with Notice H 2015-04, but the PHA must ensure that the Utility Allowance is calculated correctly. This waiver and alternative requirement shall also apply to non-RAD PBV units located at the Covered Project.

e. Tenant-Paid Utility Savings. Where a Covered Project will use a site-specific utility allowance as described in sub-paragraph iv. and the conversion will result in the reduction of one or more utility components (e.g., gas, water & sewer, electric) used to establish the Utility Allowance

relative to the utility allowance of the Converting Project (i.e., the public housing project), HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail.

f. Faircloth-to-RAD Initial Contract Rents. The initial contract rents for the Faircloth-to-RAD units will be based on the project's reasonably anticipated subsidy under the public housing program in accordance with a "RAD rent base year" described in Attachment 1C, as set forth in the NARR. In addition to applicable flexibilities as set forth in this Section 1.6.B.5, non-MTW PHAs may use existing HAP reserve funds to set the initial contract rents higher than the contract rent that is set forth in the NARR if the project meets both of the following conditions:

i. The Faircloth-to-RAD units may not make up more than:
   a) The greater of 25 units or 25% of the units in the project; or
   b) The greater of 25 units or 40% of units in the project if it is in census tract where the poverty rate is no greater than 20%.
   c) The limitations in (a) and (b) above shall not apply to units that are made exclusively available to people who are elderly, eligible for supportive services, or youth receiving HCV Family Unification Program assistance.

ii. The Faircloth-to-RAD project is in one of the following locations:
   a) A Metropolitan Statistical Area, Micropolitan Statistical Area, or ZIP code where the rental vacancy rate is less than 4 percent; or
   b) A ZIP code where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area FMR.

When a non-MTW PHA uses existing HAP reserves to supplement the initial contract rents, HUD will only provide new incremental voucher funding for the first full calendar year following conversion using per unit costs (PUCs) based on normally applicable public housing subsidy levels. The initial contract rent is still subject to all other applicable program caps, and any use of the flexibilities referenced above in setting higher initial contract rents shall be subject to subsidy layering review.

g. Initial PBV Rent Cap. Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications to the initial contract rent permitted under this Notice, 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 or included in an MTW Supplement to the PHA 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 or included in an MTW Supplement to the PHA Plan), minus any utility allowance; or (c) the rent requested by the owner.

6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted only by HUD's OCAF (which is applied only to the portion of the rent not attributable to debt service) at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the contract term.[31] 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 the private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303.[32] However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP Contract.[33] MTW agencies may not alter this requirement.

7. **Role of Independent Entity.** Where the Covered Project is PHA-owned in accordance with section 8(o)(11) of the Act as amended by HOTMA (see Attachment A in Notice PIH 2017-21 for guidance on PHA-owned units), in addition to the standard roles described in 24 CFR 983.59(b) (i.e., determining reasonable rents and conducting HQS inspection) the independent entity must also determine the OCAF adjustment.

8. **Transfer of Assistance.** This section has been moved to Section 1.4.A.12.

9. **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 part 983 subpart D are waived. Instead, the PHA

[31] OCAFs are calculated and published each year by HUD in the Federal Register in order to calculate the contract rent for the project in the following fiscal year.

[32] If the Covered Project is deemed to be PHA-owned pursuant to HUD guidance, an independent entity will need to perform the rent-setting and inspection functions set out in 24 CFR § 983.59.

[33] 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.

and Project Owner typically will enter into a HAP Contract before construction begins. During the period of Work identified in the RCC, standard HAP Contract funding procedures will be used for occupied units. Units covered under the HAP Contract that are not occupied at any point during the period of Work identified in the RCC 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 RCC, 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 or Capital Fund subsidy prior to conversion. As a result, some units in the Covered Project may not be eligible for Rehab Assistance Payments.

The Project Owner will no longer be eligible to receive RAD Rehab Assistance Payments upon the earlier of completion of the Work or expiration of the time period identified in the RCC for completion of all Work, which date is specified in the HAP contract. After such date, all units under the HAP Contract will be eligible for payment only for occupied units or for vacancy payments, as applicable. MTW agencies may not alter this requirement.

10. **HQS Inspections.** Under current regulations at 24 CFR 983.103(b) a unit covered under a HAP Contract must be inspected for compliance with HQS before assistance can be paid on behalf of a household, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions. 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. When Work is occurring under RAD, HUD requires that all units undergo inspection for HQS no later than the date of completion of the Work as indicated in the RCC. To place the unit under HAP contract and commence making payments, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units to be added to the HAP Contract instead of conducting an initial inspection. During the period of the Work, HQS requirements apply. The PHA must enforce the Project Owner's obligations under this paragraph and conduct inspections when needed, for example in response to tenant complaints or other information coming to its attention, and the owner must correct any deficiencies in accordance with HQS requirements (i.e. no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA-approved extension for other defects, but no later than the date of the completion of the Work as indicated in the RCC). To effectuate the revised initial inspection requirement for RAD PBV units and non-RAD PBV units within a

Covered Project when such units are replacing public housing units at the time of conversion, HUD is waiving and establishing an alternative requirement to 24 CFR 983.103(b) and section 8(o)(8)(A) of the Act.

11. **Floating Units.** Upon the request of the owner to the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among 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 required UFAS accessible unit only to another UFAS accessible unit that has the same bedroom size and accessibility features. If assistance floats to a UFAS accessible unit as a reasonable accommodation for a household that had not previously been in a UFAS unit, the assistance may float back to a non-UFAS unit when there is no longer need for the reasonable accommodation provided the required number of UFAS units is maintained. 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 UFAS accessible units. 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 Rescreening of Tenants upon Conversion.** Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[34] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified in this Notice (e.g., rent

[34] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

phase-in provisions). 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, Section 8(o)(4) of the 1937 Act and 24 CFR § 982.201, concerning eligibility and targeting of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement. Further, so as to facilitate the right to return to the assisted property, HUD waives Section 8(o)(4) and 24 CFR § 982.201 to the extent necessary for this provision to apply to current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR Part 983 for non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units.

2. **Right to Return.** See Section 1.4.A.5.b. and the RAD Fair Housing, Civil Rights, and Relocation Notice regarding a resident's right to return. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

3. **Phase-in of Tenant Rent Increases.** If, purely as a result of conversion, the amount a tenant would pay for rent and utilities under the PBV program (the tenant's TTP) would increase the tenant's TTP by more than the greater of 10 percent or $25, 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 and must communicate such policy in writing to affected residents. 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.

   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 "Calculated PBV 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 (the first recertification following conversion), 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 Calculated PBV TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full Calculated PBV TTP [35]

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 PBV TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 25% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 33% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 5 AR and all subsequent recertifications – Full Calculated PBV TTP

Please Note: In either the three year phase-in or the five-year phase-in, once the Calculated PBV 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 must also implement a three or five-year phase-in for impacted residents, but may alter the terms above as long as it establishes a written policy setting forth the alternative terms. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

[35] For example, where a resident's most recently paid TTP is $100, but the Calculated PBV TTP is $200 and remains $200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of $100 to $133. At the second AR, the resdient's contribution would increase by 50% of the $66 differential to the standard TPP, increasing to $166. At the third AR, the resident's contribution would increase to $200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

4. **Family Self Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are currently FSS participants will continue to participate in the PHA's FSS program. The PHA may continue to use any FSS funds already awarded to serve those FSS participants who live in units converted by RAD. At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding. 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 subsequent Appropriation Acts), 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 until provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act are implemented, 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 (current, or as amended), 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.[36] Further, upon conversion to PBV, if the PHA no longer has a public housing program, funds already escrowed 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.[37]

   For information on FSS PIC reporting requirements for RAD conversions, see Notice PIH 2016-08 at http://portal.hud.gov/hudportal/documents/huddoc?id=pih2016-08.pdf.

[36] 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.

[37] Where the PHA maintains a public housing program, any forfeited funds that had been escrowed prior to conversion would revert to the PHA's Operating Reserves.

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. At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local Resident Association and this consequence of a RAD conversion may impact those entities. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

5. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of Covered Projects with assistance converted to PBV 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. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

6. **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 (HUD Form 52530-c), as appropriate. 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 that convert assistance under RAD and to non-RAD PBV units located at the Covered Project. 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 be :
        i. A reasonable period of time, but not to exceed 30 days:
            1. If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
            2. In the event of any drug-related or violent criminal activity or any felony conviction;
        ii. Not less than 14 days in the case of nonpayment of rent; and

iii. Not less than 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.

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

For the termination of assistance and several other PHA determinations, PBV program rules require the PHA 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:

i. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(v),[38] 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.
    1. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(**v**), 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).
    2. For any additional hearings required under RAD, the Project Owner will perform the hearing.
ii. There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or Contract Administrator.
iii. 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).
iv. The Project Owner provides opportunity for an informal hearing before an eviction.

[38] § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate program has been repealed.

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

To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

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 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 24 CFR § 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 that move into the property following conversion or tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion due to loss of employment) is covered by this waiver. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

8. **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 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. Jobs Plus target public housing projects must enroll public housing residents into the Jobs Plus rent incentive, JPEID, prior to conversion. Any resident of the Covered Project that had not enrolled prior to conversion is not eligible to enroll in JPEID but may utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion. To facilitate the uniform treatment of residents and units at a Covered

Project, any non-RAD PBV units located in the Covered Project may voluntarily utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion.

9. **Total Tenant Payment Exceeds Gross Rent.** Under normal PBV rules, the PHA may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments (24 CFR § 983.53(c)). Also, a PHA must remove a unit from the HAP 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 Gross Rent. (24 CFR § 983.258 and § 983.211).

   Pre-Conversion Residents. Since the rent limitation under this Section of the Notice may result in current residents having TTPs that exceed the Gross Rent, 24 CFR §983.53(c) does not apply in order to provide RAD PBV assistance to residents who were living in the Converting Project prior to conversion. As necessary to further implement the alternative requirements described below, HUD is waiving 24 CFR §983.258 and §983.211, as well as 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.

   HUD is establishing an alternative requirement that the unit for a family with a TTP that equals or exceeds Gross Rent must be placed on the PBV HAP Contract and the family shall be admitted to the PBV program. In such cases the resident is considered a participant under the PBV program and all the family obligations and protections under RAD and PBV apply to the resident.

   During any period when the family's TTP is equal to or above the Gross Rent, the zero-HAP family will pay an alternate rent to owner that is the lower of:

   a. the family's TTP less the Utility Allowance, subject to any required phase-in pursuant to Section 1.6.C.3 of this Notice; or
   b. the Zero-HAP Rent Cap, which is the lower of either:
      i. 110% of the applicable FMR less the Utility Allowance; or
      ii. In the event the units are subject to more restrictive rent setting requirements under the LIHTC or HOME programs, or other programs approved by HUD on a project-specific basis, the rent to owner set to comply with such requirements.

During any period that the family's TTP falls below the Gross Rent, the normal PBV requirements apply and the family would pay 30% of adjusted income, less utility allowance.

After a family has paid the Zero-HAP Rent Cap as set by this Section for a period of 180 days, the PHA shall remove the unit from the HAP Contract and the family's participation in the PBV program ends.[39] If the Covered Project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit back onto the HAP Contract and admit an eligible family. If the Covered Project is partially assisted and the family subsequently leaves the property, the unit must be reinstated back onto the HAP Contract unless the PHA previously substituted a different 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 the Notice.

Additionally, if the family continues to reside in the project after the family's unit was removed from the HAP Contract, the family may request to return to the PBV program if the family's income subsequently decreases to the extent that the family's TTP is less than the Zero-HAP Rent Cap set by this section and the family is otherwise eligible for PBV assistance. The PHA shall, at the earliest opportunity[4B-8], reinstate the family's unit back onto the HAP Contract to provide rental assistance to the family. All PBV requirements with respect to the unit, such as compliance with HQS, apply while the unit is under the HAP Contract or added back to the HAP Contract.

New Admission Families. Unless a PHA requests and receives the waiver described below, any new admission to the Covered Project must meet the eligibility

[39] 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 (Gross Rent = $550). The FMR for the unit size in the area in which the project is located is $800. Following conversion, the family is responsible for paying $550 in tenant rent. If the resident's income rises or is subject to a rent increase phase-in and all other conditions remain the same, the family would pay TTP until the tenant rent reached the Zero-HAP Rent Cap of $830 ($880, which is 110% of the $800 FMR, minus the $50 utility allowance), at which point the family would continue paying $830, and unless the family's income and TTP subsequently decreases, the unit would be removed from the contract after 180 days. Families paying less than TTP because of the phased in Tenant Rent Increase alternative requirement are not paying the Zero-HAP Rent Cap and are not subject to this 180-day requirement. However, if the family's Calculated PBV TTP under section 1.6.C.3 is more than the Gross Rent, the family is a zero-HAP family and the applicability of the phased in Tenant Rent increase would end when the amount the family would pay under that alternative requirement meets or exceeds the Zero-HAP Rent Cap. At that point in time the family would pay the Zero-HAP Rent Cap and would be subject to all zero-HAP family requirements of this section, including the 180-day requirement.

[4B-8] If the project was partially assisted and the PHA previously substituted a different unit on the HAP Contract, the PHA shall substitute the family's unit for a vacant unit on the HAP Contract if there is a vacant unit at the time of the request, or by doing so as soon as a unit on the HAP Contract becomes vacant if there are no vacant units on the HAP Contract at the time of the family request.

requirements at 24 CFR § 982.201 and require a subsidy payment at admission to the PBV program, which means the family's TTP may not equal or exceed the Gross Rent for the unit at that time. Furthermore, a PHA must remove a new admission family's unit from the PBV HAP Contract when no assistance has been paid for 180 days because a new admission family's TTP subsequently increased to equal or exceed the Gross Rent. However, HUD is imposing an alternative requirement in such cases. If the project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit on the HAP Contract and admit an eligible family. 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 the Notice.

In circumstances where low RAD PBV rents may prohibit a significant number of otherwise eligible families on the waiting list from being admitted to the project because they do not require subsidy, and which could consequently create an undue concentration of poverty at the project compared to non-RAD PBV projects, a PHA may request a waiver of 24 CFR §§983.53(c), 983.259, 983.211, and 983.301 from HUD for the Covered Project. The waiver will apply the alternative requirements applicable to the pre-conversion residents in this Section to new admission families.

The PHA may request the waiver during the RAD conversion process or may subsequently request the waiver any time after the effective date of the HAP Contract. In order for the waiver to be approved, the PHA must demonstrate that based on the RAD rent calculated in accordance with Attachment 1C, the monthly two-bedroom RAD Gross Rent is less than: 30% of the monthly income of a family of four at the midpoint between the Very Low Income (VLI) HUD Income Limit and Extremely Low Income (ELI) HUD Income Limit for the area in which the Covered Project is located.

For waivers submitted during the conversion process, the Office of Recapitalization may grant the waiver after review of the Financing Plan and confirmation that the RAD rents meet the waiver rent threshold described above.[4B-9] The Office of Recapitalization shall document the waiver by adding an additional provision to the RCC before closing. For waivers submitted after the effective date of the HAP Contract, the waiver is submitted through the normal waiver process outlined in

[4B-9] An example of the waiver rent threshold calculation is as follows. Assume the applicable VLI limit is $46,850 and the ELI limit is $28,100. The midpoint income is $37,475 ($46,850 + $28,100 = $74,950; $74,950/2 = $37,475). To calculate the affordable monthly rent, the midpoint income is divided by 12 and multiplied by 0.30 ($37,475/12 = $3,123; $3,123*0.30 = $937). If the RAD Rent is less than $937, the Covered Project is eligible for the waiver.

Notice PIH 2018-16 (or any successor notice). In both cases, the approved waiver will be for the initial term of the PBV HAP Contract.

If the waiver is approved, the new admission families covered under the waiver are participants under the PBV program, all the family obligations and protections under RAD and PBV apply to the family, the RAD PBV families shall be subject to the same alternative requirements applicable to the pre-conversion residents under this Section, and the unit is subject to all PBV program requirements, as modified by this Notice.

Further, Covered Projects that receive the waiver shall be subject to an alternative income targeting requirement that at least 75% of new admissions to the PBV units (both RAD and non-RAD PBV units) in the Covered Project in any PHA fiscal year are ELI families.[4B-10] If there are less than four new admissions to the Covered Project in a PHA fiscal year, the income targeting is determined by combining the new admissions for that fiscal year with the new admissions for the subsequent fiscal year (or years) until the combined total of new admissions equals or exceeds four for those consecutive fiscal years.[4B-11]

10. **Under-Occupied Unit.** If a family is in an under-occupied unit under 24 CFR § 983.260 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 § 983.260 is waived for current residents remaining or returning to the Covered Project. MTW agencies may not modify this requirement. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

D. PBV: Other Miscellaneous Provisions

[4B-10] This alternative requirement for the Covered Project is in addition to the PHA's HCV/PBV program income targeting requirements at 24 CFR 982.201(b)(2). Admissions to the Covered Project continue to be taken into account when determining income targeting in accordance with 24 CFR 982.201(b)(2).

[4B-11] For example, assume in fiscal year in which the waiver was granted the Covered Project had one new admission and in following fiscal year had three new admissions. Compliance with the Covered Project income targeting requirement would be determined based on the combined total of the 4 new admissions over the two fiscal years (3 of the 4 new admissions to PBV units the Covered Project must have been ELI families).

1. **Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs and the Project Owner must cooperate with 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. **Ongoing PHA Board Review of Operating Budget.** The Owner must submit to the administering PHA's Board the operating budget for the Covered Project annually. The PHA's Board must confirm that the Project Owner is making deposits into the Reserve for Replacement account in accordance with the RCC as well as assess the financial health of the Covered Project.[40]

3. **Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** These sections have 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 shall 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:

    a. Transferring an existing site-based waiting list to a new site-based waiting list.
    b. Transferring an existing site-based waiting list to a PBV program-wide or HCV program-wide waiting list.
    c. Transferring an existing community-wide public housing waiting list to a PBV program-wide or HCV program-wide waiting list, an option particularly relevant for PHAs converting their entire portfolio under RAD.
    d. Informing applicants on a community-wide public housing waiting list how to transfer their application to one or more newly created site-based waiting lists.

    For any applicants on the public housing waiting list that are likely to be ineligible for admission to a Covered Project converting to PBV because the household's TTP is

[40] 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 monitoring and evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

likely to exceed the RAD gross rent, the PHA shall consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA's remaining public housing waiting list(s) or to another voucher waiting list, in addition to transferring such household to the waiting list for the Covered Project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait list(s) to which their application was transferred in accordance with the date and time of their application to the original waiting list.

If the PHA is transferring assistance to another neighborhood and, as a result of the transfer of the waiting list, the applicant would only be eligible for a unit in a location which is materially different from the location to which the applicant applied, the PHA must notify applicants on the waiting list of the transfer of assistance, and on how they can apply for residency at other sites.

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 Covered 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. 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).[41]

When using a site-based waiting list, PHAs should consider waiting list and transfer policies that expand opportunities for tenants seeking an emergency transfer under, or

[41] 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.

consistent with, the PHA's Emergency Transfer Plan. This includes allowing for easier moves between assisted properties.

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 shall administer its waiting list for the Covered Project in accordance with 24 CFR § 983.251(c). To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

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

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. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of secured debt during the HAP Contract term to ensure the financing is consistent with long-term preservation of the Covered Project. With respect to any financing contemplated at the time of conversion (including any permanent financing which is a conversion or take-out of construction financing), such consent may be evidenced through the RCC but HUD review of liens must be performed prior to execution.

7. **Administrative Fees for Public Housing Conversions During the Year of Conversion**. For the remainder of the Calendar Year in which the HAP Contract becomes effective (i.e., the "year of conversion"), 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 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 HAP 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.

   PHAs operating an HCV program typically receive 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 Work Responsibility Act of 1998" and 24 CFR § 982.152(b). During the year of conversion mentioned in the preceding paragraph, these provisions are waived. PHAs will not receive Section 8 administrative fees for PBV RAD units during the year of conversion.

After the year of conversion, 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.

8. **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 the following 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) of the Act and 24 CFR § 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.

9. **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 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.

10. **Initial Certifications and Tenant Rent Calculations**. The Contract Administrator uses the family's public housing tenant rent (reflected on line 10f of the family's most recent HUD Form 50058) at the date of the conversion to calculate the PBV HAP and tenant rent until the effective date of the earlier of the family's first regular or interim recertification following the date of conversion. At the earlier of the family's first regular or interim recertification, the Contract Administrator will use the family's TTP based on the recertification and the HCV utility allowance (or the PBV site-specific utility allowance, if applicable) to determine the PBV HAP and tenant rent. This means that the family pays the same tenant rent as the family was paying under the public housing program until the earlier of first regular or interim reexamination following conversion, at which point the normally applicable PBV calculation for the tenant rent becomes effective. (Under the PBV program, the monthly HAP is the rent to owner minus the tenant rent, and the tenant rent is the family TTP minus the utility allowance.) To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same property as the Covered Project shall be subject to the terms of this provision. To effectuate this provision, HUD is waiving 24 CFR 5.601 and 983.3(c)(6)(iii).

1.7 Special Provisions Affecting Conversions to PBRA

Under the Demonstration, HUD has the authority to waive statutory and regulatory provisions governing the PBRA program, 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 as modified for RAD and as set forth in Appendix I, and applicable existing and

subsequent Office of Housing guidance[42] 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 Contract 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 or Contract Administrator 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 of such renewal. The renewal contract(s) shall be for the prescribed number and mix of units but may, upon request of the Project Owner and subject to HUD approval, be on one or more transfer of assistance sites in lieu of the project site subject to the expiring contract. 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.A.11.

4. **RAD Use Agreement.** This section has been moved to Section 1.4.A.13

[42] 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.

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. All RAD applications, including applications for Portfolio Awards, will have initial contract rents based on their "RAD rent base year," described in Attachment 1C. PHAs have additional discretion in establishing initial contract rents using the following flexibility:

    a. **MTW Fungibility**. MTW agencies may use their MTW funds to set the initial contract rents higher than the normally applicable contract rent cap that is based on the project's public housing subsidy. In addition to the rent cap described below, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. Any use of MTW funding flexibilities 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 Notice PIH 2013-02, or successor Notice. If an MTW agency converts a project to PBRA and uses this flexibility to increase their initial contract rents, HUD will reduce the agency's public housing subsidy by the additional amount (in addition to any funding modifications that would occur as a result of the conversion absent the rent increase) required to fund the PBRA HAP (see Attachment 1C). HUD will limit the number of projects an MTW agency may convert to PBRA if the PHA does not have sufficient public housing subsidy to convert into PBRA assistance.

    b. **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. 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. This use, which HUD refers to as "bundled" rents, can occur under the following scenarios:

        i. When a PHA is converting two or more properties within its public housing portfolio. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or

simultaneous with the effective date of the recipient HAP Contract; and

ii. When PHAs have formed a Partnership in accordance with Section 1.5.M and are bundling rents between two or more converting projects. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract;

Please note that per Section 1.13.B.5, regardless of the initial contract rents for the RAD HAP Contract, including as modified by this provision, in the year of conversion the Covered Project will only be assisted by the Operating and Capital Funds obligated to the PHA for that project.

c. **Future Replacement Housing Factor (RHF) or Demolition Disposition Transition Funding (DDTF).**[43] PHAs that are scheduled to receive ongoing RHF or DDTF funding (funds that have not been awarded and, with HUD permission, funds that have been awarded but not yet disbursed) may choose to forgo any ongoing RHF or DDTF grants for the purpose of offsetting an increase to the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may offset increased RAD rent.

d. **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. The Utility Allowance shall be recalculated based on actual consumption within a reasonable period following completion of the work.

e. **New Construction or Substantial Rehab**. For any transaction that is proposed in its Financing Plan to undertake new construction or substantial rehabilitation in a designated Opportunity Zone, HUD may provide up to a $100 per unit per month (PUM) increase to the RAD rents, subject to the availability of funds and such conditions as HUD may

[43] 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.

impose. For purposes of this subparagraph, new construction or substantial rehabilitation is defined as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Costs as published by HUD for a given market area. Funds for this purpose shall be allocated on a first-come, first served basis, subject to the availability of funds, based on the time of the request (communicated through the submission of a complete and acceptable Financing Plan), where the PHA demonstrates it is necessary for the viability of the transaction.[44]

f. **Faircloth-to-RAD Initial Contract Rents.** The initial contract rents for the Faircloth-to-RAD units will be based on the project's reasonably anticipated subsidy under the public housing program in accordance with a "RAD rent base year" described in Attachment 1C, as set forth in the NARR. Additionally, PHAs may use any other applicable flexibility as set forth in this Section 1.7.A.5 to set the initial contract rents higher than the contract rent that is set forth in the NARR.

HUD will evaluate the impact of the rent setting authorities set forth in Section 1.6.B.5.f based on data available as of September 30, 2024. HUD will not accept applications for NARRs for additional units using the rent setting authorities set forth in Section 1.6.B.5.f from September 30, 2024, until the analysis is complete and HUD determines whether to resume accepting applications for NARRs for additional units (communicated on www.hud.gov/rad) or whether to issue revised policy guidance.

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,

[44] HUD will aggregate for this purpose a limited amount of funds associated with units excluded from conversions through a de minimis reduction pursuant to Section 1.4.A.4 ("Substantial Conversion of Assistance").

establishes that rents are below comparable market rents.[45] 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 only by HUD's OCAF at each Anniversary of the HAP Contract, subject to (a) the availability of appropriations for each year of the contract term, and (b) the Maximum Rent, as defined below.[46]

   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 during such period.

7. **Distributions.** Regardless of type of financing, Covered 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. **RAD Rehab Assistance Payments**. HUD and the Project Owner typically will enter into a HAP Contract before construction begins. During the period of Work identified in the RCC, standard HAP Contract administration procedures will be used for occupied units. Except where the Section 8 Pass-Through[47] is used, units covered under the HAP Contract that are not occupied at any point during the period of Work

[45] The Rent Comparability Study must be prepared consistent with Chapter Nine of HUD's Section 8 Renewal Guide, including any changes to Chapter Nine that HUD publishes while the HAP Contract is in effect. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8.

[46] OCAFs are calculated and published each year by HUD in the Federal Register and are applied to the contract rent in order to calculate the contract rent for the project in the following fiscal year. For public housing conversions, the OCAF excludes the portion of the contract rent that is committed to debt service payments .

[47] 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.

identified in the RCC 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 RCC, 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 or Capital Fund subsidy prior to conversion. As a result, some units in the Covered Project may not be eligible for Rehab Assistance Payments. 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.

The Project Owner will no longer be eligible to receive RAD Rehab Assistance Payments upon the earlier of completion of the Work or expiration of the time period identified in the RCC for completion of all Work, which date is specified in the HAP contract. After such date, all units under the HAP Contract will be eligible for payment only for occupied units or for vacancy payments, as applicable.

9. **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.[48]

10. **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; from the time of the initial execution of the HAP Contract, the property must maintain the same number and type of RAD units. 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. Assistance may float from a required UFAS unit only to another UFAS unit that has the same

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

bedroom size and accessibility features. If assistance floats to a UFAS unit as a reasonable accommodation for a household that had not previously been in a UFAS unit, the assistance may float back to a non-Section 504 unit when there is no longer need for the reasonable accommodation provided the required number of UFAS units is maintained.

11. **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. PBRA Resident Rights and Participation.

1. **No Rescreening of Tenants upon Conversion.** Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[49] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBRA requirements regarding continued occupancy unless explicitly modified in this Notice (e.g., rent phase-in provisions). 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 for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Further, so as to facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the

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

applicable program, specifically 24 CFR § 983 for non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units.[50]

2. **Right to Return.** See section 1.4.A.5.b. and the RAD Fair Housing, Civil Rights, and Relocation Notice regarding a resident's right to return.

3. **Phase-in of Tenant Rent Increases.** If, purely as a result of conversion, the amount a tenant would pay for rent and utilities under the PBRA program (the tenant's TTP) would increase the tenant's TTP by more than the greater of 10 percent or $25, the rent increase will be phased in over 3 or 5 years. Eligibility for the phase-in is to be determined at the Initial Certification which occurs at the time the household is converted to PBRA. A phase-in must not be applied after the household's Initial Certification. To implement the phase-in, 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" (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 and must communicate such policy in writing to affected residents. 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.

   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 "Calculated Multifamily TTP" refers to the TTP calculated in accordance with regulations at 24 CFR § 5.628 (not capped at Gross Rent) 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, 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 Calculated Multifamily TTP

[50] For non-RAD PBV households, applicable program requirements includes the requirement that any admission to the 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.

- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR – 50% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and all subsequent recertifications – Year 3 AR and any IR in Year 3: Full Calculated Multifamily TTP[51]

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 TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 25% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 33% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 50% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 5 AR and all subsequent recertifications – Full Calculated Multifamily TTP

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

4. **Family Self-Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are currently FSS participants will continue to participate in the PHA's FSS program once their housing is converted under RAD. Through waiver in this Notice, FSS grant funds may be used to continue to serve such FSS participants. All Project Owners will be required to administer the FSS program or partner with another agency to administer the FSS program in accordance with the requirements of 24 CFR part 984, the participants' contracts of participation, and current and future guidance published by HUD for all FSS participants enrolled in the FSS program prior to RAD conversion. All Project Owners will be required to provide both service coordination

[51] For example, where a resident's most recently paid TTP is $100, but the Calculated PBV TTP is $200 and remains $200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of $100 to $133. At the second AR, the resident's contribution would increase by 50% of the $66 differential to the standard TPP, increasing to $166. At the third AR, the resident's contribution would increase to $200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

and payments to escrow until the end of the Contract of Participation for each resident. To ensure that HAP payments are processed correctly, and until TRACS is modified, the Project Owner must notify MF_FSS@hud.gov that there are current FSS participants residing in the Covered Project and adhere to the escrow and reporting requirements in Notice H 2016-08. The Project Owner may enter into a Cooperative Agreement with the PHA (the grantee), allowing the PHA to continue to provide service coordination to RAD-affected PBRA participants until all have completed their Contracts according to 24 CFR § 984.303. The Project Owner must assume responsibility for the administrative duties associated with FSS such as calculating and crediting escrow and reporting. Ultimately, the new Project Owner is responsible for serving the RAD-affected FSS participants until the end of their CoPs. The owner is not required to enroll new participants, but may choose to run its own voluntary FSS program in accordance with Notice H 2016-08.

At the completion of the FSS grant, grantees should follow the normal closeout procedures outlined in the grant agreement. Future FSS NOFAs will identify eligible FSS participants. Until HUD implements provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act that expand eligibility for FSS to PBRA properties, only a PHA that continues to run an FSS program that serves public housing and/or HCV/PBV FSS participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding and may use that funding to serve public housing, HCV and/or RAD-affected PBRA FSS participants. However, if the PHA no longer has a public housing or HCV program, the PHA is not eligible to apply for FSS funding.

Upon conversion, if the PHA has closed out its public housing program in accordance with Notice PIH 2019-13, funds escrowed under the public housing program 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.

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. At the completion of the ROSS-SC grant, grantees should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be non-profits or local Resident Associations and this consequence of a RAD conversion may impact those entities.

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 submitted to HUD for review prior to Closing. See Attachment 1E for a sample Addendum to the House Rules.

    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 be:

            1. 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;
            2. Not less than 14 days in the case of nonpayment of rent; and
            3. Not less than 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. *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.** Pursuant to requirements in the RAD Statute, HUD is establishing additional resident procedural rights to comply with 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:

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 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 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
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 shall be bound by decisions from these hearings, except if (x) the hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing, or (y) the 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.

c. **Family Right to Move**. Pursuant to Section 1.7.C.5 and unless the Covered Project received a specific good cause exemption to such provision, families have a choice-mobility right which must be stated in the House Rules as shown in sample in Attachment 1E.

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 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. Jobs Plus target public housing projects must enroll public housing residents into the Jobs Plus rent incentive, JPEID, prior to conversion. Any resident of the Covered Project that had not enrolled prior to conversion is not eligible to enroll in JPEID but may utilize Jobs Plus services offered at the target project that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion. 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 normal PBRA rules, any new admission to the PBRA program must require a subsidy payment at admission to the program, which means their TTP may not equal or exceed the Gross Rent for the unit at that time (Section 3-6 F.4 of HUD Handbook 4350.3, REV-1). Further, a resident's eligibility ends and a Project Owner must process a termination of assistance when the family's TTP has risen to a level that is equal to or greater than the Gross Rent and increase the tenant rent to the contract rent (assuming that the tenant does not receive the benefit of any other type of subsidy) (24 CFR 880.603(c)(3) and Section 8-5 C and 8-6 A.1 of HUD Handbook 4350.3, REV-1).

   Since the rent limitation under this Section of the Notice may prevent the admission to a RAD PBRA Unit of existing residents or new admissions otherwise eligible for PBRA assistance, HUD is establishing an alternative requirement and requiring that families with a TTP that equals or exceeds Gross Rent who would otherwise qualify for assistance in the unit, shall be admitted and allowed to occupy the unit. HUD is also requiring that the units occupied by such families shall be placed on and/or remain under the HAP Contract when TTP equals or exceeds the Gross Rent.

For residents living in the Converting Project prior to conversion and for all new admissions to the Covered Project during the initial term of the contract, HUD is establishing the alternative requirement that, during any period when the family's TTP is equal to or above the Gross Rent, the zero-HAP family will pay an alternate rent to owner that is the lower of:

a. the family's TTP less the Utility Allowance, subject to any required phase-in pursuant to Section 1.6.C.3 of this Notice; or
b. the Zero-HAP Rent Cap, which is the lower of either:
    i. The applicable FMR less the Utility Allowance; or
    ii. In the event the units are subject to more restrictive rent setting requirements under another federal, state, or local program (e.g. LIHTC or HOME), the rent to owner set to comply with such requirements.

As necessary to implement this alternative requirement, HUD is waiving 24 CFR 880.603(c)(3) and sections 3-6 F.4, 8-5 C., and 8-6 A.1. of HUD Handbook 4350.3, REV-1. 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. Additionally, 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 part 5 in order to determine the Zero-HAP Rent Cap. When TTP equals or exceeds Gross Rent, the Zero-HAP Rent Cap collected by the Project Owner is considered project funds and must be used for project purposes. Subsidy may subsequently be reinstated if the tenant becomes eligible for subsidy.

The Project Owner is not required to process these individuals through Multifamily Housing's Tenant Rental Assistance Certification System (TRACS) but may be required to do so in the future when a future revision of the TRACS can accept such certifications. All normal actions for the contract rent in TRACS 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 subsidy.

11. **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 may remain in the 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 within a 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 and the Project Owner must cooperate with 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).** These sections have 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:

    a. Transferring an existing site-based waiting list to a new site-based waiting list.
    b. Transferring an existing site-based waiting list to a PBRA program-wide waiting list.
    c. Transferring an existing community-wide public housing waiting list to a PBRA program-wide waiting list, an option particularly relevant for PHAs converting their entire portfolio under RAD.
    d. Informing applicants on a community-wide public housing waiting list how to transfer their application to one or more newly created site-based waiting lists.

    To the extent the wait list relies on the date and time of application, the applicants shall have priority on the wait list(s) to which their application was transferred in accordance with the date and time of their application to the original waiting list.

If the PHA is transferring assistance to another neighborhood and, as a result of the transfer of the waiting list, the applicant would only be eligible for a unit in a location which is materially different from the location to which the applicant applied, the PHA must notify applicants on the waiting list of the transfer of assistance, and on how they can apply for residency at other sites.

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 Covered 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. 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).[52]

When using a site-based waiting list, PHAs should consider waiting list and transfer policies that expand opportunities for tenants seeking an emergency transfer under, or consistent with, the PHA's Emergency Transfer Plan. This allows for easier moves between assisted properties. Any such preference must be approved by HUD in accordance with Notice H 2013-21, prior to implementation.

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 Project Owner shall administer its waiting list for the Covered Project in accordance with 24 CFR § 880.603.

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

[52] 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.

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. Unless provided an exemption as described below, 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:[53]

    a. *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 effective date of the HAP or (b) 24 months after the move-in date.
    b. *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.
    c. *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 Project Owner and voucher agency may agree to 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 Project Owner and voucher agency could limit the number of families exercising Choice-Mobility to 15 in any year, but not to less than 15.) While a Project Owner and voucher agency are 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.

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

The voucher agency must maintain a written agreement with the owner describing how the Choice-Mobility option will be administered in accordance with these requirements and the process by which households may request a voucher. For example, the written agreement must specify whether the owner will receive requests from families or refer families to the PHA.

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 voucher agencies 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.[54]
- 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:
  - 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 with non special-purpose vouchers; 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.[55] 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 secured debt during the HAP Contract term to ensure the financing is consistent with long-term preservation of the Covered Project. With respect to any financing contemplated at the time of conversion (including any permanent financing which is a conversion or take-out of construction financing), such consent may be

[54] The sponsoring agency must commit to the full term of the initial HAP Contract, 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. 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.

