

**Certifications of Compliance with  
PHA Plans and Related Regulations  
(Standard, Troubled, HCV-Only, and  
High Performer PHAs)**

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB No. 2577-0226  
Expires 02/29/2016

**PHA Certifications of Compliance with the PHA Plan and Related Regulations including  
Required Civil Rights Certifications**

*Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the \_\_\_ 5-Year and/or  Annual PHA Plan for the PHA fiscal year beginning \_\_\_\_\_, hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:*

1. The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located.
2. The Plan contains a certification by the appropriate State or local officials that the Plan is consistent with the applicable Consolidated Plan, which includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice, for the PHA's jurisdiction and a description of the manner in which the PHA Plan is consistent with the applicable Consolidated Plan.
3. The PHA has established a Resident Advisory Board or Boards, the membership of which represents the residents assisted by the PHA, consulted with this Resident Advisory Board or Boards in developing the Plan, including any changes or revisions to the policies and programs identified in the Plan before they were implemented, and considered the recommendations of the RAB (24 CFR 903.13). The PHA has included in the Plan submission a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the Plan addresses these recommendations.
4. The PHA made the proposed Plan and all information relevant to the public hearing available for public inspection at least 45 days before the hearing, published a notice that a hearing would be held and conducted a hearing to discuss the Plan and invited public comment.
5. The PHA certifies that it will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
6. The PHA will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those programs, addressing those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.
7. For PHA Plans that includes a policy for site based waiting lists:
  - The PHA regularly submits required data to HUD's 50058 PIC/IMS Module in an accurate, complete and timely manner (as specified in PIH Notice 2010-25);
  - The system of site-based waiting lists provides for full disclosure to each applicant in the selection of the development in which to reside, including basic information about available sites; and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site;
  - Adoption of a site-based waiting list would not violate any court order or settlement agreement or be inconsistent with a pending complaint brought by HUD;
  - The PHA shall take reasonable measures to assure that such a waiting list is consistent with affirmatively furthering fair housing;
  - The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications, as specified in 24 CFR part 903.7(c)(1).
8. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.
9. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
10. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 135.
11. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.

12. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
13. The PHA will provide the responsible entity or HUD any documentation that the responsible entity or HUD needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58 or Part 50, respectively.
14. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under Section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
15. The PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
16. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.
17. The PHA will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments), 2 CFR Part 225, and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).
18. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the regulations and included in its Plan.
19. All attachments to the Plan have been and will continue to be available at all times and all locations that the PHA Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its PHA Plan and will continue to be made available at least at the primary business office of the PHA.
22. The PHA certifies that it is in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s).

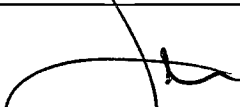
New Brunswick Housing Authority  
PHA Name

NJ 022  
PHA Number/HA Code

Annual PHA Plan for Fiscal Year 2017

5-Year PHA Plan for Fiscal Years 20     - 20    

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Authorized Official <u>John Clarke</u>	Title <u>Executive Director</u>
Signature 	Date <u>4/13/17</u>

**Civil Rights Certification**  
*(Qualified PHAs)*

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0226  
Expires 02/29/2016

**Civil Rights Certification**

**Annual Certification and Board Resolution**

*Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official, I approve the submission of the 5-Year PHA Plan for the PHA of which this document is a part, and make the following certification and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the public housing program of the agency and implementation thereof:*

The PHA certifies that it will carry out the public housing program of the agency in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990, and will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those program, addressing those impediments in a reasonable fashion in view of the resources available and working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.

New Brunswick Housing Authority  
PHA Name

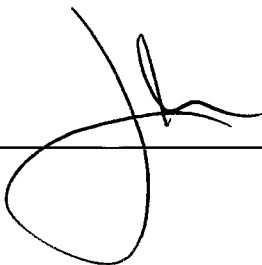
NJ 022  
PHA Number/HA Code

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Name of Authorized Official

Title Executive Director

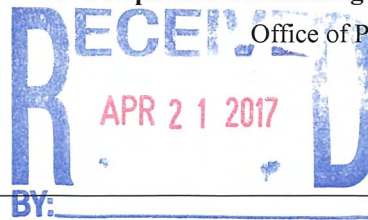
Signature



Date 4/13/17

**Certification by State or Local  
Official of PHA Plans Consistency  
with the Consolidated Plan or  
State Consolidated Plan  
(All PHAs)**

U. S Department of Housing and Urban Development



Office of Public and Indian Housing

OMB No. 2577-0226

Expires 2/29/2016

**Certification by State or Local Official of PHA Plans  
Consistency with the Consolidated Plan or State Consolidated Plan**

I, Glenn Patterson, the Director, Planning, Community & Econ. Dev.  
*Official's Name* *Official's Title*

certify that the 5-Year PHA Plan and/or Annual PHA Plan of the

New Brunswick Housing Authority  
*PHA Name*

is consistent with the Consolidated Plan or State Consolidated Plan and the Analysis of

Impediments (AI) to Fair Housing Choice of the

City of New Brunswick, N.J.  
*Local Jurisdiction Name*

pursuant to 24 CFR Part 91.

Provide a description of how the PHA Plan is consistent with the Consolidated Plan or State Consolidated Plan and the AI.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Glenn S. Patterson

Signature

Title

DIRECTOR OF PLANNING,  
COMMUNITY & ECON. DEVELOP

Date

4/24/2017



**Annual PHA Plan**  
*(Standard PHAs and Troubled PHAs)*

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

OMB No. 2577-0226  
Expires: 02/29/2016

**Purpose.** The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families.

**Applicability.** Form HUD-50075-ST is to be completed annually by **STANDARD PHAs** or **TROUBLED PHAs**. PHAs that meet the definition of a High Performer PHA, Small PHA, HCV-Only PHA or Qualified PHA do not need to submit this form.

**Definitions.**

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both of the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments if administering both programs, or PHAS if only administering public housing.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, or at risk of being designated as troubled, that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceeds 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceeds 550, and that was designated as a standard performer in the most recent PHAS or SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined, and is not PHAS or SEMAP troubled.