[55] 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.

evidenced through the RCC, but HUD review of liens must be performed prior to execution.

7. **Submission of Year-End Financial Statements**. Projects converting assistance to PBRA must comply with 24 CFR part 5, subpart H, as amended, revised, or modified by HUD.[56]

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 projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the Act. 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 Act and 24 CFR § 5.653(d)(2) to require Project Owners of projects converting to PBRA to adhere to the requirements of section 16(c)(1) of the Act and 24 CFR § 5.653(d)(1).

9. **Owner-Adopted Preferences.** Covered Projects are not permitted to establish or, where previously approved under public housing rules, maintain a designation (i.e., a set-aside of units) for elderly families or for disabled families; unlike the statute governing public housing, the Section 8 statute does not authorize designations. However, owners of Covered Projects may adopt a selection preference (e.g., for elderly individuals and/or elderly families) which permits those applicants to be selected from the waiting list and housed before other eligible families. 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), must obtain HUD approval from the prospective Multifamily Housing Account Executive (field office) prior to execution of the HAP contract to do so in accordance with Notice H 2013-21 (July 25, 2013). This approval must be secured prior to conversion if the owner intends to implement the preference for new admissions immediately following conversion.

[56] 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).

10. Initial Certifications and Tenant Rent Calculations. Owners are to use the resident's pre-existing public housing 50058 data and maintain the tenant rent and utility allowance until the resident's next annual or interim certification. To effectuate this provision, HUD is waiving 24 CFR 5.601.

1.8 Resident Engagement

A. Before Application. Prior to submitting an application to participate in the Demonstration, the PHA must:

1. Provide written notification of the PHA's intent to pursue a conversion to duly elected resident organizations (in accordance with 24 CFR Part 964) representing the buildings or developments proposed for conversion. Additionally, HUD encourages PHAs to partner with resident leaders to help communicate information about the RAD conversion to the broader resident population through peer-to-peer engagement;

2. Provide written notification in the form of a RAD Information Notice (RIN) to residents of projects proposed for conversion to inform the residents of the PHA's intent to pursue a conversion, their rights in connection with a proposed conversion (whether or not any relocation is anticipated), the nature of current conversion plans, including at a minimum, a description of the plans that will be discussed at the resident meetings, and a means for contacting HUD.[4B-4] RINs must be delivered directly to each unit or by U.S. mail to each head of household at the Converting Project, must be posted in a conspicuous place within the Converting Project, and must remain available at the management office during normal business hours for inspection and copying by tenants and by the public;

3. In certain instances, such as when the PHA knows that a project will involve acquisition, rehabilitation or demolition, or if relocation is anticipated, another notice known as a General Information Notice (GIN) may also need to be issued simultaneously with the RIN. A GIN is a notice required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and its implementing regulations of 49 CFR part 24. The timing, content and delivery methods for GINs remain unchanged by this Notice. See the RAD Fair Housing, Civil Rights, and Relocation Notice for additional information.

4. No less than one week following issuance of the RIN and within the six months prior to submission of the application, conduct at least two meetings with residents of projects proposed for conversion to discuss conversion plans and provide opportunities for comment. Discussion at both meetings must include a

[4B-4] See the RAD Fair Housing, Civil Rights, and Relocation Notice for the required full contents of the RIN. Sample RIN provided at www.radresourcedesk.net

description of resident rights described in Attachment 1B.1 and a description of the PHA's preliminary intentions, to the extent formulated, with respect to: a) whether the conversion will include a transfer of assistance and potential locations to which the assistance would be transferred, b) plans to partner with an entity other than an affiliate or instrumentality of the PHA if such partner will have a general partner or managing member ownership interest in the proposed Project Owner, c) 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, d) de minimis reduction of units which will have been vacant for more than 24 months at the time of RAD Application, e) the scope of work and potential relocation scenarios, f) an overview and projected timeline of the the conversion process, and g) primary differences for residents between public housing and the Section 8 platform (PBV or PBRA) of the conversion;[4B-5] and

5. Submit the following information with the RAD Application[60]:
   a. Certification that the RIN and notice of the tenant meetings have been provided to all residents in accordance with this Notice;
   b. A summary of meeting attendees and participation by residents, PHA staff, and other attendees, e.g. a sign-in sheet or list of registrants or participants for calls or online meetings;
   c. A description of the PHA's efforts to promote tenant participation in meetings, including the dates and times of meetings to accommodate a variety of schedules, efforts to accommodate residents with disabilities or Limited English Proficiency in accordance with subparagraph H below, the format of meetings (in-person, electronic, or both), location of in-person meetings, efforts to overcome technology barriers for virtual meetings, and other relevant efforts as the PHA determines appropriate (e.g., offering childcare or refreshments);
   d. Meeting agenda(s) and copies of any handouts or presentation materials;
   e. A summary of questions and comments asked in the meeting or submitted by residents to the PHA and responses provided to the residents by the PHA to those questions and comments;
   f. Identification of how residents who were unable to attend meetings are able to access materials or submit questions or comments;
   g. Identification of materials that were shared with residents to communicate resident protections, which can include but are not limited to the following materials: HUD resident rights brochure; HUD resident fact sheets; HUD

[4B-5] Resident Education materials on a variety of topics, including the conversion process, the differences between PBV and PBRA, relocation and other topics are available at https://www.hud.gov/RAD/residents/PublicHousingResidents.

RAD video; or other resident education materials created by HUD or the PHA; and

h. Where there is a duly elected resident organization, contact information for at least one elected leader of such organization.

B. <u>Before Concept Call.</u> After a PHA is selected to participate in RAD (i.e., after receipt of the CHAP) but prior to requesting a Concept Call, the PHA must have at least two additional meetings with residents to discuss updated conversion plans covering, at a minimum, the topics listed above, and to clearly describe and solicit feedback on proposed or needed property improvements, management changes, services, or other items as appropriate. Meetings should be spaced to provide meaningful updates to residents on the progress of the conversion, to offer opportunities for residents to provide input, and to permit residents to raise questions and concerns. PHAs are encouraged to meet with residents each calendar quarter and to provide access to written materials describing the conversion prior to each meeting. The PHA shall submit in the Financing Plan a summary of questions and comments received in connection with the required resident meetings and the responses provided to the residents by the PHA. Additional resident meetings may be required by HUD after the Concept Call if HUD determines that they are needed, for example, to provide residents with up-to-date information regarding the conversion.

C. <u>Before Closing.</u> After issuance of the RCC and prior to closing, the PHA must notify residents in writing that conversion of the project has been approved and hold an additional resident meeting following such notification.[4B-6] In the meeting and in the written notice, the PHA must address, as appropriate, the anticipated timing of the conversion, the anticipated duration of the Work, the revised terms of the lease and house rules, procedures for execution of the new lease, any anticipated relocation, and opportunities and procedures for the exercise of the choice-mobility option. PHAs must also provide access to or copies of the new lease form and any applicable house rules. HUD will require evidence of such notice and meeting(s) prior to closing.

Households in the affected project(s) who do not want to transition to the Section 8 program may be offered, if available, the opportunity to move to other public housing owned by the PHA.

D. <u>Additional RAD Meetings.</u> The required meetings must discuss any substantial change to the conversion plans relative to what was presented in the previous resident meetings. Additional meetings with residents are required if one of the required meetings does not occur within a reasonable time (approximately three months) following a substantial change

to the conversion plan. A substantial change to the conversion plans includes, but is not limited to:

- Introduction or abandonment of a transfer of assistance or a material change in the projected location to which the assistance would be transferred;
- Plans to partner with an entity other than an affiliate or instrumentality of the PHA if such partner will have a general partner or managing member ownership interest in the proposed Project Owner;
- 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;
- De minimis reduction of units which had been vacant for more than 24 months at the time of RAD Application;
- A substantial change in the proposed scope of the Work or relocation plans;
- A material change in utility allowances; or
- Other scenarios which HUD may prescribe.

E. Significant Amendment Process. The requirements for resident notifications and meetings for the RAD program are separate from, and complementary to, the resident notification and consultation requirements under the significant amendment process (24 CFR part 903).

F. Other Requirements. A PHA must comply with all applicable relocation requirements (see Section 1.4.A.5) and all applicable resident consultation and notification requirements. Refer to the RAD Fair Housing, Civil Rights, and Relocation Notice for resident consultation requirements regarding relocation.

G. Meeting Participation. PHAs must provide adequate notice of meetings, should consider practices to reduce barriers to resident participation in meetings, and should conduct meetings in a place and time to foster participation. PHAs should consider the timing of resident meetings (e.g., times of day, days of the week including weekends) to encourage participation by residents with a variety of preferences and schedules. PHAs must make meeting notifications and meeting materials available in an accessible format (e.g., website, hard copies in the management office). Resident meetings can be offered in various formats including electronically (e.g., Zoom), in person, and/or in a hybrid meeting format. If a resident meeting is offered virtually, PHAs should consider residents' computer and internet access and undertake reasonable measures to address technological barriers. Relevant parties from the PHA or the Project Owner should be available to respond to questions or comments from residents. Additionally, PHAs may not restrict attendance at the meetings unless necessary for the effective conduct of the meeting, for example, restricting attendance to accommodate size constraints of the venue of the meeting.

H. Accessibility Requirements. 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 may include, but is not limited to, providing written materials in appropriate alternative formats (e.g., Braille, large type, accessible email or websites), 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).

I. **Resident Engagement Requirements in a Faircloth-to-RAD conversion.** In addition to requirements for a PHA to include a Faircloth-to-RAD conversion in its Five-Year Plan, Annual Plan, or MTW Plan, HUD is requiring the following engagement with residents of an impacted property. When a PHA is developing new public housing units under Faircloth-to-RAD, this Section 1.8.I shall apply in lieu of Sections 1.8.A through 1.8.D.

1. If the property is occupied at the time the PHA requests a Notice of Anticipated RAD Rents, Sections 1.8.A through 1.8.D shall apply with the following modifications. The PHA must have complied with Section 1.8.A prior to submitting the request for a Notice of Anticipated RAD Rents. References to the Concept Call in Section 1.8.B shall be deemed to be references to the submission of the public housing acquisition, mixed finance development, or other development proposal pursuant to the applicable provisions of 24 CFR part 905. References to the RCC in Section 1.8.C shall be deemed to be references to HUD

approval of such proposal and references to closing in Section 1.8.C shall be deemed to be the completion of such approved acquisition or development.

2. If tenants are admitted to the property in accordance with admissions requirements after issuance of an RCC and prior to the Closing of the RAD conversion, the PHA shall, prior to the execution of the lease:
   i. Provide written notification in the form of a RAD Information Notice (RIN) to residents of projects proposed for conversion to inform the residents of the PHA's intent to pursue a conversion and of their rights in connection with a proposed conversion[4B-7];
   ii. Provide a written explanation of the leasing and occupancy changes that will occur soon after move-in resulting from the RAD conversion to Section 8; and
   iii. Meet with each resident household to discuss the conversion, explain the written materials referenced in subparagraph i and ii, above, and provide the residents an opportunity to ask questions. The resident meeting can be conducted on an individual household basis.

J. HUD Participation. At HUD's request, the PHA must provide an opportunity for a representative from HUD to attend resident meetings either in-person or virtually.

K. Contacting HUD. Should residents and/or their advocates have concerns, require clarification on RAD program guidelines, including those focused on resident engagement and protections, or need additional support which cannot be met by the PHA, they may contact HUD at rad@hud.gov.

1.9 Application Requirements

Under the Demonstration, applicants may apply to convert a single project[57], a phase of a multi-phase rehabilitation or redevelopment, and/or a PHA-defined portfolio of projects (which could include subsequent phases in a multi-phase effort and completely independent projects). The requirements for each type of application are listed below:

A. General Requirements. All applicants must complete the RAD Application, which HUD will make available on the RAD website (www.hud.gov/rad), along with all other required

[57] In limited cases and with compelling justification, HUD may permit more than one project to be combined as a single transaction in order to facilitate financing as long as the PHA can ameliorate the risk of cross-default and HUD determines that it could maintain individual oversight of each project.

submittals. The RAD Application will include certain pre-populated project data and will require the applicant to input summary information regarding the PHA's tentative plans.

PHAs apply by Project. A Project may consist of an entire Asset Management Project (AMP), a part of an AMP, multiple AMPs, or a project proposed for public housing development under 24 CFR Part 905. If a PHA desires to convert only a portion of a public housing AMP (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). Similarly, a PHA may indicate in its application if it is applying for multiple public housing AMPs as a single Project. PHAs pursuing a Faircloth-to-RAD conversion must request a Notice of Anticipated RAD Rents (NARR) in lieu of the RAD Application.

The RAD Application must include, where applicable:

1. **Certification of Board Approval** which must be signed by the authorized representative of the PHA. This certification will be required for all submitted applications.
2. **Responses to comments** received in connection with the required resident meetings on the proposed conversion.
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 Contract; and (b) the agency that obtains a commitment from a voucher agency to support Choice-Mobility for a specified PBRA project. PHAs that are able to meet the Choice-Mobility requirement through turnover from their own voucher programs do not need to complete this letter.

If a PHA chooses to convert assistance to PBVs, the PHA must identify in the RAD Application the voucher agency that will administer the PBV HAP 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, or receive an exception to, the Choice-Mobility requirement as described above.

B. Applications for Multi-phase Development. Prior versions of the Notice distinguished Multi-Phase Awards from Portfolio Awards. With this notice, PHAs that wish to implement a multi-phase rehabilitation or redevelopment of a public housing site may reserve authority to do so under the Portfolio Award structure. As of the effective date of this Notice, existing Multi-Phase Awards are converted to Portfolio Awards, subject to the time frames specified for Portfolio Awards provided that HUD may, in its sole discretion, grant extensions to such deadlines up to September 30, 2024.

HUD recognizes that in certain situations multi-phase development warrants the demolition of a greater number of units than may be replaced in a single phase. HUD will consider individual requests for demolition prior to the construction closing of a phase 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.

C. Applications for Portfolio Awards. A PHA may apply for a Portfolio Award, which allows a PHA to reserve RAD conversion authority for a set of projects (including for multiple phases of a large scale redevelopment effort and for planned projects) and that locks in the applicable contract rent in the year of application. In order to apply for a Portfolio Award, a PHA must submit:

1. The total number of units to be converted; and

2. RAD Applications for the lesser of four projects or 25% of the units 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 units 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 units covered by the Portfolio Award. In order to retain its Portfolio Award, except with HUD approval, a PHA must close, on average starting one year after the issuance of the first CHAP, either two projects per year or 25% of the units identified in the portfolio per year. For purposes of the annual average, conversions which occur in the first year shall be deemed to have occurred in the second year after issuance of the first CHAP. Units held in an existing portfolio award will be held to this standard effective on the date of publication of this Notice. PHAs may count existing CHAPs, in lieu of Applications, in presenting their Portfolio Award requests. The PHA has until September 30, 2024, to submit an application for the final project covered by the Portfolio Award. Recipients of Portfolio Awards shall be required to fulfill all RAD requirements 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. With HUD consent, PHAs may substitute projects in the portfolio award, and switch projects between the active and pending portions of the portfolio, provided that the newly substituted projects are subject to all of the requirements of this Notice.

Further, PHAs that have received CHAPs for multiple projects, but that did not request a Portfolio Award, may convert their awards into a Portfolio Award as long as they comply with the requirements for a Portfolio Award.

D. Application for projects awarded under a Choice Neighborhoods Initiative (CNI) Implementation Notice of Funding Availability (CNI NOFA). HUD will reserve authority under the statutory cap on public housing conversions for properties covered under CNI implementation grants that submit RAD Applications or Portfolio Award applications and that meet eligibility requirements.

E. Submission of Letter of Interest When a Waiting List Has Formed. During any period when HUD is maintaining a waiting list pursuant to Section 1.10, in lieu of a RAD Application, a PHA may submit a letter of interest signed by the PHA's Executive Director to RADapplications@hud.gov that identifies all of the properties (PIC # and name) and associated ACC units that the PHA is proposing for conversion. Such a submission would reserve the PHA's spot on the waiting list under the lowest priority category described in Section 1.11 in the order in which the letter was received. In anticipation of HUD's ability to make additional awards, HUD will notify the PHA that it must submit a complete RAD Application or Portfolio Award application and comply with all the application provisions of this Notice, within 60 days of such notification or forfeit its position on the waiting list.

PHAs may consider submitting complete RAD Applications separately for properties in its conversion portfolio that would fall under a higher priority category so as to achieve a higher position on the waiting list.

1.10 Submission of Applications

All required materials (including attachments and narrative summaries) must be submitted electronically pursuant to instructions available at www.hud.gov/rad. 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 re-submitted, the application will be reviewed in order of the date of the re-submission.

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.

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 (CLOSED). The Second Application Period commenced on October 25, 2012 and closed on July 27, 2015. All applications submitted during the Second Application Period competed 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 (CLOSED). The Third Application Period commenced on July 28, 2015, and closes 30 days following the publication of this Notice. All applications submitted during the Third Application Period competed on a first-come, first-serve basis subject to the Priority Categories in effect at the time of the issuance of the CHAP in each instance.

D. Fourth Application Period. The Fourth Application Period commences 30 days following the publication of this Notice. Applications that meet all eligibility criteria, and any associated Portfolio Award requests, will be awarded on a first-come, first-serve basis. HUD will reserve units for the Application and any associated Portfolio Award up until the point at which issuing an additional award would exceed the statutory cap. For all applications that meet all eligibility criteria, HUD will rank each qualified application by the date and time the Application was submitted. If the next ranked application cannot be awarded because HUD has reached its available authority under the statutory cap, the application will be placed on the waiting list by the date and time the Application was submitted. While a waiting list has formed, a PHA may submit a Letter of Interest as described in Section 1.9 in lieu of an Application that would serve to reserve a project's or a portfolio's position on the waiting list subject to future submissions of a RAD Application. In administration of awards made off of the waiting list, applications for properties located in designated Opportunity Zones, along with their associated Portfolio Awards, shall be selected prior to all other properties.

E. Replacement Awards. If a CHAP or Portfolio Award 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 to an applicant from the waiting list, if one has formed.

F. 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 periodically.

G. 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.[58] 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 has 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

[58] 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.

good-cause exemption if a CHAP is terminated for a project that originally received a good-cause exemption. At any point, a PHA may revise its application to certify that it will meet the Choice-Mobility component. If an application is modified in this way, it will retain its place on the waiting list.

H. 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 30 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. The appeal should be sent to RADapplications@hud.gov, with the name of the project and the word "Appeal" included in the Subject Line, e.g., "Subject: Lincoln Townhomes, Appeal." If a PHA's application or appeal is denied, the PHA may revise the application and resubmit; such resubmittals will be reviewed in the order of date of resubmission.

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. For PBV conversions, the PHA is responsible for ensuring that the rents included in the CHAP do not exceed the Reasonable Rent in accordance with 24 CFR 983.301. The CHAP will not be subject to negotiation.

A PHA must confirm its acceptance of the CHAP by submitting an application (including required attachments) 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.[59]

If a PHA applies for a 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.

[59] 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.H. When a CHAP is issued near the PHA's fiscal year end, the PHAs are advised to submit the application into PIC before that date.

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.

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) if the PHA cannot demonstrate to HUD's satisfaction that it is making adequate progress towards Closing; (4) for PHA non-cooperation; (5) for violation of program rules and restrictions, including fraud, (6) if the PHA fails to discuss the conversion plans as a significant action in the PHA's Five-Year Plan, Annual Plan or MTW Plan or 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.

HUD will request periodic discussions with the PHA to assess whether the PHA is making adequate progress towards the submission of a Financing Plan. In order to ensure PHAs are making consistent progress towards conversions, within nine months (270 days) of the CHAP award the PHA must submit a Financing Plan or receive an extension from HUD setting forth a project-specific Financing Plan due date, which due date may be further extended by HUD upon reasonable justification. A PHA must hold another meeting to update residents on conversion plans in order to secure an extension greater than six months.

PHAs may request amendments to the CHAP to split or combine CHAPs, modify the units or utility allowances, utilize rent flexibilities in accordance with Section 1.6.B.5 or Section 1.7.C.5, or request a replacement CHAP in order to secure rents based on the applicable RAD rent base year at the time of the request (see Attachment 1C).

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. Activities Prior to Financing Plan Submission. The PHA is responsible for ensuring that up front civil rights reviews and relocation activities are conducted as required in the RAD Fair Housing, Civil Rights, and Relocation Notice.

C. Concept Call. Prior to submitting a Financing Plan a PHA must request a "Concept Call" with HUD via the RAD Resource Desk during which the PHA will describe the conversion plan and demonstrate that the plans are sufficiently advanced to warrant review by HUD. If HUD determines, in its sole discretion, that conversion plans are sufficiently advanced and

do not present any program violations, HUD will invite the PHA to submit a Financing Plan as long as it is consistent with the project plans.

D. Financing Plan. The PHA must submit a Financing Plan within 60 days of the invitation to submit the Financing Plan unless otherwise approved by HUD. The PHA must request a new Concept Call if it does not submit the Financing Plan timely. See Attachment 1A for Financing Plan Requirements. A Financing Plan must be substantially complete in order for HUD to consider the submission.[60]

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, HUD will notify the PHA of the deficiencies and request a modified or new submission. If a PHA is unable to submit a complete and viable Financing Plan HUD will revoke the CHAP award.

A PHA will be notified of HUD's acceptance of the Financing Plan by the issuance of an RCC, conditioned upon firm commitment of financing from the lender on substantially the same terms as those presented with the Financing Plan.[61] 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.

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,

[60] 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.

[61] 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.

financing terms and Sources and Uses, key features of the Covered Project, 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 in 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. Current HUD forms of the closing documents must be used. Closing shall 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 conditioned only on the completion of construction or term of the bridge financing and standard permanent loan financing conditions acceptable to HUD. 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 in parallel with specific RAD requirements.

The RAD HAP Contract generally becomes effective on the first day of either of the two months following closing, at the Project Owner's discretion.[62]

B. Preparations for leaving the public housing program.

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 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

[62] Where HUD has approved a delayed conversion (see Section 1.4.A.13), after Closing the Converting Project will remain as public housing during the period of construction and the HAP Contract is executed once the Covered Project is ready for occupancy.

to IMS/PIC, or the PHA may submit an on-line EOP.[63] Failure to do so may result in delays in HAP payments to the Covered Project.

2. **Leases.** PHAs must provide residents with notification of public housing lease termination in accordance with 24 CFR § 966.4(l)(3) and in accordance with local law, and shall enter into new Section 8 leases effective as of the effective date of the HAP Contract.

3. **Earned Income Verification.** For any public housing residents with outstanding debt, PHAs may not enter the debt into the Earned Income Verification "Debts Owed" module as a result of the 50058 End of Participations that is required to be submitted into PIC as part of the conversion. PHAs and Owners must otherwise continue to use EIV in all applicable circumstances.

4. **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 identified on the Sources and Uses and drawn down at closing in accordance with HUD procedures which may include placement in a segregated 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.

5. **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 and implementation of new data systems).[64]

6. **Funding Upon Closing.** For the remainder of the first Calendar Year in which a HAP Contract is effective (the "year of conversion"), Operating Funds and Capital Funds will be obligated to the PHA for the Covered Project at the level of public housing subsidy which that project is eligible to receive regardless of the initial contract rent amount or OCAF.[65]

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[63] 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

[64] 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

[65] For example, a closing on December 10 will result in a HAP Contract that is effective on January 1 or February 1, as selected by the Project Owner. For the remainder of the Calendar Year which includes the January 1 or February

a. **Operating Fund.**

i. 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.

ii. The amount of Operating Funds that can be used for HAP payments during the year of conversion is capped at HUD's obligations of Operating Subsidy to the project for the remainder of the year after conversion, pro-rated by the portion of units in the PIC Development that are converting and will be removed from PIC. HUD will periodically publish the cap amount for converted units.

iii. Projects that complete conversion are not eligible for Operating Subsidy in the subsequent year. For conversions that result in the removal of all public housing units from a PIC Development, the PIC Development will not be eligible for any subsidy in the subsequent funding year.[66] For partially converted projects, PHAs must remove eligible unit months (EUMs) for units that converted to RAD from the Operating Subsidy tools and must adjust the rolling base to reflect only the units that remain assisted under public housing. Please see the instructions to the Form HUD-52722 for details on adjusting the rolling base.

iv. The funding guidance provided in this notice supersedes the guidance in Section 9 of the Notice PIH 2016-10.

b. **Capital Fund.** The amount of Capital Funds that can be used for HAP payments during the year of conversion 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

1 date, subsidy is paid from public housing funds obligated to the PHA regardless of the RAD HAP Contract rent amount or OCAF. 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 Covered Project for the balance of the Calendar Year.

[66] If the project is funded in the year after the HAP effective date, the PHA should not draw down funds and should notify the Field Office that the project should not be funded.

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. Capital Fund amounts will be moved into specific RAD Budget Line Items (BLIs) in LOCCS.

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 may use no more than the amounts described above to make HAP payments in the "year of conversion." 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 Deficit Reserve in their Financing Plan (using Operating Reserves, available Capital Funds, financing proceeds, or any other eligible source), but the PHA is under no HUD-imposed obligation to do so.

In the first full year following conversion, Covered Projects will be funded from the PBRA account or the TBRA account, 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.

7. **Post-Closing Completion Certification.** Project Owners must submit to HUD a completion certification for all repairs included in the Scope of Work in the RCC and other information about compliance with the requirements of the RCC. Project Owners can fulfill the cost certification element of 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.

8. **Management fees.** Any management fees earned following conversion are not subject to any federal restrictions.

9. **Additional requirements for PHAs removing all public housing units.** Notice PIH 2019-13 or successor notice provides information and guidance regarding program activities that PHAs must complete regarding removal of the last of their public housing dwelling units from their public housing inventory. Such notice also contains

notification requirements for both PHAs seeking to develop new public housing units in the future (after removing all existing public housing dwelling units from their inventory) and for PHAs seeking to close out their public housing program.

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 on the schedule proposed by the PHA and accepted by HUD in the Financing Plan.

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), the developer fee will be subject to the LIHTC allocating agency's limitations on developer fees and the following HUD-imposed limitation: The undeferred portion of such developer fee (as documented in the LIHTC cost certification) may not, without HUD approval, exceed the greater of:

1. 15 percent of the total development costs less acquisition payments made to the PHA, developer fee and all reserves; or
2. The lesser of $1,000,000 or 15 percent of the total development costs without offset for acquisition payments made to the PHA, developer fee and all reserves.

The limits on developer fee in effect prior to the issuance of this Notice shall apply to all transactions with an RCC issued prior to sixty (60) days after the date of this Notice which also close prior to the later of sixty (60) days after the date of this Notice or sixty (60) days after the date of the RCC.

C. Where the Contract Administrator agrees to adopt an admissions preference for a) homeless applicants referred to the property by the local Continuum of Care (CoC) and/or b) applicants

exiting permanent supportive housing, which preference shall apply to at least 25% of the property's units, HUD will permit a 25% increase in the allowable development fee limits described above.[67] The fee will remain subject to the LIHTC allocating agency's limitations, as applicable. The PHA or Project Owner must provide evidence of an agreement to participate in coordinated entry operated by the local CoC and must produce a letter from the CoC affirming, based on current data and local need, that there is expected to be need for affordable housing for these populations for the term of the HAP Contract. In such cases, HUD will require a special provision in the HAP Contract governing the continued existence of this preference through the term of the HAP Contract.

A preference for homeless applicants must fall within the definition of Homeless established by section 103 of the McKinney-Vento Homeless Assistance Act and implemented in the Continuum of Care Program Rule at 24 CFR § 578.3, unless the local CoC provides a letter of support to cover a homeless population not included in that definition.[68]

The developer fee shall be payable on the schedule allowed by the allocating agency and/or equity investor. Earned developer fees are not subject to any federal restrictions. 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.

1.15 Streamlined RAD Conversion for Small Public Housing Agencies.

This Section explains the alternative processing requirements that certain very small PHAs may voluntarily adopt.

A. Eligibility for Streamlined Project Conversion. In addition to the eligibility requirements outlined in Section 1.3, a PHA must meet the following criteria to participate in a streamlined RAD conversion as verified by HUD in its existing systems and records. Unless otherwise approved by HUD, a PHA must:

1. Have 50 or fewer units remaining in its public housing inventory and demonstrate that through RAD or other means (e.g., Section 18 Demolition or Disposition) it will remove all of the public housing units under its ACC and close out its public housing program in accordance with Notice PIH 2019-13;

[67] For guidance on establishing a homeless preference for PBRA, please see H 2013-21. For guidance on establishing a homeless preference for PBV, please see Notice PIH 2013-15.

[68] The definition of homeless implemented in the Continuum of Care Program can be found at: https://www.hudexchange.info/resources/documents/CoCProgramInterimRule_FormattedVersion.pdf

2. Have an overall PHAS (Public Housing Assessment System) score of 75 or higher; have a PASS (Physical Assessment Sub-System) score of 30 or higher; and not have a PHAS substandard designation or a PHAS Capital Fund troubled designation;
3. Not propose as part of the conversion to perform any construction or rehabilitation on the property, to undertake relocation, or to transfer the assistance.
4. For PBV conversions, select a Contract Administrator that has at least 100 units under its HCV ACC.

B. Streamlined Project Conversion Requirements. The following describes the requirements of the RAD Notice that are modified or do not apply to streamlined RAD conversion.

1. Application Requirements. Requirements set forth in Section 1.9 of the RAD Notice are modified for Streamlined RAD conversions (and other classes of conversions as HUD determines) eliminating the need for information on financing, a financing letter of interest, and, for public housing-only PHAs, identification of a partnering voucher agency. To ensure appropriate processing, the subject line of the email submission to RADapplications@hud.gov should include "Small PHA".

2. Capital Needs Assessment (CNA). Requirements set forth in the RAD Notice, Section 1.4.A.1 shall not apply. In lieu of a CNA, see below the required certification that must be included with the "Financing Plan." The requirements set forth in the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17, PIH 2016-17 (HA)) continue to apply. Notwithstanding this exemption from the requirement to conduct a CNA, the PHA should have certified in its PHA Plan, Significant Amendment to the PHA Plan, or MTW Plan that it conducted a site review/inspection of the project with respect to accessibility for persons with disabilities and that the site is consistent with applicable accessibility standards under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as required by Section 5.2 of the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17, PIH 2016-17 (HA)).

3. Environmental Review. For Environmental Reviews conducted under 24 CFR Part 50 for Streamlined RAD conversions without any rehabilitation, construction, or demolition,[69] HUD conducted a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

a. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

[69] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

b. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 C.F.R. Part 55;
c. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR Part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further

obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or other interested parties or the public.[70]

PHAs will be required to submit documentation to facilitate HUD's site-specific review, as defined in Attachment 1A of the RAD Notice. For Environmental Reviews under 24 CFR Part 58, PHA/Owners should reach out to the responsible entity. HUD encourages responsible entities to consider a tiered approach.

4. **Financing Plan Requirements for Streamlined RAD Conversion.** The following table describes the applicability of the Financing Plan submission requirements set forth in Attachment 1A of the RAD Notice for Streamlined Conversion for small PHAs. [71]

Financing Plan Requirements for Streamlined RAD Conversion for Small PHAs	**Applies**	**Does Not Apply**	**Modified**
A. Type of Conversion. The PHA must identify whether the project will covert to PBV or PBRA as described in Attachment 1A of the RAD Notice.	✓		
B. Capital Needs Assessment (CNA). Section 1.4.A.1 of the RAD Notice is waived for Streamlined Conversions. However, the PHA must provide a certification from its Board that: **i.** The PHA has assessed the property for any exigent health and safety hazards and, if applicable, has completed any necessary repairs. **ii.** The property can be sustained for 20 years as decent, safe, and sanitary housing at the published RAD contract rents.[72]			✓

[70] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR Part 50. See https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/.

[71] Please note that while some Financing Plan requirements are not modified under Streamlined Conversion, HUD anticipates that they will very rarely, if ever, be applicable due to the eligibility criteria for Streamlined Conversion. This includes: **E.** RAD Fair Housing, Accessibility & Relocation Checklist; **L.** Pre-Approval of Specific Activities; **N.** Approved Amendment to Attachment A of the MTW Agreement; and **Q.** Transfer of Assistance.

[72] While the capital needs assessment is no longer required, HUD recommends that the Board complete due diligence appropriate to the property prior to making this certification. Capital needs assessors, architects, consultants, general contractors, building inspectors or, in some cases, PHA staff, may provide relevant analysis using the HUD e-CNA tool as a template, using another CNA template, using the provider's proprietary tool and/or based on the provider's professional judgment. Under this streamlined processing, HUD will rely on the Board's

iii. If the PHA is transferring the property to a new owner (including an wholly controlled single asset entity) and the property has pre-1978 "target" housing, PHA has provided the Owner the records of lead disclosures, lead-based paint inspections, risk assessments, ongoing lead-based paint maintenance, periodic re-evaluations, and the Owner has agreed to evaluate and control lead-based paint hazards.			
C. Scope of Work. Does not apply.		✓	
D. Environmental Review. Section 1.4.A.3. and Attachment 1A of the RAD Notice are modified for Environmental Reviews required under 24 CFR Part 50 to allow for a tiered Environmental Review. See Section 1.15.B.3. above.			✓
E. RAD Fair Housing, Accessibility & Relocation Checklist. As applicable to the proposed conversion plans, the PHA must complete and submit the checklist as described in Attachment 1A of the RAD Notice.	✓		
F. Sources & Uses. Requirements set forth in Attachment 1A of the RAD Notice do not apply except that all of the PHA's remaining public housing funds must be reflected in a Sources and Uses statement (e.g. used to cover any conversion-related cost or placed into an initial deposit to the replacement reserve), with the exception of any funds needed to address the public housing closeout in accordance with Notice PIH 2019-13. Any public housing funds that are retained under public housing and not used to cover the cost of administrative activities required to terminate the ACC as described in Notice PIH 2019-13 will be remitted to HUD.			✓
G. Development Team. Does not apply.		✓	
H. Proposed Financing. Does not apply.		✓	
I. Operating Pro-Forma. The PHA must submit an operating pro-forma that meets all existing			✓

certification that it has satisfied itself regarding the sustainability of the property at the published RAD contract rents.

requirements except that annual replacement reserve deposits must equal or exceed $500 per unit, unless otherwise approved by HUD and justified by a third-party assessment report.			
J. Market Study. Does not apply.		✓	
K. Approval of Significant Amendment to PHA Plan. All Requirements for RAD Specific PHA Plan and/or Significant Amendment Submission set forth in Attachment 1D of the RAD Notice shall apply.	✓		
L. Pre-Approval of Specific Activities. Requirements set forth in Attachment 1A of the RAD Notice shall apply.	✓		
M. Approval of Non-Dwelling Real Property. Does not apply. In order to facilitate the complete conversion of the PHA, all non-dwelling property and land possessed by the PHA will be removed from the DOT or DORC and from the ACC and shall be encumbered by the RAD Use Agreement or released under 2 CFR 200.311(c).		✓	
N. Approved Amendment to Attachment A of the MTW Agreement. (only applicable to MTW Agencies subject to the Standard MTW Agreement rather than the MTW Operations Notice) See Footnote in Section 1.15.B.iv	✓		
O. Affirmative Fair Housing Marketing Plan (AFHMP). Applies only for PBRA conversions, as set forth in Attachment 1A of the RAD Notice.	✓		
P. Estimated public housing funds available for HAP subsidy. Submission requirements set forth in Attachment 1A of the RAD Notice shall apply.	✓		
Q. Transfer of Assistance. See Footnote 2.	✓		
R. Resident Comments. Submission requirements set forth in Attachment 1A of the RAD Notice shall apply. Furthermore, All Resident Participation and Funding requirements set forth in Attachment 1B of the RAD Notice shall apply.	✓		

S. **Title Report.** Submission requirements set forth in Attachment 1A of the RAD Notice shall apply.	✓		

1.16 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 for Public Housing Conversions

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 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, small projects, or transactions using CNI grants.[73]

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 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).

[73] See https://www.hud.gov/sites/documents/RAD-CHOICEPROTOCOL.PDF for RAD/CNI Protocols.

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 (who is typically distinct from the contractor that conducted the CNA), 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). If the property was constructed before 1978, identify the need for interim controls of lead-based paint hazards based on a risk assessment or re-evaluation and discuss planned lead hazard control activities in accordance with LSHR 24 CFR 35. O&M plans covering properties that continue to have lead painted surfaces, even if enclosed or encapsulated, must include training and certifying property maintenance personnel who disturb paint in accordance with the EPA's Renovation, Repair and Painting Rule (40 CFR 745, Subpart E), training and certifying property maintenance personnel who abate the paint in accordance with the EPA's Lead Abatement Rule (40 CFR 745, Subpart L or Q), and training and certifying the employer of the property maintenance personnel to become a certified lead renovation firm or certified lead abatement firm, as applicable.
4. Include 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 instructions for the CNA e-Tool and the RAD Fair Housing, Civil Rights, and Relocation Notice for a complete list of accessibility requirements and resources.
5. 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.
6. Include a reasonable timeline for completion of all rehabilitation items acceptable to HUD, depending on the scope of rehabilitation funded.
7. Identify which hazards are "relatively high" or "very high" for their county and census tract according to FEMA's National Risk Index (NRI) and provide a narrative

description detailing how the scope of work addresses or mitigates against the climate hazard risks.

8. Until such time as regulations promulgated pursuant to Executive Order 13690 become effective, for all buildings that will be newly constructed (including gut rehab, where physically and financially feasible) and will be located in the FEMA 500-year floodplain (or 100-year floodplain where FEMA has not mapped the 500-year floodplain), all relevant building mechanicals (HVAC, cogeneration, hot water heating, and other systems) and all residential units must be designed to be at a height no less than the greater of the 500-year floodplain or two feet above the 100-year floodplain based on FEMA Flood Insurance Rate Maps (FIRMs). Any interior non-residential spaces – such as common areas, community centers, and lobbies – that are not elevated to this level, must at a minimum be floodproofed to at least two feet above the 100-year floodplain. For buildings outside of FEMA floodplains, PHAs are encouraged to consult other sources (e.g., historical flooding of neighboring sites, NOAA Sea Level Rise Viewer, Flood Factor) to consider future flood risk and design accordingly.

D. Environmental Review. HUD cannot 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.

A RAD transaction will either be reviewed under 24 CFR Part 50 ("Part 50 Reviews") or 24 CFR Part 58 ("Part 58 Reviews"). Part 50 applies when HUD conducts the environmental review, and Part 58 applies when a Responsible Entity (RE) conducts the environmental review. The following table shows which review protocol a transaction will follow, along with who will conduct the review:

Description	Type of Environmental Review	Reviewer
PBRA Non-FHA	Part 50	RAD Transaction Manager
PBRA FHA Non-Risk Share[74]	Part 50	FHA Production
PBRA FHA Risk-Share	Part 50	Transaction Manager
PBV FHA Non-Risk Share	Part 50	FHA Production
PBV Non-FHA	Part 58	Responsible Entity (RE)

[74] Section 542(c) of the Housing and Community Development Act of 1992 enables HUD and State and local housing finance agencies (HFAs) to provide new risk-sharing arrangements to help those agencies provide more insurance and credit for multifamily loans known as the FHA Risk Sharing Program.

PBV FHA Risk-Share	Part 58	State Housing Finance Agency or Responsible Entity, as applicable[75]

Under limited circumstances, per 24 CFR 58.11(c), an Awardee with a non-FHA PBV transaction may request HUD to undertake the environmental review under Part 50 if a suitable RE cannot be found or if the local government was not a direct recipient of the funds and refuses to accept responsibility or when HUD determines the local government does not have capacity to act as an RE.[76] This request must be made in writing and submitted to HUD no later than at the time of the Financing Plan submission.

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.

Requests to transfer assistance from the Converting Project to a new location are subject to environmental review.

For transactions receiving funding from other HUD programs (i.e. HOME, CDBG, non-RAD PBV), HUD encourages all parties to complete one review for all programs, even if these programs' environmental reviews are conducted under a different review protocol (Part 50, Part 58). In cases where two Part 58 programs are combined, HUD encourages applicants to work with the Responsible Entity to see if environmental reviews can be combined. However, this is solely the Responsible Entity's determination. In cases where a Part 50 program and a Part 58 program are combined, HUD may determine that it will perform one Part 50 environmental review for both programs under 24 CFR 58.11 if performing an additional Part 58 environmental review is not feasible in the time allotted. HUD must ensure that the Part 50 review considers the full scope of all activities and funding associated with all programs. When one review is used for both programs, the Approving Officials for both programs must certify the review.

[75] Housing Finance Agencies can act as the Responsible Entity for Housing's Risk Share Programs if the HFA is a regular part of the state government or if the HFA is a state instrumentality that has been approved by the governor. If the HFA does not meet either criteria, it must request another department of the state to act as Responsible Entity. An instrumentality of a city or county government cannot act as a Responsible Entity for the Risk Share Program. Please contact HUD if you have any questions about whether an HFA can act as the Responsible Entity.

[76] These circumstances are considered on a case-by-case basis only. Please work with your Transaction Manager to determine suitability.

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:[77]

1. For PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) without FHA insurance and without any rehabilitation, construction, or demolition,[78] HUD conducted a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

    A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

    B. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 C.F.R. Part 55;

    C. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

    Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR Part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or other interested parties or the public.[79]

    PHAs will be required to submit documentation to facilitate HUD's site-specific review.

2. For all non-FHA PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) that do not meet the requirements under paragraph 1 above, the awardee will follow the guidelines in Chapter 9 of the MAP

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

[78] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

[79] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR Part 50. See https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/.

guide. Awardees will upload all applicable documentation directly into HEROS at the time of Financing Plan submission. The following exceptions to the MAP Guide apply:

- In lieu of a Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) [80], except for conversions involving substantial rehabilitation or new construction activities, Awardees may submit a more limited report on potential sources of contamination. Where a Phase I ESA is not required (i.e., projects without any associated substantial rehabilitation[81] or new construction), the Awardees can submit 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 ESA in accordance with ASTM E 1527-13 (or the most recent edition) must be provided.
- Awardees may submit a Phase I ESA that is up to 5 years old upon submission; however, it must be updated by a Transaction Screen that is up to 1 year old upon submission.

When HUD conducts the environmental review under Part 50, PHAs (or their vendors) must submit environmental reports and documentation[82] for HUD review into the HUD Environmental Review Online System (HEROS), where HUD will complete its review.

HUD staff will review the submissions and may require additional information in order to complete their review. HUD's review will result in a determination, which may stipulate the

[80] The Transaction Screen does not meet the standard for "All Appropriate Inquiries" for CERCLA liability protection, as noted in ASTM E 1528-14 Section 4.2.1.

[81] 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. 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.

[82] PHAs and providers should take care to respond to all applicable laws and authorities and MAP-specific requirements when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. Information about HEROS and how to register can be found at https://www.hudexchange.info/programs/environmental-review/housing/#heros.

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 or mitigation 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.[83] 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 (RROF), to their local PIH field staff.[84] 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 proof of the completed Form 7015.16 (either a copy of the paper form or a screenshot of the completed screen in HEROS) to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR § 58.34(a)(12), the PHA must submit the RE's finding of exempt activity with their RAD Financing Plan. 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(a)(12) is sufficient.

Additionally, the PHA must submit a Radon Report consistent with the requirements of Section 9.6.3 of the MAP Guide (or successor provision) for HUD to review.

E. RAD Fair Housing, Accessibility and Relocation Checklist. Prior to submission of the Financing Plan, all PHAs shall have completed and submitted the RAD Fair Housing, Civil Rights, and Relocation Checklist provided by HUD. The Checklist shall include a certification that the relocation plan complies with all applicable HUD requirements, including the URA as well as Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §8).[85] The cost of the relocation must be fully funded in the Development Budget. The Financing Plan submission shall include a copy of HUD's

[83] 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/.
[84] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.
[85] For additional information see the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17; PIH 2016-17).

approval of the Checklist or a statement that approval is still outstanding. In the event of any changes in the plans described in the Checklist, the PHA shall submit an update to the Checklist.

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

1. 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.
2. Include a construction contingency of 10% for rehabilitation or as otherwise allowed by a LIHTC allocating agency for new construction. Note that HUD may require a higher contingency on a case-by-case basis.
3. 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.
4. 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), unless otherwise approved by HUD.
5. 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.
6. 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, in accordance with section 102(d) of the HUD Reform Act, whenever multiple federal sources are proposed, when public housing funds are used (see Section 1.5.A.), or when an MTW agency is using MTW funds to set their initial contract rents (see Sections 1.6.B.5. and 1.7.A.5.). A separate SLR will not be conducted by HUD if there is non-RAD PBV or another HUD subsidy at the time of conversion; the SLR performed as part of the RAD conversion will satisfy the requirements under section 102(d) of the HUD Reform Act. The purpose of the subsidy layering review is to ensure that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. The subsidy layering review performed for conversions to either PBV or PBRA will ensure that costs are reasonable and cash flow is not excessive. Given unique circumstances that occur in RAD conversion, other guidance with respect to PBV or PBRA subsidy layering reviews do not apply to financing of Covered Projects at the time of conversion.[86]

[86] Accordingly, Notice PIH 2013-11 or successor notice shall not apply.

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. The submission must disclose any identity of interest between any of the parties. Where fees normally determined by market negotiations (such as general contractor overhead and profit) are being paid among identity of interest parties, HUD may limit such fees to amounts comparable to the market, commonly seen in RAD transactions, commonly permitted in other HUD programs, or permitted by the applicable State's low income housing tax credit qualified allocation plan.

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.[87]

H. Proposed Financing. For each proposed loan, equity contribution, or grant, the PHA must include a:[88]

1. Recent lender, investor or grant engagement letter, dated no later than 60 days prior to Financing Plan submission, with key terms identified (including for each amount, repayment terms, interest rate, amortization, maturity, prepayment restrictions, and pay-in schedule) from all financing provider(s). Permanent debt financing with

[87] 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.

[88] The RAD Resource Desk includes data entry fields that Project Owners and PHAs can use to provide all required information on each loan, equity contribution, and grants.

monthly payment amounts not conditioned on the availability of cash flow (i.e., "hard" debt) on Covered Projects must: [89]

a. Be at a fixed rate of interest, for a fixed term, fully amortized over no more than 40 years;
b. Not have a balloon payment until after the earlier to occur of a) expiration of the term of the HAP Contract or b) 17 years from the date of the permanent debt financing; and
c. Not have a debt service coverage less than the higher of 1.11 or lender requirements.

All bridge loan or construction financing must be disclosed and approved by HUD. All cash-flow ("soft" debt) and 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;
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[90] 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

[89] A conversion may entail multiple hard-debt mortgages as long as, viewed together, they comply with these conditions.

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

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.
    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. 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%. HUD may consider alternative arrangements with respect to the initial deposit to the replacement reserve if risks to the Covered Project can be adequately mitigated.
    i. For non-leveraged transactions (i.e. transactions that will not be taking on any new hard debt as part of the conversion), the stabilized cash flow should not be less than $12 per unit monthly. For leveraged transactions (i.e. transactions that will be taking on new hard debt as part of the conversion), 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 reconfiguration or inclusion of market-rate units. For projects using an FHA insured

mortgage, please see the 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. Front-End Civil Rights Reviews. Any necessary approvals described in the RAD Fair Housing, Civil Rights, and Relocation Notice must have been secured.

M. Approval of Non-dwelling Real Property. The PHA provides information on the units, non-dwelling property and land it wishes to remove from the Declaration of Trust (DOT) or Declaration of Restrictive Covenants (DORC) and from the ACC in the RAD PIC Removal Application. Information is provided both in the removal application form and by attaching the CHAP, a site map, and a written explanation of units and property to the removal application. Based on information the PHA provides in the RAD PIC Removal Application, the PIH Field Office will review the removal application and approve any non-dwelling real property that can be released from public housing use restrictions (DOT or DORC), under RAD authority, as part of a RAD transaction, provided it is encumbered under a RAD Use Agreement. 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;[91] and
    - underlying land at those buildings;

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

[91] 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 or DORC from any public housing property[92] 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 Act or PHA retention of the property under 2 CFR Part 200.

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. If a PHA is converting more than one project to PBRA, a separate AFHMP must be submitted for each project. Typically, the management agent or the entity responsible for marketing (if different) is responsible for completing and submitting

[92] 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 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.

the AFHMP. If a Project Owner plans to adopt any local or residency preference(s), the Project Owner must submit its Tenant Selection Plan along with the AFHMP (see HUD Handbook 4350.3, page 4-4). 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. The Project Owner may not market or lease any unit not occupied by a household exercising its right to remain in or return to the Covered Project prior to approval of the AFHMP. Market or leasing includes the solicitation, distribution, or acceptance of applications or development of a waiting list.

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 have secured HUD approval of the site (Covered Project). The PHA must also identify proposed plans for the pre-conversion public housing site (Converting Project), including how the PHA proposes to treat the DOT at the effective date of the HAP contract in compliance with Section 1.4.A.12.

R. Resident Participation and Comments. Provide:

a. A summary of meeting attendees and participation by residents, PHA staff, and other attendees;
b. A description of the PHA's efforts to promote tenant participation in meetings, including the dates and times of meetings to accommodate a variety of schedules, efforts to accommodate residents with disabilities or Limited English Proficiency in accordance with Section 1.8.H, the format of meetings (in-person, electronic, or both), location of in-person meetings, efforts to overcome technology barriers for virtual meetings, and other relevant efforts as the PHA determines appropriate (e.g., offering childcare, refreshments);
c. Meeting agenda(s) and copies of handouts or presentation materials;
d. A summary of questions and comments asked in the meeting or submitted by residents to the PHA and responses provided by the PHA to those questions and comments;
e. Identification of how residents who were unable to attend meetings are able to access materials or submit questions or comments and receive responses;
f. Identification of materials that were shared with residents to communicate resident protections, which can include but are not limited to the following materials: HUD

resident rights brochure; HUD resident fact sheets; HUD RAD video; or other resident education materials created by HUD or the PHA; and

g. Where there is a duly elected resident organization, contact information for at least one elected leader of such organization.

S. Title Report. Submit a complete title report including information on whether the Converting Project is currently subject to a DOT or DORC and any other liens, encroachments, easements or other encumbrances on the property.

Financing Plan Requirements for Transactions Utilizing FHA-Insurance

For RAD conversions that will utilize FHA mortgage insurance, the submission requirements and feasibility benchmarks are primarily found in the 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):

- A. Type of Conversion
- E. Fair Housing, Accessibility and Relocation Checklist or Update
- F. Development Budget (Sources and Uses of Funds).
  - Lender Narrative
  - 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 an MTW agency is using MTW 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. Front End Civil Rights Reviews (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

- R. Resident Comments
- S. Title Report

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 (including for those that will reside in non-RAD PBV units in the Covered project):

- Conversion will be considered a significant action requiring discussion in the PHA's Five-Year Plan, Annual Plan or MTW Plan or requiring 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);
- A right to return, which covers the right to return to the rent-assisted property after temporary relocation (when temporary relocation is necessary to facilitate rehabilitation or construction), or the right to occupancy of the new unit if the rental assistance is transferred to a new unit. (See Section 1.4.A.5. of this Notice and the RAD Fair Housing, Civil Rights, and Relocation Notice.)
- Phase-in of tenant rent increases (see Section 1.6.C.3. of this Notice for conversions to PBV and Section 1.7.B.3. for conversions to PBRA);
- Relocation protections, including procedural rights, assistance with moving, and applicable relocation payments. (See Section 1.4.A.5 of this Notice and the RAD Fair Housing, Civil Rights, and Relocation Notice.)
- Continued participation in the ROSS-SC FSS and JobsPlus programs (see Sections 1.6.C.5 and 1.6.C.9 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).

The foregoing is a summary of special provisions and alternative requirements relating to residents of public housing projects converting to RAD and does not attempt to capture all program requirements and details. For additional information, refer to the full text of this Notice and to the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17; PIH 2016-17).

1B.2 Resident Participation and Funding[93]

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. Resident participation funding applies to all occupied units in the Covered Project as well as units which would have been occupied if not for temporary relocation. 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, 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 resident 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.

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. Eligible uses of funds are the same as those permitted under "Guidance on the use of Tenant Participation Funds," Notice PIH 2013-21. The Department strongly encourages residents and Project Owners to resolve questions concerning specific uses of resident participation funds directly. If a dispute over funding arises the resident organization or Project Owner may refer any disputes over funding to the HUD Field Office for intervention only after documented efforts to at direct resolution have proven unsuccessful.

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

[93] For the purposes of this Attachment, HUD uses the term "Project Owner" to refer to the owner of a Converting Project or Covered Project, as applicable to the context.

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 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 resident 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.

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.** Major capital additions; and

vi. 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 Owners 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.[94] These funds must be used for resident education, organizing around tenancy issues, and training activities. 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. Eligible use of funds are the same as those permitted under "Guidance on the use of Tenant Participation Funds," Notice PIH 2013-21. The Department strongly encourages residents and Project Owners to resolve questions concerning specific uses of resident participation funds directly. If a dispute over funding arises the resident organization or Project Owner may refer any disputes over funding to the Contract Administrator for intervention only after documented efforts to at direct resolution have proven unsuccessful.

[94] Resident participation funding applies to all occupied units in the Covered Project as well as units which would have been occupied if not for temporary relocation.

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.

RAD Rent Base Years. All RAD applications, including applications for Portfolio or Multi-Phase awards, will have initial contract rents based on their "RAD rent base year." Prior to conversion, these rents will be adjusted by HUD's published OCAF until they are established in the HAP Contracts at the time of conversion.

For example, for CHAPs awarded based on the FY 14 RAD rent base year that closed in 2017, the initial contract rents were based on 2014 funding, with an OCAF adjustment for 2015, 2016, and 2017.

Every two years, beginning January 1, 2021, the RAD Rent Base Year shall be reset, based on the funding levels of the immediately preceding fiscal year (for example FY 20 funding levels for CHAPs issued in 2021 and 2022, FY 22 funding levels for CHAPs issued in 2023 and 2024). These rents will be adjusted each year by HUD's published OCAF starting in the calendar year after the base year and established in the HAP Contracts at the time of conversion. This policy is illustrated in *Table 2: RAD Rent Base Years and OCAFs based on Award* Date below, but is not limited to the dates shown.

Table 2: RAD Rent Base Years and OCAFs based on Award Date			
Applicable Universe	Awards made between	RAD Rent Base Year	Year in which an OCAF adjustment is first applied
Properties awarded new RAD authority under the original 60,000 unit cap		FY 12	2014
Properties awarded new RAD authority above HUD's original 60,000 unit cap but subject to the increased 185,000 cap		FY 14	2015
Properties awarded new RAD authority above the 185,000 unit cap but subject to the increased 225,000 cap		FY 16	2017
Properties awarded new RAD authority above the 225,000 unit cap where the award is made prior to January 1, 2019	7/2/18 – 12/31/18	Modified FY 16*	2019
Properties awarded new RAD authority January 1, 2019 through December 31, 2020	1/1/19 – 12/31/20	FY 18	2019
Properties awarded new RAD authority January 1, 2021 through December 31, 2022	1/1/21- 12/31/22	FY 20	2021
Properties awarded new RAD authority January 1, 2023 through December 31, 2024	1/1/23 – 12/31/24	FY 22	2023

**The Modified FY 16 RAD Rent Base Year utilizes the FY 16 RAD Rent base Year, but for the Capital Fund component of the rent replaces FY 16 figures with FY 18 figures.*

When a PHA returns RAD authority to HUD by submitting a voluntary withdrawal of a project and subsequently requests new RAD authority for the same project within one month thereafter, provided that HUD has authority to make awards under the statutory cap, HUD may approve issuance of a replacement CHAP, via a CHAP amendment, without the requirement that the PHA submit the application materials that would otherwise be required. The replacement CHAP will include the original CHAP issuance date, but will have rents based on the applicable RAD rent base year as described above. For example, a withdrawal of a CHAP and subsequent request for new RAD authority that occurs in September of 2018 would have rents based on Modified FY 16 rent levels.

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).

Construction of Rents for the RAD Rent Base Year

1. Step One – Determine Current Funding[95]

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).[96]
- The amount of the PHA's Capital Fund Formula Grant attributable to the standing units at the project (i.e., excluding DDTF), 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.[97]

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.[98]

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. The following is an illustration:

Current Funding: Bedroom Adjusted Based on FMR

[95] 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.

[96] 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..

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

[98] 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, the project's Operating subsidy is determined based on a pro rata share of the agency's Operating Fund grant.

Bedroom Size	0BR	1BR	2BR	3BR	4BR	5BR	TOTAL
PIC Units	0	20	50	30	0	0	100
Metropolitan FMRs	$550	$650	$775	$900	$1,000	$1,150	
FMR Bedroom Adjustments	0.710	0.839	1.000	1.161	1.290	1.484	
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
- 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. Where conversion plans will result in energy and water efficiency improvements and, for PBV, where the Covered Project will utilize a site-specific utility allowance (see Section 1.6.B.5.e.), 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 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

Notes

1. For MTW PHAs converting to PBV that are augmenting RAD rents using voucher reserves, as described in Section 1.6, the agency will use MTW funds 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 (in addition to any funding modifications that would occur as a result of the conversion absent the rent increase) by the additional 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 an additional permanent reduction in its Operating and Capital Fund subsidy (in addition to any funding modifications that would occur as a result of the conversion absent the rent increase) 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. Instead, HUD will reallocate the subsidy to other conversions in accordance with Section 1.7.A.5.vi. 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 subsidy (including funds that have not been awarded as well as funds that have been awarded but not yet disbursed) may choose to forego any ongoing RHF/DDTF grants for the purpose of offsetting an increase to the initial RAD rent. At a

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

[Total Anticipated RHF/DDTF Grants or Undisbursed RHF/DDTF] ÷ 20 ÷ Number of Units converting under RAD ÷12 = PUM RAD Rent Increase

The PUM RAD Rent Increase 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 affected obligations of Replacement Housing Factor (RHF) funds or Demolition and Disposition Transition Funding (DDTF).

5. Resident Paid Utilities. For projects with an existing EPC using the Resident 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 Covered 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 RAD Fair Housing, Civil Rights, and Relocation Notice - Notice H 2016-17, PIH 2016-17 (HA) . (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 Covered 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 RAD Fair Housing, Civil Rights, and Relocation Notice - Notice H 2016-17, PIH 2016-17 (HA) . (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 location to where the assistance is being transferred
   b. The number of units to be transferred;
   c. The bedroom distribution of the units in the new building(s), and
   d. The type of units, if changed (e.g., family, elderly/disabled, or elderly-only); and

e. Any reduction or change in the number of units and what reduction category they fall under (i.e. de minimis)
f. 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).
g. What the PHA plans to do with the original site following the transfer of assistance, consistent with allowable uses described in Section 1.4.A.12.

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 that meets the requirements of Section 5.2 of the RAD Fair Housing, Civil Rights, and Relocation Notice (Notice H 2016-17/PIH 2016-17 (HA)) certifying that the RAD conversion complies with all applicable site selection and neighborhood reviews 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 MTW PHAs augmenting the RAD rents using voucher reserves as described in Section 1.6 or 1.7, as applicable, a statement explaining how the PHA will be able to maintain continued service level requirements.

Additionally, in accordance with 24 CFR Part 903, 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;

2. 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;

3. Changes to the construction and rehabilitation plan for each approved RAD conversion; and

4. Changes to the financing structure for each approved RAD conversion.

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 Notice H 2019-xx, PIH 2019-xx; and Notice H 2016-17, PIH 2016-17)	**Project Based Rental Assistance Requirements (Section 1.7 of Notice H 2019-xx, PIH 2019-xx; and Notice H 2016-17, PIH 2016-17)**
Tenant Protections Under Notice H 2016-17; PIH 2016-17	
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 rescreening of tenants upon conversion	1. No rescreening of tenants upon conversion
2. Under-Occupied Unit	2. Under-Occupied Unit
3. Phase-in of tenant rent increase	3. Phase-in of tenant rent increase
4. FSS and ROSS-SC programs	4. FSS and ROSS-SC programs
5. Resident Participation and Funding	5. Resident Participation and Funding
6. Termination notification	6. Termination notification
7. Grievance process	7. Grievance process
8. Earned Income Disregard.	8. Earned Income Disregard
9. Jobs Plus	9. Jobs Plus

10. When Total Tenant Payment Exceeds Gross Rent.	10. 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

By way of summary and not as a modification of the program requirements set forth in the Notice provisions referenced, please note that the foregoing tenant protections for RAD PBV residents apply to non-RAD PBV residents of the same Covered Project with the exception of Choice Mobility. Standard PBV Choice Mobility requirements apply to non-RAD PBV residents.

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 H 2019-xx/PIH 2019-xx, REV-4 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 H 2019-xx/PIH 2019-xx, REV-4; and H-2016-17/PIH-2016-17; *For conversions to PBRA:* Section 1.7 of H 2019-xx/PIH 2019-xx, REV-4; and H-2016-17/PIH-2016-17). 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 H 2019-xx/PIH 2019-xx, REV-4 Section 1.6.C & Section 1.6.D, and H-2016-17/PIH-2016-17, as a whole, into this Attachment to your PHA Plan)

If converting to PBRA: (Insert H 2019-xx/PIH 2019-xx, REV-4 Section 1.7.B & Section 1.7.C, and H-2016-17/PIH-2016-17, 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:

a. If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or

b. In the event of any drug-related or violent criminal activity or any felony conviction; or

2. Not less than 14 days in the case of nonpayment of rent; and

3. Not less than 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. *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 written 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 in writing of this determination, and of the reasons for the determination.

c. Family Right to Move. [Do not include this provision if HUD provided to the Covered Project a good-cause exemption from Choice Mobility as described in Section 1.7.5.] Each family has the option to obtain tenant-based rental assistance (commonly known as a Housing Choice Voucher) from [name of the PHA], subject to certain program limitations, at any time after the second year of occupancy. Before providing notice to terminate the lease, the family must first contact the PHA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available, the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance. After the PHA offers the family the opportunity for tenant-based rental assistance in accordance with HUD requirements and after the family has secured a lease with such tenant-based rental assistance, the family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

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.

All Mod Rehab conversions are processed under the Second Component. 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 waive regulatory provisions and develop alternative requirements to fulfill the purposes of the Demonstration as described in this Notice and only to the extent described in this Notice.

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, in which case the Mod Rehab contract would be renewed until funds become available.

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 Conversion 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,[99] 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 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. Initial contract rents will be determined by an RCS and be limited to 110% of FMR (unless a higher limitation not exceeding any applicable statutory maximum is approved by HUD pursuant to Section 2.6.C) 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 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

[99] Where TPVs or EVs have been requested by the PHA and processed by HUD but none of the TPVs or EVs have been issued to a project resident (i.e., the PHA's ACC has been amended reflecting the new increment of TPVs or EVs), HUD will amend the ACC a second time to remove the new increment of TPVs or EVs and the transaction will be processed as a prospective conversion. The first issuance of a TPV or EV shall make a project ineligible for a prospective conversion.

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 Conversion Plan to convert assistance under the Second Component of RAD.

2.3.1 Eligible Owners

A. Compliance with HUD and PHA Requirements. Owners must be in good standing with HUD and the PHA. The owner must not have a history of non-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 purchaser must provide evidence of successful experience owning and operating HUD or other affordable multifamily housing properties.[100]

B. Fair Housing and Civil Rights Compliance for PBV and PBRA Conversions. An owner must resolve to HUD's satisfaction any outstanding civil rights matters prior to conversion. All pending legal processes must have been satisfied to meet this standard. If eligibility would be denied on this basis, HUD will notify the applicant of its determination and any actions necessary to permit a finding of eligibility.

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 documents 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.

[100] If the acquisition occurs prior to the expiration or termination of the Mod Rehab Contract, the Administering PHA must consent to the assignment of the contract in accordance with the provisions of the Mod Rehab Contract.

The owner will follow any requirements for the modification of such VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision. If HUD is a party to the such document, 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.

B. Physical Condition. For PBRA conversion, unless provided explicit approval by HUD, 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, 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 project selection. 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, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions.[101]

All PBRA and PBV conversions of properties constructed before 1978 must provide evidence that the project meets the lead paint evaluation and remediation requirements in 24 CFR 35.

C. Eligible Units. For prospective PBRA conversions, all units on the original Mod Rehab contract are eligible for conversion under RAD. Retroactive conversions to PBRA are not authorized.

[101] See Notice PIH-2017-20

For prospective PBV conversions, all units on the Mod Rehab contract that are eligible for TPVs at the expiration or termination of the Mod Rehab contract under PIH's HCV funding Appropriations Act notices (or successor PIH notices regarding TPV allocations) are eligible for conversion under RAD. The PHA makes the final determination of unit eligibility to be included in the PBV HAP Contract.

For retroactive PBV 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.

2.4 Conversion Planning Requirements

A. Capital Needs Assessment (CNA).[102] 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 Conversion Plan.

1. For FHA transactions, owners must use the CNA eTool and follow applicable requirements in the MAP Guide governing exemptions. The CNA must be completed by a qualified, independent third-party professional.
2. For all non-FHA transactions using equity sources of financing, the equity provider will determine the scope of work and required Initial Deposits to the Reserve for Replacement (IDRR) and Annual Deposits to the Reserve for Replacement (ADRR), as long as the ADRR is not less than $450 per unit per year. Submission of a CNA to HUD is not required unless the owner proposes an ADRR below this minimum threshold.
3. For all other transactions (i.e., without any FHA-insured debt or equity financing sources):
    a. The Project Owner must provide a copy of a CNA completed within 12 months of RAD Conversion Plan submission by a qualified, independent third-party professional.
    b. A CNA will not be required to include an assessment of critical or immediate needs if the project:
        i. was built within the last 5 years; or

[102] Notice PIH 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.

ii. qualifies as new construction or "substantial rehabilitation" (generally defined as meeting Level 3[103] Alterations per the 2012 International Building Code for Existing Buildings).

iii. HUD will use the component replacement and reserve schedule from the submitted CNA to verify that the IDRR and ADRR are in accordance with HUD requirements.

HUD may exempt projects from submitting a CNA where the project has 20 or fewer units or where the total assisted units (e.g., RAD units and other units supported by PBV) at the project will constitute less than 20% of the total units at the project (or a higher amount at HUD's discretion).

Any proposed exemptions must be confirmed with the Transaction Manager assigned to the RAD conversion.

No utility consumption baseline analysis is necessary as part of the CNA conducted for the RAD conversion.

HUD may, at its discretion, conduct a site visit to substantiate that site conditions established in the CNA are as reported.

B. Healthy Housing and Energy Efficiency. For all projects retrofitted under a RAD conversion, if systems and appliances are being replaced as part of the Work identified in the approved Conversion Plan, Owners shall utilize the most energy- and water-efficient options that are financially feasible and that are found to be cost-effective. The use of Energy Star®, WaterSense® or Federal Energy Management Program (FEMP)-designated products and appliances replacements, if any such designation is available for the applicable system or appliance, is presumed to be the minimum threshold for meeting such requirement.[104] Owners are strongly encouraged, for all RAD conversion projects, to scope rehabilitation and ongoing replacements that utilize components that 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.

[103] Level 1 is removal and replacement or covering of existing materials, elements, equipment, or fixtures using new materials, elements, or equipment. that serve the same purpose. Level 2 includes reconfiguration of space, addition or elimination of any door/window, reconfiguration or extension of any system, or installation of additional equipment. Level 3 applies where the work area exceeds 50% of the aggregate area of the building. Level 3 must also meet the provisions of level 1 and level 2 alterations.

[104] 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/.

C. Financing. An owner's Conversion 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 Conversion Plan. A Conversion 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, including transactions that will not result in the alteration of the physical condition of the property. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.[105]

E. Lead Safety.

- A CNA performed for a project built before 1978, and the scope of the rehabilitation that follows, must address lead safety with respect to paint, dust, soil (including compliance with 24 CFR 35, subparts B – R), and water (including lead service line replacement).
- For a project built before 1978 for which a CNA is not performed, the scope of the rehabilitation must address lead safety with respect to paint, dust, soil (including compliance with 24 CFR 35, subparts B – R), and water (including lead service line replacement).

[105] A choice limiting action means an action that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, real property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, ground disturbance, and leasing. For more information see the Environmental Review Requirements for RAD Conversions Quick Reference Guide: https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/.

F. <u>Relocation and Right to Return</u>. Any person who is legally on the lease or otherwise in lawful occupancy at the Converting Project at or after the time of submission of the Conversion Plan has a right to remain in or, in the event that rehabilitation will result in the relocation of residents, a right to return to an assisted unit at the Covered Project. Any relocation as a direct result of acquisition, demolition, or rehabilitation is subject to requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) which are found at 49 CFR part 24. Proper notices including the General Information Notice (GIN), when applicable, must be sent in accordance with URA regulations and other applicable relocation regulations. Additionally, relocation and one-for-one replacement requirements under section 104(d) of the Housing and Community Development Act of 1974 may apply when CDBG or HOME funds are used in connection with a RAD conversion. Section 104(d) requirements are found at 24 CFR part 42, subpart C, and program-specific relocation requirements for CDBG and HOME projects are found at 24 CFR 570.606 and 24 CFR 92.353, respectively. The applicability of URA or section 104(d) requirements to a RAD conversion is fact-specific and must be determined in accordance with the applicable URA and section 104(d) regulations. 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 Project Owner must alter the Project plans in order to house the resident in the Covered Project. If a resident agrees to the plans which would preclude the resident's return, the Project Owner must ensure that the resident's decision is fully informed, voluntary, and well documented. To be fully informed, at a minimum the resident must be notified in writing of a) his or her right to return; b) his or her right to object to plans which would preclude the resident from returning; c) the Project Owner's obligation to accommodate the resident's right to return; and d) a description of the short and long-term implications of both the right to return arrangements (e.g., temporary relocation) and the resident's options if the resident agrees to such plans. The resident must be provided counseling regarding the resident's rights and options. To be voluntary, a resident must be informed of their right to return, potential for relocation, and temporary and permanent housing options 30 days before making a decision. In addition, under the URA regulation, residents must be provided notice of relocation at least 90 days before the relocation. The Project Owner cannot employ any tactics to pressure the resident into relinquishing his or her right to return or accepting permanent relocation assistance and payments. To be well documented, evidence of a resident's decision must be retained by the Project Owner. At a minimum such evidence must include copies of notices informing the resident of their options, records of any counseling or assistance provided, and the resident's informed, written consent, including an acknowledgement that acceptance of such assistance terminates the resident's right to return to the Covered Project. If the resident agrees to the Project Owner's plans, the permanent relocation is considered voluntary, but must include, at a

minimum, any relocation assistance and payments required under the URA and Section 104(d), as applicable. The Project Owner may not propose or request that residents waive their rights or entitlements to relocation assistance under the URA or Section 104(d).

G. 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 substantial alterations and other alterations as defined in 24 CFR § 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 § 8.23, the PHA or Project Owner, as applicable, must comply with all applicable accessibility requirements under Section 504 and HUD's implementing regulations. For some projects undertaking repairs, "other alterations" described at 8.3 are made over time. If other alterations, considered together (such as improvements to the kitchen and bathroom), 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.

H. 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 24 CFR § 983.57 for PBV conversions and of Appendix III of this Notice for PBRA conversions, 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).

I. Change in Unit Configuration. Owners may change the unit configuration in conjunction with 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.F. on Relocation and Right to Return) and will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status. Where the change in unit configuration will result in a reduction of assisted units, PHAs may request Tenant Protection Vouchers (TPVs) for any eligible residents that elect not to return to the property upon completion of the change in unit configuration (see Section 2.4.F. regarding Right to Return requirements). For SRO projects that are converting, such changes will require a letter of support from the CoC in which the project participates. See Section 2.7.B. of this Notice.

J. 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 HAP Contract, HUD terminates the HAP Contract.

Absent compelling circumstances, 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.[106] 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.[107] Owners are strongly encouraged to request HUD approval of the proposed site prior to submission of the Conversion Plan.

For PBV transfers of assistance to a new site, the Mod Rehab contract will remain in effect at the original site and will not be terminated until the units at the new site are ready for

[106] The analysis can be found in Section VIII B.1 of H-2015-03 "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.

[107] 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.

occupancy and the new HAP Contract is executed. For PBRA transfers of assistance, the new HAP Contract can be executed at the close of construction financing and the Project Owner can use the Section 8 Pass-Through.[108]

After initial conversion, in general, a Project Owner may only request a transfer of assistance to HUD after 10 years from the effective date of the initial HAP Contract. A Project Owner may submit a transfer request sooner if it is needed as a result of eminent domain proceedings, natural disasters, unforeseen events, or as otherwise approved by HUD (for example, if HUD provided approval of a future transfer prior to conversion). HUD may consider, and approve with such conditions as HUD determines appropriate, a partial or complete transfer of assistance to a new location if the new location complies with applicable site selection standards. If applicable, any lender to and/or investor in the Covered Project must also approve the transfer of the assistance. Substantially all units covered by the initial HAP Contract must remain or be replaced as a result of the transfer. Residents of the original location at the time of the transfer request shall not experience a loss of rental assistance. PBV-assisted families living at the property upon termination of a PBV HAP Contract have a statutory right to receive a tenant-based voucher and to certain tenancy protections.[109] (A family may voluntarily decline the tenant-based voucher and accept a PBV unit at the new location but may not be required to do so.) Termination of a PBV contract is not cause for issuance of additional tenant-based voucher assistance from HUD. PHAs and owners contemplating RAD PBV transfers after conversion must take the PBV families' right to tenant-based voucher assistance into consideration and ensure that there will be sufficient resources available to the PHA to both effectuate the transfer and meet the PHA's obligation to provide tenant-based vouchers to those families that wish to receive them. Subject to the availability of appropriations, PBRA-assisted families living at the property upon termination of a PBRA HAP Contract that meet the eligibility requirements for voucher assistance may receive tenant-based tenant protection vouchers (TPVs) in the event the termination of the original PBRA HAP Contract qualifies for issuance of such vouchers.