A.	PHA Information																																
A.1	<p>PHA Name: Housing Authority of the City of New Brunswick PHA Code: NJ 022            PHA Type: <input type="checkbox"/> Standard PHA <input checked="" type="checkbox"/> Troubled PHA            PHA Plan for Fiscal Year Beginning: 07/2017            PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above)            Number of Public Housing (PH) Units 284 Number of Housing Choice Vouchers (HCVs) 940 Total Combined Units/Vouchers 1224            PHA Plan Submission Type: <input checked="" type="checkbox"/> Annual Submission <input type="checkbox"/> Revised Annual Submission</p> <p><b>Availability of Information.</b> PHAs must have the elements listed below in sections B and C readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. At a minimum, PHAs must post PHA Plans, including updates, at each Asset Management Project (AMP) and main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. PHAs are also encouraged to provide each resident council a copy of their PHA Plans.</p> <p><input type="checkbox"/> PHA Consortia: (Check box if submitting a Joint PHA Plan and complete table below)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="2" style="width: 25%;">Participating PHAs</th> <th rowspan="2" style="width: 10%;">PHA Code</th> <th rowspan="2" style="width: 25%;">Program(s) in the Consortia</th> <th rowspan="2" style="width: 20%;">Program(s) not in the Consortia</th> <th colspan="2" style="width: 20%;">No. of Units in Each Program</th> </tr> <tr> <th style="width: 10%;">PH</th> <th style="width: 10%;">HCV</th> </tr> </thead> <tbody> <tr> <td>Lead PHA:</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program		PH	HCV	Lead PHA:																							
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Lead PHA:																																	
B.	Annual Plan Elements																																

<p><b>B.1</b></p>	<p><b>Revision of PHA Plan Elements.</b></p> <p>(a) Have the following PHA Plan elements been revised by the PHA?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Financial Resources.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Rent Determination.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Operation and Management.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Grievance Procedures.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Homeownership Programs.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Community Service and Self-Sufficiency Programs.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Safety and Crime Prevention.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Pet Policy.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Asset Management.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification</p> <p>(b) If the PHA answered yes for any element, describe the revisions for each revised element(s):</p> <ul style="list-style-type: none"> <li>• The allowable time period for the earned income disregard has changed from four years to two years.</li> <li>• The NBHA will implement a smoke-free policy effective July 1, 2017.</li> <li>• The community service policy now requires entrance and annual acknowledgements.</li> </ul> <p>(c) The PHA must submit its Deconcentration Policy for Field Office review.</p>
<p><b>B.2</b></p>	<p><b>New Activities.</b></p> <p>(a) Does the PHA intend to undertake any new activities related to the following in the PHA's current Fiscal Year?</p> <p>Y N</p> <p><input type="checkbox"/> <input type="checkbox"/> Hope VI or Choice Neighborhoods.</p> <p><input type="checkbox"/> <input type="checkbox"/> Mixed Finance Modernization or Development.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Demolition and/or Disposition.</p> <p><input type="checkbox"/> <input type="checkbox"/> Designated Housing for Elderly and/or Disabled Families.</p> <p><input type="checkbox"/> <input type="checkbox"/> Conversion of Public Housing to Tenant-Based Assistance.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Conversion of Public Housing to Project-Based Assistance under RAD.</p> <p><input type="checkbox"/> <input type="checkbox"/> Occupancy by Over-Income Families.</p> <p><input type="checkbox"/> <input type="checkbox"/> Occupancy by Police Officers.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Non-Smoking Policies.</p> <p><input type="checkbox"/> <input type="checkbox"/> Project-Based Vouchers.</p> <p><input type="checkbox"/> <input type="checkbox"/> Units with Approved Vacancies for Modernization.</p> <p><input type="checkbox"/> <input type="checkbox"/> Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).</p> <p>(b) If any of these activities are planned for the current Fiscal Year, describe the activities. For new demolition activities, describe any public housing development or portion thereof, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act under the separate demolition/disposition approval process. If using Project-Based Vouchers (PBVs), provide the projected number of project based units and general locations, and describe how project basing would be consistent with the PHA Plan.</p> <ul style="list-style-type: none"> <li>• The NBHA will continue to apply for the disposition of the cleared Hoffman site and will implement the mixed-finance redevelopment of the site.</li> <li>• The 72 public housing units at AMP-3 will be converted to project-based vouchers under RAD.</li> <li>• The NBHA will implement a smoke-free policy effective July 1, 2017.</li> </ul>
<p><b>B.3</b></p>	<p><b>Civil Rights Certification.</b></p> <p>Form HUD-50077, <i>PHA Certifications of Compliance with the PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<p><b>B.4</b></p>	<p><b>Most Recent Fiscal Year Audit.</b></p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>(b) If yes, please describe:</p>