[108] 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.

[109] See the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices including the "January 18, 2017 HOTMA implementation notice, 82 Fed. Reg. 5458," and the "July 14, 2017 technical correction and clarification notice, 82 Fed. Reg. 32461." Also see Notice PIH 2017-21. Pursuant to applicable Housing Choice Voucher program requirements, upon PBV HAP Contract termination the family must be given the option to remain in their unit with HCV assistance if the unit remains rental housing, the rent is reasonable, and the unit meets housing quality standards.

K. <u>No Rescreening of Tenants upon Conversion</u>. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[110] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV or PBRA requirements regarding continued occupancy. Under PBV, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, Section 8(o)(4) of the Act and 24 CFR § 982.201, concerning income eligibility and income targeting of tenants at initial occupancy, will not apply for current households. Under PBRA, a household that would not be income eligible for initial occupancy of a Section 8 unit at the time of conversion would still be placed on a Section 8 lease and eligible for assistance under the provisions governing continued occupancy. 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 for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing's restrictions. Additionally, any owner-adopted preference shall not apply to any current resident.

2.5 <u>Special Provisions Affecting Conversions to PBVs</u>

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.

[110] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

A. Length of Contract. Section 8(o)(13)(F) of the Act provides, in part, that the HAP Contract may have an initial term of up to 20 years. In addition, 24 CFR § 983.205(a) provides the PHA with discretion to set the contract term, for a minimum period of one year and a maximum period of twenty years. By choosing to participate in the RAD program, the PHA and owner agree to an initial HAP Contract term of 20 years. A PHA may enter into an extension of the initial HAP Contract term with the Owner at any time during the initial term. The PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding.

B. PBV Percentage Limitation. Per the RAD statute, Section 8(o)(13)(B) of the Act (and, by extension, 24 CFR § 983.6) does not apply and covered projects do not count against the percentage limitation applicable to the PBV program. As a result, a PHA that is administering RAD PBV assistance does not take the RAD PBV into consideration when calculating the percent limitation for any non-RAD PBV actions that are subject to the percent limitation. In other words, RAD PBV is excluded from both the numerator and the denominator when calculating the percent of the PHA's voucher portfolio that may be project-based for non-RAD PBV.

C. Cap on the Number of PBV Units in Each Project. There is no cap on the number of units that may receive RAD PBV assistance in each project. Under the HOTMA Implementation Notice, certain formerly assisted properties are excepted from the project cap. For any Covered Projects not covered under the HOTMA Implementation Notice, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(b), and 983.262(a) and (d).

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.

F. Initial Contract Rent Setting. Initial rents for PBV contracts are determined by the PHA, in accordance with 24 CFR Part 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). For RAD conversions, HUD is waiving 24 CFR § 888.113(f)(2) and establishing the alternative requirement that the applicable FMR used for SRO units for initial and re-determined rents shall be the zero bedroom (efficiency) FMR.

G. Re-Determined Rents. The rent to owner will be redetermined in accordance with 24 CFR § 983.302.

H. Under-Occupied Units. If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in the unit until an appropriately-sized unit becomes available in the Covered Project.[111] When an appropriately-sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriately-sized unit within a reasonable period of time, as determined by the PHA. In order to allow the family to remain in the under-occupied unit until an appropriately-sized unit becomes available in the Covered Project, 24 CFR § 983.260 is waived.[112]

I. Davis-Bacon Prevailing Wages. Execution of a PBV contract through RAD that provides rental assistance to previously-assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements.

[111] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[112] As the later enacted statute, the RAD Statute, as amended by the FY 2018 Appropriations Act to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

J. Replacement Reserve. 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. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected needs. Replacement reserves shall be maintained in a bank account or similar instrument, as approved by HUD, where funds will be held by the mortgagee or, where there is no financing, by the Project Owner and may be drawn from the reserve account and used subject to HUD guidelines.

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[113]) 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. Appendix III provides the site and neighborhood standards applicable to RAD conversions to PBRA.

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. Based on the requirements of section 8(c)(1) of the Act, the initial contract rents will be established at the lesser of the following rent levels: (a) 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[114] and submitted with the request for prospective conversion; and (b) 110 percent of the applicable FMR, less utility allowances or 120 percent of the applicable FMR,

[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] See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8.

less utility allowances, in the case of projects that (i) preserve project-based rental assistance in communities with high percentages of rent-burdened households and where it is particularly hard to utilize tenant-based assistance, (ii) serve to expand housing opportunities in communities with poverty rates less than 30%, and/or (iii) support revitalization activities that are resulting in material private investment in the surrounding neighborhoods. For RAD conversions, HUD is waiving 24 CFR § 888.113(f)(2) and establishing the alternative requirement that the applicable FMR used for SRO units at initial contract rent setting and when adjusting contract rents shall be the zero bedroom (efficiency) FMR. Further, with HUD approval, the Project Owner may use the Small Area FMR in place of the FMR in the computation of rents. To implement this provision HUD is implementing an alternative requirement to 24 CFR §888.113(h) so as to permit the use of a Small Area FMR by project for initial contract rent setting and when adjusting contract rents.

For projects with units that will be undergoing Work, 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 (or 120 percent of the applicable FMR, less utility allowances, per the criteria described above). For owners who wish to establish rents using this method, the owner must submit an RCS that includes both "as-is" rents at the project and "post-rehab" rents at the project. 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 Work. The owner will be required to submit for HUD approval a cost-certification prepared for the third-party financing source once the Work has been completed.

If the Work is not completed by the date reflected in the HAP Contract, unless HUD agrees to extend the deadline for completion of the Work, on the first day of the month following the date for the completion of the Work 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 Work was 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 Work was to have been completed as an overpayment and will offset future HAP payments until the overpayment has been repaid. Effective on the date the Work is completed and the cost-certification accepted by HUD, 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 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 the 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.[115]

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 120% 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. The applicable FMR used for SRO units shall be the zero bedroom (efficiency) FMR. Further, where HUD has approved the use of Small Area FMR by project, the Small Area FMR will continue to serve as the applicable FMR when determining the rent cap.

E. Distributions. Covered 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-motivated owners and authorizes HUD to require not-for-profit and certain for-profit owners to establish a residual receipts account.

F. Davis-Bacon Prevailing Wages. Execution of a PBRA contract through RAD that provides rental assistance to previously-assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements. In such cases, Davis-Bacon applies to a PBRA conversion to the same extent it would apply if the conversion were a PBV conversion.

[115] 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 in order to calculate the contract rent for the project in the following fiscal year.

G. Under-Occupied Units. If at the time of conversion, an eligible family assisted under the Mod Rehab contract is occupying a unit that is larger than appropriate because of the family's composition, the family may remain in the unit until an appropriately-sized unit becomes available in the Covered Project.[116] When an appropriately-sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriately-sized unit within a reasonable period of time. In order to allow the family to remain in the under-occupied unit until an appropriately-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.[117]

H. Physical Inspection. 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, however, only after the PBRA HAP Contract is executed and the Work completed, 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.

I. Choice-Mobility. HUD seeks to provide all residents of covered projects with viable Choice-Mobility options. Unless provided an exemption as described below, 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 Contract 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

[116] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[117] As the later enacted statute, the RAD Statute, as amended by the FY 2018 Appropriations Act to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

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. 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 Conversion Plan, unless the project owner administers, directly or through an affiliate, a Housing Choice Voucher program.

Unless exempt, project owners should include in their Conversion Plan their intention to provide Choice-Mobility at the Project and include the following as part of the House Rules for the associated project: “Family Right to Move. Each family has the option to obtain tenant-based rental assistance (commonly known as a Housing Choice Voucher) from [name of the PHA], subject to certain program limitations, at any time after the second year of occupancy. Before providing notice to terminate the lease, the family must first contact the PHA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available, the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance. After the PHA offers the family the opportunity for tenant-based rental assistance in accordance with HUD requirements and after the family has secured a lease with such tenant-based rental assistance, the family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.”

2.7 Special Provisions Affecting Conversion of SROs

As the purpose of the conversion of SRO assistance to assistance under a long-term PBV or PBRA HAP 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 McKinney-Vento Homeless Assistance Act and contained in the Continuum of Care Interim Rule at 24 CFR § 578.3. 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 Notice H 2013-21 (July 15, 2013). The preference shall not apply to current residents because these residents will 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 Notice H 2013–-21. This requirement shall apply for the term of the contract and any renewal contract.[118]

B. Consultation with CoC. Owners must meet with their CoC to discuss the conversion of assistance, project rehabilitation plans, the ongoing requirement for a preference for homeless individuals or families, 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). To the extent that project plans entails a reconfiguration of units, owners must secure a letter of support from the CoC for these actions.

C. Admission of Homeless Participants. The Administering PHA or Project Owner is strongly encouraged to follow the CoC's established coordinated entry process to identify new homeless participants for converted SRO properties prior to screening. The Administering PHA or Project Owner must apply **all** mandatory screening criteria to homeless individuals and families that are new admissions (e.g., sex offender screening under 24 CFR § 982.553(a)(2)(i) or 24 CFR § 5.856).

For PBV properties, the Administering PHA may establish screening requirements for new admissions to the SRO project which are distinct from those in place for its HCV program, provided that such screening requirements do not conflict with the prohibition on screening

[118] 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.

of pre-conversion residents upon conversion (see Section 2.4.K.). 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 all SRO projects converting to PBV under RAD. In administering its regular PBV program, PHAs generally may not choose to apply different screening criteria to different properties within its HCV program. HUD is authorizing this limited exception for SRO conversions under RAD. (Project Owners under PBRA already have the discretion to apply distinct screening requirements for any individual assisted project).

All discretionary admission policies must be applied to all applicants to a converted SRO property uniformly.

Administering PHAs and Project Owners should be aware that some discretionary criteria can have the effect of screening out homeless 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. **Data Submission Requirements.** In order to maintain data on the project's ongoing housing of formerly homeless persons, the project will continue to be required to participate in 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.

E. Tenant Selection in Permanent Supportive Housing.

1. In setting preferences for new admissions following accommodation of current residents pursuant to Section 2.4.E, the Administering PHA or Project Owner may not deny admission to or otherwise discriminate against or among any federally protected classes, including among different groups of persons with disabilities. Although an owner or PHA may adopt a preference for admission of families that include a person with disabilities, the owner or PHA may not adopt a preference for admission of persons with a specific disability.[119] However, an owner or PHA may

[119] 24 C.F.R. § 5.655(c)(3); 24 C.F.R. §982.207(b)(3).

provide a suite of supportive services, and a preference for admission to assisted units for households containing individuals who would qualify for the supportive services offered, such as, for example, by having Medicaid reimbursement authority for the supportive services provided. Any preference for admission to assisted units may not discriminate based on the type of disability and any individual who would qualify to receive the services offered under the service's nondiscriminatory eligibility requirements may not be excluded from the preference.

2. For Mod Rehab projects converting SRO assistance to PBV under the Demonstration, the Administering PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. The voluntary services may be designed to be particularly beneficial for specific subpopulations, pursuant to PBV program requirements. Voluntary services can consist of a variety of activities, including for example, meal service adequate to meet nutritional needs, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, and other services designed to help the recipient live in the community as independently as possible. Voluntary services can also include disability-specific services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided to support a person with a disability. Such services may also include, for example, services provided by State Medicaid programs to promote community-based settings for individuals with disabilities. To implement such a preference, such housing, aid, services, benefits, and accommodations must be provided in the most integrated setting appropriate to the needs and choices of qualified individuals with disabilities, participation cannot be designed to deny participation in housing, programs, or activities that are not separate or different, participation in such housing, aids, benefits, or services cannot be required, and such preference must comply with and be implemented in accordance with applicable anti-discrimination requirements. This type of preference must be implemented in accordance with the requirements in Federal Register Notice 82 FR 5458 "Housing Opportunities Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions" and any successor regulations, notices and guidance. As part of the PHA plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review the proposed preference. However, HUD's limited review and authorization to implement a preference is not a determination by HUD of compliance with such requirements.

3. For Mod Rehab projects converting SRO assistance to PBRA under the Demonstration, the following provisions shall apply.

    a. The Project Owner may establish a preference for admission of households including a person that qualifies for the services provided at the site, including services, aids, benefits, and accommodations which are designed to be particularly beneficial for specific subpopulations, if it is determined that all of the following criteria are met:

        i. The housing, aid, benefits, services, and accommodations will serve the resident population in the most integrated setting appropriate to the needs and choices of qualified individuals with disabilities in accordance with Section 504 and Title II of the ADA. For example, the housing's design, location, and/or operational policies and procedures must mitigate the effects of segregation or concentration of individuals with a specific disability or diagnosis.
        ii) The preference is limited to the population of families that include an individual where that individual's need for services significantly interfere with the family's ability to obtain and maintain housing.
        iii) Such families will not be able to obtain or maintain themselves in housing without the availability of such supportive services.
        iv) Participation in such services is voluntary. Families are not required to accept the housing, aids, benefits, accommodations, or services offered at the project. The Project Owner may not condition admission into the project on the basis of utilizing services offered at the project. The Project Owner may not deny the opportunity for continued occupancy at the project on the basis that an individual chooses to no longer participate in a service or that the individual no longer qualifies for a service.
        v) The preference will not be used to exclude a family or individual based on disability.

    b. The determination required in Section 2.7.E.3(a), above, shall be made by the Project Owner. The Project Owner shall consult with the state and county Medicaid authorities, health services agencies, and other state officials implementing Olmstead settlements, as applicable, regarding how the project and the proposed preference fits with the state system of care and expands individual choice.

i. The Project Owner's determination with respect to subsection (a)(i), above, shall consider factors at a minimum including the number of units and bedroom distribution of units eligible to be filled pursuant to the proposed preference relative to the number of units in the property (including whether the preference applies to more than the greater of five units or 25% of the total units at the project), whether any other units at the project are subject to a preference for persons with disabilities, the overall size of the property, whether the location of units appropriate for persons admitted under the proposed preference are dispersed throughout the property, the availability of cooking facilities in the units, access and egress to the units, the ability of residents with disabilities to interact with residents who do not have disabilities, the property location, access to public transportation, access to other neighborhood amenities, the nature of the services provided, and the qualifications of the provider. The Project Owner must also consider standards for proposed integrated settings that are specific to the state where the property is located (e.g., Olmstead settlements, Qualified Allocation Plans, state transition plan under the Home and Community Based Services settings rule,[120] and state and local guidelines governing the concentration of persons with disabilities within a property, for various disability types). The Project Owner's determination may rely heavily on whether the proposed setting is consistent with such state standards for integrated settings, but Project Owners are cautioned to conduct appropriate due diligence regarding whether the state standards are appropriate for such reliance.

ii. In evaluating whether the factors in subsections (a)(ii) and (a)(iii), above, are met in a particular case, the Project Owner may look to whether payment for the services for the individuals that qualify for the preference is provided through a federal agency, state, or local program implementing home- and community-based supportive services for people with significant and long-term service needs, which program is established to mitigate the risk of institutionalization or

[120] 42 C.F.R. § 441.301(c)(4).

homelessness pursuant to authorities such as, but not limited to, (i) Sections 1115, 1115a, 1915(i), 1915(k), and 1915(j)(3) of the Social Security Act of 1935; (ii) a Home and Community Based Services Waiver pursuant to Section 1915(c) of the Social Security Act of 1935; (iii) the Money Follows the Person Demonstration and (iv) a state or local plan for implementing the "most integrated setting" mandate of Olmstead v. L.C.[121]

c. The Project Owner may not implement a preference as described in this Section 2.7.E.3 absent notice to and authorization from HUD. Compliance with all applicable fair housing and civil rights requirements is the responsibility of the Project Owner, and HUD's limited review and authorization to implement a preference is not a determination by HUD of compliance with such requirements. Prior to or contemporaneous with the RAD Conversion Plan submission, a request for review of a preference must be submitted through the applicable Office of Multifamily Housing Programs regional asset management office pursuant to Notice H 2013-21. The request must include a certification from the Project Owner regarding the determinations set forth in Section 2.7.E.3(a), above, and must include the information and documentation to support the certification, a description of how the Project Owner reached the determinations, and any appropriate additional documentation. The request must be accompanied by appropriate ancillary documents such as a description of the property (including of the services offered and the provider), a tenant selection plan (which must identify all tenant screening and selection preferences at the property), and an affirmative fair housing marketing plan. The Office of Multifamily Housing Programs will document authorization to implement the preference following a finding by regional asset management staff and by the Office of Fair Housing and Equal Opportunity staff, in consultation with Office of General Counsel staff in the applicable HUD Region, that the Project Owner's determination documentation is adequate for purposes of HUD's limited review. HUD may request that the Project Owner provide additional documentation necessary to review the adequacy of the Project Owner's determination.

[121] See https://www.medicaid.gov/medicaid/ltss/money-follows-the-person/index.html and https://www.ada.gov/olmstead/olmstead_about.htm.

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)
- Conversion Plan submission and conditional approval
- Closing of financing and HAP Contract execution consistent with conditional approval

2.8.1 Initial Submission of Interest to HUD

Prior to submitting a Conversion 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;
- Project Owner's name;
- Project Owner's contact information;
- The Mod Rehab Contract number(s);
- Mod Rehab Contract expiration date
- Total number of units covered under the Mod Rehab Contract(s), by bedroom size;
- Property Type (Mod Rehab or Mod Rehab SRO) and
- Conversion Type (PBRA or PBV)

HUD has developed an electronic form submission for Project Owners to make the initial submission. To access the electronic submission template, Project Owners must request access to the RAD Resource Desk at www.radresource.net where users will be prompted to provide the information listed above.

HUD will provide the Project Owner a confirmation of successful submission. HUD will use the initial submission in order to:

1. Assign a Transaction Manager, who will make contact to discuss the conversion process and the Project Owner's goals for the Project; and
2. For PBV conversion, initiate the process to identify a PHA willing to administer the new PBV contract (usually this is the current PHA administering the Mod Rehab contract).

There is no fee associated with the initial submission, and there is no cap on the number of Mod Rehab Projects for which a Project Owner may make a submission. HUD will take no adverse

action against an owner who makes an initial submission, but does not later submit a Conversion Plan.

2.8.2 PHA Administration of the PBV Contract

1. **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 HUD finds the PHA to be unfit for this role, the PHA is uninterested in administering the contract, or there is a strong business justification for selecting an alternative PHA. In such cases, HUD will make a reasonable effort to find a PHA, in consultation with the Project Owner, with operational jurisdiction willing to enter into a PBV contract with the Project 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 Conversion Plan 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 within 30 days of HUD's request. HUD will communicate the PHA's response to the Project Owner. If no PHA consents to enter into the PBV contract, the Project cannot convert to PBV, and the Project Owner may consider conversion to PBRA instead. Applicants must wait until a PBV HAP Contract Administrator has been identified before submitting their Conversion Plan, as the PHA who will act in this capacity must be identified in that plan.

2. **Role of Administering PHA.** The PHA that agrees to administer the PBV contract is responsible for administrative duties described in 24 CFR Part 983 and this Notice. Prior to conversion, the PHA's key roles include:

1. **Pre-Selection Inspection.** The PHA must ensure that the units substantially meet HQS, as defined in the PHA's Section 8 administrative plan, prior to submission of the Conversion Plan.
2. **Initial contract rent setting.** The PHA will determine the initial contract rents pursuant to Section 2.5.G.
3. **Number of Vouchers.** The PHA will request vouchers based on the number of units on the Mod Rehab contract that are eligible for TPVs at the expiration or termination of the Mod Rehab contract under PIH's HCV funding Appropriations Act notices (or successor PIH notices regarding TPV allocations) .
4. **HQS inspections.** Prior to execution of the HAP Contract, the PHA must inspect the Converting Project proposed for conversion to ensure that the units fully comply with

HQS, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions.[122]

2.8.3 Resident Notification and Consultation

A. Resident Notification – All conversions.

For all conversions, a Project Owner is required to notify residents in writing of its intent to participate in the Demonstration.[123] 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. Include a description of any proposed rehabilitation or construction at the property;
5. State the Project 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
6. Supply information on the method to submit comments to the Project Owner and provide for a 30-day comment period.

The Project 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 meetings 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. The Project Owner must hold an additional meeting when there has been a material change that was not already discussed in a previous meeting.

When providing resident notification and meetings, a Project 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

[123] This notification letter does not replace or obviate any other applicable notification letters, such as those that may be required under the URA. Sample resident notification letters are available at www.hud.gov/rad.

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, a Project 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, a Project 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 Project Owner must submit a copy of all comments received with their Conversion Plan, along with a description of how the residents' comments will be addressed in the conversion. HUD will consider all resident comments and the Project Owner's plan to address the comments before approving the Conversion Plan. For prospective conversions, if more than 50 percent of written resident comments disapprove of the conversion of assistance, HUD will contact the Project Owner to discuss options for proceeding with the conversion request or may decline the request.

Upon conditional approval of the Conversion Plan, the Project Owner must notify each affected family that the project has been approved for conversion.

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. <u>Compliance with Applicable Notices Regarding Contract Expiration or Termination</u>. 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 Mod Rehab Contracts (including SRO properties), the owner must provide written notice of the impending Mod Rehab Contract expiration to residents assisted under the Mod Rehab Contract. An owner requesting conversion under this Section of the Notice must comply with this requirement. However, conversion under this Notice will adequately protect residents from displacement and from an increase in the resident portion of the rent. Consequently, conversion may be processed and completed during the one-year notification period. 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. If the owner subsequently decides not to pursue a RAD conversion, they are still subject to compliance with 8(c)(8)(A). 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.

2.8.4 <u>Conversion Plan, RAD Approval, and Closing</u>

A. Conversion Plan. The Owner must submit to HUD through the RAD Resource Desk a complete Conversion Plan that satisfies all HUD underwriting standards and program requirements. (See Attachment 2.A for Conversion Plan Requirements). HUD will have 60 calendar days from the date of submission of the Conversion Plan to conditionally approve or reject the plan, or request additional information. HUD's decisions regarding the acceptance of the Conversion Plan will be made in HUD's sole discretion. If HUD determines that a Conversion Plan is not feasible or that the requirements of the Conversion 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 Conversion Plan is disapproved, HUD's letter of disapproval will discuss changes, if any, that would result in an acceptable Conversion Plan.

B. Conversion Approval. An owner will be notified of HUD's acceptance of the Conversion 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 Conversion Plan.[124] 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 conditional approval letter is issued, HUD expects that the RAD conversion will close in a timely manner. The conditional approval letter will allow 90 calendar days (from the date the conditional approval letter is issued to the owner) in which to close the RAD conversion transaction, unless extended by HUD. 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 conditional approval.

C. Closing. Conversion under RAD, and 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 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 and routine processing conditions acceptable to HUD. In transactions with outside financing, a successful closing will also include evidence that financing sources have closed and will provide the contemplated funding. If the project

[124] "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.

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: Conversion Plan Requirements and Feasibility Benchmarks for Mod Rehab Conversions

A Conversion Plan will not be reviewed until all required documentation is submitted electronically to the RAD Resource Desk at www.radresource.net. HUD will complete an initial review for document completeness within five business days of submission and will notify the Project Owner of deficiencies. Once HUD has determined that all required documents appear to have been received, HUD will review the submission.

HUD's purpose in reviewing Conversion Plan is to ensure the long-term physical and financial viability of the Covered Project. If a Conversion 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 Conversion Plan if the information provided is not complete, accurate, or in compliance with the submission requirements listed below. HUD will not accept the Conversion Plan if the Covered Project does not meet environmental review requirements, as described below.

Below are all the required components of a complete Conversion Plan and the requirements of each component.[125] 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. Owners must upload their Conversion Plan as outlined below, following submission of the FHA insured loan application for Firm Commitment.

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. Conversion Overview. A narrative summary of the Covered Project and the Project Owner's conversion goals. Include details such as a description of the physical Project, the number of proposed units of each bedroom type, project history, identification of immediate capital needs of the Project, identification of other properties to be held within the same ownership entity, anticipated financing that will be obtained to meet the capital needs, anticipated relocation, and circumstances such as new construction, Transfer of Assistance, scattered site, and reconfiguration of units.

[125] Additional guidance in preparing the Financing Plan is available in The Mod Rehab Processing Guide located at http://www.radresource.net/2c_library.cfm.

B. HQS or REAC Inspections. Submit the project's most recent Housing Quality Standards (HQS) or Real Estate Assessment Center (REAC) score as evidence that the project meets this minimum threshold requirement.

C. Mod Rehab Contract. Submit a copy of the fully executed original and current Mod Rehab Contract(s), including all exhibits.

D. Statement of Compliance with Fair Housing and Civil Rights. The Project Owner must submit a written statement certifying that it will comply with the requirements identified in section 2.3.1.B of this Notice.

E. Type of conversion. Identify whether the Covered Project will convert to PBV or PBRA assistance. For PBV conversions, identify the PHA that will administer the PBV HAP Contract.

F. Choice- Mobility Letter of Agreement. 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.

G. Resident Notification. The Project Owner must provide proof of written notification informing residents of the intent to participate in RAD. Include 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 Project Owner must also provide a description of how the residents' comments will be addressed in their plan for conversion.

H. Capital Needs Assessment (CNA). A CNA is required in order to identify the short-term and long-term capital needs of the property, which will factor into the Scope of Work and both the Initial and Annual Deposits to the Replacement Reserve. See Paragraph 2.4.A. for additional information on CNA requirements.

I. Initial Contract Rent Setting.

1. For PBV conversions, submit evidence that the Project Owner's proposed rents are in accordance with the PHA's rent setting. See Section 2.5.F. for additional information

on Initial Contract Rent Setting for PBV.

2. For PBRA conversions, submit a Rent Comparability Study, including the Owner's RCS Cover Letter. The rents cannot exceed the limits set forth in Section 2.6.C.

J. Scope of Work. The Conversion Plan must include a Scope of Work that accompanies the CNA. The Scope of Work must:

1. Identify and address all repairs identified in the CNA as critical or immediate, (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 proposed Work and the conclusions and recommendations of the CNA provider; additional scope items not identified in the CNA; and the Project Owner's choices for replacement components.
2. Identify replacement quantities and costs. Rehabilitation cost 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 and corresponding remediation activities known at that time, and a summary of accessibility features that are required pursuant to applicable accessibility standards and other accessibility requirements. Other accessibility requirements include, but are not limited to, physical features that need to be provided as reasonable accommodations for qualified persons with disabilities.
4. Include a reasonable timeline for completion of all rehabilitation items acceptable to HUD, from the date of Conversion Closing and any financing, depending on the scope of rehabilitation needed.

For Conversions using FHA financing or equity sources of financing. submit a copy of the Scope of Work included with the FHA Application for Firm Commitment, or submitted to the lender, equity provider (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source.

K. Environmental Review. HUD cannot approve an applicant's Conversion Plan 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.

A RAD transaction will either be reviewed under 24 CFR Part 50 ("Part 50 Reviews") or 24 CFR Part 58 ("Part 58 Reviews"). Part 50 applies when HUD conducts the environmental review, and Part 58 applies when an RE conducts the environmental review. The following table shows which review protocol a transaction will follow, along with who will conduct the

review:

Description	Type of Environmental Review	Reviewer
PBRA Non-FHA	Part 50	RAD Transaction Manager
PBRA FHA Non-Risk Share[126]	Part 50	FHA Production
PBRA FHA Risk-Share	Part 50	Transaction Manager
PBV FHA Non-Risk Share	Part 50	FHA Production
PBV Non-FHA	Part 58	Responsible Entity
PBV FHA Risk-Share	Part 58	State Housing Finance Agency or Responsible Entity, as applicable[127]

Under limited circumstances, per 24 CFR 58.11(c), an Awardee with a non-FHA PBV transaction may request HUD to undertake the environmental review under Part 50 if a suitable RE cannot be found or if the local government was not a direct recipient of the funds and refuses to accept responsibility or when HUD determines the local government does not have capacity to act as an RE.[128] This request must be made in writing and submitted to HUD no later than at the time of the Conversion Plan submission.

For multi-phase developments, the environmental documents submitted with the Conversion 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.

Requests to transfer assistance from the Converting Project to a new location are subject to environmental review.

[126] Section 542(c) of the Housing and Community Development Act of 1992 enables HUD and State and local housing finance agencies (HFAs) to provide new risk-sharing arrangements to help those agencies provide more insurance and credit for multifamily loans known as the FHA Risk Sharing Program.

[127] Housing Finance Agencies can act as the Responsible Entity for Housing's Risk Share Programs if the HFA is a regular part of the state government or if the HFA is a state instrumentality that has been approved by the governor. If the HFA does not meet either criteria, it must request another department of the state to act as Responsible Entity. An instrumentality of a city or county government cannot act as a Responsible Entity for the Risk Share Program. Please contact HUD if you have any questions about whether an HFA can act as the Responsible Entity.

[128] These circumstances are considered on a case-by-case basis only. Please work with your Transaction Manager to determine suitability.

For transactions receiving funding from other HUD programs (i.e. HOME, CDBG, non-RAD PBV), HUD encourages all parties to complete one review for all programs, even if these programs' environmental reviews are conducted under a different review protocol (Part 50, Part 58). In cases where two Part 58 programs are combined, HUD encourages applicants to work with the Responsible Entity to see if environmental reviews can be combined. However, this is solely the Responsible Entity's determination. In cases where a Part 50 program and a Part 58 program are combined, HUD may determine that it will perform one Part 50 environmental review for both programs under 24 CFR 58.11 if performing an additional Part 58 environmental review is not feasible in the time allotted. HUD must ensure that the Part 50 review considers the full scope of all activities and funding associated with all programs. When one review is used for both programs, the Approving Officials for both programs must certify the 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:[129]

1. For PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) without FHA insurance and without any rehabilitation, construction, or demolition,[130] HUD conducted a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

   A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

   B. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 C.F.R. Part 55;

   C. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

   Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR Part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are

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

[130] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or other interested parties or the public.[131]

Owners will be required to submit documentation to facilitate HUD's site-specific review.

For Environmental Reviews under 24 CFR Part 58, PHAs and/or proposed Owners should reach out to the responsible entity.

2. For all non-FHA PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) that do not meet the requirements under paragraph 1 above, the owner or vendor will follow the guidelines in Chapter 9 of the MAP guide. Owners or vendors will upload all applicable documentation directly into HEROS at the time of Conversion Plan submission. The following exceptions to the MAP Guide apply:
    - In lieu of a Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) [132], except for conversions involving substantial rehabilitation or new construction activities, Awardees may submit a more limited report on potential sources of contamination. Where a Phase I ESA is not required (i.e., projects without any associated substantial rehabilitation[133] or new construction), the Awardees can submit 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

[131] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR Part 50. https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/

[132] The Transaction Screen does not meet the standard for "All Appropriate Inquiries" for CERCLA liability protection, as noted in ASTM E 1528-14 Section 4.2.1.

[133] 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. 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.

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 ESA in accordance with ASTM E 1527-13 (or the most recent edition) must be provided.

- Awardees may submit a Phase I ESA that is up to 5 years old upon submission; however, it must be updated by a Transaction Screen that is up to 1 year old upon submission.

When HUD conducts the environmental review under Part 50, PHAs (or their vendors) must submit environmental reports and documentation[134] for HUD review into the HUD Environmental Review Online System (HEROS), where HUD will complete its review.

HUD staff will review the submissions and may require additional information in order to complete their review. 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 RAD approval will include any conditions required to carry out any and all mitigation measures as may result from the environmental review. Any conditions or mitigation that cannot be satisfied before Closing will survive Closing.

When a Responsible Entity (RE) completes an environmental review under Part 58, the Conversion 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.[135] 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 (RROF), to their local PIH field staff.[136] 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 proof of the completed Form 7015.16 (either a copy of the paper form or a screenshot of the completed screen in HEROS) to HUD; or

[134] PHAs and providers should take care to respond to all applicable laws and authorities and MAP-specific requirements when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. Information about HEROS and how to register can be found at https://www.hudexchange.info/programs/environmental-review/housing/#heros

[135] 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/.

[136] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR § 58.34(a)(12), the PHA must submit the RE's finding of exempt activity with their RAD Conversion Plan. 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(a)(12) is sufficient.

Additionally, the PHA must submit a Radon Report consistent with the requirements of the Section 9.6.3 of the MAP Guide (or successor provision) for HUD to review.

L. Accessibility and Relocation Plan Checklist. All Project Owners shall complete and submit the Accessibility and Relocation Plan Checklist provided by HUD on the RAD Resource Desk. The checklist shall include a certification that anticipated relocation activities comply with all applicable HUD requirements, including the URA as well as applicable accessibility standards, including, but not limited to those under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §8). The cost of accessibility improvements and relocation must be fully funded in the Development Budget. Project Owners are encouraged to use HUD's guidance on relocation planning for persons with disabilities in HUD Handbook 1378.0, Exhibit 3-1 and the RAD Fair Housing, Civil Rights, and Relocation Notice.

M. Proposed Financing

a. For all conversions using financing, the following must be addressed:
    1. Provide a brief discussion of conditions/milestones to be satisfied prior to closing including any known impediments to closing within the timeframe required under the Notice;
    2. Estimated closing date(s) for all proposed financing;
    3. For each proposed loan, equity contribution, or grant, the Conversion Plan must include a recent lender, investor or grant commitment letter, dated no more than 60 days prior to Conversion Plan submission, with key terms identified (including amount, repayment terms, interest rate, amortization, maturity, prepayment restrictions, and pay-in schedule) from all financing provider(s);

b. For conversions not using FHA financing or equity sources, the following requirements must be addressed in addition to the requirements set forth in Attachment 2A, Section M.a. 1-3 above:
    1. Permanent debt financing with monthly payment amounts not conditioned on the availability of cash flow (i.e., "hard" debt) on Covered Projects must:

8. Be at a fixed rate of interest, for a fixed term, fully amortized over no more than 40 years;

9. Not have a balloon payment until after the earlier to occur of a) expiration of the term of the HAP Contract or b) 17 years from the date of the permanent debt financing; and

10. Not have a debt service coverage less than the higher of 1.11 or lender requirements.

2. All subordinate (or secondary) financing must be disclosed and then approved by the first-mortgage lender;
3. The terms for all seller take-back financing must also be disclosed;
4. If project revenue or existing reserves will be a source of funding, submit evidence of the current account balances.

N. <u>Development Budget (Sources and Uses of Funds)</u>. All owners must submit a Development Budget.

c. For Conversions using FHA financing or equity sources of financing, submit a copy of the Development Budget included with the FHA Application for Firm Commitment, or submitted to the lender, equity provider (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source. The Project Owner must submit the FHA Application for Firm Commitment review <u>before</u> the RAD conversion is submitted to the Office of Recapitalization. Include a Subsidy Layering Review (SLR) if one has been performed by another agency. If no SLR is provided, HUD will complete an SLR whenever multiple federal sources are proposed.

d. **For all other Conversions with new financing:**

1. Include a reasonable, balanced, and comprehensive presentation of both construction period and permanent sources and uses of funds.
2. Identify existing loans or debt that will be paid off at the closing, if applicable.
3. Include a construction contingency of 10 percent (HUD may require a higher contingency on a case-by-case basis) if the Project Owner plans to obtain new financing simultaneous with the Conversion.
4. Demonstrate that any Identity of Interest (IOI) loans or advances will be converted to unsecured Surplus Cash Notes (Project's cash remaining, after debt service, project operational costs and other permitted payments) unless otherwise approved by HUD.
5. If applicable, identify the initial operating deficit during the construction period and how that deficit will be funded, such as an operating deficit escrow or similar fund.

6. 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.

O. Proposed Development Team. The Project Owner must identify the proposed legal entity that will own the Covered Project following conversion, the proposed management agent following conversion, and the "principals" of both entities. In addition, the Project Owner shall provide the following:

1. For all conversions with a proposed change in ownership entity, the new Project Owner must provide evidence of successful experience owning and operating HUD or other multifamily housing properties. New Project Owners may be required to demonstrate that the criteria specified in HUD Handbook 4350.1, Chapter 13, Change in Ownership: Transfer of Physical Assets have been met in part or in whole.
2. For PBRA conversions with a proposed change in ownership entity or a material proposed change in ownership of the existing ownership entity, the new Project Owner must submit evidence that all new principals have a Previous Participation Certification in the Active Partners Performance System (APPS) (formerly referred to as Form HUD-2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.
3. For all conversions with a proposed change in management agent the new agent must provide evidence of successful experience managing and operating HUD or other multifamily housing properties.
4. For all conversions in which Work is proposed, the Project Owner must submit the identity of the general contractor or construction manager or a statement that the Project Owner will be managing construction directly, together with evidence of the general contractor's, construction manager's or Project Owner's recent and successful experience with similar rehabilitation or construction projects.