<p><b>B.5</b></p>	<p><b>Progress Report.</b></p> <p>Provide a description of the PHA's progress in meeting its Mission and Goals described in the PHA 5-Year and Annual Plan.</p> <p><u>Goal 1: Dispose of Hoffman site and partner with developer to build up to 50 affordable housing units within the City of New Brunswick.</u></p> <p>Objective 1.1: Prepare disposition request for HUD review.</p> <p>NBHA is reviewing the application process for disposition of the Hoffman site and will work with its development partner to determine which type of disposition should be used for the redevelopment of the site. The site was previously approved for disposition only and we have completed that stage of the project. NBHA has an approved site plan to build up to 72 units of senior affordable housing on the site. We continue to apply for funding of the proposed replacement building through the NJHMFA tax credit process. This objective remains open and on-going.</p> <p>Objective 1.2: Issue RFP for developer.</p> <p>NBHA has issued an RFP and has awarded a contract for a development partner to build up to 72 units of affordable senior housing on the Hoffman site. This objective remains open and on-going.</p> <p>Objective 1.3: Award contract; move forward with development partner to apply for funding and development of new units.</p> <p>NBHA has awarded the contract for a development partner to Pennrose and is applying for funding through the NJHMFA to build up to 72 units of affordable senior housing. This objective remains open and on-going.</p> <p><u>Goal 2: Maintain maximum utilization of voucher program within funding provided.</u></p> <p>Objective 2.1: determine number of units maximally feasible.</p> <p>NBHA is working with HUD to maximize utilization within the housing voucher program. This objective remains open and on-going.</p> <p>Objective 2.2: Absorb port-ins.</p> <p>NBHA has placed a hold on absorbing port-ins until funding amounts are released for the new federal budget beginning 10/1/16. This objective remains open and on-going.</p> <p>Objective 2.3: Work to issue and lease-up vouchers in a timely manner.</p> <p>NBHA continues to work to lease-up vouchers to maximize utilization rate within funding constraints. This objective remains open and on-going.</p> <p><u>Goal 3: Maintain and operate security camera system at all sites and improve reduction in crime.</u></p> <p>Objective 3.1: perform monthly inspection of camera system.</p> <p>NBHA continues to inspect the camera system on regular basis. NBHA is completing the upgrade to the system. This objective remains open and on-going.</p> <p>Objective 3.2: Upgrade camera system and units as needed.</p> <p>NBHA has purchased updated equipment and is installing the equipment. This objective remains open and on-going.</p> <p>Objective 3.3: Continue to work with the NBPD on response to crime.</p> <p>We continue to work with the NBPD and their crime unit on a regular basis. This objective remains open and on-going.</p> <p><u>Goal 4: Maintain and expand fee-for-service agreements with PHAs and government agencies.</u></p> <p>Objective 4.1: Contract with at least one PHA or government agency on a fee-for-service basis.</p> <p>The NBHA has executed a fee-for-service agreement with the Franklin Township Housing Authority for 2016. This objective remains open and on-going.</p>
<p><b>B.6</b></p>	<p><b>Resident Advisory Board (RAB) Comments.</b></p> <p>(a) Did the RAB(s) provide comments to the PHA Plan?</p> <p>Y   N  <input type="checkbox"/>   <input type="checkbox"/></p> <p>(c) If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations.</p>

B.7	<p><b>Certification by State or Local Officials.</b></p> <p><u>Form HUD 50077-SL</u>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
B.8	<p><b>Troubled PHA.</b></p> <p>(a) Does the PHA have any current Memorandum of Agreement, Performance Improvement Plan, or Recovery Plan in place?  Y N N/A  <input checked="" type="checkbox"/> ' <input type="checkbox"/></p> <p>(b) If yes, please describe:  <span style="margin-left: 150px;"><i>Recovery Plan in place</i></span></p>
C.	<p><b>Statement of Capital Improvements</b> - Required for all PHAs completing this form that administer public housing and receive funding from the Capital Fund Program (CFP).</p>
C.1	<p><b>Capital Improvements.</b> Include a reference here to the most recent HUD-approved 5-Year Action Plan (HUD-50075.2) and the date that it was approved by HUD.</p> <p>See HUD Form-50075.2 approved by HUD on 7/1/15.</p>

**TI: SUMMARY**

Name/Number: New Brunswick Housing Priority, NJ022		Locality (City/County & State) New Brunswick, Middlesex, New Jersey		<input checked="" type="checkbox"/> Original 5-Year Plan <input type="checkbox"/> Revision No:	
Development Number and Name	Work Statement for Year 1 FFY 2014	Work Statement for Year 2 FFY 2015	Work Statement for Year 3 FFY 2016	Work Statement for Year 4 FFY 2017	Work Statement for Year 5 FFY 2018
Physical Improvements Subtotal	See	\$ 900,000	900,000	600,000	200,000
Management Improvements	Annual	44,637	44,637	44,637	44,637
PHA-Wide Non-dwelling Structures and Equipment	Statement				
ADMINISTRATION		27,898	27,898	27,898	27,898
Fees and Costs		90,000	90,000	90,000	90,000
Operations		69,746	69,746	69,746	69,746
Demolition					
Development					
Capital Fund Financing – Debt Service		198,009.43	197,518.55	196,687.97	195,736.10
Total CFP Funds		\$ 1,330,290.43	1,329,799.55	1,028,968.97	628,017.10
Total Non-CFP Funds					
Grand Total		\$ 1,330,290.43	1,329,799.55	1,028,968.97	628,017.10











**TI: SUMMARY**

Name/Number: New Brunswick Housing City, NJ022		Locality (City/County & State) New Brunswick, Middlesex, New Jersey		<input checked="" type="checkbox"/> Original 5-Year Plan <input type="checkbox"/> Revision No:	
Development Number and Name	Work Statement for Year 1 FFY 2014	Work Statement for Year 2 FFY 2015	Work Statement for Year 3 FFY 2016	Work Statement for Year 4 FFY 2017	Work Statement for Year 5 FFY 2018
Physical Improvements Subtotal	See	\$ 900,000	900,000	600,000	200,000
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Fees and Costs		90,000	90,000	90,000	90,000
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Capital Fund Financing – Debt Service		198,009.43	197,518.55	196,687.97	195,736.10
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Total Non-CFP Funds					
Grand Total		\$ 1,330,290.43	1,329,799.55	1,028,968.97	628,017.10











ATTACHMENT TO THE PHA PLAN FOR THE FISCAL YEAR BEGINNING JULY 1, 2016

The New Brunswick Housing Authority (NBHA) is amending its annual PHA Plan for the fiscal year beginning July 1, 2016, because it was a successful applicant in the Rental Assistance Demonstration (RAD). As a result the NBHA will be converting to project-based vouchers (PBV) under the guidelines of PIH Notice 2012-32, REV-1 and any successor notices. Upon conversion to PBV, the NBHA will adopt the resident rights, participation, waiting list and grievance procedures listed in Section 1.6 of PIH Notice 2012-32, REV-2 and joint Housing-PIH Notice H-2014-09/PIH-2014-17. These resident rights, participation, waiting list and grievance procedures are appended to this attachment. Additionally, the NBHA certifies that it is currently compliant with all fair housing and civil rights requirements.

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing the NBHA with access to private sources of capital to repair and preserve its affordable housing assets. Please be aware that upon conversion, the NBHA's Capital Fund budget will be reduced by the pro rata share of Public Housing Developments being converted as part of the demonstration and that the NBHA may also borrow funds to address its capital needs. The NBHA will not be contributing operating reserves, capital funds, or replacement housing funds towards the conversion. The NBHA currently has debt under the Capital Fund Financing Program and will be working with HUD to address outstanding debt issues which may result in additional reductions of capital or operating funds.

Below please find specific information related to the public housing development selected for RAD;

Name of Development: Hope Manor/Riverside	PIC Development ID: NJ22000003	Conversion Type: Project-based Vouchers	Transfer of Assistance: Not applicable
Total Units: 144	Pre-RAD Unit Type: General Occupancy	Post-RAD Unit Type: General Occupancy	Capital Fund Allocation of Development: \$0
Bedroom Type	Number of Units Pre- Conversion	Number of Units Post- Conversion	Change in Number of Units and Why
0-Bedroom	0	0	Not applicable
1-Bedroom	1	1	
2-Bedroom	72	72	
3-Bedroom	65	65	
4 or more Bedrooms	6	6	
Total	144	144	

Attachments: PIH Notice 2012-32 REV-2, sections 1.6.C and 1.6.D and Joint Housing/PIH Notice H-2014-9/PIH Notice 2014-17.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

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**Special Attention of:**

Public Housing Agencies  
Public Housing Hub Office Directors  
Public Housing Program Center Directors  
Regional Directors  
Field Office Directors  
RAD Transaction Managers

Notice H 2014-09  
PIH 2014-17

Issued: July 14, 2014

This notice remains in effect until amended,  
superseded, or rescinded.

Cross Reference: PIH Notice 2012-32 (HA)  
REV 1

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**Subject: Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component**

**1. Purpose**

This Notice provides public housing agencies (PHAs)<sup>1</sup> and their partners with information and resources on applicable program and relocation assistance requirements when planning for or implementing resident moves as a result of a **Rental Assistance Demonstration (RAD) conversion**<sup>2</sup> under the first component of the demonstration.<sup>3</sup> This Notice provides guidance on RAD relocation requirements and requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), as they relate to the public housing conversion process under the first component.<sup>4</sup>

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<sup>1</sup> This Notice always uses the term "PHA" to refer to the owner of the project prior to and after the RAD conversion, even though, in some cases, the owner of the converted RAD project may be another public entity, a non-profit organization, or other owner (e.g., low-income housing tax credit owner). In addition, this Notice uses "PHA" to refer to the "displacing agency," a URA term that means 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, may require substituting in a reference to a party that is more appropriate for a specific project.

<sup>2</sup> 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.

<sup>3</sup> The "first component" of RAD allows public housing and Moderate Rehabilitation properties to convert assistance; the "second component" refers to conversion of Rent Supplement, Rental Assistance Payment, and Moderate Rehabilitation properties upon contract expiration or termination.

<sup>4</sup> Relocation concerns and URA requirements apply to both components of RAD. This notice provides guidance only as to the first component.

Relocation assistance provided pursuant to public housing and RAD requirements is broader than URA relocation assistance requirements. Not all specific situations requiring relocation under RAD may trigger URA assistance requirements. In addition, whereas all qualifying residents<sup>5</sup> of a converting public housing project are eligible for relocation assistance under RAD, some residents or household members may not meet the statutory and regulatory requirements for eligibility under URA. This Notice supersedes PIH Notice 2012-32 (HA), REV-1, with respect to relocation matters. This Notice also specifically addresses when relocation may begin (see Section 9 below). As necessary, the Department will issue additional guidance on relocation issues and requirements as they relate to RAD.

## **2. Background**

RAD allows public housing properties to convert assistance to long-term project-based Section 8 contracts. In many cases, a RAD project may require relocation of residents when properties undergo repairs, are demolished and rebuilt, or when the assistance is transferred to another site. PIH Notice 2012-32 REV-1 (see also FR Notice 5630-N-05, 78 FR 39759-39763 (July 2, 2013)) details RAD program requirements.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) is a federal law that establishes minimum standards for federally-funded programs and projects 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 of real property.<sup>6</sup> The URA will apply to acquisitions of real property and relocation of persons from real property that occurs as a direct result of acquisition, rehabilitation, or demolition for a project that involves conversion of assistance to Project-Based Voucher (PBV) or Project-Based Rental Assistance (PBRA) programs under RAD.

Additionally, all relocation conducted as part of a RAD conversion and all relocation assistance provided under URA must be consistent with applicable fair housing and civil rights laws, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

Because each RAD proposal varies in its scope, this Notice may not address each PHA's specific circumstances. RAD PHAs and participants should carefully review the regulations, notices, and guidance material referenced in this Notice. Any questions related to the applicability of these requirements should be referred to the RAD Transaction Managers (TM) or may be emailed to [rad@hud.gov](mailto:rad@hud.gov).

## **3. Applicable Legal Authorities**

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<sup>5</sup> The term "resident" as used in this Notice refers to eligible resident families of public housing residing in a property applying for participation in RAD or a property that undergoes a conversion of assistance through RAD.

<sup>6</sup> 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](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378).

- RAD: Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), with the implementing PIH Notice 2012-32, REV-1
- URA statute and implementing regulations: 49 CFR part 24
- FHEO: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Fair Housing Act
- Section 104(d) of the Housing and Community Development Act of 1974, statute and implementing regulations (if CDBG and/or HOME funds are used): 24 CFR part 42, subpart C

#### 4. Relocation Planning

If there is a possibility that residents will be relocated as a result of acquisition, demolition, or rehabilitation for a project converting under RAD, PHAs must undertake a planning process in conformance with URA in order to minimize the adverse impact of relocation (49 CFR 24.205(a)).

While a written Relocation Plan is not a requirement under RAD or URA, the Department strongly encourages PHAs to prepare a written Relocation Plan, both to establish their relocation process and to communicate this process consistently and effectively to all relevant stakeholders. Appendix 1 contains recommended elements of a Relocation Plan.