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

1. **For all FHA transactions or Conversions using equity sources of financing:**
   a. Provide a copy of the Operating Pro Forma that was submitted with the FHA Application for Firm Commitment or submitted to the lender, equity provider (including LIHTC, historic tax credit, or Opportunity Zone equity providers), LIHTC allocating agency, or comparable funding source.
2. **For all other Conversions:**
   a. Provide a 20-year Operating Pro Forma in an owner-provided template.

b. Include columns capturing the average amount for the past three years for all line items listed in the Pro Forma. Provide explanations and/or supporting documentation for any major deviations of the historical average from the year 1 data entered on the Pro Forma.
c. 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.
d. Ensure the Pro Forma complies with at least the following feasibility benchmarks unless otherwise approved by HUD:

Revenue:

i. Rents shall not exceed the amounts permitted under program rules;
ii. All other sources of income 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);
iii. Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent;
iv. Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent;

Expenses:

i. All other operating expenses shall be no less than 85 percent of the average for the last three years;
ii. The ADRR 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. The Owner should use reasonable estimates for 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%. HUD may consider alternative arrangements with respect to the Initial Deposit to the Replacement Reserve (IDRR) if risks to the Covered Project can be adequately mitigated. The ADRR must be sufficient to maintain a minimum balance at the end of each year during the initial 20-year HAP Contract term in accordance with the HUD MAP Guide Appendix 5g Section VII.C.3D, Minimum Balances; and
iii. 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.

Q. **Market Study.** A market study or net demand analysis may be required if the project is currently experiencing a high vacancy rate or if the Project Owner is requesting a reconfiguration of units. The Project Owner should consult with the Transaction Manager to determine if a market study is necessary before procuring one.

R. **Certification of Compliance with Site and Neighborhood Standards.** The Project Owner (for PBRA) or the PHA (for PBV) shall evaluate and include a certification that the site complies with applicable Site Selection and Neighborhood Standards (see Section 2.4.H).

S. **Affirmative Fair Housing Marketing Plan and Tenant Selection Plan.** For PBRA conversions, evidence that a completed AFHMP (Form 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 a Project Owner plans to adopt any preferences, the Project Owner must submit its Tenant Selection Plan along with the AFHMP (see HUD Handbook 4350.3, page 4-4) for review. Please note that in accordance with Notice H 2013-21, if a Project Owner plans to adopt any preferences that are not authorized in 24 CFR 5.655(c), it must obtain HUD approval. The AFHMP and any owner-adopted preferences may not conflict with any special condition arising from the RAD conversion or any provision in a remedial order or agreement. 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.

T. **Transfer of Assistance.** For all conversions involving a transfer of assistance to a new site, the PHA must have secured HUD approval of the site (Covered Project). See Section 2.4.J.

U. <u>Coordination with CoC</u>. SRO projects converting under RAD must provide a certification with their Conversion Plan that the local CoC has been consulted with regards to the RAD conversion and that it will participate in the CoC's Homeless Management Information System (HMIS) and the annual Housing Inventory Count (HIC). To the extent that project plans entail a reconfiguration of units or include a transfer of assistance, owners must also secure a support letter from the CoC.

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 Last date of Submission

Except with HUD approval, any request under this Section must be submitted by September 30, 2019, and the conversion must be completed no later than November 30, 2019.

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.

Short-term extensions have been 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 directly to the

Office of Recapitalization. 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, subject still to the final date of conversion in Section 3.2, 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 Recapitalization 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 (unless a higher limitation not exceeding any applicable statutory maximum is approved by HUD pursuant to Section 3.6.C) 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, the site and neighborhood standards in Appendix III of this Notice, and applicable standing and subsequent Office of Housing guidance, including handbooks, shall apply. Retroactive conversions are not permitted under PBRA.

C. Relocation and Right to Return. Any person who is legally on the lease or otherwise in lawful occupancy at the Converting Project at or after the time of submission of the Conversion Plan has a right to remain in or, in the event that rehabilitation will result in the relocation of residents, a right to return to an assisted unit at the Covered Project. Any relocation as a direct result of acquisition, demolition, or rehabilitation is subject to requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) which are found at 49 CFR part 24. Proper notices including the General Information Notice (GIN), when applicable, must be sent in accordance with URA regulations and other applicable relocation regulations. Additionally, relocation and one-for-one replacement requirements under section 104(d) of the Housing and Community Development Act of 1974 may apply when CDBG or HOME funds are used in connection with a RAD conversion. Section 104(d) requirements are found at 24 CFR part 42, subpart C, and program-specific relocation requirements for CDBG and HOME projects are found at 24 CFR 570.606 and 24 CFR 92.353, respectively. The applicability of URA or section 104(d) requirements to a RAD conversion is fact-specific and must be determined in accordance with the applicable URA and section 104(d) regulations. 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 Project Owner must alter the project plans in order to house the resident in the Covered Project. If a resident agrees to the plans which would preclude the resident's return, the Project Owner must ensure that the resident's decision is fully informed, voluntary, and well documented. To be fully informed, at a minimum the resident must be notified in writing of a) his or her right to return; b) his or her right to object to plans which would preclude the resident from returning; c) the Project Owner's obligation

to accommodate the resident's right to return; and d) a description of the short and long-term implications of both the right to return arrangements (e.g., temporary relocation) and the resident's options if the resident agrees to such plans. The resident must be provided counseling regarding the resident's rights and options. To be voluntary, a resident must be informed of their right to return, potential for relocation, and temporary and permanent housing options 30 days before making a decision. In addition residents must be provided notice of relocation at least 90 days before the relocation. The Project Owner cannot employ any tactics to pressure the resident into relinquishing his or her right to return or accepting permanent relocation assistance and payments. To be well documented, evidence of a resident's decision must be retained by the Project Owner. At a minimum such evidence must include copies of notices informing the resident of their options, records of any counseling or assistance provided, and the resident's informed, written consent, including an acknowledgement that acceptance of such assistance terminates the resident's right to return to the Covered Project. If the resident agrees to the Project Owner's plans, the permanent relocation is considered voluntary, but must include, at a minimum, any relocation assistance and payments required under the URA and Section 104(d), as applicable. The Project Owner may not propose or request that residents waive their rights or entitlements to relocation assistance under the URA or Section 104(d).

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:

C. Voluntary compliance agreement (VCA) signed by all the parties;
D. HUD-approved conciliation agreement signed by all the parties;
E. Conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
F. Consent order or consent decree; or
G. 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 documents., 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 VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision, etc. If HUD is a party to the such a document the RAD project will not close without HUD's express approval of the transfer of obligations to the new owner.

3.4.2 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 within two years of the request. 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 Section 3.4.2.D.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 project selection. 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, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions.[137].

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.[138] 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.

1. **Rent Supp and RAP contract units.** For prospective conversions, all units on the original Rent Supp or RAP contract that that are eligible for TPVs at the expiration or termination of the contract under PIH's HCV funding Appropriations Act notices (or successor PIH notices regarding TPV allocations) are eligible for conversion to PBV

[137] See Notice PIH-2017-20

[138] Please note that for PBV conversions, the PHA makes the final determination of eligibility to be included on the PBV HAP Contract; 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.

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.[139]

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. Conversions of assistance under the Second Component may not be the basis of re-screening or termination of assistance or eviction of any tenant family in a property participating in the demonstration and such a family shall not be considered a new admission for any purpose, including compliance with income targeting. Other units occupied by such residents 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 Notice PIH 2001-41, Section 8 Tenant Based Assistance (Enhanced and Regular Housing Choice Vouchers) for Housing Conversion Actions – Policy and Processing Guidance, and if 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), or is treated as such under Section 201(p) of the Housing and Community Development Amendments of 1978 as discussed below, which means that the prepayment or other transaction 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 prepayment.

   Qualifying preservation-eligible transactions 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;[140]

[139] 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.

[140] 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[141]; or
- A project that has received a Flexible Subsidy Loan and is the subject of a transaction under which the project is preserved as affordable housing as determined by the Secretary under Section 201(p) of the Housing and Community Development Amendments of 1978.

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 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. **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 Notice PIH 2001-41); the resident may

trigger the provision of EVs and therefore no units beyond the Rent Supp units would be eligible for the RAD conversion.

[141] 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.

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 3.4.2.D.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 3.4.2.D.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, 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. Section 8(o)(13)(F) of the Act provides, in part, that the HAP Contract may have an initial term of up to 20 years. In addition, 24 CFR § 983.205(a) provides the PHA with discretion to set the contract term, for a minimum period of one year and a maximum period of twenty years. By choosing to participate in the RAD program, the PHA and owner agree to a minimum 15-year initial term for the HAP. A PHA may agree to enter into an extension of the initial HAP Contract term with the Owner at any time during the initial term. The PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding.

B. PBV Percentage Limitation. Per the RAD statute, Section 8(o)(13)(B) of the Act (and, by extension, 24 CFR § 983.6) does not apply and covered projects do not count against the percentage limitation applicable to the PBV program. As a result, a PHA that is administering RAD PBV assistance does not take the RAD PBV into consideration when calculating the percent limitation for any non-RAD PBV actions. In other words, RAD PBV is excluded from both the numerator and the denominator when calculating the percent that may be project-based for non-RAD PBV.

C. Cap on the Number of PBV Units in Each Project. There is no cap on the number of units that may receive RAD PBV assistance in each project. Under the HOTMA Implementation Notice, certain formerly assisted properties are excepted from the project cap. For any Covered Projects not covered under the HOTMA Implementation Notice, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(b), 983.262(a) and (d).

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 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. No Screening of Residents upon conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion, but will

be subject to any ongoing eligibility requirements for actions that occur after conversion.[142] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy. 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 income eligibility and income targeting of tenants at initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing's restrictions. Additionally, any owner-adopted preference shall not apply to any current resident.

H. Initial Rents. Initial rents for PBV contracts are determined by the PHA, in accordance with 24 CFR Part 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.

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

[142] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

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. If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in the unit until an appropriate-sized unit becomes available in the Covered Project.[143] 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 PHA. 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 § 983.260 is waived.[144]

L. Davis-Bacon Prevailing Wages. Execution of a PBV contract through RAD that provides rental assistance to previously-assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction (including,

[143] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[144] As the later enacted statute, the RAD Statute, as amended by the FY 2018 Appropriations Act to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements.

M. Transfers after conversion. After initial conversion, in general, a Project Owner may only request a transfer of assistance to HUD after 10 years from the effective date of the initial HAP Contract. A Project Owner may submit a transfer request sooner if it is needed as a result of eminent domain proceedings, natural disasters, unforeseen events, or as otherwise approved by HUD (for example, if HUD provided approval of a future transfer prior to conversion). Absent compelling circumstances, 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 and how the transfer would affect project residents. HUD may consider, and approve with such conditions as HUD determines appropriate, a partial or complete transfer of assistance to a new location if the new location complies with applicable site selection standards. If applicable, any lender to and/or investor in the Covered Project must also approve the transfer of the assistance. Substantially all units covered by the initial HAP Contract must remain or be replaced as a result of the transfer. Residents of the original location at the time of the transfer request shall not experience a loss of rental assistance. PBV-assisted families living at the property upon termination of a PBV HAP Contract have a statutory right to receive a tenant-based voucher and to certain tenancy protections.[145] (A family may voluntarily decline the tenant-based voucher and accept a PBV unit at the new location but may not be required to do so.) Termination of a PBV contract is not cause for issuance of additional tenant-based voucher assistance from HUD. PHAs and owners contemplating RAD PBV transfers after conversion must take the PBV families' right to tenant-based voucher assistance into consideration and ensure that there will be sufficient resources available to the PHA to both effectuate the transfer and meet the PHA's obligation to provide tenant-based vouchers to those families that wish to receive them.

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

[145] See the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices including the "January 18, 2017 HOTMA implementation notice, 82 Fed. Reg. 5458," and the "July 14, 2017 technical correction and clarification notice, 82 Fed. Reg. 32461." Also see Notice PIH 2017-21. Pursuant to applicable Housing Choice Voucher program requirements, upon PBV HAP Contract termination the family must be given the option to remain in their unit with HCV assistance if the unit remains rental housing, the rent is reasonable, and the unit meets housing quality standards.

provisions listed below.[146,147] 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. Appendix III provides the site and neighborhood standards applicable to RAD conversions to PBRA.

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.

C. Initial contract rent setting. Initial rent levels for the PBRA contract are subject to section 8(c)(1) of the Act. For projects that will not undergo Work, the initial contract rents will be established at the lesser of the following rent levels: (1) the comparable market rent, as determined by a Rent Comparability Study (RCS), which must be prepared in accordance with the requirements of Chapter Nine of the Section 8 Renewal Policy Guidebook[148] and submitted with the request for prospective conversion; and (2) 110 percent of the applicable fair market rent (FMR), less utility allowances or 120 percent of the applicable FMR, less utility allowances, in the case of projects that (i) preserve project-based rental assistance in communities with high percentages of rent-burdened households and where it is particularly hard to utilize tenant-based assistance, (ii) serve to expand housing opportunities in communities with poverty rates less than 30%, and/or (iii) support revitalization activities that are resulting in material private investment in the surrounding neighborhoods. With HUD approval, the Project Owner may use the Small Area FMR in place of the FMR in the computation of rents. To implement this provision HUD is implementing an alternative requirement to 24 CFR §888.113(h) so as to permit the use of a Small Area FMR by project for initial contract rent setting and when adjusting contract rents. Properties that are located in

[146] 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).

[147] 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.

[148] See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8

High Cost Areas as identified in Notice H 2017–06 shall have initial rents set at comparable market rents, without regard to any Fair Market Rent (FMR) cap.

For projects with units that will be undergoing Work, 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) unless located in a High Cost Area, 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.[149] 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 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. For properties located in a High Cost Area, Over the 20-year term of the HAP contract, contract rents will be adjusted using the processes

[149] For example: a project has established a timeframe of completing construction within 12 months of the effective date of the PBRA HAP Contract 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.

described in the HUD Section 8 Renewal Policy Guidebook under Option 1A: Mark-Up-To-Market.

Otherwise, 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 (or 120% if approved at initial rent-setting), 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 (or 120% as applicable), 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. Where HUD has approved the use of Small Area FMR by project, the Small Area FMR will continue to serve as the applicable FMR when determining the rent cap.

E. Distributions. Covered 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. No Rescreening of Residents upon conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[150] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBRA requirements regarding continued occupancy. A household that would not be income eligible for initial occupancy of a Section 8 unit at the time of conversion would still be

[150] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

placed on a Section 8 lease and eligible for assistance under the provisions governing continued occupancy. 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 for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing's restrictions. Additionally, any owner-adopted preference shall not apply to any current resident.

G. Davis-Bacon Prevailing Wages. Execution of a PBRA contract through RAD that provides rental assistance to previously-assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements. In such cases, Davis-Bacon applies to a PBRA conversion to the same extent it would apply if the conversion were a PBV conversion.

H. Under-occupied Units Converting to PBRA. If at the time of conversion, an eligible family assisted under the Rent Supp or RAP (and if applicable Section 236) is occupying a unit that is larger than appropriate because of the family's composition, the family may remain in the unit until an appropriate-sized unit becomes available in the Covered Project.[151] 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 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.[152]

[151] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[152] As the later enacted statute, the RAD Statute, as amended by the FY 2018 Appropriations Act to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this

I. Transfers after conversion. After initial conversion, in general, a Project Owner may only request a transfer of assistance to HUD after 10 years from the effective date of the initial HAP Contract. A Project Owner may submit a transfer request sooner if it is needed as a result of eminent domain proceedings, natural disasters, unforeseen events, or as otherwise approved by HUD (for example, if HUD provided approval of a future transfer prior to conversion). Absent compelling circumstances, 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 and how the transfer would affect project residents. HUD may consider, and approve with such conditions as HUD determines appropriate, a partial or complete transfer of assistance to a new location if the new location complies with applicable site selection standards. If applicable, any lender to and/or investor in the Covered Project must also approve the transfer of the assistance. Substantially all units covered by the initial HAP Contract must remain or be replaced as a result of the transfer. Residents of the original location at the time of the transfer request shall not experience a loss of rental assistance. Subject to the availability of appropriations, PBRA-assisted families living at the property upon termination of a PBRA HAP Contract that meet the eligibility requirements for voucher assistance may receive tenant-based TPVs in the event the termination of the original PBRA HAP Contract qualifies for issuance of such vouchers.

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 Contract 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 registering an account on the RAD Resource Desk at www.radresource.net, and submitting your initial interest. For PBV conversions, the owner is

override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

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. <u>Resident Notification.</u> 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[153]:

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) 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.

[153] A sample notification letter for both PBV and PBRA conversions can be found at http://www.hud.gov/RAD

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. 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, 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 to the RAD Resource Desk at www.radresource.net 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 conversion 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, and a relocation plan. If rehabilitation will occur on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction, the project description must include a certification by the Owner that Davis-Bacon wages will be paid on rehabilitation of such units.

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.

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 Notice PIH 2013-27: Voluntary Relinquishment of Enhanced or Regular Voucher in Exchange for PBV in Multifamily Conversion Actions are followed.

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.

A RAD transaction will either be reviewed under 24 CFR Part 50 ("Part 50 Reviews") or 24 CFR Part 58 ("Part 58 Reviews"). Part 50 applies when HUD conducts the environmental review, and Part 58 applies when an RE conducts the environmental review. The following table shows which review protocol a transaction will follow, along with who will conduct the review:

Description	Type of Environmental Review	Reviewer
PBRA Non-FHA	Part 50	RAD Transaction Manager
PBRA FHA Non-Risk Share[154]	Part 50	FHA Production
PBRA FHA Risk-Share	Part 50	Transaction Manager
PBV FHA Non-Risk Share	Part 50	FHA Production
PBV Non-FHA	Part 58	Responsible Entity
PBV FHA Risk-Share	Part 58	State Housing Finance Agency or Responsible Entity, as applicable[155]

Under limited circumstances, per 24 CFR 58.11(c), an Awardee with a non-FHA PBV transaction may request HUD to undertake the environmental review under Part 50 if a suitable RE cannot be found or if the local government was not a direct recipient of the funds and refuses to accept responsibility or when HUD determines the local government does not have capacity to act as an RE.[156] This request must be made in writing and submitted to HUD no later than at the time of the conversion plan request.

For transactions receiving funding from other HUD programs (i.e. HOME, CDBG, non-RAD PBV), HUD encourages all parties to complete one review for all programs, even if these programs' environmental reviews are conducted under a different review protocol (Part 50,

[154] Section 542(c) of the Housing and Community Development Act of 1992 enables HUD and State and local housing finance agencies (HFAs) to provide new risk-sharing arrangements to help those agencies provide more insurance and credit for multifamily loans known as the FHA Risk Sharing Program.

[155] Housing Finance Agencies can act as the Responsible Entity for Housing's Risk Share Programs if the HFA is a regular part of the state government or if the HFA is a state instrumentality that has been approved by the governor. If the HFA does not meet either criteria, it must request another department of the state to act as Responsible Entity. An instrumentality of a city or county government cannot act as a Responsible Entity for the Risk Share Program. Please contact HUD if you have any questions about whether an HFA can act as the Responsible Entity.

[156] These circumstances are considered on a case-by-case basis only. Please work with your Transaction Manager to determine suitability.

Part 58). In cases where two Part 58 programs are combined, HUD encourages applicants to work with the Responsible Entity to see if environmental reviews can be combined. However, this is solely the Responsible Entity's determination. In cases where a Part 50 program and a Part 58 program are combined, HUD may determine that it will perform one Part 50 environmental review for both programs under 24 CFR 58.11 if performing an additional Part 58 environmental review is not feasible in the time allotted. HUD must ensure that the Part 50 review considers the full scope of all activities and funding associated with all programs. When one review is used for both programs, the Approving Officials for both programs must certify the 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:[157]

1. For PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) without FHA insurance and without any rehabilitation, construction, or demolition,[158] HUD conducted a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

   A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

   B. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 C.F.R. Part 55;

   C. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

   Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR Part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or

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

[158] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

other interested parties or the public.[159]

PHAs will be required to submit documentation to facilitate HUD's site-specific review.

For Environmental Reviews under 24 CFR Part 58, PHAs and/or proposed Owners should reach out to the responsible entity.

2. For all non-FHA PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) that do not meet the requirements under paragraph 1 above, the awardee will follow the guidelines in Chapter 9 of the MAP guide. Awardees will upload all applicable documentation directly into HEROS at the time of conversion plan request. The following exceptions to the MAP Guide apply:

- In lieu of a Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition) [160], except for conversions involving substantial rehabilitation or new construction activities, Awardees may submit a more limited report on potential sources of contamination. Where a Phase I ESA is not required (i.e., projects without any associated substantial rehabilitation[161] or new construction), the Awardees can submit 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

[159] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR Part 50. https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/

[160] The Transaction Screen does not meet the standard for "All Appropriate Inquiries" for CERCLA liability protection, as noted in ASTM E 1528-14 Section 4.2.1.

[161] 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. 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.

contamination. If any potential environmental concerns are identified, an ASTM Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition) must be provided.

- Awardees may submit a Phase I ESA that is up to 5 years old upon submission; however, it must be updated by a Transaction Screen that is up to 1 year old upon submission.

3. For all 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 radon testing for all projects and mitigation of any structures with elevated levels of radon (4 pCi/L or above).

When HUD conducts the environmental review under Part 50, PHAs (or their vendors) must submit environmental reports and documentation[162] for HUD review into the HUD Environmental Review Online System (HEROS), where HUD will complete its review.

HUD staff will review the submissions and may require additional information in order to complete their review. 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 or mitigation that cannot be satisfied before Closing will survive Closing.

When a Responsible Entity (RE) completes an environmental review under Part 58, the Conversion 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.[163] 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*:

[162] PHAs and providers should take care to respond to all applicable laws and authorities and MAP-specific requirements when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. Information about HEROS and how to register can be found at https://www.hudexchange.info/programs/environmental-review/housing/#heros

[163] 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/.

- Form HUD-7015.15, Request for Release of Funds (RROF), to their local PIH field staff.[164] 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 proof of the completed Form 7015.16 (either a copy of the paper form or a screenshot of the completed screen in HEROS) to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR § 58.34(a)(12), the PHA must submit the RE's finding of exempt activity with their RAD Conversion Plan. 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(a)(12) is sufficient.

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 described in Paragraph 1:
    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.

[164] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

2. Projects that have had a PCA or CNA done in the last ten years will not have to produce a new CNA. 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 (e.g., RAD units and other PBV units) at the project will constitute less than 20% of the total units at the project (or a higher percentage at HUD's discretion).

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 . 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 HAP Contract with the owner for eligible units at the project. If no PHA consents to enter into the PBV HAP 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 HAP Contract at the project, the transaction manager will begin the process of finalizing the PBV HAP 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 PBV assistance (provided they are income-eligible), and an additional 20 households at the project would be eligible for PBV 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 Notice PIH 2011-065 and Appendix IV.

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.[165]

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.[166] However, prior to the execution of the HAP Contract, the units proposed for conversion must meet HQS (unless the PHA is using HOTMA non-life threatening and alternative inspection provisions[167]), 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

[165] See Section 3.7.1.E. for more information on environmental review.

[166] The HAP Contract and Rider can be found at www.hud.gov/rad

[167] See Notice PIH-2017-20 for guidance on HOTMA non-life threatening and alternative inspection provisions.

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 unassisted project units following the requirements of Section 3.4(D), "Eligible Units for PBRA Conversion".

- 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.[168]
- Certification of Davis-Bacon wages if rehabilitation is being carried out on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction.
- 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

[168] See Section 3.7.1.E. for more information on environmental review.

RAP-assisted project as the result of a mortgage prepayment, as detailed in Section 3.4(C). In 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 through the RAD Resource Desk at www.radresource.net. 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 Notice PIH 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 through the RAD Resource Desk at www.radresource.net. 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 30,2006 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. 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.[169] 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.

[169] Sample Resident Notification language can be found on the RAD website.

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.

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 the RAD Resource Desk at www.radresource.net. 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 Contract. The owner is advised that the PBV HAP Contract will only cover eligible units as described in Section 3.4. A PBV HAP 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 Notice PIH 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.

SECTION IV: SECTION 202 PROJECT RENTAL ASSISTANCE CONTRACT (PRAC) PROJECTS

4.1 Purpose

Section 237 of the General Provisions – Department of Housing and Urban Development in the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) authorized RAD conversion of

Project Rental Assistance Contracts (PRACs) under Section 202(c)(2) of the Housing Act of 1959. This Section provides RAD program instructions to owners of these Section 202 Housing for the Elderly Capital Advance properties with PRACs. These properties are referred to as "202 PRAC Projects" unless otherwise noted.

While the Second Component of RAD does not have the broad statutory waiver authority that the First Component does, the Second Component does provide that participation is subject to "requirements established by the Secretary." HUD has used this authority and standard regulatory waiver authority to develop alternative requirements, and to waive purely regulatory provisions where necessary in order to fulfill the purposes of the Demonstration.

4.2 **General Program Description**

Under the Second Component of RAD, a 202 PRAC Project Owner may convert an eligible PRAC to one of two forms of long-term Section 8 Housing Assistance Payment (HAP) Contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). The selection is the Project Owner's choice. At the time of conversion, Converting Projects will be released from any outstanding obligations under the Capital Advance Agreement, the Capital Advance Mortgage Note, the Capital Advance Program Regulatory Agreement, the Capital Advance Program Use Agreement, and related or collateral documents associated with the PRAC and the foregoing documents and will enter into an Elderly Housing Use Agreement, which will be recorded as a restrictive covenant in first position on the Covered Project. The Elderly Housing Use Agreement, described in more detail in Section 4.4.J, will restate any PRAC obligations that survive the conversion. The Elderly Housing Use Agreement will have a term of 20 years plus the balance of the term left on the Capital Advance Program Use Agreement at the time of conversion. Any PRAC documents still in effect at the time of conversion will be terminated immediately prior to execution of a new PBV or PBRA HAP Contract and the Elderly Housing Use Agreement.

A. PBV Conversions. If the Project Owner requests to enter into a Section 8 PBV HAP Contract, HUD will make a reasonable effort to find an eligible PHA with a Housing Choice Voucher Program and with operational jurisdiction, that is willing to enter into and administer the PBV HAP Contract with the Project Owner. After HUD determines that the requirements of this Notice have been satisfied, the PHA that has agreed to administer the PBV HAP Contract will have the resulting vouchers and budget authority added to its Annual Contributions Contract (ACC). Contract rents will be established and adjusted according to the terms described in this Notice. Project Owner and the PHA will execute the HAP Contract effective at the expiration of the PRAC. The initial contract must be for a term of 20 years (i.e., the maximum allowable initial term under section 8(o)(13)(F) of the Act). Mandatory contract extensions of the initial term are governed by section 4.5.B. of this Notice. Unless specifically identified in this Notice, 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 notices and handbooks, shall apply.

B. PBRA Conversions. If a Project Owner requests to enter into a Section 8 PBRA HAP Contract (subject to annual appropriations), the HAP Contract will be executed by HUD's Office of Housing. After HUD determines that the requirements of this Notice have been satisfied, the Project Owner and HUD will execute the HAP Contract to finalize the conversion. Contract rents will be established and adjusted according to the terms described in this Notice. The initial contract must be for a period of 20 years and will be subject to annual appropriations. At expiration, the initial contract shall be eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). Mandatory contract renewals are governed by section 4.6.C. of this Notice. The Covered Project shall be governed by 24 CFR part 880, as modified and as published in Appendix I of this Notice, the site and neighborhood standards in Appendix III of this Notice, as well as by applicable standing and subsequent Office of Housing guidance, including notices and handbooks.

4.3 **Eligibility**

Owners of 202 PRAC Projects that meet all eligibility requirements described below may request to convert assistance under the Second Component of RAD. HUD may, at its discretion and subject to the availability of staffing resources, prioritize processing and approval of conversions for projects that have immediate capital needs; funding from a 3rd party source; and/or are PBRA conversions.

4.3.1 **Eligible Owners**

A. Compliance with HUD Requirements. The Project Owner must be in good standing with HUD. If the current Project Owner is anticipated to remain in the ownership structure, the Project Owner must not have a history of non-compliance with program and contractual requirements, including maintaining units in a decent, safe, and sanitary condition. If a proposed conversion is in the context of an acquisition simultaneous with the conversion, the purchaser must provide evidence of successful experience owning and operating HUD or other multifamily housing properties. Any change in Ownership will require Form HUD-2530 Previous Participation approval as described in Attachment 4A.

B. Fair Housing and Civil Rights Compliance. A Project Owner must certify it will comply with all fair housing and civil rights requirements including but not limited to those at 24 CFR § 5.105(a). Any outstanding fair housing or civil rights matters arising prior to conversion must be resolved to HUD's satisfaction prior to conversion, provided that all

applicable legal processes have been satisfied. If HUD determines a conversion would fail to meet this standard, HUD will notify the Project Owner of its determination and any necessary actions. Fair housing or civil rights matters that arise after conversion will be addressed in accordance with applicable authorities.

Additionally, a Project 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 Project Owner subject to the remedial provisions contained in such documents. It is the Project Owner's obligation to disclose such documents, etc., to the prospective Project Owner. The extent of the Project 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 Project Owner will follow any requirements for the modification of such VCA, conciliation agreement, consent order or consent decree, or final judicial ruling or administrative ruling or decision. If HUD is a party to such document, the RAD project will not close without HUD's express approval of the transfer of obligations to the new Project Owner.

4.3.2 **Eligible Properties and Units**

A. Eligible Properties and Units. A property is eligible for conversion if the property is currently receiving assistance through a PRAC that is in its renewal term. A property assisted by a PRAC in its initial term is also eligible for conversion but, depending on the age of the funds HUD has obligated to the contract, may have to time the conversion based on when funding can be transferred to support a conversion to a Section 8 contract. For a property assisted by a PRAC in its initial term, the Project Owner should confirm with HUD the necessary timing of its conversion. Properties that were previously assisted under a PRAC which has been terminated due to noncompliance are ineligible to participate under this Notice. A Project Owner may include under the subsequent Section 8 HAP Contract no more than the number of units covered under the PRAC.

B. Physical Condition. For PBRA conversions, unless project plans address (or obviate, through transfer of assistance) all physical deficiencies identified in the most recent REAC Inspection report, the project must have a REAC score of 60 or above.

For PBV conversions, the Converting Project must qualify as "existing housing" in order to be eligible for conversion. This means that the PHA must ensure that the Converting Project's units substantially comply with HQS, as defined in the PHA's Section 8 administrative plan, prior to submission of the Conversion Plan (see Section 4.7.4 for more information on the Conversion Plan). Prior to entering into a PBV HAP Contract, the PHA must inspect the Converting Project proposed for conversion to ensure that the units fully comply with HQS, unless the PHA is using HOTMA non-life threatening and alternative inspection provisions.[170]

4.4 **General Requirements**

A. Applicability of PRAC Requirements. Until conversion and the effective date of a HAP Contract, properties continue to be subject to the requirements of the PRAC. Owners of 202 PRAC Projects are required to submit a project budget and any accompanying request for a Budget Based Rent Increase annually for renewal of the PRAC. HUD requires that Project Owners analyze project operating and capital needs as well as the efficacy of resident services at each renewal and request adjustments to the Operating Expense Amount accordingly.

B. Capital Needs Assessment (CNA). Each Converting Project is required to have a CNA and to demonstrate that both short-term and long-term capital needs can be addressed through the replacement reserve account (see paragraph C) and/or through financing (see paragraph D) as appropriate. The CNA contains two major components – the narrative (the description of each component and its age and condition) and the financial model (the 20-year schedule and associated determination of the Initial Deposit to Replacement Reserve, or IDRR, and the Annual Deposit to Replacement Reserve, or ADRR). The CNA must be completed or updated within 12 months of the submission of the Conversion Plan, except with HUD approval. Further, the CNA must be performed by a qualified, independent third-party professional as defined in Section 5.2.B.2 of the MAP Guide. The CNA must be prepared in accordance with the instructions at Appendix 5G of the MAP Guide although the use of a specific format is not required unless HUD requires a specific format for 202 PRAC budget-based rent increase requests. The CNA submitted for RAD must be consistent with any CNA submitted to a Multifamily Regional Center as part of the demonstration of project expenses for the most recent annual rent adjustment under the 202 PRAC, although it may include additional discretionary items. (As such, the CNA submitted for the purposes of demonstrating project expenses must meet the aforementioned standards.) The CNA will identify certain improvements for physical accessibility for persons with disabilities as well as design considerations that promote housing stability for an aging population. In further developing the scope of work, refer to Paragraphs E, F, and G regarding Accessibility

[170] See Notice PIH-2017-20

Requirements, Design Considerations for Elderly Housing, and Healthy Housing and Energy Efficiency, respectively.

C. **Replacement Reserve.** 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. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected needs as identified in the CNA 20-year replacement schedule. The Project Owner must commit to repairing and replacing components generally in accordance with the schedule set forth in the CNA. HUD encourages Project Owners to evaluate the 20-year replacement needs of the property at the time of their annual PRAC renewal, prior to submitting a Conversion Plan.

- For PBRA, 24 CFR § 880.602 applies, as amended (see Appendix I).
- For PBV, replacement reserves shall be maintained in a bank account or similar instrument, as approved by HUD, where funds will be held by the mortgagee or, where there is no financing, by the Project Owner and may be drawn from the reserve account and used subject to HUD guidelines.

D. **Financing and Repairs.** If the CNA identifies repairs as critical, immediate or required within the first two years following conversion and the total of such repairs exceeds an average of $5,000 per unit, if HUD determines that immediate repairs are necessary based on REAC scores of 59 or less or referrals to the Department Enforcement Center (DEC) related to physical conditions, or if there is outstanding noncompliance with accessibility requirements identified by the CNA, the Project Owner must demonstrate as a condition of closing that it has secured financing sources to address such needs and must agree to address such needs within a prescribed period following the conversion as part of the Work. Following conversion and the completion of any immediate repairs, HUD requires all Projects to either utilize available capital replacement reserves to address ongoing capital repair and replacement needs generally consistent with the CNA, or to periodically recapitalize as lifecycle improvements become necessary.

E. **Accessibility Requirements.** Federal accessibility requirements apply to all conversions. The laws that most typically apply to HUD-assisted housing undergoing rehabilitation include Section 504 of the Rehabilitation Act of 1973 (Section 504), the Fair Housing Act, and, in some cases, the Americans with Disabilities Act (ADA). Although the requirements of each of these laws are somewhat different, Project Owners must comply with each law that applies. Section 504 and the ADA apply to new construction and additions as defined in 24 CFR § 8.22, substantial alterations and other alterations as defined in 24 CFR § 8.23 and to existing, unaltered facilities (24 CFR § 8.24), as well as any combination thereof. See also 28 CFR § 35.151(b) and 28 CFR § 36.402. Section 504 and the ADA also require structural modifications as reasonable accommodations. The Fair Housing Act applies to the design

and construction of multifamily dwellings built for first occupancy after March 13, 1991. It also requires that Project Owners allow for structural alterations in housing generally as reasonable modifications when necessary for an individual with a disability to use and enjoy a dwelling, and under these authorities, Project Owners must ensure that reasonable modifications remain available to the resident after construction or alteration (e.g., accommodations are preserved through the course of the construction work or, if the resident is moved to a different unit as a result of construction, are installed in the new unit).

When a Project's rehabilitation meets the definition of a "substantial alteration" under 24 CFR § 8.23, the Project Owner must comply with all applicable accessibility requirements for new construction at 24 CFR § 8.22 under HUD's Section 504 regulations as well as the ADA. 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, until five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments (see 24 CFR § 8.23).

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

F. Design Considerations for Elderly Housing. Quality housing is a platform for health and wellness. Health can be promoted through both supportive services (as described below) and through a physical living environment suitable for the needs of the anticipated residents. In the context of housing for the elderly, enhanced livability of the physical environment promotes housing stability and may prevent premature institutionalization in assisted living or nursing homes. A well-situated, well-designed physical space at the unit and building level can help seniors maintain independence and age in place longer. In addition to any required accessibility features under Section 504 of the Rehabilitation Act of 1973, the design and construction requirements of the Fair Housing Act, or Title II of the Americans with Disabilities Act, the Department strongly encourages Project Owners to incorporate design standards that address fall prevention, visitability, universal design, and electronic communication mechanisms when developing or rehabilitating housing and community facilities. Project Owners are expected to consider access to transportation and walkability to the surrounding community and neighborhood services when selecting sites for a transfer of assistance. These design elements and siting decisions all serve to enhance the livability of housing for older adults and promote housing stability.