The following presents a general sequencing of relocation planning activities within the RAD milestones:

Stage	Activities
1. Prior to submission of RAD application	<ul style="list-style-type: none"> <li>• Determine potential need for relocation</li> <li>• Meet with residents to discuss plans, communicate right to return, and solicit feedback</li> <li>• Provide <i>General Information Notice</i> (GIN) to residents</li> <li>• Survey residents to prepare Relocation Plan and relocation process cost estimate</li> </ul>
2. After receipt of the Commitment to Enter into a HAP Contract (CHAP) Award	<ul style="list-style-type: none"> <li>• Prepare Significant Amendment to PHA Plan</li> <li>• Assess and refine need for relocation</li> <li>• Develop a Relocation Plan (See Appendix 1 for recommended content)</li> <li>• Identify relocation housing options</li> </ul>
3. Preparing Financing Plan (due to RAD Transaction Manager no later than 180 days following	<ul style="list-style-type: none"> <li>• Budget for relocation expenses</li> <li>• Submit FHEO Accessibility &amp; Relocation checklist (PHAs may submit Relocation Plan along with checklist)</li> </ul>

Stage	Activities
CHAP award)	
4. Receipt of RAD Conversion Commitment (RCC)	<ul style="list-style-type: none"> <li>• The date of issuance of the HUD RCC marks the date of "Initiation of Negotiations" (ION), as defined in the URA (49 CFR 24.2(a)(15))</li> <li>• Provide residents with appropriate notice informing them if they will be relocated and any associated relocation assistance</li> <li>• Meet with residents to describe approved conversion plans and discuss required relocation</li> </ul>
5. Closing/RAD conversion	<ul style="list-style-type: none"> <li>• Generally, resident relocation should not begin until after the date of closing/conversion of assistance under RAD</li> <li>• PHAs must adhere to notification requirements (described in Paragraph 8 of this Notice): generally, a minimum of 30 days for residents to be temporarily relocated for up to a year, and 90 days for permanent relocation</li> <li>• PHAs seeking to move residents prior to closing must receive prior approval from HUD as described in Paragraph 9 of this Notice</li> </ul>

### 5. Resident Right to Return

RAD program rules prohibit the permanent involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed and is in decent, safe, and sanitary conditions.<sup>7</sup> The period during which residents may need to be temporarily relocated is determined by the period of rehabilitation or construction, which will be specific to each project.

If proposed plans for a project would preclude a resident from returning to the RAD project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the PHA must alter the project plans to accommodate the resident in the converted project. If a resident agrees to such plans, the PHA must secure informed, written consent from the resident to receive permanent relocation assistance and payments consistent with URA and acknowledge that acceptance of such assistance terminates the resident's right to return to the project. In obtaining this consent, PHAs must inform residents of their right to return, potential relocation, and temporary and permanent housing options at least 30 days before residents must make a decision. The PHA cannot employ any tactics to pressure residents into

<sup>7</sup> Where the transfer of assistance to a new site is approved, residents of the converting project will have the right to reside in an assisted unit at the new site once rehabilitation or new construction is complete.

relinquishing their right to return or accepting permanent relocation assistance and payments.<sup>8</sup> A PHA may not terminate a resident's lease if it fails to obtain this consent.

PHAs must keep documentation of such information provided to residents and such consent by residents. While HUD does not require PHAs to submit documentation of obtaining this consent, PHAs and participants must properly brief residents on their housing and relocation options and must keep auditable written records of such consultation and decisions. HUD may request this documentation during a review of the FHEO Relocation and Accessibility Checklist or if relocation concerns arise.

Examples of project plans that may preclude a resident from returning to the converted RAD project include, but are not limited to:

- Changes in bedroom distribution (i.e. when larger units will be replaced with smaller units such that current residents would become under-housed or when smaller units will be replaced with larger units such that current residents would become over-housed);
- Where a PHA is reducing the number of assisted units at a property by a de minimis amount<sup>9</sup>, but those units are occupied by assisted residents; or
- The reconfiguration of efficiency apartments, or the repurposing of dwelling units in order to facilitate social service delivery.

In all scenarios where residents voluntarily accept permanent relocation to accommodate project plans, these residents are eligible for permanent relocation assistance and payments under URA. If a resident accepts permanent relocation assistance, the resident surrenders his or her right to return to the completed project.

## **6. Relocation Assistance**

Under RAD, relocation assistance may vary depending on the length of time relocation is required.<sup>10</sup>

- a. In instances when the PHA anticipates that a resident will be relocated for more than a year, the PHA must offer the resident the choice of:
  - Permanent relocation assistance and payments at URA levels; or
  - Temporary relocation assistance, including temporary housing, while the resident retains his or her right to return and reimbursement for all reasonable out-of-pocket expenses associated with the temporary relocation.

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<sup>8</sup> Persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their accessibility needs must be accommodated.

<sup>9</sup> A reduction in total number of assisted units at RAD project of 5% or less. (Section 1.5.B of PIH 2012-32 REV-1)

<sup>10</sup> Some residents may not qualify for relocation assistance under URA. A nonexclusive listing of persons who do not qualify as displaced persons under URA is at 49 CFR 24.2(a)(9)(ii). See also, Paragraph 1-4(J) of HUD Handbook 1378.

The PHA must give the resident no less than 30 days to decide between permanent and temporary relocation assistance. If the resident elects to permanently relocate with assistance at URA levels, the PHA must inform the resident that his or her acceptance of permanent relocation assistance terminates the resident's right to return to the completed RAD project.

- b. In instances when a resident elects temporary relocation assistance and reoccupies a unit in the completed project within one year, the resident need not be offered permanent relocation assistance pursuant to URA.

Great care must be exercised to ensure that residents are treated fairly and equitably. If a resident is required to relocate temporarily in connection with the project, his or her 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 and increased housing costs during the temporary relocation.

- c. In the event that a resident elects to receive temporary relocation assistance and the temporary relocation exceeds one year, the resident becomes eligible for all permanent relocation assistance and payments under URA. (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 shall give the resident the opportunity to choose to remain temporarily relocated for an agreed-to period (based on new information about when they can return to the completed RAD unit), or choose to permanently relocate with URA assistance.

PHAs may not propose or request that a displaced person waive rights or entitlements to relocation assistance under the URA. If the resident elects to permanently relocate with URA assistance, the PHA must inform the person that the person's acceptance of URA relocation assistance to permanently relocate will terminate the person's right to return to the completed RAD project. Conversely, unless and until the resident elects to be permanently relocated, the resident may remain temporarily relocated with a right to return to the completed project.

## **7. Initiation of Negotiations (ION) Date**

Eligibility for URA relocation assistance is generally effective on the date of initiation of negotiations (ION) (49 CFR 24.2(a)(15)). For RAD projects, the ION date is the date of the issuance of the RAD Conversion Commitment (RCC).

## **8. Resident Notification**

When a project converting under RAD will include relocation of residents, notice must be provided to those resident households. For each notice listed below, one notice shall be given to each resident household. The purpose of these notifications is to ensure that residents are



informed of their potential rights and the relocation assistance available to them. During initial meetings with residents about RAD and in subsequent communications with residents related to relocation, the PHA should inform residents that if they choose to move after receiving a written GIN, but prior to receiving a RAD Notice of Relocation, they may jeopardize their eligibility for relocation assistance. However, PHAs should note that a resident move undertaken as a direct result of the project may still require relocation assistance and the resident may be eligible to receive permanent relocation assistance under the URA even though the PHA has not yet issued notices.

a. *General Information Notice* (49 CFR 24.203(a) & Handbook 1378, Paragraph 2-3(B))

As soon as feasible in the planning process, the PHA must provide each resident with a written GIN (see sample in Appendix 2) to provide a general description of the project, the activities planned, and the relocation assistance that may become available. URA regulations state that the GIN should be provided *as soon as feasible*. Under RAD, PHAs must provide GINs during the initial RAD resident meetings, before submitting a RAD application. GINs 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 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 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 at least 90 days advance written notice, and inform any person to be displaced from a dwelling that 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 CFR 24.208(h) for additional information); and
- Describe the resident's right to appeal the PHA's determination as to a person's eligibility for URA assistance.

b. *RAD Notice of Relocation*

If a resident will be relocated to facilitate the RAD conversion, the PHA shall provide notice of such relocation (RAD Notice of Relocation). The PHA shall issue this notice upon the PHA's receipt of the RCC from HUD, which is the ION date.

If residents will not be relocated, notice of relocation is not required, but the PHA should

notify them that they are not being relocated.<sup>11</sup>

The RAD Notice of Relocation must conform to the following requirements:

- The notice must state the anticipated duration of the resident's relocation.
- PHAs must provide this notice a minimum of 30 days prior to relocation to residents who will be temporarily relocated.<sup>12</sup> Longer notice may be appropriate for persons who will be relocated for an extended period of time (over 6 months), or if necessary due to personal needs or circumstances.
- Residents whose temporary relocation is anticipated to exceed one year must be informed that they will have no less than 30 days to elect temporary or permanent relocation as described in Section 6 of this Notice. When timing is critical for project completion, the 30-day decision period can run concurrently with the 30-day notice period for temporary relocation and with the 90-day period for permanent relocation if the PHA makes available comparable replacement dwellings consistent with 24.204(a).
- Residents who will be permanently relocated must receive written notice a minimum of 90 days prior to relocation. This 90-day time period may only begin once the PHA has made available at least one comparable replacement dwelling consistent with 49 CFR 24.204(a).<sup>13</sup>
- 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 explain the reasonable terms and conditions under which the resident may continue to lease and occupy a unit in the completed project.
- The notice must state that the PHA will reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with any temporary move. These expenses include, but are not limited to, moving expenses and increased housing costs (rent, utilities, etc.).

c. *Notice of Intent to Acquire* (49 CFR 24.203(d))

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<sup>11</sup> HUD policy generally requires a "notice of non-displacement" in certain instances; the RAD program does not require this notice. Although the scope of this notice is limited to guidance for projects requiring relocation, PHAs should note, however, that there may be notification requirements for projects that do not involve relocation. The RAD conversion will terminate the resident's public housing lease and commence a PBV or PBRA lease, even when there is no relocation required. In such instances, state law may impose certain notification requirements. In addition, public housing regulations generally require 30 days' notice prior to lease termination. PHAs are encouraged to review public housing requirements set forth in 24 CFR parts 5 and 966.

<sup>12</sup> HUD may approve shorter notice periods based on an urgent need due to danger, health, or safety issues or if the person will be temporarily relocated for only a short period.

<sup>13</sup> 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.

For RAD projects involving acquisition, residents may be provided with a notice of intent to acquire (“*Notice of Intent to Acquire*”) prior to the ION date with HUD’s prior approval. Once the Notice of Intent to Acquire is provided, a resident’s eligibility for relocation assistance and payments is established. Therefore, the RAD Notice of Relocation must be provided in conjunction with or after the Notice of Intent to Acquire. A RAD Notice of Relocation would not otherwise be sent prior to the ION date.

Since residents who accept permanent relocation must receive 90 days advanced written notice prior to being required to move, providing residents the Notice of Intent to Acquire and RAD Notice of Relocation prior to the ION date may be necessary to provide sufficient notice of relocation to a resident in instances where there may not be 90 days between the issuance of the RCC (ION date) and the anticipated closing date. This allows the PHA to issue the notice earlier so that relocation may begin upon closing. This allows program participants to conduct orderly relocation upon closing, minimize adverse impacts on displaced persons, and to expedite project advancement and completion.<sup>14</sup>

- d. *URA Notice of Relocation Eligibility – for residents whose temporary relocation exceeds one year (49 CFR 24.203(b) & Handbook 1378, Paragraph 2-3(C))*

After a resident has been temporarily relocated for one year, the PHA must provide a notice of relocation eligibility in accordance with URA requirements (“*Notice of Relocation Eligibility*”). This notice is not required if the resident has already accepted permanent relocation assistance.

The Notice of Relocation Eligibility must conform to URA requirements as set forth in 49 CFR Part 24, to HUD Handbook 1378 and to the following requirements:

- The PHA must provide updated information as to when it is anticipated that the resident will be able to return to the completed project.
- The resident may choose to remain temporarily relocated based upon such updated information or may choose to accept permanent URA relocation assistance in lieu of exercising the right to return.
- If the resident chooses to accept permanent URA relocation assistance and such assistance requires that the resident move, the URA requires such resident to receive 90 days advance written notice of the earliest date they will be required to move (i.e., 90-Day Notice, 49 CFR 24.203(c)). The PHA should be mindful that the 90-day time period may only begin once the PHA has made available at least one “comparable replacement dwellings” as set forth in 49 CFR 24.204(a).

## **9. Initiation of Relocation**

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<sup>14</sup> PHAs and program participants should note that, in most instances, it will be most appropriate for the acquiring entity to send this notice.