G. Healthy Housing and Energy Efficiency. If systems and appliances are being replaced as part of the Work identified in the approved Conversion Plan, the Project Owner shall utilize the most energy- and water-efficient options that are financially feasible and that are found to

be cost-effective. The use of Energy Star®, WaterSense® or Federal Energy Management Program (FEMP)-designated products and appliances, if any such designation is available for the applicable system or appliance, is presumed to be the minimum threshold for meeting such requirement.[171] Project Owners are strongly encouraged, for all Converting Projects, to scope rehabilitation and ongoing replacements that utilize the components that the CNA indicates will improve indoor air quality, prepare the property for known or anticipated natural hazards, generate utility cost savings for residents or common areas, and/or reduce overall environmental impact, where those components are determined to be cost-effective and consistent with healthy housing and energy efficiency principles and best practices.

H. Existing Residual Receipts Balance. Project Owners may apply any balance in the Converting Project's residual receipts as a source in the development budget to support conversion. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs of the Covered Project, or establishment of the replacement reserve or operating reserve.

I. Operating Reserve. The Project Owner shall establish and maintain a Project operating reserve account in an interest-bearing account to be used for project purposes, consistent with this paragraph. Withdrawals from the operating reserve do not require HUD approval. However, surplus cash distributions are prohibited during any period when the balance in the operating reserve is less than $250 per unit. The Project operating reserve is separate and apart from the replacement reserve. The operating reserve must be used for the benefit of the project, including to provide working capital, to cover unexpected operating or capital expenses, to bridge periods of financial instability, to cover budget deficiencies arising from time to time as a result of delinquent receivables or other contingencies, or for other similar purposes determined by the Project Owner as beneficial to preserve the financial or physical stability of the Project. HUD will monitor the balance in the operating reserve when reviewing the Project Owner's annual financial statements. An operating reserve required by a third-party source of financing (e.g., a lender or a LIHTC-motivated equity investor) that meets or exceeds $250 per unit satisfies the requirements of this Section and the Project Owner is not required to maintain a distinct operating reserve for this purpose.

J. Ownership and Control. Through the term of the Converting Project's Capital Advance Use Agreement, HUD will require ownership or control of the Covered Project by a non-profit entity. A non-profit entity is an organization that has tax-exempt status under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1986 or that is a non-profit consumer cooperative and includes a non-profit entity that is affiliated with a public agency. Subject to HUD review, non-profit entity ownership or control requirements may be satisfied

[171] 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/.

if a non-profit entity (or entities), directly or through an entity wholly owned by the non-profit entity (or entities) meets one or more of the following: (1) holds a fee simple interest in the real property of the Covered Project; (2) is the lessor under a ground lease with the Project Owner; (3) has the direct or indirect legal authority (via contract, partnership share, agreement of an equity partnership, voting rights, or otherwise) to direct the financial and legal interests of the Project Owner with respect to the RAD units; (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD. Note however, that prior to conversion, the Converting Project must continue to meet the ownership requirements set forth in the Housing Act of 1959, as amended.

K. Elderly Housing Use Agreement. A Covered Project shall have an Elderly Housing Use Agreement. The Elderly Housing Use Agreement will:

- Restrict the units covered under the HAP Contract, but not govern any other units at the Covered Project;
- Be recorded in a superior position to all other liens on the property that HUD determines could compromise the applicability or enforceability of the Elderly Housing Use Agreement. The Elderly Housing Use Agreement shall be recorded prior to any mortgage or security instrument, including an FHA-insured loan or a Risk-Share loan;
- Have a term equal to the remaining term of the Capital Advance Use Agreement plus 20 years but not to exceed 60 years from the commencement of the Capital Advance Use Agreement;
- Remain in effect even in the case of abatement or termination of the HAP Contract, although the Secretary may approve a modification or termination of the Elderly Housing Use Agreement to facilitate a transfer of assistance or if HUD determines it is necessary in order to address a demonstrated financial burden caused by insufficient Federal appropriations;
- Provide that, if the HAP Contract is terminated due to breach or non-compliance by the Project Owner, for all units previously covered under the HAP Contract, new tenants must meet the definition of “elderly family” in 24 CFR 5.403; and
    1. Through the period equal to the remaining term of the Capital Advance Use Agreement, must have incomes at or below fifty percent (50%) of the area median income (AMI) at the time of admission and rents may not exceed thirty percent (30%) of fifty percent (50%) of AMI for an appropriate-size unit for the remainder of the term of the Elderly Housing Use Agreement; and

2. Thereafter and through the remainder of the Elderly Housing Use Agreement, 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 Elderly Housing Use Agreement;

- Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing; and
- Prescribe potential remedies in the event of default, which remedies may include, without limitation, civil money penalties, injunctive relief, specific performance, the right to take possession subject to non-disturbance of subordinate lienholders, the right to appointment of a receiver, the right to require a transfer of the Covered Project with consent of mortgage lienholders, the right to transfer the HAP Contract, and any other remedy available at law or in equity.

L. Restriction on Net Proceeds from Refinance or Sale. The proceeds from any refinance or sale of the Covered Project, net of funds described below, that occurs during the period equal to the remaining term of the original Capital Advance Use Agreement will be restricted to benefit the Covered Project or residents at the Covered Project (e.g., capital improvements, service delivery, or any uses set forth in a HUD-approved sources and uses statement other than acquisition) or to other Affordable Housing Purposes. For purposes of this paragraph, proceeds of a refinancing include all commercial or subsidized loan proceeds, equity investments and grants received by or invested in the Project Owner after deduction of funds used for repayment of commercial first mortgage debt secured by the Covered Project. For purposes of this paragraph, proceeds of a sale include all cash or other direct or indirect consideration paid to or on behalf of the seller of a Covered Project after deduction of funds used for repayment of commercial first mortgage debt secured by the Covered Project. In addition, in the context of an arms-length sale to an unrelated third party, net proceeds of a sale shall be determined after deduction of the following:

- The seller's payment of real estate or transfer taxes and fees, recording fees, real estate brokerage fees, and reasonable third-party transaction costs associated with the sale;
- Any unrecovered (i.e., not previously drawn) seller equity in the Covered Project. Seller equity shall be calculated as a pro-rata portion of the original Capital Advance Note corresponding to the term of the Capital Advance Use Agreement that has elapsed;[172] and

[172] For example, if a property with an original Capital Advance Note of $10 million is sold as part of the proposed conversion 20 years into the original 40 year Capital Advance Use Agreement term, the Project Owner would have accrued $5 million in seller equity (20 years ÷ 40 year × $10 million) that would be unrestricted at sale. If the property were subsequently re-sold 10 years later the maximum seller equity potentially available at that time would be $7.5 million. However, if $3 million in seller equity had been drawn at the original conversion, the maximum unrecovered seller equity available at the subsequent sale would be $4.5 million.

- Paydown of any Identity of Interest (IOI) loans or advances that were used to address the needs of the project or residents of the project.

M. 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 Conversion Plan. A Conversion Plan cannot be approved by HUD if the Project plan does not meet environmental review requirements. Please see Attachment 4A for a discussion of the environmental review requirements applicable to PRAC conversions, including conversion transactions that will not result in the alteration of the physical condition of the Project.

N. Relocation and Right to Return. Any person who is legally on the lease or otherwise in lawful occupancy at the Converting Project at or after the time of submission of the Conversion Plan has a right to remain in or, in the event that rehabilitation will result in the relocation of residents, a right to return to an assisted unit at the Covered Project. Any relocation as a direct result of acquisition, demolition, or rehabilitation is subject to requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) which are found at 49 CFR part 24. Proper notices including the General Information Notice (GIN), when applicable, must be sent in accordance with URA regulations and other applicable relocation regulations. Additionally, relocation and one-for-one replacement requirements under section 104(d) of the Housing and Community Development Act of 1974 may apply when CDBG or HOME funds are used in connection with a RAD conversion. Section 104(d) requirements are found at 24 CFR part 42, subpart C, and program-specific relocation requirements for CDBG and HOME projects are found at 24 CFR 570.606 and 24 CFR 92.353, respectively. The applicability of URA or section 104(d) requirements to a RAD conversion is fact-specific and must be determined in accordance with the applicable URA and section 104(d) regulations. 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 Project Owner must alter the Project plans in order to house the resident in the Covered Project. If a resident agrees to the plans which would preclude the resident's return, the Project Owner must ensure that the resident's decision is fully informed, voluntary, and well documented. To be fully informed, at a minimum the resident must be notified in writing of a) his or her right to return; b) his or her right to object to plans which would preclude the resident from returning; c) the Project Owner's obligation to accommodate the resident's right to return; and d) a description of the short and long-term implications of both the right to return arrangements (e.g., temporary relocation) and the resident's options if the resident agrees to such plans. The resident must be provided counseling regarding the resident's rights and options. To be voluntary, a resident must be

informed of their right to return, potential for relocation, and temporary and permanent housing options 30 days before making a decision. In addition, under the URA regulation, residents must be provided notice of relocation at least 90 days before the relocation. The Project Owner cannot employ any tactics to pressure the resident into relinquishing his or her right to return or accepting permanent relocation assistance and payments. To be well documented, evidence of a resident's decision must be retained by the Project Owner. At a minimum such evidence must include copies of notices informing the resident of their options, records of any counseling or assistance provided, and the resident's informed, written consent, including an acknowledgement that acceptance of such assistance terminates the resident's right to return to the Covered Project. If the resident agrees to the Project Owner's plans, the permanent relocation is considered voluntary, but must include, at a minimum, any relocation assistance and payments required under the URA and Section 104(d), as applicable. The Project Owner may not propose or request that residents waive their rights or entitlements to relocation assistance under the URA or Section 104(d).

O. Site Selection and Neighborhood Standards. Where a Project Owner is planning to convert assistance under RAD, the Project Owner must comply with all applicable site selection requirements, including those of 24 CFR § 983.57 for PBV (except as waived in Section 4.5.E) 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).

P. Change in Unit Configuration. Project Owners may change the unit configuration in conjunction with conversion (e.g., converting efficiency units to one-bedroom units). However, the Project Owner must ensure that the change in bedroom distribution will not result in the involuntary permanent displacement of any resident (see Section 4.4.M on Relocation and Right to Return), will not result in a reduction in accessible units below the minimum percentage, and will not, except with HUD approval, result in a reduction in the number of assisted units by the greater of 5% or five units. The Project Owner must also ensure that a change in unit configuration does not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status.

Q. Transfer of Assistance (TOA). In order to facilitate the financing, development, and preservation of decent, safe, and sanitary affordable housing, there are three scenarios under which assistance converted pursuant to RAD may be transferred from the existing Project (for the purposes of this paragraph, transfer of assistance does not include transfers to an adjacent site): (1) the Project Owner requests assistance to be transferred as part of the conversion from a Converting Project to another Project; (2) post-conversion, the Project Owner requests a partial or full transfer of assistance to another Project; or (3) as a result of a

default of the HAP Contract, HUD terminates the HAP Contract but seeks to preserve the assistance at another Project with another Project Owner.

HUD will ascertain that assistance does not transfer to neighborhoods with highly concentrated poverty based on the criteria formulated for transfers under section 8(bb) of the Act.[173] 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.[174] Project Owners are strongly encouraged to request HUD approval of the proposed site prior to submission of the Conversion Plan.

For PBV transfers of assistance to a new site, the PRAC contract will remain in effect at the original site and will not be terminated until the units at the new site are ready for occupancy and the HAP Contract is executed. For PBRA transfers of assistance, the HAP Contract can be executed at the closing of the construction financing and the Project Owner may use the Section 8 Pass-Through to provide for the continued flow of subsidy during the construction period.[175]

After initial conversion, in general, a Project Owner may only request a transfer of assistance after 10 years from the effective date of the initial HAP Contract. A Project Owner may submit a transfer request sooner if it is needed as a result of eminent domain proceedings, natural disasters, unforeseen events, or as otherwise approved by HUD (for example, if HUD provided approval of a future transfer prior to conversion). HUD may consider, and approve with such conditions as HUD determines appropriate, a partial or complete transfer of assistance to a new location if the new location complies with applicable site selection standards. If applicable, any lender to and/or investor in the Covered Project must also approve the transfer of the assistance. Substantially all units covered by the initial HAP Contract must remain or be replaced as a result of the transfer. Residents of the original

[173] The analysis can be found in Section VIII B.1 of Notice H-2015-03, "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 the 8(bb) criteria satisfy 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.

[174] For example, any transfers of assistance must comply with requirements detailed in this Notice on Site and Neighborhood Standards (see Section 4.4.O), Changes in Unit Configuration (see Section 4.4.P), and Accessibility Requirements (see Section 4.4.E). For PBV conversions, PHAs will be responsible for this determination.

[175] As fully described in Handbook 4350.1, under Section 8 Pass Through, Project 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 Project 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.

location at the time of the transfer request shall not experience a loss of rental assistance. PBV-assisted families living at the property upon termination of a PBV HAP Contract have a statutory right to receive a tenant-based voucher and to certain tenancy protections.[176] (A family may voluntarily decline the tenant-based voucher and accept a PBV unit at the new location but may not be required to do so.) Termination of a PBV contract is not cause for issuance of additional tenant-based voucher assistance from HUD. PHAs and owners contemplating RAD PBV transfers after conversion must take the PBV families' right to tenant-based voucher assistance into consideration and ensure that there will be sufficient resources available to the PHA to both effectuate the transfer and meet the PHA's obligation to provide tenant-based vouchers to those families that wish to receive them. Subject to the availability of appropriations, PBRA-assisted families living at the property upon termination of a PBRA HAP Contract that meet the eligibility requirements for voucher assistance may receive tenant-based tenant protection vouchers (TPVs) in the event the termination of the original PBRA HAP Contract qualifies for issuance of such vouchers.

In the event that a transfer of assistance is approved, the underlying Elderly Housing Use Agreement will be transferred to the new Project and HUD will release the Elderly Housing Use Agreement on the original site corresponding to the units transferred.

R. Davis-Bacon prevailing wages. Execution of a HAP Contract through RAD that provides rental assistance to previously-assisted units does not trigger Davis-Bacon prevailing wage requirements (prevailing wages, the Contract Work Hours and Safety Standards Act, and implementing regulations, rules, and requirements). However, to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent assisted or rent restricted and will be newly assisted as a result of the conversion transaction (including, without limitation, through transfer of assistance), such construction or rehabilitation is subject to Davis-Bacon prevailing wage requirements. In such cases, Davis-Bacon applies to a PBRA conversion to the same extent it would apply if the conversion were a PBV conversion.

S. Supportive Services for the Elderly. A Service Coordinator and/or the availability of Supportive Services for the elderly plays a critical role supporting the physical and mental health and wellness of residents and the delivery of cost-effective long-term community-based housing for this population. HUD encourages Project Owners to evaluate the service

[176] See the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices including the "January 18, 2017 HOTMA implementation notice, 82 Fed. Reg. 5458," and the "July 14, 2017 technical correction and clarification notice, 82 Fed. Reg. 32461." Also see Notice PIH 2017-21. Pursuant to applicable Housing Choice Voucher program requirements, upon PBV HAP Contract termination the family must be given the option to remain in their unit with HCV assistance if the unit remains rental housing, the rent is reasonable, and the unit meets housing quality standards.

provision at the time of their annual PRAC renewal, prior to submitting a Conversion Plan. Each project will be required to demonstrate that the needs of residents are adequately met either through a Service Coordinator (full-time or part-time) funded through the annual project budget or through another service coordination/service provision arrangement. Project Owners must describe how the proposed supportive services provided by the Project or otherwise available to residents will meet the identified needs of the anticipated residents as they age. Project Owners must further describe how the identified supportive services will be provided or otherwise made available on a consistent, long-term basis to support residents. These commitments will be incorporated into terms of the Elderly Housing Use Agreement and/or HAP Contract at closing.

T. Provision of Services. For properties that have submitted an Initial Submission of Interest to HUD (i.e., prior to conversion), HUD may approve service costs to be paid from Section 202 project rental assistance up to $27 per unit per month if it is necessary to provide effective supportive services for the elderly. This adjustment to the PRAC contract shall be subject to the availability of funding in the Housing for the Elderly account.[177] Accordingly, conditioned on the project's successful conversion, HUD is waiving and providing an alternative requirement to 24 § CFR 891.225, which limits the eligible service costs that can be paid from project rental assistance to $15 per unit per month. This rent adjustment would become effective immediately prior to the conversion (following Conversion Plan Approval and following release of all Closing documents from escrow to permit the Closing) and would be rescinded if the conversion does not occur. Following conversion, the Project Owner is required to maintain provision of services in accordance with this paragraph.

U. Lead Based Paint Hazards. For properties built before 1978 and in the infrequent case that a child under age 6 resides in one or more units:

- The Lead Disclosure Rule and the Lead Safe Housing Rule (specifically, 24 CFR part 35, subparts A, B, H, and R) apply to each such unit, any common areas servicing such units, and exterior painted surfaces associated with such units or common areas. (These covered areas must have a risk assessment conducted and any lead-based paint hazards identified controlled and cleared, with affected tenants getting disclosure and/or notification of these activities, as applicable; see also the MAP Guide section 9.5.A, Lead-Based Paint.)
- If occupancy rule exceptions are made to allow children under age 6 to reside (such as in accordance with the Living Equitably: Grandparents Aiding Children and Youth Act of 2003, P.L. 108-186), the general exemption of the property from the lead safety rules is not available and they apply to the entire property.

[177] PRAC renewals and rent adjustments are funded from the Housing for the Elderly account. Renewal of ongoing PRAC contracts including inflationary adjustments to core operating expenses will be prioritized over mid-cycle rent increases that enhance services and replacement reserves for converting properties.

V. Completion Certification. HUD may require a certification or evidence of completion of any requirements the Project Owner is required to complete following the conversion of assistance.

4.5 **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 and applicable standing and subsequent Office of Public and Indian Housing guidance, including related notices and handbooks shall apply, including resident choice, environmental review, and non-discrimination and equal opportunity requirements.

The modified or alternative requirements that pertain solely to 202 PRAC Projects converting assistance to PBV under the Demonstration are described below.

Please note that while in this Notice HUD prescribes requirements for converting 202 PRAC Projects to PBV, the conversion of project subsidy from its current PRAC account to a PBV contract will result in added complexity to the closing of the transaction (as compared to PRAC conversions to PBRA) and may cause unforeseen delays.

A. Initiation of Contract. The HAP may only be effective at the expiration of the PRAC. Further in order to provide sufficient time for HUD to transfer funds across appropriated accounts and then to subsequently obligate new funding to a PHA's Housing Choice Voucher ACC, all closing conditions must be satisfied, and all transaction documents executed and held in escrow, 90 days before the PRAC expiration.[178]

B. Length of Contract. Section 8(o)(13)(F) of the Act provides, in part, that the HAP Contract may have an initial term of up to 20 years. In addition, 24 CFR § 983.205(a) provides the PHA with discretion to set the contract term, for a minimum period of one year and a maximum period of twenty years. By choosing to participate in RAD, the PHA and the Project Owner agree to an initial HAP Contract term of 20 years. A PHA may enter into an extension of the initial HAP Contract term with the Project Owner at any time during the

[178] In addition to statutory limitations, HUD must structure the conversion in this manner in order to ensure that there are not delays between when the PHA has subsidy obligations under the HAP contract and when funds are obligated to the PHA's HCV program and to ensure that the funding provided is adequate.

initial term. The PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding.

C. Mandatory Contract Extension. Section 8(o)(13)(G) of the Act provides, in part, that the extension of any PBV HAP Contract is at the discretion of the PHA. The regulatory provisions governing PBV HAP Contract extensions are contained in 24 CFR § 983.205(b). By choosing to participate in RAD, the PHA agrees to offer, and the Project Owner agrees to accept, each extension of the initial HAP Contract term during the term of the Elderly Housing Use Agreement so that the contract could expire no earlier than the expiration date of the Elderly Housing Use Agreement.[179] As indicated in Section 4.5.A, the PBV HAP Contract during the initial and any extended term is subject to the requirement for sufficient annual appropriated funding. The contract extension(s) shall be for the prescribed number and mix of units but may, upon request of the Project Owner and subject to HUD approval, be on one or more transfer of assistance sites in lieu of the project site subject to the expiring contract.

D. PBV Percentage Limitation. Per the RAD statute, Section 8(o)(13)(B) of the Act (and, by extension, 24 CFR § 983.6) does not apply and Covered Projects do not count against the percentage limitation applicable to the PBV program. As a result, a PHA that is administering RAD PBV assistance does not take the RAD PBV into consideration when calculating the percent limitation for any non-RAD PBV actions that are subject to the percent limitation. In other words, RAD PBV is excluded from both the numerator and the denominator when calculating the percent that may be project-based for non-RAD PBV.

E. Cap on the Number of PBV Units in Each Project. There is no cap on the number of units that may receive RAD PBV assistance in each project because under the HOTMA Implementation Notice, units exclusively serving elderly families are excepted from the project cap.

F. 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.

G. 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. For purposes of RAD, the date of PBV proposal selection shall be the date on which

[179] For example, if the Elderly Housing Use Agreement required a minimum affordability period of 39 years, the PHA and Project Owner would enter into an initial 20-year HAP contract and, because the Elderly Housing Use Agreement would still be in effect at the end of the 20 year term, must subsequently agree to extend the contract for at least 19 additional years.

the Project Owner submits a Conversion Plan. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in this Notice.

H. Initial Contract Rent Setting. Consistent with the requirements of section 8(o)(13)(H) of the 1937 Act and 24 CFR part 983, Subpart G, the initial contract rents will be the lower of: (a) the approved PRAC rents determined by HUD;[180] (b) the reasonable rent (as defined under 24 CFR § 983.303); (c) 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 (d) the rent requested by the Project Owner.

With HUD approval, Project Owners and the PHA administering the contract may adjust subsidy amounts across multiple Projects proposed for conversion in order to modify initial contract rents that would be established in the HAP Contracts, as long as the subsidy adjustments do not exceed the aggregate subsidy for all of the Projects that the Project Owners has submitted for conversion under RAD and as long as the rents do not exceed applicable rent limits described in 24 CFR part 983 subpart G. This use, which HUD refers to as "bundled" rents, is permissible when multiple Project Owners in mutual agreement submit Conversion Plans for two or more Projects. There is no limit to the number of Projects that Project Owners may bundle. The conversion of the donor Project must close prior to or simultaneous with the conversion of the recipient Project. For example, assume that when Project Owners are 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 Project Owners could bundle the two projects such that the initial contract rents for both projects will be $550.

I. Re-Determined Rents. The Project Owner may request an increase in rent at the anniversary date of the HAP contract by written notice to the PHA in accordance with 24 CFR § 983.301(b)(2). Under the PBV regulations, a Project Owner may request an adjusted rent level below the PBV rent caps. As a condition of converting to PBV under RAD, the Project Owner agrees to never request a rent increase in excess of the OCAF-adjusted rent.[181] This OCAF limitation is in addition to the existing PBV rent limitations in 24 CFR § 983.301(b) more generally. All other PBV provisions governing the redetermination of rent to the Project Owner apply.

[180] PRAC rents are the "Operating Expense Amounts" listed in Part I of the PRAC, Exhibit 1, as adjusted pursuant to rent "bundling" described in this subsection G. If PRAC rents have been temporarily increased in accordance with an approved plan with the Multifamily Regional Center, the PRAC rents used for the purposes of setting initial contract rents at conversion will be adjusted downward.

[181] 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 in order to calculate the contract rent for the project in the following fiscal year.

J. Distributions. As an alternative requirement, distribution of surplus cash is prohibited unless the Project operating reserve is funded at no less than $250 per unit and the replacement reserve is funded at a level prescribed by any conversion agreements.

K. No Rescreening of Tenants upon Conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[182] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy. 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 income eligibility and income targeting of tenants at initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing's restrictions.

L. Under-Occupied Units. If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in the unit until an appropriate-sized unit becomes available in the Covered Project.[183] 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 PHA. 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 § 983.260 is waived.[184]

M. Occupancy Requirements. In accordance with the RAD statute, as amended by the

[182] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

[183] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[184] As the later enacted statute, the RAD Statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), Section 202 PRAC projects converting assistance under RAD must continue to serve elderly persons. Accordingly, in addition to income-eligibility and income targeting requirements in 24 CFR 982.201, new admissions must meet the definition of "elderly family" in 24 CFR 5.403. See Section 4.5.K regarding the treatment of current households.

4.6 **Special Provisions Affecting Conversions to PBRA**

For 202 PRAC Projects converting assistance to PBRA, 24 CFR part 880 ("Section 8 Housing Assistance Payments Program for New Construction"), as modified and as published in Appendix I of this Notice, the site and neighborhood standards in Appendix III of this Notice, and applicable standing and subsequent Office of Housing guidance[185] will apply, except for the provisions listed below. Where applicable, reference is made to the affected statute and/or regulation.

A. Initiation of Contract. The HAP effective date will typically be the first day of the month, that begins at least 30 days after all closing conditions have been satisfied and documents executed and recorded, as applicable. For example, for a closing that occurs on May 28th, a HAP effective date will typically be July 1. This timing will enable a smooth transition from vouchering for payments under the PRAC to vouchering under the new HAP.

B. Length of Contract. Pursuant to the RAD statute, Covered Projects shall have an initial HAP Contract term of 20 years. Accordingly, section 8(d)(2)(A) of the Act, which establishes a maximum term of 15 years for "an existing structure," does not apply. 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.

C. Mandatory Contract Renewal. Pursuant to the RAD Statute, after the initial term of the HAP Contract, the HAP Contract is eligible for renewal 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. By choosing to participate in RAD, the Project Owner agrees to accept each offer to renew the HAP contract during the term of the Elderly Housing Use Agreement so that any renewal of the HAP contract could expire no earlier than the expiration of the Elderly Housing Use Agreement, but not to exceed a term of 20 years for any given renewal.[186] The renewal contract(s) shall be for the prescribed number and mix

[185] 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).
[186] For example, if the Elderly Housing Use Agreement required a minimum affordability period of 39 years, the HUD and Project Owner would enter into an initial 20 year HAP contract and, because the Elderly Housing Use

of units but may, upon request of the Project Owner and subject to HUD approval, be on one or more transfer of assistance sites in lieu of the project site associated with the expiring contract.

D. Initial Contract Rent Setting. The initial contract rents will be set at the approved PRAC rents.[187] Pursuant to authority provided in the RAD Statute, the limitation under Section 8(c)(1)(A) of the Act on setting initial contract rents no higher than 120% of FMR, less any utility allowances, shall not apply as necessary to ensure the ongoing provision and coordination of services or to avoid a reduction in project subsidy. The initial contract rents shall be capped at 120% of the applicable FMR, less any utility allowance, consistent with the requirements of Section 8(c)(1) of the Act, only in the event the Project Owner utilizes the authority in this Section to increase the initial contract rents above the approved PRAC rents. Furthermore, HUD is implementing an alternative requirement to 24 CFR §888.113(h) permitting the use of a Small Area FMR as the "applicable FMR" upon request of the Project Owner.

With HUD approval, Project Owners may adjust subsidy across multiple Projects proposed for conversion in order to modify the initial contract rents that would be established in the HAP Contract, as long as the Project Owners do not exceed the aggregate subsidy for all of the Projects the Project Owners have submitted for conversion under RAD and the rents do not exceed 120% of FMR (or SAFMR, as applicable). This use, which HUD refers to as "bundled" rents, is permissible when Project Owners in mutual agreement submit Conversion Plans for two or more Projects. There is no limit to the number of Projects that Project Owners may rent bundle together. The conversion of the "donor" Project must close prior to or simultaneously with the conversion of the "recipient" Project. For example, assume that two Project Owners are 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 Project Owners could bundle the two projects such that the initial contract rents for both Projects will be $550.

HUD may, in limited circumstances, modify the PRAC Rents separate from the annual contract renewal process and prior to conversion, given the project budget, and subject to the

Agreement would still be in effect at the end of the 20 year term, at the end of the term, HUD would offer and a Project Owner must request a contract renewal covering at least 19 additional years.

[187] PRAC rents are the "Operating Expense Amounts" listed in Part I of the PRAC, Exhibit 1, as adjusted pursuant to rent "bundling" described in this subsection D. If PRAC rents have been adjusted by a special temporary increase in accordance with an approved plan with the Multifamily Regional Center, such special temporary rent increase will not be included in the PRAC rents used for the purposes of setting initial contract rents at conversion.

availability of funding in the Housing for the Elderly account.[188] For example, if a CNA was not available at the time of the most recent PRAC renewal, a rent adjustment to appropriately update reserve for replacement deposits could be requested in the middle of the contract year, ahead of conversion.

In order to support preservation efforts that will enhance the resilience, energy and water efficiency, and design of housing appropriate for the elderly to age-in-place, for any transaction that is proposed in its Conversion Plan to undertake new construction or rehabilitation with debt financing, and subject to demonstrated need, HUD may provide an increase to the PRAC rent prior to conversion that will be incorporated in the initial Section 8 contract rent. Subject to the availability of funds,[4B-1] HUD may provide:

- An increase of up to $250 per unit per month (PUM) to the PRAC rent for any transaction that will undertake new construction or substantial rehabilitation (defined as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds) in excess of 60% of the Housing Construction Costs as published by HUD for a given market area.[4B-2]
- An increase of up to $100 PUM to the PRAC rent for any transaction that will undertake rehabilitation (defined as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds) in excess of 30% of the Housing Construction Costs as published by HUD for a given market area.

To be eligible for such increase to the PRAC rent prior to conversion, the Project Owner must demonstrate that the construction or substantial rehabilitation will enhance climate resilience, energy and water efficiency, and/or appropriate design for the elderly residents to age-in-place. [4B-3] Funds for this purpose shall be reserved on a first-come, first served basis based on the time of the request (communicated through the submission of a complete and acceptable Conversion Plan), subject to the availability of funds, and finalized when the Owner demonstrates the amount is necessary for the viability of the transaction.

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. Project Owners can submit utility allowance projections performed by a third-party 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

[188] PRAC renewals and rent adjustments are funded from the Housing for the Elderly account. Renewal of ongoing PRAC contracts including inflationary adjustments to core operating expenses will be prioritized over mid-cycle rent increases that enhance services and replacement reserves for converting properties.

systems, appliances, and characteristics of the building location. For utilities that will remain tenant-paid, HUD will increase the contract rents by 75% of the approved reduction in Utility Allowance. The Utility Allowance shall be recalculated based on actual consumption within a reasonable period following completion of the work.

E. Method of Adjusting Contract Rents. Contract rents will be adjusted by an OCAF at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the initial term of the HAP Contract. [189]

F. Distributions. Covered Projects will not be subject to any limitation on distributions, contingent on satisfaction of program requirements and the availability of surplus cash as determined by year-end audited or certified financial statements, and subject to the provisions of this paragraph. 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. As an alternative requirement, in addition to standard PBRA requirements that must be satisfied prior to calculating surplus cash, distribution of surplus cash is prohibited unless HUD is able to verify on the annual financial statement that the Project operating reserve is funded at no less than $250 per unit. HUD may also impose restrictions on distributions of surplus cash on a given project as a potential remedy if HUD determines the Project Owner is in violation of the HAP Contract or Elderly Housing Use Agreement.

G. No Rescreening of Tenants upon Conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.[190] Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBRA requirements regarding continued occupancy. For example, a household that would not be income eligible for initial occupancy of a Section 8 unit at the time of conversion would still be placed on a Section 8 lease and eligible for assistance under the provisions governing continued occupancy. Thus, the first clause of section 8(c)(4) of the Act and 24

[189] 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 in order to calculate the contract rent for the project in the following fiscal year.

[190] These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

CFR § 880.603(b), concerning determination of eligibility and selection of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing's restrictions.

H. Under-Occupied Units. If at the time of conversion, an eligible family assisted under the PRAC is occupying a unit that is larger than appropriate because of the family's composition, the family may remain in the unit until an appropriate-sized unit becomes available in the Covered Project.[191] 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 30 days. 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.[192]

I. Occupancy Requirements. In accordance with the RAD statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), Section 202 PRAC projects converting assistance under RAD must continue to serve elderly persons. Accordingly, in addition to income-eligibility and income targeting requirements in 24 CFR 5.653, new admissions must meet the definition of "elderly family" in 24 CFR 5.403. See Section 4.5.K regarding the treatment of current households.

J. 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, only after the PBRA HAP Contract is executed and any proposed Work is completed, 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.

[191] A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

[192] As the later enacted statute, the RAD Statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

4.7 **Conversion and Processing Requirements**

As discussed in further detail below, the conversion of a PRAC Project will generally entail:

- An Initial Submission of Interest to HUD
- Resident Notification and Consultation
- Selection of PHA (PBV conversions only)
- Conversion Plan Submission, RAD Approval, and Closing

4.7.1 **Initial Submission of Interest to HUD**

Prior to submitting a Conversion Plan, a Project Owner must make an initial submission to HUD indicating the Project Owner's interest in conversion under this Notice. The submission must include:

- Project name;
- Project address;
- Project Owner's name;
- Project Owner's contact information;
- The PRAC Contract number(s);
- PRAC Contract expiration date(s);
- Total number of units covered under the PRAC Contract(s), by bedroom size; and
- Conversion Type (PBV or PBRA).

HUD has developed an electronic form submission for Project Owners to make the initial submission. To access the electronic submission template, Project Owners must request access to the RAD Resource Desk at www.radresource.net where users will be prompted to provide the information listed above.

HUD will provide the Project Owner a confirmation of successful submission. HUD will use the initial submission in order to:

1. Assign a Transaction Manager, who will make contact to discuss the conversion process and the Project Owner's goals for the Project; and
2. For PBV conversion, initiate the process to identify a PHA willing to administer the new PBV contract.

There is no fee associated with the initial submission. HUD will take no adverse action against a Project Owner who makes an initial submission but does not later submit a Conversion Plan.

4.7.2 **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 would need to agree to accept the responsibility. 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 decline the request within 30 days of HUD's request. HUD will communicate the PHA's response to the Project Owner. Applicants must wait until a PBV HAP Contract administrator has been identified before submitting their Conversion Plan, as the PHA who will act in this capacity must be identified in that plan. If no PHA consents to enter into the PBV contract, the Project cannot convert to PBV, and the Project Owner may consider conversion to PBRA instead.

B. Role of Administering PHA. The PHA that agrees to administer the PBV contract is responsible for administrative duties described in 24 CFR part 983 and this Notice. Prior to conversion, the PHA's key roles include:

1. **Pre-Selection Inspection.** The PHA must ensure that the units substantially comply with HQS, as defined in the PHA's Section 8 administrative plan, prior to submission of the Conversion Plan.
2. **Initial Contract Rent Setting.** The PHA will determine that the initial contract rents do not exceed the rent caps described in Section 4.5.G.
3. **HQS Inspections.** Prior to entering into a PBV HAP Contract, the PHA must inspect the Converting Project proposed for conversion to ensure that the units fully comply with HQS,[193] unless the PHA is using HOTMA non-life threatening and alternative inspection provisions. [194]

4.7.3 **Resident Notification and Consultation**

Resident Notification. For all conversions, a Project Owner is required to notify residents in writing of its intent to participate in RAD and is required to hold at least two meetings with residents.[195] The Project Owner must have at least one resident meeting within 30 days prior to submission of the Conversion Plan and at least one resident meeting after submission of the Conversion Plan but prior to conversion. The Notification letter must:

1. Be delivered to all Converting Project residents, including each PRAC–assisted household, as well as posted in the Converting Project office or other common area, and at no fewer than three prominent locations on the Converting Project site;

[193] Please note that under PBV, the standard HQS requirements related to lead-based paint under 24 CFR 982.401 do not apply. Instead, if the property was constructed before 1978 and one or more units has a child under age 6 residing, the PHA must ensure that the HQS requirements for lead safety at 24 CFR 983.101(c)(2) are met in those units, common areas servicing those units, and exterior painted surfaces associated with such units or common areas (or the whole property if there are children under age 6 residing in numerous units).

[194] See Notice PIH-2017-20 for guidance on HOTMA non-life threatening and alternative inspection provisions.

[195] Sample resident notification letters are available at www.hud.gov/rad.

2. Include the date and time of the resident briefings;
3. Include an estimated date of conversion to either a PBV or PBRA HAP Contract;
4. Include a description of any proposed change in ownership, rehabilitation, construction, or transfer of assistance associated with the conversion;
5. State the Project Owner's plan for relocation, if applicable, as a result of rehabilitation or construction, including the expected length of the relocation, the temporary nature of the relocation, the household's right to return, and the Project Owner's responsibility for covering relocation costs; and
6. Supply information on the method to submit comments to the Project Owner and provide for a 30-day comment period.

The Project 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 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 PRAC rules. The Project Owner must hold an additional meeting when there has been a material change that was not already discussed in a previous meeting.

When providing resident notifications and conducting resident meetings, the Project 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 § 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 Project 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 enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible (28 CFR part 35, Appendix B).

Additionally, the Project 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, the Project 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 Project Owner must submit a copy of all comments received with their Conversion Plan, along with a description of how the residents' comments will be addressed in the conversion. HUD will consider all resident comments and the Project Owner's plan to address the comments before approving the Conversion Plan. If more than 50 percent of written resident comments disapprove of the conversion of assistance, HUD will contact the Project Owner to discuss options for proceeding with the conversion request or may decline the request.

Upon Conversion Plan approval, the Project Owner must notify each affected family that the Project has been approved.

4.7.4 **Conversion Plan Submission, RAD Approval, and Closing**

A. Conversion Plan Submission. The Project Owner must submit to HUD through the RAD Resource Desk a complete Conversion Plan that satisfies all RAD program requirements. (See Attachment 4.A for Conversion Plan Requirements.)

HUD will review the Conversion Plan and Notify the Project Owner of HUD's determination to approve or reject the plan or to request additional information. HUD's decisions regarding the acceptance of the Conversion Plan will be made in HUD's sole discretion. If HUD determines that a Conversion Plan is not feasible or that the requirements of the Conversion Plan as set forth in Attachment 4A have not been met, then the Project Owner may either make corrections that satisfactorily address HUD's concerns or appeal the decision. If a Conversion Plan is disapproved, HUD's letter of disapproval will discuss changes, if any, that would result in an acceptable Conversion Plan.

B. RAD Approval. If the Conversion Plan satisfies the requirements of this Notice, HUD will issue an approval letter to the Project Owner. 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 Project Owner) in which to close the RAD conversion transaction, unless extended by HUD. The Project Owner 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. Upon conversion, units whose assistance has been converted pursuant to RAD will be removed from the 202 PRAC program. Converting Projects will be released from any outstanding obligations under the Capital Advance Agreement, the Capital Advance

Mortgage Note, the Capital Advance Program Regulatory Agreement, the Capital Advance Program Use Agreement, and related or collateral documents associated with the PRAC and the foregoing documents. The 202 PRAC will be terminated (or for PBV conversions, the 202 PRAC will expire without renewal), the Section 8 HAP Contract will be executed and the Project Owner will enter into an Elderly Housing Use Agreement, which will be recorded as a restrictive covenant in first position on the Covered Project. The effective date identified in the HAP Contract is the date the Project will cease to operate as a 202 PRAC Project and begins to operate under Section 8 requirements.

4.8 **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 4A: Conversion Plan Requirements and Feasibility Benchmarks for PRAC Conversions

A Conversion Plan will not be reviewed until all required documentation is submitted electronically to the RAD Resource Desk at www.radresource.net. HUD will complete an initial review for document completeness within five business days of submission and will notify the Project Owner of deficiencies. Once HUD has determined that all required documents appear to have been received, HUD will review the submission.

HUD's purpose in reviewing the Conversion Plan is to ensure the long-term physical and financial viability of the Covered Project in providing quality, supportive housing to elderly residents. HUD reserves the right to reject any Conversion Plan if the information provided is not complete, accurate, or in compliance with the submission requirements listed below. If a Conversion Plan fails one or more feasibility benchmarks, HUD may, in its sole discretion, still accept the Conversion Plan if HUD determines that the Conversion Plan is consistent with the long-term physical and financial viability of the Covered Project, and/or the Project Owner has demonstrated through historical data or other means that the Project Owner can satisfactorily maintain and manage the Covered Project as presented in the Conversion Plan. HUD will not accept the Conversion Plan if the Covered Project does not meet environmental review requirements, as described below.

Below are all the required components of a complete Conversion Plan and the requirements of each component. Additional guidance in preparing the Conversion Plan is available in the PRAC Processing Guide located at http://www.radresource.net/mf_library.cfm.

A. **Conversion Overview.** A narrative summary of the Covered Project and the Project Owner's conversion goals. Include details such as a description of the physical Project, Project history, identification of immediate capital needs of the Project, identification of other properties to be held within the same ownership entity, anticipated financing that will be obtained to meet the capital needs, anticipated relocation, how the conversion of assistance will impact residents, and circumstances such as new construction, Transfer of Assistance, scattered site, and reconfiguration of units.

B. **Proposed Units.** The Project Owner must provide the number of units by bedroom size proposed to be covered by the HAP Contract. If a reconfiguration of units is proposed, the Project Owner must submit a narrative explanation of the proposal, including a description of the units to be removed and an explanation of why the Project can better serve assisted residents at the reduced number. Discussion of the proposed units can be included in the Conversion Overview.

C. PRAC Contract. Submit a copy of the fully executed current PRAC Contract including all exhibits.

D. Statement of Compliance with Fair Housing and Civil Rights. The Project Owner must submit a written statement certifying that it does not have any outstanding fair housing or civil right matters and that the proposed RAD conversion is consistent with any applicable remedial order or agreements, as described in section 4.3.1.B. of this Notice.

E. Resident Notification. The Project Owner must provide proof of written notification informing residents of the intent to participate in RAD. Include a PDF attachment of all **comments received from residents** as described in Section 4.7.3. Project 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 Project Owner must also provide a description of how the residents' comments will be addressed in their plan for conversion.

F. Capital Needs Assessment. A CNA is required in order to identify the short-term and long-term capital needs of the property, which will factor into the Scope of Work and both the Initial and Annual Deposits to the Replacement Reserve. See Paragraph 4.4.A. for additional information on CNA requirements.

G. Initial Contract Rent Setting.

1. For PBV conversions, submit evidence that the Project Owner's proposed rents are in accordance with the PHA's rent setting. See Section 4.5.G for additional information on Initial Contract Rent Setting for PBV.
2. For PBRA conversions, the rents cannot exceed the limits set forth in Section 4.6.C

H. Scope of Work. The Conversion Plan must include a Scope of Work that accompanies the CNA. The Scope of Work must:

1. Identify and address all repairs identified in the CNA as critical, immediate or required within the first two years following conversion when the total of such repairs exceeds $5,000 per unit (including all items identified in the CNA as not functioning at the time of the CNA site visit). Briefly discuss any differences between the proposed Work and the conclusions and recommendations of the CNA provider; any additional scope items not identified in the CNA; and the Project Owner's choices for replacement components.
2. If the most recent REAC Inspection score is below 60, or the property has been referred to DEC due to physical deficiencies, the scope of work must address all physical deficiencies identified.
3. Identify replacement quantities and costs. Rehabilitation estimates must be based on 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.

4. Include a summary of environmental issues and corresponding remediation activities known at that time, and a summary of accessibility features that are required pursuant to applicable accessibility standards and other accessibility requirements. Other accessibility requirements include, but are not limited to, physical features that need to be provided as reasonable accommodations for qualified persons with disabilities. The scope of work should also include design features necessary for elderly housing (see Section 4.4.F) and a description of how those features will promote housing stability for an aging population.
5. Include a construction contingency of 10 percent (HUD may require a higher contingency on a case-by-case basis) if the Project Owner plans to obtain new financing simultaneous with the Conversion.
6. Include a reasonable timeline for completion of all rehabilitation items acceptable to HUD, from the date of Conversion Closing and any financing, depending on the scope of rehabilitation needed.

For Conversions using FHA financing, conventional debt, or equity sources of financing, submit a copy of the Scope of Work included with the FHA Application for Firm Commitment, or submitted to the lender, equity provider (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source.

I. Environmental Review. HUD cannot approve an applicant's Conversion 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.

A RAD transaction will either be reviewed under 24 CFR Part 50 ("Part 50 Reviews") or 24 CFR Part 58 ("Part 58 Reviews"). Part 50 applies when HUD conducts the environmental review, and Part 58 applies when a Responsible Entity (RE) conducts the environmental review. The following table shows which review protocol a transaction will follow, along with who will conduct the review:

Description	Type of Environmental Review	Reviewer
PBRA Non-FHA	Part 50	RAD Transaction Manager
PBRA FHA Non-Risk Share[196]	Part 50	FHA Production
PBRA FHA Risk-Share	Part 50	Transaction Manager
PBV FHA Non-Risk Share	Part 50	FHA Production
PBV Non-FHA	Part 58	Responsible Entity
PBV FHA Risk-Share	Part 58	State Housing Finance Agency or Responsible Entity, as applicable[197]

Under limited circumstances, per 24 CFR 58.11(c), an Awardee with a non-FHA PBV transaction may request HUD to undertake the environmental review under Part 50 if a suitable RE cannot be found or if the local government was not a direct recipient of the funds and refuses to accept responsibility or when HUD determines the local government does not have capacity to act as an RE.[198] This request must be made in writing and submitted to HUD no later than at the time of the Conversion Plan submission.

For multi-phase developments, the environmental documents submitted with the Conversion 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.

Requests to transfer assistance from the Converting Project to a new location are subject to environmental review.

For transactions receiving funding from other HUD programs (i.e. HOME, CDBG, non-RAD PBV), HUD encourages all parties to complete and adopt one review for all programs, even if these programs' environmental reviews are conducted under a different review protocol (Part 50, Part 58). In cases where two Part 58 programs are combined, HUD encourages applicants to work with the Responsible Entity or Entities to see if environmental reviews can be combined. However, this is solely the Responsible Entities' determination. In cases

[196] Section 542(c) of the Housing and Community Development Act of 1992 enables HUD and State and local housing finance agencies (HFAs) to provide new risk-sharing arrangements to help those agencies provide more insurance and credit for multifamily loans known as the FHA Risk Sharing Program.

[197] Housing Finance Agencies can act as the Responsible Entity for Housing's Risk Share Programs if the HFA is a regular part of the state government or if the HFA is a state instrumentality that has been approved by the governor. If the HFA does not meet either criteria, it must request another department of the state to act as Responsible Entity. An instrumentality of a city or county government cannot act as a Responsible Entity for the Risk Share Program. Please contact HUD if you have any questions about whether an HFA can act as the Responsible Entity.

[198] These circumstances are considered on a case-by-case basis only. Please work with your Transaction Manager to determine suitability.

where a Part 50 program and a Part 58 program are combined, HUD may determine that it will perform one Part 50 environmental review for both programs under 24 CFR 58.11 if performing an additional Part 58 environmental review is not feasible in the time allotted. HUD must ensure that the Part 50 review considers the full scope of all activities and funding associated with all programs. When one review is used for both programs, the Approving Officials for both programs must certify the 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:[199]

1. For PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) without FHA insurance and without any rehabilitation, construction, or demolition,[200] HUD conducted a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

   A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

   B. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 C.F.R. Part 55;

   C. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

   Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR Part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or other interested parties or the public.[201]

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

[200] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

[201] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR Part 50. https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/

Project Owners will be required to submit documentation to facilitate HUD's site-specific review.

2. For all non-FHA PBRA conversions (or where HUD has determined to conduct the PBV environmental review under Part 50) that do not meet the requirements under paragraph 1 above, the Project Owner or vendor will follow the guidelines in Chapter 9 of the MAP guide. Project Owners or vendors will upload all applicable documentation directly into HEROS at the time of Conversion Plan submission. The following exceptions to the MAP Guide apply:
    - In lieu of a Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition),[202] except for conversions involving substantial rehabilitation or new construction activities. Awardees may submit a more limited report on potential sources of contamination. Where a Phase I ESA is not required (i.e., projects without any associated substantial rehabilitation[203] or new construction), the Awardees can submit 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 ESA in accordance with ASTM E 1527-13 (or the most recent edition) must be provided.
    - Awardees may submit a Phase I ESA that is up to 5 years old upon submission; however, it must be updated by a Transaction Screen that is up to 1 year old upon submission.

[202] The Transaction Screen does not meet the standard for "All Appropriate Inquiries" for CERCLA liability protection, as noted in ASTM E 1528-14 Section 4.2.1.

[203] 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. 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.

When HUD conducts the environmental review under Part 50, PHAs (or their vendors) must submit environmental reports and documentation[204] for HUD review into the HUD Environmental Review Online System (HEROS), where HUD will complete its review.

HUD staff will review the submissions and may require additional information in order to complete their review. 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 RAD approval will include any conditions required to carry out any and all mitigation measures as may result from the environmental review. Any conditions or mitigation that cannot be satisfied before Closing will survive Closing.

When a Responsible Entity (RE) completes an environmental review under Part 58, the Conversion 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.[205] 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 (RROF), to their local PIH field staff.[206] 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 proof of the completed Form 7015.16 (either a copy of the paper form or a screenshot of the completed screen in HEROS) to HUD; or
- If form HUD-7015.15 is not required because the project converts to Exempt under 24 CFR § 58.34(a)(12), the PHA must submit the RE's finding of exempt activity with their RAD Conversion Plan. 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(a)(12) is sufficient.

Additionally, the PHA must submit a Radon Report consistent with the requirements of the Section 9.6.3 of the MAP Guide (or successor provision) for HUD to review.

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[204] PHAs and providers should take care to respond to all applicable laws and authorities and MAP-specific requirements when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. Information about HEROS and how to register can be found at https://www.hudexchange.info/programs/environmental-review/housing/#heros

[205] 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/.

[206] Form HUD-7015.15 is available at https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/.

J. Accessibility and Relocation Plan Checklist. All Project Owners shall complete and submit the Accessibility and Relocation Plan Checklist provided by HUD on the RAD Resource Desk. The checklist shall include a certification that the relocation plan complies with all applicable HUD requirements, including the URA as well as applicable accessibility standards, including but not limited to those under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR § 8.23). The cost of accessibility improvements and relocation must be fully funded in the Development Budget. Project Owners are encouraged to use HUD's guidance on relocation planning for persons with disabilities in HUD Handbook 1378.0, Exhibit 3-1 and the RAD Fair Housing and Civil Rights Notice.

K. Proposed Financing

1. For all conversions using financing, the following must be addressed:
    a. Provide a brief discussion of conditions/milestones to be satisfied prior to closing including any known impediments to closing within the timeframe required under the Notice;
    b. Estimated closing date(s) for all proposed financing;
    c. For each proposed loan, equity contribution, or grant, the Conversion Plan must include a recent lender, investor or grant commitment letter, dated no more than 60 days prior to Conversion Plan submission, with key terms identified (including amount, repayment terms, interest rate, amortization, maturity, prepayment restrictions, and pay-in schedule) from all financing provider(s);
2. For conversions not using FHA financing or equity sources, the following requirements must be addressed in addition to the requirements set forth in Attachment 4A, Section K.1 above:
    a. Permanent debt financing with monthly payment amounts not conditioned on the availability of cash flow (i.e., "hard" debt) on Covered Projects must:
        i. Be at a fixed rate of interest, for a fixed term, fully amortized over no more than 40 years;
        ii. Not have a balloon payment until after the earlier to occur of a) expiration of the term of the HAP Contract or b) 17 years from the date of the permanent debt financing; and
        iii. Not have a debt service coverage less than the higher of 1.11 or lender requirements.
    b. All subordinate (or secondary) financing must be disclosed and then approved by the first-mortgage lender;
    c. The terms for all seller take-back financing must also be disclosed;
    d. If project revenue or existing reserves will be a source of funding, submit evidence of the current account balances.

L. Development Budget (Sources and Uses of Funds). All Project Owners must submit a Development Budget.

1. **For Conversions using FHA financing or equity sources of financing,** submit a copy of the Development Budget included with the FHA Application for Firm Commitment, or submitted to the lender, equity provider (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source. The Project Owner must submit the FHA Application for Firm Commitment review before the RAD conversion is submitted to the Office of Recapitalization. Include a Subsidy Layering Review (SLR) if one has been performed by another agency. If no SLR is provided, HUD will complete an SLR whenever multiple federal sources are proposed.
2. **For all other Conversions with new financing:**
    a. Include a reasonable, balanced, and comprehensive presentation of both construction period and permanent sources and uses of funds, which development budget must be consistent with the development budget submitted to the lender, equity provider (including LIHTC, historic tac credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source.
    b. Identify existing loans or debt that will be paid off at the closing, if applicable.
    c. Include a binding commitment letter with respect to any new source of financing or sources of equity.
    d. Include a construction contingency of 10 percent (HUD may require a higher contingency on a case-by-case basis) if the Project Owner plans to obtain new financing simultaneous with the Conversion.
    e. Demonstrate that any Identity of Interest (IOI) loans or advances will be converted to unsecured Surplus Cash Notes (Project's cash remaining, after debt service, project operational costs and other permitted payments) unless otherwise approved by HUD.
    f. If applicable, identify the initial operating deficit during the construction period and how that deficit will be funded, such as an operating deficit escrow or similar fund.
    g. 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.

M. Proposed Development Team. The Project Owner must identify the proposed legal entity that will own the Covered Project following conversion, the proposed management agent following conversion, and the "principals" of both entities. In addition, the Project Owner shall provide the following:

1. For all conversions with a proposed change in ownership entity, the new Project Owner must provide evidence of successful experience owning and operating HUD or other multifamily housing properties. New Project Owners may be required to demonstrate that

the criteria specified in HUD Handbook 4350.1, Chapter 13, Change in Ownership: Transfer of Physical Assets have been met in part or in whole.

2. For PBRA conversions with a proposed change in ownership entity or a material proposed change in ownership of the existing ownership entity, the new Project Owner must submit evidence that all new principals have a Previous Participation Certification in the Active Partners Performance System (APPS) (formerly referred to as Form HUD-2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.
3. For all conversions with a proposed change in management agent the new agent must provide evidence of successful experience managing and operating HUD or other multifamily housing properties.
4. For all conversions in which Work is proposed, the Project Owner must submit the identity of the general contractor or construction manager or a statement that the Project Owner will be managing construction directly, together with evidence of the general contractor's, construction manager's or Project Owner's recent and successful experience with similar rehabilitation or construction projects.

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

1. **For all FHA transactions or Conversions using equity sources of financing:**
   a. Provide a copy of the Operating Pro Forma that was submitted with the FHA Application for Firm Commitment or submitted to the lender, equity provider (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable funding source.
2. **For all other Conversions:**
   a. Provide a 20-year Operating Pro Forma in an owner-provided template,
   b. 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.
   c. Include columns capturing the average amount for the past three years for all line items listed in the Pro Forma. Provide explanations and/or supporting documentation for any major deviations of the historical average from the year 1 data entered on the Pro Forma.
   d. Ensure the Pro Forma complies with at least the following feasibility benchmarks unless otherwise approved by HUD:

      Revenue:

      i. Rents shall not exceed the amounts permitted under program rules;
      ii. All other sources of income 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);

iii. Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent;

iv. Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent;

Expenses:

i. All operating expenses shall be reasonable, with decreases justified and generally no less than 85 percent of the average for the last three years;

ii. The ADRR 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. The Project Owner should use reasonable estimates for 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%. HUD may consider alternative arrangements with respect to the Initial Deposit to the Replacement Reserve (IDRR) if risks to the Covered Project can be adequately mitigated. The ADRR must be sufficient to maintain a minimum balance at the end of each year during the initial 20-year HAP Contract term in accordance with the HUD MAP Guide Appendix 5g, Section VII.C.3D, Minimum Balances; and

iii. 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.

O. Supportive Services and Design. Applicants must describe how the proposed supportive services meet the identified needs of the anticipated residents, both initially and as they age, and how the identified supportive services will be provided on a consistent, long-term basis to support residents. The conversion plan also must discuss how current property design features and/or modifications planned in conjunction with the conversion provide a physical living environment suitable for meeting the needs of elderly residents and facilitating prolonged independent living. Relevant building design features may include, but are not limited to, those focused on fall prevention and visitability, universal design, and electronic communication mechanisms.

P. Market Study. A market study or net demand analysis may be required if the project is currently experiencing a high vacancy rate or if the Project Owner is requesting a reconfiguration of units. The Project Owner should consult with the Transaction Manager to determine if a market study is necessary before procuring one.

Q. Certification of Compliance with Site and Neighborhood Standards. The Project Owner (for PBRA) or the PHA (for PBV) shall evaluate and include a certification that the site complies with applicable Site and Neighborhood Standards (see Section 4.4.O.).

R. Affirmative Fair Housing Marketing Plan. For PBRA conversions, evidence that a completed AFHMP (Form 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 a Project Owner plans to adopt any tenant admission 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) for review. The AFHMP may not conflict with any special condition arising from the RAD conversion or provision in a remedial order or agreement. 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.

S. Transfer of Assistance. For all conversions involving a transfer of assistance to a new site, the Project Owner must have secured HUD approval of the site (Covered Project). See Section 2.4.I.

T. Title Report. Submit a complete title report including information on whether the Converting Project is currently subject to any other liens, encroachments, easements or other encumbrances on the property.

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,~~ a 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 5.655.

(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 5.655.

(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 (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(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 Notice H 2014-14; any substantive conflicts between the requirements set forth herein and those set forth in Notice H 2014-14 are accidental and in the event of such conflict, the requirements set forth in Notice H 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 are 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 Notice PIH 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.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing
Office of Public and Indian Housing

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

Notice H 2025-01
Notice PIH 2025-03 (HA)

Issued: January 16, 2025

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

Amends: H-2019-09/PIH-2019-23 as amended by H-2023-18/PIH-2023-19

Cross Reference: PIH-2021-07 (HA) and H-2016-17/PIH 2016-17

SUBJECT: Rental Assistance Demonstration – Supplemental Notice 4C

Purpose

This Supplemental Notice amends Notice H-2019-09 PIH-2019-23(HA) to implement certain changes to the Rental Assistance Demonstration (RAD) authorized under the Fiscal Year (FY) 2024 Appropriations Act as well as other changes.

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 (Pub. L. No. 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. No. 113-235, approved December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. No 115-31, approved May 5, 2017), the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, approved March 23, 2018), the Consolidated Appropriations Act, 2022 (Pub. L. 117-103, approved March 15, 2022), and the

Consolidated Appropriations Act, 2024 (Pub. L. 118-42, approved March 9, 2024) (collectively, the "RAD Statute").

MAJOR REVISIONS IN SUPPLEMENTAL NOTICE 4C

Implementation guidance for RAD is currently described in Notice H- 2019-09/ PIH- 2019-23 (HA) "Rental Assistance Demonstration – Final Implementation, Revision 4," as amended (RAD Notice, Rev-4) and as amended by Supplemental 4B published July 27, 2024 (Housing 2023-08 and PIH 2023-19). This Supplemental Notice supplements and further amends RAD Notice, Rev-4 in the following respects:

Extension of Application Date. The Consolidated Appropriations Act, 2024 extended the date to September 30, 2029 by which a Public Housing Agency (PHA) may apply to convert public housing under RAD. Section I of this Supplemental Notice implements this statutory change, which impacts both stand-alone applications and applications for Portfolio Awards which allow a PHA to reserve RAD conversion authority for a set of projects (including for multiple phases of a large scale redevelopment effort and for planned projects) and that lock in the applicable contract rent in the year of the application.

RAD and Section 18 Blends. The RAD statute as amended by the Consolidated Appropriations Act, 2024 allows HUD to convert tenant protection voucher assistance to a RAD HAP Contract under either Project-Based Rental Assistance (PBRA) or Project Based Voucher (PBV) when a Converting Property partially converts Section 9 assistance under RAD and an event under Section 18 of the United States Housing Act of 1937 (the Act) occurs that results in the eligibility for tenant protection vouchers under Section 8(o) of the Act. Section II of this Supplemental Notice implements this statutory change.

Resident Services. The RAD statute as amended by the Consolidated Appropriations Act, 2024 provides waiver authority to facilitate the ongoing availability of services to residents for Jobs Plus, ROSS, and FSS programs. Section III of this Supplemental Notice extends the availability of these programs at Covered Projects, removes waivers with respect to the FSS program which are no longer needed due to the implementation of 24 CFR part 984, and clarifies the continuing availability of grant assistance through the Congregate Housing Services Program.

Waivers of Rent Adjustments by OCAF. Section IV of this Supplemental Notice describes the process by which Covered Projects may apply for a waiver to receive an exception to the requirement in RAD Notice, Rev-4 for annual adjustments to contract

rents during the initial contract term while limited to the Operating Cost Adjustment Factor.

Annual Financial Statements. Section V of this Supplemental Notice strengthens program requirements for Project Owners to submit annual financial statements to HUD or the Contract Administrator.

Extension from 14 to 30 Days' Notice for Non-payment of Rent. Section VI of this Supplemental Notice strengthens RAD resident protections by increasing termination notification timelines by adding 16 more days in the case of tenant nonpayment of rent.

Renewal After Initial Term. Section VII of this Supplemental Notice clarifies that each HAP Contract must be renewed/extended after its initial term of 15 or 20 years.

Leases. Section VIII of this Supplemental Notice provides guidance on security deposits, pet occupancy, and the use of plain language in resident leases.

Restore-Rebuild (formerly Faircloth-to-RAD). Section IX of this Supplemental Notice makes clarifying changes to resident notification requirements for Restore-Rebuild developments where the proposed project is occupied.

Financing Plan Requirements and Feasibility Benchmarks for Public Housing Conversions. Section X of this Supplemental Notice strengthens the Financing Plan Requirements and Feasibility Benchmarks for public housing properties undergoing a RAD conversion to ensure properties are sustainable and financially stable for the long term.

HOTMA PBV Rule conforming changes. Section XI of this Supplemental Notice modifies the RAD Notice, Rev-4 due to the publication of the Housing Opportunity Through Modernization Act of 2016 – Housing Choice Voucher and Project Based Voucher Implementation; Additional Streamlining Changes (HOTMA Voucher Final Rule), published in the Federal Register May 7, 2024 at 89 FR 38304, as corrected in a publication in the Federal Register on May 28, 2024 (89 FR 46020) and effective as of June 6, 2024.

Effective Date

Except as noted herein, the changes in this Supplemental Notice shall be effective immediately (the "Effective Date"). Further, these provisions are subject to a 30-day comment period. If HUD receives comment that would lead to the reconsideration of any of the changes contained in

this Supplemental Notice, HUD will notify the public in a new revision upon expiration of the comment period. Please submit all comments to RAD@hud.gov. Finally, any waivers or alternative requirements to statutory provisions shall take effect 10 days after such waivers are published in the Federal Register.

SECTION I: EXTENSION OF APPLICATION DEADLINE

1. Section 1.9.A is amended by adding at the end of the first paragraph the following sentence: "Applications must be submitted no later than September 30, 2029."

2. All references to the date September 30, 2024 shall be replaced with the date September 30, 2029.

SECTION II: RAD AND SECTION 18 BLENDS

1. The Definitions section is amended to add the following definitions:

> *Converting Public Housing Assistance.* The funding for units associated with a Converting Project whose public housing assistance is converting under RAD.
>
> *Converting TPV Assistance.* The tenant protection voucher assistance resulting from an approval under Section 18 of the Act that is converting under RAD.
>
> *Legacy Non-RAD PBV.* PBV assistance in a Covered Project that prior to December 31, 2024 replaced public housing at the time of conversion and that are subject to a non-RAD PBV HAP Contract.
>
> *Legacy Non-RAD PBRA.* PBRA assistance in a Covered Project that prior to December 31, 2024 replaced public housing at the time of conversion and that are subject to a non-RAD PBRA HAP Contract.
>
> *RAD/Section 18 Blend.* A public housing conversion that is combining RAD and Section 18 activities and that includes both Converting Public Housing Assistance and Converting TPV Assistance.

2. Section 1.5.B.2 is deleted and replaced with:

> **2. <u>RAD/Section 18 Blends</u>.** A PHA can combine RAD and Section 18 activities towards the preservation of a project.
>
> a. In certain circumstances as determined by HUD (for additional details see Notice PIH 2021-07, or any amended or successor Notice), HUD will offer the PHA a streamlined process for securing HUD approval for a disposition under Section 18 and for a determination of eligibility for tenant protection vouchers (TPV) under section 8(o) of the Act.
> b. A PHA that has received a Section 18 approval under normal processing shall be subject to the provisions governing RAD/Section 18 Blends provided they request

and receive SAC approval to conditionally rescind the Section 18 approval for some portion of RAD eligible units (see paragraph 1.5.B.3.b below) and provided at least 10% of the total units in the Converting Project will be Converting Public Housing Assistance.

c. If, at a Converting Project, a PHA is using 24 CFR § 970.17(b) or 970.17(c) to dispose of other units at the project justified on the grounds that disposition allows more efficient or effective on-site or off-site development (§ 970.17(b)) or to dispose for reasons and goals of the PHA in its PHA Plan (970.17(c)) (see Notice PIH 2021-07, as may be amended or succeeded, for more details), HUD may disapprove the conversion if HUD determines that the PHA's use of both RAD and disposition under sections 970.17(b) or 970.17(c) in a single project undermines the unit replacement requirements of the RAD program.

d. Both the Converting Public Housing Assistance and the Converting TPV Assistance shall be converted to the selected form of Section 8 assistance (i.e., PBV or PBRA). All assistance converting under a RAD/Section 18 Blend will be placed under a single RAD form of HAP contract upon conversion, be subject to a single RAD Use Agreement, and be governed by the terms of this Notice for RAD PBV or RAD PBRA as applicable.

e. All RAD relocation requirements (such as the resident notice and meeting requirements, the right to return and relocation assistance and payments as described in the Notice H 2016-17/PIH 2016-17 RAD Fair Housing, Civil Rights, and Relocation Notice, or successor notice) shall apply to residents of the units subject to a Section 18 action in lieu of the relocation requirements under 24 CFR § 970.21. The PHA must provide the same relocation rights and benefits to all residents of the Converting Project.

f. Public housing properties that have been developed pursuant to the mixed-finance development method are eligible for RAD/Section 18 Blends.

g. With HUD approval, for a Covered Project that previously entered into a RAD PBRA HAP Contract with Converting Public Housing Assistance and that also includes units assisted by a PBV HAP Contract, the Project Owner and PHA may request to terminate the PBV HAP Contract and enter into one single RAD PBRA HAP Contract for all of the assisted units for a term not less than the remaining term of the original RAD PBRA HAP Contract. Section 8(o)(F)(iv) of the Act and its implementing regulations in 24 CFR § 983.206(b) requiring provision of tenant-based assistance upon termination of a PBV contract shall not apply. Any residents of the PBV units shall not be re-screened for admission into the PBRA program and shall retain all choice-mobility rights of Section 1.6.D.8. of this Notice including counting the length of occupancy under the PBV HAP Contract toward the family's eligibility for choice-mobility.

Additionally, Section 8(c)(8)(A) of the Act and 24 CFR § 983.206(a) requires an owner to provide written notice of the impending Contract termination to residents not less than one year before the termination of any contract and, in the event the owner does not provide the notice required, prohibits the owner from evicting the tenants or increasing the tenants' rent payment until such time as the owner has provided the notice and one year has elapsed. An owner requesting to replace an eligible PBV contract with a PBRA contract under this Section of the Notice must comply with this requirement. However, placing the units formerly covered under a PBV contract under a PBRA contract will protect residents from displacement and protect them from an increase in the resident portion of the rent. Consequently, execution of the PBRA contract may be processed and completed during the one-year notification period.

Project Owners seeking to use this provision shall apply to HUD for approval pursuant to instructions to be separately provided by HUD at www.hud.gov/rad.

3. The second paragraph of Section 1.5.D is deleted and replaced with:

A PHA's Faircloth Limit will be reduced by the number of units that generate the Converting Public Housing Assistance. The units that generate Converting TPV Assistance shall not reduce the 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 960 units if it entered into a 100-unit RAD HAP Contract utilizing Converting Public Housing Assistance from 40 ACC units and Converting TPV Assistance from 60 ACC units.

4. Section 1.6.B.5.a is deleted and replaced with:

a. MTW Fungibility. MTW agencies may use their MTW funds to set the initial contract rents higher than the normally applicable contract rent cap as described in this section. However, the initial contract rent set by the PHA is still subject to all other applicable program caps. The agency must use existing MTW funds to supplement the initial contract rent; HUD will only provide new incremental funding based on the normally applicable contract rent as described in this section. Any use of MTW funds in setting higher initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in Notice PIH 2013-02, or successor notice.

5. Section 1.6.B.5.c is deleted and replaced with:

> **c. Demolition Disposition Transition Funding (DDTF).** PHAs that are scheduled to receive ongoing DDTF subsidy for an approved Section 18 action that was not part of the Converting Project may choose to forego any ongoing DDTF for the purpose of offsetting an increase to the initial RAD rent. In the case of RAD/Section 18 Blends, DDTF for which the PHA would become eligible for the units approved under Section 18 will immediately be cancelled and used to offset an increase to the initial RAD rents for the Covered Project that results from the RAD/Section 18 Blend, unless the resulting RAD rent would exceed the initial PBV contract rent cap (see Section 1.6.B.7.h) or HUD determines the Section 18 units would not have been eligible for DDTF. See Attachment 1C for the calculation of how HUD will determine the increase to the RAD rent.

6. Subsection Section 1.6.B.5.g is relabeled Section 1.6.B.5.h and a new subsection is added as Section 1.6.B.5.g, as follows:

> **g. Rents in RAD/Section 18 Blends.** HUD will produce a single, blended rent schedule for all units resulting from a RAD/Section 18 Blend. The rent schedule will be calculated as the unit-weighted average contract rent by bedroom of:
>
> - the Converting Public Housing Assistance using the RAD rents based on their "RAD rent base year" described in Attachment 1C, and
> - the Converting TPV Assistance using the lower of 110% of the applicable FMR (or approved exception payment standard) minus any Utility Allowance or the Reasonable Rent.
>
> The initial contract rent in a RAD/Section 18 Blend can use any of the flexibilities referenced in subsections a. through e. above.

7. With the exception to the references in Sections 1.5.L, 1.6.B.5.b, and the second paragraph in Section 1.6.C.9 all other instances of the phrase "Non-RAD PBV" shall be replaced with "Legacy Non-RAD PBV."

8. The following sentence is added at the end of the 2nd paragraph in Section 1.7:

> Conversions from a RAD/Section 18 Blend will result in a single form of RAD PBRA HAP contract for the Converting Public Housing Assistance and Converting TPV Assistance and will include all of the same requirements.

9. Section 1.7.A.5.c is deleted and replaced with:

c. Demolition Disposition Transition Funding (DDTF). PHAs that are scheduled to receive ongoing DDTF subsidy for an approved Section 18 action that was not part of the Converting Project may choose to forego any ongoing DDTF for the purpose of amending the initial RAD rent. In the case of RAD/Section 18 Blends, DDTF for which the PHA would become eligible for the units approved under Section 18 will immediately be cancelled and used to increase the initial RAD rents for the Covered Project that results from the RAD/Section 18 Blend, unless the resulting RAD rent would exceed the initial PBRA contract rent cap or HUD determines the Section 18 units would not have been eligible for DDTF. See Attachment 1C for the calculation of how HUD will determine the increase to the RAD rent.

10. A new subsection is added as Section 1.7.A.5.g, as follows:

g. Rents in RAD/Section 18 Blends. HUD will produce a single, blended rent schedule for all units resulting from a RAD/Section 18 Blend. The rent schedule will be calculated as the unit-weighted average contract rent by bedroom of:

- the Converting Public Housing Assistance using the RAD rents based on their "RAD rent base year" described in Attachment 1C, and
- the Converting TPV Assistance using the lower of 110% of the applicable FMR (or approved exception payment standard) minus any Utility Allowance or the Reasonable Rent.

The initial contract rent in a RAD/Section 18 Blend can use any of the flexibilities referenced in subsections a. through e. above.

11. The first paragraph of Section 1.13.B.6 is deleted and replaced, as follows, without any changes to sub-paragraphs a and b:

6. Funding Upon Closing. For the remainder of the first Calendar Year in which a HAP Contract is effective (the "year of conversion"), the contract will be funded as follows:

- Operating Funds and Capital Funds will be obligated to the PHA for the Covered Project at the level of public housing subsidy which the Converting Public Housing Assistance is eligible to receive regardless of the initial contract rent amount or OCAF;[65] and

[65] For example, a closing on December 10 will result in a HAP Contract that is effective on January 1 or February 1, as selected by the Project Owner. For the remainder of the Calendar Year which includes the January 1 or February 1 date, subsidy is paid from public housing funds obligated to the PHA regardless of the RAD HAP Contract rent amount or OCAF. 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 Covered Project for the balance of the Calendar Year.

- For a RAD/Section 18 Blend, the amount of funding available for Covered Projects will include the Converting TPV Assistance provided to the PHA (for PBV conversions) or obligated to the contract (for PBRA conversions).

12. Note 4 in Attachment 1C is deleted and replaced with:

> For scenarios in which a PHA will forego DDTF to increase the initial RAD rent pursuant to Section 1.6.B.5.c and 1.7.A.5.c., HUD will provide a forecast of total Anticipated DDTF based on the RAD Rent Base Year. The RAD rent may then be increased by the following amount:
>
> [Total Anticipated DDTF or Undisbursed DDTF] ÷ 20 ÷ Number of Units converting under RAD ÷12 = PUM RAD Rent Increase
>
> The PUM RAD Rent Increase would be reflected in the initial rents established in the HAP Contract. 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 affected obligations of DDTF.