Unless otherwise approved by HUD, relocation may not begin until the date of closing of the RAD transaction and recordation of the RAD Use Agreement. PHAs must provide residents being temporarily relocated at least 30 days advance written notice of the required move. PHAs must give residents being permanently relocated at least 90 days advance written notice of the required move. This means PHAs are advised to plan carefully to account for this 30-day or 90-day notice period to ensure the closing is not delayed.

However, HUD is aware that, in rare cases, some project plans necessitate relocation prior to closing. With prior HUD approval, for projects involving acquisition, PHAs may relocate residents prior to the closing date subject to public housing requirements (see 24 CFR part 5 and 24 CFR 966). PHAs must contact their assigned RAD transaction manager (TM) to discuss plans as early as possible in the process to ensure compliance with all RAD and URA requirements.

If relocation prior to closing is desired, PHAs should submit to the TM the following information, as early as possible in the process:

- A written request for relocation prior to closing. The request must include justification of why the early relocation is necessary for the viability of the RAD transaction. Justification may include the presence of outside financing, such as Low Income Housing Tax Credit (LIHTC) awards, if the PHA can show that early relocation is necessary to meet critical LIHTC deadlines.
- FHEO Accessibility and Relocation Checklist.
- Evidence of intent to comply with public housing requirements, as applicable. Generally, public housing regulations require public housing residents to receive 30 days' notice prior to relocation and that such notice either be published in the PHA's admissions and continued occupancy policies (ACOP) or published elsewhere at least 30 days prior to receipt of such notice (24 CFR parts 5 and 966).

When seeking to relocate residents prior to closing, submission of this request as early as possible is preferred, prior to the 180-day Financing Plan milestone if possible (with Financing Plan submission following the request).

HUD reserves the right to request additional follow-up information, including a Relocation Plan and related budget, prior to approving such requests. PHAs must receive written HUD approval before beginning relocation of residents prior to closing.

Early planning and submission of the Financing Plan and FHEO checklist to HUD will ensure the PHA has built in the 30- or 90-day notice period prior to initiating relocation.

## **10. Fair Housing and Civil Rights Requirements**

PHAs must comply with all applicable fair housing and civil rights laws, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. Further, communication must be provided in a manner that is effective for persons

with disabilities (24 CFR 8.6) and for person who are Limited English Proficient (see 72 FR 2732). This section discusses some of the PHA's obligations under these laws and regulations. However, the applicability of civil rights laws is not limited to the activities discussed in this section. PHAs conducting relocation activities should familiarize themselves with applicable civil rights statutes, regulations, and guidance, including but not limited to, those listed at the end of this section.

- **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 CFR 8.6), and as applicable, the Americans with Disabilities Act; and for persons who are limited English proficient (*see* 72 Fed Reg 2732). This includes ensuring that training materials are in appropriate alternative formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters.
- **Accessible Meeting Facilities for Persons with Disabilities:** When holding public meetings, PHAs must give priority to methods that provide physical access to individuals with disabilities, i.e., holding the meetings, workshops, and briefings or any other type of meeting in an accessible location, in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Titles II and III of 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, in which case the PHA must take any action that would not result in such an alteration or such 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, in-home briefing. 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 nondisabled person to the fullest extent possible (28 CFR part 35, appendix B).
- **Meaningful Access for Persons with Limited English Proficiency (LEP):** PHAs must provide meaningful access to programs and activities for persons who have a limited ability to read, speak, or understand English. Any person with LEP who will be temporarily relocated or permanently displaced must have meaningful access to any public meetings regarding the project. In addition, any information provided to residents including, but not limited to, any notices required under the URA, should be provided in the appropriate language to persons with LEP. Generally, PHAs will be responsible for providing oral interpreters at meetings, including ensuring their competence, and covering any associated translation and interpretation costs.
- URA requires that PHAs provide persons who are unable to read or understand the notices, such as persons with disabilities or persons with LEP, with appropriate translation and counseling to ensure that they understand their rights and responsibilities and the assistance available to them (49 CFR 24.5). URA also requires that each notice indicate the name and telephone number of a person to contact with questions or for other

needed help (49 CFR 24.5). This notice should include the number for the telecommunication device for the deaf (TDD) or other appropriate communication device, if applicable (24 CFR 8.6(a)(2)).

- **Comparable Housing for Persons with Disabilities:** PHAs should identify the accessibility needs of residents to be relocated by consulting existing information (e.g., tenant 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). For guidance on providing relocation assistance to persons with disabilities, see Exhibit 3-1 in HUD Handbook 1378.
- **Advisory Services:** PHAs should determine the advisory services that will be necessary to ensure a successful relocation program consistent with 49 CFR 24.205(c). Such advisory services may include housing counseling that should be facilitated to ensure that residents affected by the project understand their rights and responsibilities and the assistance available to them (49 CFR 24.205(c)). Advisory counseling must also inform residents of their fair housing rights and be carried out in 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 CFR 24.205(c)(1)). In addition, PHAs 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>.

#### Fair Housing References:

- Section 504 of the Rehabilitation Act of 1973
  - Regulations: 24 CFR part 8
  - Fair Housing Act Regulations: 24 CFR part 100
  - Title VI of the Civil Rights Act of 1964
  - Regulations: 24 CFR part 1
  - Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) (72 FR 2732)
  - Exhibit 3-1 Compliance with Section 504 of the Rehabilitation Act in HUD Handbook 1378 (Tenant Assistance Relocation and Real Property Acquisition)
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## **11. Other Requirements**

### **a. Public Housing Program Compliance**

PHAs should note that public housing resident provisions related to occupancy and termination, including grievances and related hearings, will remain in effect until the execution of the new PBV or PBRA Housing Assistance Payment (HAP) contract.

### **b. Evictions for Cause**

If the PHA determines that a resident was evicted in accordance with applicable state and local law for serious or repeated violation of material terms of the lease, and the eviction was not undertaken for the purpose of evading the obligation to make available URA payments and other assistance, the resident is not entitled to relocation payments and assistance under the URA (49 CFR 24.206).