Section III: Resident Services Programs

1. Section 1.5.G is deleted and replaced with:

> **G. Resident Opportunity and Self-Sufficiency Service Coordinators (ROSS-SC).**
>
> With respect to ROSS, current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their project is converted under RAD and the PHAs or the new Project Owners may apply for their ROSS-SC grant to be renewed, subject to requirements of the ROSS-SC NOFO. To implement this provision, HUD is using its RAD authority to waive and establish alternative requirements to the language in the Self Sufficiency Program account in the Appropriations Acts and to Section 34 of the Act that would limit ROSS-SC to serving only public housing units or residents.
>
> In addition, Covered Projects where the project previously received a ROSS-SC grant prior to conversion but was ineligible to renew the grant after conversion are eligible to apply for a ROSS-SC grant, subject to requirements of the ROSS-SC NOFO. Authority for this provision is provided under recent Appropriation Acts (see, for example, the FY2023 and FY2024 Appropriation Acts under the heading "Self-Sufficiency Programs") which allow a PHA or a new owner to continue to serve (or restart service to)

residents of a project with assistance converted from public housing to RAD PBV or RAD PBRA.

All information on specific eligibility and application requirements will be described in forthcoming ROSS NOFOs. Upon completion of a ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. To facilitate the uniform treatment of residents and units at a Covered Project previously served by a ROSS-SC grant, any Legacy Non-RAD PBV units in a Covered Project that replace former public housing at the time of conversion shall be subject to the terms of this provision.

2. A new Section 1.5.N is added:

N. Congregate Housing Services Program (CHSP). A Converting Project that is receiving congregate housing services assistance under the Congregate Housing Services Act of 1978 (42 USC 8001-8010) or section 802 of the Cranston-Gonzalez National Affordable Housing Act (42 USC 8011), will be able to finish out their current grant once the project is converted under RAD. To facilitate the uniform treatment of residents and units at a Covered Project, any Legacy Non-RAD PBV or Legacy Non-RAD PBRA units in a Covered Project that replace former public housing at the time of conversion shall be subject to the terms of this provision.

3. Subsection 1.6.C.4 is deleted and replaced with:

4. Family Self Sufficiency (FSS). PHAs and Project Owners must follow the FSS regulations at 24 CFR part 984. Public Housing residents that are currently FSS participants must be allowed to continue to participate in the PHA's FSS program for the duration of the grant's period of performance. The PHA may continue to use any FSS funds already awarded to serve those FSS participants who live in units converted through RAD. At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement and any applicable 24 CFR part 200 requirements. If the PHA continues to run an FSS program that serves public housing, HCV (including PBV), and/or PBRA participants, the PHA will continue to be eligible (subject to FSS Funding Notice requirements) to apply for FSS funding. Due to the program merger between public housing FSS and HCV FSS that took place pursuant to the FY2014 Appropriations Act (and was continued in the subsequent Appropriation Acts), no special provisions are required to continue serving FSS participants that live in public housing units converting to PBV through RAD.

4. Subsection 1.7.B.4 is deleted and replaced with:

4. Family Self Sufficiency (FSS). PHAs and Project Owners must follow the FSS regulations at 24 CFR part 984. Public Housing residents that are currently FSS participants must be allowed to continue to participate in the PHA's FSS program once their housing is converted through RAD for the duration of the grant's period of performance. The Project Owner must ensure that these participants continue to be served by an FSS program: The PBRA owner may administer their own FSS program or enter into a Cooperative Agreement with the PHA, another PHA or another owner, allowing the partner entity to provide service coordination to PBRA participants in accordance with the requirements of 24 CFR parts 984 and 877, and current and future guidance published by HUD. In all program administration scenarios, the Project Owner must submit an FSS Action Plan to HUD for approval upon RAD conversion where there are converted participants. Under a Cooperative Agreement, the Project Owner must assume responsibility for the administrative duties associated with FSS such as calculating and crediting escrow and reporting. The Project Owner may choose to continue to enroll new participants but is not required to continue enrollment if they plan to phase out the FSS program.

If, upon conversion, the PHA ceases to be a PHA and no longer has public housing or HCV participants, or if the PHA converts all units that were eligible for FSS and no longer wishes to run an FSS program, the FSS grant may be transferred to the PBRA Project Owner for the remainder of the FSS grant period of performance. Following such a transfer, an otherwise eligible entity will be identified as a renewal or new applicant under future FSS Funding Notices.

5. Subsection 1.6.C.8 is deleted and replaced with:

8. Jobs Plus. Jobs Plus grantees awarded FY2014 and/or subsequent fiscal year funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance 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 grant agreement and/or work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project (see provisions in the relevant Jobs Plus NOFO and/or Grant Agreement). If the Jobs Plus program is continued, the grantee must agree to continue to implement the program according to HUD's program requirements. During the term of the Jobs Plus grant period after conversion, residents previously enrolled in the Jobs Plus rent incentive may continue their enrollment and any project resident may enroll in services or the rent incentive after conversion. To facilitate the uniform treatment of residents and units , any Jobs Plus program at a target project(s) may also enroll residents in any Legacy Non-RAD PBV units in a Covered Project that replaced former public housing at the time of conversion

in Jobs Plus services and in the Jobs Plus financial/rent incentive. To facilitate the ongoing availability of services for resident participants of Jobs Plus, HUD is waiving and establishing an alternative requirement to the "Self Sufficiency Programs" account in the Consolidated Appropriations Act, 2024 (and subsequent Appropriations Acts, as applicable) that restricts Jobs Plus grants to serving only public housing residents.

6. Subsection 1.7.B.8 is deleted and replaced with:

8. Jobs Plus. Jobs Plus grantees awarded FY2014 and/or subsequent fiscal year funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance 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 grant agreement and/or work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project (see provisions in the relevant Jobs Plus NOFO and/or Grant Agreement). If the Jobs Plus program is continued, the grantee must agree to continue to implement the program according to HUD's program requirements. During the term of the Jobs Plus grant period after conversion, residents previously enrolled in the Jobs Plus rent incentive may continue their enrollment and any project resident may enroll in services or the rent incentive after conversion. To facilitate the uniform treatment of residents and units in a Jobs Plus program at a target project(s), any Jobs Plus program at a target project(s) may also enroll residents in any Legacy Non-RAD PBRA units in a Covered Project that replaced former public housing at the time of conversion in Jobs Plus services and in the Jobs Plus financial/rent incentive. To facilitate the ongoing availability of services for resident participants of Jobs Plus, HUD is waiving and establishing an alternative requirement to the "Self Sufficiency Programs" account in the Consolidated Appropriations Act, 2024 (and subsequent Appropriations Acts, as applicable) that restrict Jobs Plus grants to serving only public housing residents.

SECTION IV: WAIVERS OF RENTAL ADJUSTMENTS BY OCAF

The RAD Statute allows HUD to set annual rent adjustments by an operating cost factor. HUD uses the annually published Operating Cost Adjustment Factor (OCAF) for this factor. HUD acknowledges that this methodology may not fully capture increases in operating costs for all Covered Projects. HUD may consider individual waivers of the annual rent adjustment in extraordinary circumstances.

In extraordinary circumstances, a Project Owner may request a waiver of the rental adjustment by OCAF and receive a rental adjustment by an alternative operating cost factor. Project Owners requesting a waiver of the rental adjustment by OCAF must submit a request with documentation

demonstrating the need for an alternative operating cost factor rental adjustment in order to preserve the Covered Project. The submission to the Office of Recapitalization must be consistent with instructions published on www.hud.gov/rad. The documentation will allow the Office of Recapitalization to determine if there is good cause to grant the waiver. If the Owner has demonstrated the need for the waiver, the Office of Recapitalization may grant the waiver and will determine the appropriate alternative operating cost factor and resulting rents. For PBV, the Contract Administrator must consent to the request and their consent must be evidenced in the Project Owner's documentation.

SECTION V: ANNUAL FINANCIAL STATEMENTS

1. Section 1.6.D.2 is deleted and replaced with the following:

> **2. Review of Financial Documents.** The Project Owner must submit to the administering PHA's Board the operating budget for the Covered Project annually. When timely requested by the Contract Administrator, the Project Owner must also submit property-specific audited year-end financial statements within a reasonable time established by the Contract Administrator. The Contract Administrator must confirm that the Project Owner is making deposits into the Reserve for Replacement account in accordance with the RCC as well as assess the financial health of the Covered Project.[40]

2. Section 1.7.C.7 is deleted and replaced with the following:

> **7. Submission of Year-End Financial Statements.** Projects converting assistance to PBRA must comply with 24 CFR part 5, Subpart H, as amended, revised, or modified by HUD and must file annual financial statements to HUD in accordance with the following provisions.[59] HUD may require the Project Owner to amend the HAP Contract to incorporate these requirements:
>
> a. Within ninety (90) days, or such alternative period established in writing by HUD, following the end of the Project Owner's fiscal year, the Project Owner shall prepare a financial report for the Project Owner's fiscal year, or the portion thereof that started with the Project Owner's assumption of the HAP Contract, based on an examination of the books and records of the Project Owner in

[40] 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 monitoring and evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

[59] 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).

accordance with generally accepted accounting principles and in such other form and substance as specified by HUD in supplemental guidance, and provide such report to HUD in such form, substance, and manner as may be specified by HUD under the Uniform Financial Reporting Standards at 24 CFR § 5.801 ("UFRS"), or any successor regulations.

b. Unless specifically waived or modified by HUD or to the extent otherwise exempt, the Project Owner shall: (a) engage an independent, licensed Certified Public Accountant ("CPA") to audit the Project Owner's annual financial report and to produce an audit report in accordance with both Generally Accepted Government Auditing Standards and Generally Accepted Auditing Standards; (b) engage an independent, licensed CPA to perform an agreed-upon procedure, in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements, to compare the financial data template information submitted electronically by the Project Owner to HUD against the annual financial report examined by, and the audit report prepared by, the independent, licensed CPA, and report any variances to HUD; and (c) furnish to the Contract Administrator and HUD (if a PHA is the Contract Administrator) the audit report, and any other reports relating to the annual financial report or the audit report as required by HUD, by such means and in such form, substance, and manner as may be specified by HUD under UFRS, or any successor regulations.
c. To the extent certain non-profit Project Owners' requirement to submit annual financial reports may be waived or modified by HUD, or such Project Owners may otherwise be exempt from compliance, such waiver, modification, or exemption shall not be construed to relieve the Project Owner of any requirements of this provision, except for those requirements specifically waived, modified, or from which they are exempt.
d. If the Project Owner fails to perform as required pursuant to this provision, the Contract Administrator or HUD (if a PHA is the Contract Administrator) may, at its sole election, and in a manner determined by HUD, and without affecting any other provisions herein, and after first providing to the Project Owner a notice of default of the HAP Contract with a reasonable opportunity to cure, initiate or cause to be initiated a forensic audit of the Project Owner's books, records, and accounts in such a manner as to provide to the Contract Administrator and HUD (if a PHA is the Contract Administrator) with as much of the same information that would have been provided had the Project Owner not failed to perform as required. Any such audit initiated by the Contract Administrator or HUD does not relieve Project Owner of the requirement to submit to the Contract Administrator and HUD (if a PHA is the Contract Administrator) an annual audited financial report as required pursuant to this provision.

SECTION VI: NOTICES FOR NONPAYMENT OF RENT

1. Section 1.6.C.6.a.ii is deleted and replaced with:

> ii. Not less than 30 days in the case of nonpayment of rent and in conformance with the terms of the Tenancy Addendum (HUD Form 52530c or replacement form); and

2. Section 1.7.B.6.a.i.2 is deleted and replaced with:

> 2. Not less than 30 days in the case of nonpayment of rent and in conformance with 24 CFR part 247; and

3. Attachment 1E, Paragraph a.i.2 is replaced with:

> 2. Not less than 30 days in the case of nonpayment of rent and in conformance with 24 CFR part 247; and

SECTION VII: RENEWAL AFTER INITIAL TERM

1. A new sentence is added at the end of Section 1.6.B.2:

> After the expiration of a 20-year initial term of the HAP Contract, the HAP Contract shall be renewed on a form approved by HUD, which shall include language that requires rents to be re-determined in accordance with 24 CFR §§ 983.301 and 983.302. If the RAD PBV HAP Contract was renewed or extended prior to the 20th year after conversion, then starting with the 20th year after execution of the original RAD PBV HAP Contract, contract rents shall be re-determined in accordance with 24 CFR § 983.302 or successor regulation.

2. A new sentence is added at the end of Section 1.7.A.2:

> The renewal contract shall have contract rents set in accordance with the renewal options available under MAHRAA (see Section 8 Renewal Guide, as may be amended).

SECTION VIII: LEASES

1. Section 1.13.B.2 is replaced with the following:

2. Leases. PHAs must provide residents with notification of public housing lease termination in accordance with 24 CFR § 966.4(l)(3) and in accordance with local law, and shall enter into new Section 8 leases effective as of the effective date of the HAP Contract. As part of the RAD Closing package, PHAs must provide a copy of the sample Section 8 tenant lease including all riders and addenda (i.e., House Rules) for HUD review. For PBRA conversions, PHAs must use the HUD Model Lease (Form HUD-90105a), including an approved RAD lease addendum. For PBV conversions, there is no model lease. However, the PHA/Project Owner of a PBV Covered Project must ensure that the proposed tenant lease meets the requirements in 24 CFR § 983.256, that the required Tenancy Addendum (HUD Form 52530c or replacement form) is included, and that the lease incorporates the tenancy provisions provided under this Notice. For both PBRA and PBV properties, the lease terms and provisions, including all addenda and referenced documents such as House Rules, must:

a. Be reasonable, use plain language, and must not contain provisions that conflict with resident rights described in this Notice or requirements of the PBV or PBRA programs (as applicable). The lease, including all riders and addenda, must also be available in multiple languages as needed and written in a manner accessible to people with disabilities. Furthermore, tenant leases and House Rules should not be onerous or difficult for residents to understand, and should not impose overly restrictive rules about what residents may or may not do in their homes. HUD reserves the right to reject or require revisions to leases if they are deemed unreasonable or otherwise do not conform to the aforementioned requirements.
b. Not require a new security deposit for residents in-place at the time of conversion,
c. Not prohibit residents' pets in-place at the time of conversion. Owners are encouraged to adopt reasonable policies permitting pets and are required to permit residents with disabilities to have service or assistance animals.
d. For any residences that qualify as "target housing" under 42 U.S.C. 4851b, each lease must comply with the Lead Disclosure Rule, as codified in 24 CFR part 35, subpart A.

SECTION IX: RESTORE-REBUILD, FORMERLY KNOWN AS FAIRCLOTH-TO-RAD

1. All references to "Faircloth-to-RAD" shall be replaced with "Restore-Rebuild."

2. Section 1.8.I.1. is deleted and replaced as follows:

1. If the impacted property is occupied, Sections 1.8.A through 1.8.D shall apply with the following modifications unless otherwise approved by HUD. The PHA must have complied with resident notification and meeting requirements as described in Section 1.8.A. prior to submission of the public housing acquisition, mixed finance development, or other development proposal. References to the Concept Call in Section 1.8.B shall be deemed to be references to HUD approval of the public housing acquisition, mixed finance development, or other development proposal pursuant to the applicable provisions of 24 CFR part 905. References to Closing in Section 1.8.C shall be deemed to be the Closing of the RAD conversion.

SECTION X: FINANCING PLAN REQUIREMENTS AND FEASIBILITY BENCHMARKS FOR PUBLIC HOUSING CONVERSIONS

The provisions of this Section X shall be effective for any transaction that has not submitted a complete Financing Plan on or before the 90th day following the Effective Date, unless otherwise approved by HUD. All other transactions will be subject to the previous provisions of the RAD Notice, Rev-4.

1. Section 1.4.A.3. is deleted and replaced with:

> **3. Environmental Review.** Under Federal environmental review requirements, proposed RAD projects are subject to environmental review under either 24 CFR part 50 or 24 CFR part 58, as applicable. HUD has made a determination under 24 CFR § 58.11(c) that all conversions will be subject to an environmental review under part 50. Environmental documents are required to be submitted no later than the applicant's Financing Plan.[9] HUD will not issue an RCC if the project plan does not meet the environmental review requirements described in Attachment 1A. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.[10]

[9] Under Part 50, HUD staff complete the review in conjunction with the Financing Plan review and therefore the PHA should submit full environmental review documentation no later than the Financing Plan submission. HUD may require earlier submission in order to ascertain whether a conversion has sufficiently advanced (see Section 1.12 for discussion of the Concept Call).

[10] A choice limiting action means an action that would have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, real property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, and ground disturbance. For more information see the Environmental Review Requirements for RAD Conversions Quick Reference Guide: https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/.

2. Footnote 21 following the first sentence of Section 1.4.B.6 is deleted and replaced with:

> [21] PHAs, Project Owners, and the source of the grant funds shall determine, based on local conditions, whether funds are structured as grants or as loans pursuant to the terms of Section 1.4.B.1. The same source, such as CDBG funds or public housing Capital Funds, could be structured in either manner. Repayment may be required from cash flow when the debt is in good standing and from any available source with respect to balloon payments at maturity and accelerated payments following a declaration of default and expiration of any applicable cure period.

3. Subparagraph C.1. in Attachment 1A is deleted and replaced with:

> 1. Identify and address all repairs identified in the CNA as critical, immediate or required within the first two years following conversion (including all items identified in the CNA as not functioning at the time of the CNA site visit). Briefly discuss any differences between the proposed Work and the conclusions and recommendations of the CNA provider; any additional scope items not identified in the CNA; and the Project Owner's choices for replacement components.

4. Subparagraph C.8 in Attachment 1A is deleted and replaced with:

> 8. For all existing buildings located in a FFRMS floodplain as determined by 24 CFR § 55.7, the PHA must submit an appraisal. The appraisal must determine the market value of the building(s) either before the improvement or repair is started, or if this structure has been damaged and is being restored, before the damage occurred. If the total cost of work exceeds 50% of the market value, or if the conversion increases the total number of project units by 20%, the work is considered to be a substantial improvement in accordance with 24 CFR § 55.2(b)(12), and FFRMS requirements are triggered under 24 CFR § 55.20. Further, 24 CFR § 55.2(b)(12)(ii) states substantial improvement may not be defined to include either: (a) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or (b) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places. If a building(s) will be new construction, an appraisal is not required and compliance with 24 CFR § 55.20 is required.
>
> For buildings outside of FFRMS floodplains and therefore not covered under the FFRMS rule, PHAs are encouraged to consult other sources (e.g., historical flooding of neighboring sites, NOAA Sea Level Rise Viewer, Flood Factor) to consider and design to future flood risk.

5. Attachment 1A, Section D is deleted and replaced with:

D. Environmental Review. HUD cannot 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.

All RAD transactions will be reviewed under 24 CFR part 50 ("Part 50 Reviews") by HUD.

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.

For requests to transfer assistance from the Converting Project, the new site where the Covered Project will be located is subject to a Part 50 Review. For the Converting Project, as a condition of releasing the DOT on the Converting Project, the Converting Project must undergo a Part 58 Environmental Review, completed by the Responsible Entity. This Part 58 review is distinct from the required Part 50 requirements for the Covered Project.

The following table shows which review protocol a transaction will follow, along with who will conduct the review:

Transaction Type	Review Performed Under	Review Performed by
PBRA Non-FHA PBRA FHA Risk-Share PBV Non-FHA PBV FHA Risk-Share	Part 50	RAD Transaction Manager
PBRA FHA Non-Risk Share PBV FHA Non-Risk Share	Part 50	FHA Production Underwriter
Release of DOT following a Transfer of Assistance	Part 58	Responsible Entity

For transactions receiving funding from other HUD programs (i.e. HOME, CDBG, non-RAD PBV), HUD encourages all parties to complete one review for all programs, even if these programs' environmental reviews are conducted under a different review protocol (Part 50, Part 58). In cases where two Part 58 programs are combined, HUD encourages applicants to work with the Responsible Entity to see if environmental reviews can be combined. However, this is solely the Responsible Entity's determination. In cases where

a Part 50 program and a Part 58 program are combined, HUD may determine that it will perform one Part 50 environmental review for both programs under 24 CFR § 58.11 if performing an additional Part 58 environmental review is not feasible in the time allotted. HUD must ensure that the Part 50 review considers the full scope of all activities and funding associated with all programs. When one review is used for both programs, the HUD Approving Officials for both programs must certify the 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:[77]

1. For all RAD conversions without FHA insurance and without any rehabilitation, construction, or demolition,[78] HUD has conducted the first (program-wide) tier of a tiered review of program-wide and site-specific compliance. HUD has made program-wide compliance determinations for most of the applicable environmental laws and authorities, and will complete a site-specific compliance review of the following:

    A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

    B. Flood insurance and floodplain management pursuant to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42 U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly section 2(a), and 24 CFR part 55;

    C. Contamination pursuant to 24 C.F.R. 50.3(i) (HUD Standard).

    D. Radon pursuant to the protocols set by the American Association of Radon Scientists and Technologists, Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (ANSI-AARST MAMF-2017) that includes testing 100% of ground floor units and at least 10% of upper floor units in all buildings included in the Covered Project. PHAs are to follow the radon requirements detailed in Section 9.6.3 of the MAP Guide (or successor versions).

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

[78] This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02 (or future successor Notice).

Additionally, while Historic Preservation (National Historic Preservation Act of 1966, particularly sections 106 & 110; 36 CFR part 800) is not included in the tiered review, for conversions that entail no physical activities or only activities that are limited to maintenance as defined in HUD Notice CPD-16-02, HUD has no further obligations under Section 106. HUD is not required to contact SHPO, THPO, and/or other interested parties or the public.[79]

PHAs will be required to submit documentation to facilitate HUD's site-specific review. Refer to https://www.hudexchange.info/resource/5799/site-specific-environmental-review-form-for-part-50-rad-conversions/ for additional information.

2. For all RAD Conversions that do not meet the requirements under paragraph 1 above, the awardee will follow the guidelines in Chapter 9 of the MAP guide. Awardees will upload all applicable documentation directly into HEROS at the time of Financing Plan submission. The following exceptions to the MAP Guide apply:
    - In lieu of a Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-21 (or the most recent edition), [80] except for conversions involving substantial rehabilitation or new construction activities, Awardees may submit a more limited report on potential sources of contamination. Where a Phase I ESA is not required (i.e., projects without any associated substantial rehabilitation[81] or new construction), the Awardees can submit a "transaction screen" in accordance with ASTM E 1528-22 (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 1528-22 does not meet this requirement, the environmental professional, as defined by the

[79] This Determination is detailed in the "Determination of 'No Potential to Cause Effects' under Section 106 of the National Historic Preservation Act for Rental Assistance Demonstration (RAD) Projects Limited to Maintenance Activities and Carried Out Under 24 CFR part 50." See https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/.

[80] The Transaction Screen does not meet the standard for "All Appropriate Inquiries" for CERCLA liability protection, as noted in ASTM E 1528-22 Section 4.2.1.

[81] 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. Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-21.

EPA's AAI Final Rule, must have either (a) A state- or tribal-issued certification or license and three years of relevant, full-time work experience, (b) A bachelor's degree or higher in science or engineering and five years of relevant, full-time work experience, or (c) Ten years of relevant, full-time work experience. If any potential environmental concerns are identified, an ASTM Phase I ESA in accordance with ASTM E 1527-21 (or the most recent edition) must be provided.

- Awardees may submit a Phase I ESA that is up to 5 years old upon submission; however, it must be updated by a Transaction Screen that is up to 1 year old upon submission.

PHAs (or their vendors) must submit environmental reports and documentation[82] for HUD review into the HUD Environmental Review Online System (HEROS), where HUD will complete its review.

HUD staff will review the submissions and may require additional information in order to complete their review. 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 or mitigation that cannot be satisfied before Closing will survive Closing and remain as a Covered Project Owner obligation to complete.

6. A new subparagraph F.7 in Attachment 1A is added, as follows:

7. To ensure that a PHA has adequate funds should operating expenses such as utilities, management fees, management staff salaries, maintenance, real estate taxes, and insurance exceed the gross rent potential of the Covered Project, HUD will require conversions without the use of Low Income Housing Tax Credits or commercial debt to include an operating reserve equal to six months of stabilized operating expenses, excluding monthly deposits to the replacement reserve.

The operating reserve may be held or escrowed at the Covered Project level and may only be used for the benefit of the Covered Project.

7. Subparagraph I.5.i. in Attachment 1A is deleted and replaced with:

[82] PHAs and providers should take care to respond to all applicable laws and authorities and MAP-specific requirements when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. Information about HEROS and how to register can be found at https://www.hudexchange.info/programs/environmental-review/housing/#heros.

i. For non-leveraged transactions (i.e. transactions that will not be taking on any new hard debt as part of the conversion), the Operating Expense Ratio, calculated as all operating expenses and required deposits to the capital replacement reserve divided by gross potential income, must be no greater than 80% within the first five years of stabilized operations. For leveraged transactions (i.e. transactions that will be taking on new hard debt as part of the conversion), 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.

SECTION XI: HOTMA CONFORMING CHANGES

This Notice makes the following changes to the RAD Notice due to the implementation of the HOTMA Voucher Final Rule. HUD is making technical changes to the RAD Notice to update regulatory references and language and certain non-technical changes to resolve conflicts between the RAD Notice and the HOTMA Voucher Final Rule. In the event that these technical changes to the RAD Notice do not resolve all apparent conflicts, HUD will continue to apply the RAD Notice's waivers and alternative requirements consistent with the PBV requirements in effect prior to the HOTMA Voucher Final Rule and the comparable provisions as they appear following the HOTMA Voucher Final Rule.

1. The following Definitions are modified:

- The definition for "HOTMA Implementation Notice" is deleted in its entirety.
- *The definition for* "Housing Quality Standards" *is replaced with "*The minimum quality standards developed by HUD in accordance with 24 CFR § 5.703 for the PBV program, including any variations approved by HUD for the PHA under 24 CFR § 5.705(a)(3)."
- The footnote in "Project" is revised to read, "The definition of "project" in 24 CFR § 983.3 is used to determine how many PBV HAP Contracts must be entered into."
- The definition of "Tenant Protection Vouchers" is deleted.

2. The first paragraph of the introductory language appearing at Section 1.6 is deleted and replaced with the following, and the final paragraph is deleted:

> 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 and authorizes HUD to establish requirements for converted assistance under the Demonstration. Conversions of public housing properties through RAD, including conversions through a RAD/Section 18 Blend, will be subject to the requirements below and in this Notice, and as reflected in the RAD PBV HAP Contract. Consequently, there are fundamental differences in the process, structure and function in

RAD PBV conversions of public housing properties as compared to the traditional PBV program.

3. Section 1.6.A.1 is deleted in its entirety and replaced with

Maximum Number of PBV Units (Percentage Limitation). RAD PBV units in Covered Projects do not count against the percentage limitation (program cap) applicable to the PBV program. Per 24 CFR § 983.6(e), units that meet the requirements of 24 CFR § 983.59 that were previously subject to federally required rent restrictions or received one of the listed forms of HUD assistance do not count toward the program cap. Furthermore, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6(a)-(b) with respect to RAD PBV units and Legacy Non-RAD PBV units within a Covered Project when such units replace public housing units at the time of the conversion at a new location. Any additional PBV units subsequently placed at the former public housing site would not be excluded from the percentage limitation applicable to the PBV program. In other words, the number of PBV units excluded from the PHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a Covered Project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percentage of vouchers that may be project-based by a PHA.

4. Section 1.6.A.2 is deleted in its entirety and replaced with:

Cap on Number of PBV Units in Each Project (Income-Mixing requirement). There is no cap on the number of units that may receive RAD PBV assistance in each project. Under 24 CFR § 983.54(c)(3), units excluded under 24 CFR § 983.59 that were previously subject to federally required rent restrictions or received one of the listed forms of HUD assistance do not count toward the project cap. For any RAD PBV and Legacy Non-RAD PBV units in Covered Projects not already excluded under 24 CFR § 983.59, including transfers of assistance to a new location, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR § 983.54. Accordingly, units under the contract may not be "excepted" for a specified purpose.

5. Section 1.6.A.3 is deleted in its entirety and replaced with:

Proposal and Project Selection Procedures. A PHA is not required to follow competitive selection procedures for units that will be subject to a RAD PBV HAP Contract. Accordingly, HUD is waiving 24 CFR § 983.51(b) (which also renders the selection procedures at 24 CFR § 983.51(c), (d), (h), and (i) inapplicable) with regard to units that will be subject to a RAD PBV HAP Contract. 24 CFR § 983.51(e)(2) does not apply, since HUD has waived the definition of existing housing for RAD PBV projects

under the First Component of the Demonstration. HUD is also waiving 24 CFR § 983.51(f), such that no written notice of proposal or project selection is required for units that will be subject to a RAD PBV HAP Contract. HUD is establishing an alternative requirement at 24 CFR § 983.51(g) to specify that the proposal or project selection date (as the term is used throughout 24 CFR part 983, where applicable) is the date of execution of the RAD PBV HAP Contract. 24 CFR § 983.51(a) (General Procedures), (e)(1) (inspection required prior to selection to determine site selection standards compliance), (j) (inapplicability of previous participation clearance) and (k) (exclusions from Federal procurement) continue to apply, except that the PHA is not required to describe in the PHA Administrative Plan the procedures for owner submission of RAD PBV proposals and PHA selection of PBV proposals for RAD PBV projects. To facilitate the uniform treatment of residents and units at a Covered Project, any Legacy Non-RAD PBV units in the same Covered Project, shall be subject to the terms of this provision. Any additional PBV units placed at the Covered Project would be subject to all of the requirements of 24 CFR § 983.51.

5. Section 1.6.B.9 is deleted in its entirety and replaced with:

Applicability of PBV Housing Types, Execution of RAD PBV HAP Contract, and RAD Rehab Assistance Payments. For public housing conversions to PBV, the project will not be classified as one of the housing types defined in the PBV regulations (i.e., "existing housing," "rehabilitated housing," or "newly constructed housing"). Accordingly, regulations as well as other requirements that stem from a project's classification as "existing housing," "rehabilitated housing," or "newly constructed housing," shall not apply until HUD has accepted the certification of Work completion under the RCC. Following the completion of Work, the contract shall be subject to all PBV requirements that apply to "existing housing."

The PHA and Project Owner will enter into a RAD PBV HAP Contract and will follow the requirements in this Notice with regard to conditions for entering into the HAP contract, executing the HAP contract, and conducting any Work. Except as provided under Section 1.4.A.12 (Transfers of Assistance), the RAD PBV HAP Contract will take effect before any Work begins.

During the period of Work identified in the RCC, standard HAP Contract funding procedures will be used for occupied units. Units covered under the RAD PBV HAP Contract that are not occupied at any point during the period of Work identified in the RCC 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 RCC, 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 or Capital Fund subsidy prior to conversion. As a result, some units in the Covered Project may not be eligible for Rehab Assistance Payments.

The Project Owner will no longer be eligible to receive RAD Rehab Assistance Payments upon the earlier of completion of the Work or expiration of the time period identified in the RCC for completion of all Work, which date is specified in the RAD PBV HAP Contract. After such date, all units under the HAP Contract will be eligible for payment only for occupied units or for vacancy payments, as applicable. MTW agencies may not alter this requirement.

To effectuate the above requirements, the definitions of "existing housing," "rehabilitated housing," and "newly constructed housing" at 24 CFR § 983.3(b), the definitions of "development activity" and "substantial improvement" at 24 CFR § 983.3(b) with respect to Work completed under the RCC, and 42 USC 1437f(o)(13)(A) and 24 CFR § 983.5(a)(2) describing the housing types for which a PHA enters into a HAP Contract in the PBV program, are waived. The requirements of this Notice shall apply with regard to the procedures for attaching PBV assistance to a Covered Project or to Work completed under the RCC in place of the PBV requirements stemming from the housing type classifications, such as: 24 CFR § 983.5(a)(3) (procedure for developing housing), 24 CFR § 983.10(b)(6)(i)-(ii), (8), and (10) (Administrative Plan policies), 24 CFR § 983.11 (Subsidy Layering Review), 24 CFR § 983.51(e)(2) (requirements before entering into a HAP Contract), 24 CFR § 983.52(d) (commencement of construction), 24 CFR § 983.56(a)(2) (environmental review), 24 CFR § 983.103(a)-(c) (pre-selection and initial inspections; see Section 1.6.B.10 for alternative inspection requirements), 24 CFR Subpart D (governing development activity), and 24 CFR § 983.204(a)-(c) (procedure for executing the HAP Contract). With respect to site selection standards, HUD requires site selection standards in compliance with this Notice and Notice PIH 2016-17/H 2016-17.

2. The second paragraph of Section 2.3.2.B is deleted and replaced with:

For PBV conversions, except as modified in this Notice, the converting project must qualify as existing housing or rehabilitated housing (as defined in 24 CFR § 983.3(b)) to be selected for conversion under the Second Component of RAD. The PHA must comply with all applicable housing quality standards of 24 CFR part 983.

3. A new Section 2.5.K is added:

K. Execution of RAD PBV HAP Contract and Rehabilitation. Work on Mod Rehab units that convert to PBV through RAD will generally be conducted under the PBV

program requirements applicable to rehabilitated housing, except as modified by this Notice (e.g. Section 2.5.I Davis-Bacon Wages). However, until such time as 24 CFR § 983.157 is effective, allowing a Project Owner to undergo rehabilitation after the HAP Contract is effective, this section provides alternative requirements for projects completing Work. Mod Rehab projects converting to PBV through RAD shall be considered existing housing under 24 CFR part 983 so long as they meet the criteria of paragraph (i) of the definition of existing housing in 24 CFR § 983.3. Such projects shall follow the requirements governing "substantial improvements" under 24 CFR § 983.212 when conducting Work, except as modified below. Accordingly, HUD is providing a limited waiver to the requirement under paragraph (ii) of the definition of existing housing in 24 CFR § 983.3(b), which requires a PHA determination and owner certification regarding substantial improvement in order for a project to qualify as existing housing, the provision of 24 CFR § 983.212(a) prohibiting the owner from requesting PHA approval before the effective date of the HAP contract, and 24 CFR § 983.212(a)(1)(ii) which requires that PHAs do not approve substantial improvement to commence until after the first two years of the effective date of the HAP Contract. These waivers shall remain in effect for any projects where the Project Owner has submitted a Conversion Plan (which includes the substantial improvement request and approval) prior to 60 days after the implementation of 24 CFR § 983.157. During the period in which these waivers are effective, references to "construction" or "rehabilitation" in paragraph 2.5.I shall include "substantial improvements."

4. The following references are deleted or modified as follows:

- In Section 1.4.A.7., 1.6.A.4., 2.4.H., 2.5.D., 4.4.O., and 4.5.F., replace "24 CFR § 983.57" with "24 CFR § 983.55."
- In Section 1.4.A.12.b, Footnote 18, the reference to "See the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and HUD's implementation notices including the January 18, 2017, HOTMA implementation notice, 82 Fed. Reg. 5458, and the July 14, 2017, technical correction and clarification notice, 82 Fed. Reg. 32461. Also see Notice PIH 2017-21." is deleted.
- In Section 1.6.B.5.d, the reference to 24 CFR § 983.2(c)(6)(iii) is deleted and replaced with 24 CFR § 983.2(c)(7)(iii) and 24 CFR § 983.301(f)(4).
- In Section 1.6.B.5.g, the reference to 24 CFR § 983.301 is removed and the reference to 24 CFR § 983.303 is replaced with 24 CFR § 982.4.
- In Section 1.6.B.7 the reference to "in accordance with section 8(o)(11) of the Act as amended by HOTMA (see Attachment A in Notice PIH 2017-21 for guidance on PHA-owned units)" is replaced with "as defined at 24 CFR § 983.3".
- In Section 1.6.B.7 the reference to 24 CFR § 983.59(b) is replaced with 24 CFR § 983.57(b).

- In Section 1.6.B.10, the first two sentences are replaced with: "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."
- In Section 1.6.B.10, the words "24 CFR § 983.103(b) and" are removed from the last sentence.
- In Section 1.6.C.1, the reference to "a household that was over-income at time of conversion" is replaced with "a public housing program participant that was over-income at time of conversion".
- In Section 1.6.C.1, ", 24 CFR § 983.251(a)(2) and 24 CFR § 983.255(a)(1)" is added after the reference to 24 CFR § 982.201.
- In Section 1.6.C.9, all references to 24 CFR § 983.53(c) are changed to 24 CFR §§ 983.52(c) and 983.251(a)(2).
- In Section 1.6.C.9, in the second paragraph, "and 24 CFR § 983.353(b)(1)" is added after the reference to 983.301.
- In Section 1.6.C.9, the reference to 24 CFR § 983.259 is changed to 983.258.
- In Section 1.6.D.4, the reference to 24 CFR § 983.251(c)(2) is deleted and replaced with 24 CFR § 983.251(c)(2)(iii).
- In Section 1.6.D.10 the reference to 24 CFR § 983.3(c)(6)(iii) is deleted and replaced with 24 CFR § 983.2(c)(7)(iii).
- In Attachment 1B the reference to 24 CFR § 983.260 is deleted and replaced with 24 CFR § 983.261.

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.

Paperwork Reduction Act

Approved

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0612, 2529-0013, 2506-0087, and 2577-0169. In accordance with the Paperwork Reduction Act, 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.

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