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Jemine A. Bryon  
General Deputy Assistant Secretary for  
Public and Indian Housing

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Carol J. Galante, Assistant Secretary for  
Housing-Federal Housing Commissioner

## **APPENDICES**

### **Appendix 1**

**Recommended Relocation Plan Contents**

### **Appendix 2**

**Sample RAD General Information Notice (GIN)**

### **Appendix 3**

**Sample RAD Notice of Relocation (for relocation anticipated for a year or less)**

### **Appendix 4**

**Sample RAD Notice of Relocation (for relocation anticipated for more than a year)**

### **Appendix 5**

**Sample Notice of Eligibility for URA Relocation Assistance (for residents who have been temporarily relocated for more than a year)**



## **Appendix 1: RECOMMENDED RELOCATION PLAN CONTENTS**

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While written Relocation Plans are not required under RAD or URA, the Department strongly encourages PHAs to document their relocation planning process and procedures in a written Relocation Plan. The following provides suggested content for Relocation Plans.

### **I. Project Summary**

The Relocation Plan should provide a general description of and purpose for the project (e.g., year built, location, number of units, configuration, occupancy information, and funding sources).

The basic components of a plan include:

- A general description of the project and the site, including acquisition, demolition, rehabilitation, and construction activities and funding sources;
- A detailed discussion of the specific steps to be taken to minimize the adverse impacts of relocation, including when transferring the assistance to a new site;
- Information on occupancy (including the number of residents, residential owner-occupants and non-residential occupants, if any, to be permanently or temporarily relocated);
- Information on relocation needs and costs (including the number of residents who plan to relocate with Section 8 assistance);
- General moving assistance information;
- Temporary move assistance (including information on the duration of temporary moves);
- Permanent move assistance; and
- Appeals process.

### **II. Resident Return and Re-occupancy Policies**

For residents that will be temporarily relocated, the plan should include the criteria that will be used to determine the priority for residents to re-occupy units at the project after rehabilitation, demolition, and/or construction is completed. For example, if units will come online in stages, the plan should outline how the PHA will determine when each resident will return to the project. PHAs should ensure that any written return or re-occupancy policy is compliant with related RAD requirements, such as the right-to-return policy and the “no re-screening upon conversion” policy, as described in the RAD Notice.

### **III. Summary of Moving Costs**

The plan should include a summary of moving costs, identified by move types, including the following:

### Temporary Moves

- Number of and cost amount for two-way moves (i.e., a move to another unit and then a return move) within the same building/complex.
- Number of and cost amount for two-way moves to a unit not in the same building/complex, carried out by the PHA.
- Number of and cost amount for two-way moves to a unit not in the same building/complex not carried out by the PHA.

### Permanent Moves

- Number of and cost amount for one-time moves into another unit in the same building/complex.<sup>15</sup>
- Number of and cost amount for one permanent move to a unit not within the same building/complex, carried out by the PHA.  
PHAs should note that if a residential move is carried out by the PHA at no cost to the resident, this per-household estimate must include the required dislocation allowance (currently \$100). The URA Fixed Residential Moving Cost Schedule lists the most current dislocation allowance:  
[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)
- Number of and cost amount for one permanent move to a unit not within the same building/complex that is not carried out by the PHA.

## IV. Temporary Relocation Assistance

The PHA will assist residents who are required to move temporarily. At the Initiation of Negotiations (ION), the PHA will send a RAD Notice of Relocation to residents who will be relocated. Appendices 3 and 4 of this Notice contain sample RAD Notices of Relocation to be provided to residents that will be temporarily relocated.

The plan should detail the temporary relocation assistance the PHA will provide for residents (Paragraph 2-7 of HUD Handbook 1378). This assistance includes:

- Temporary Housing - The PHA will provide temporary housing that is decent, safe, and sanitary on a nondiscriminatory basis for residents who are relocated temporarily. The PHA will also pay for reasonable increased housing costs that the resident incurs in connection with the temporary relocation.

NOTE: If a resident's relocation exceeds one year, the PHA must then issue a *Notice of Relocation Eligibility* (49 CFR 24.203(b)) to the resident and offer the resident permanent

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<sup>15</sup> A resident who moved to another unit in the same building/complex may be considered a displaced person under URA if the resident moves from the building/complex permanently and was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the same building/complex and/or if other conditions of the move within the building/complex were not reasonable.

relocation assistance and payments at URA levels. The PHA must provide this notice to affected residents as soon as the temporary relocation exceeds one year.

- Packing and Moving Assistance - Since most residents prefer to pack their own personal possessions and items of value, they should be provided packing instructions, boxes, markers, and tape for the move. If assistance in packing is needed, the PHA should provide the resident with information on how to request this assistance. The PHA is responsible for covering all reasonable moving expenses incurred in connection with temporarily relocating a resident. The PHA may reimburse the resident's out-of-pocket moving expenses and/or directly carry out the move.
- Payment for Temporary Relocation Moving Expenses - The plan should also indicate how the PHA intends to provide or reimburse for moving services and expenses. The PHA can choose to do one or more of the following:
  - Undertake the moves itself, using force account labor or a moving company;
  - Use PHA's contractor or moving company;
  - Carry out moves with employees of the PHA;
  - Reimburse residents for all actual and reasonable moving costs.

NOTE: The PHA will not make fixed payments since such payments may not be representative of actual reasonable costs incurred. However, in order for a resident to be sure of full reimbursement, the resident should submit a moving cost estimate to the PHA for approval prior to the move unless the PHA is directly carrying out the move and the resident will not incur any reasonable out-of-pocket moving expenses. Failure to do so may result in the resident not being fully reimbursed.

- Utility Costs - The PHA is responsible for covering the expenses relating to disconnection and reconnection of necessary utilities. If the resident has telephone, cable service or Internet access, the PHA is responsible for covering the expenses involved in transferring existing service. The PHA may also pay utility deposits, if required at the temporary relocation housing (HUD Handbook 1378, paragraph 2-7(A)(3)). If a resident is temporarily relocating from a public housing unit to a non-public housing unit, the resident must be reimbursed for reasonable increases in utility costs even if the PHA utility allowance is lower than the actual costs to the resident.

## **V. Permanent Relocation Assistance**

Based on the local housing resources available, the PHA should identify the replacement housing options that will be available to meet the housing needs of residents to be permanently relocated. Replacement housing options for residents that meet the definition of a "displaced person" (49 CFR 24.2(a)(9)) under the URA include, but are not limited to:

- Other Public Housing;
- Section 8 Project-Based Voucher unit;
- Section 8 Housing Choice Voucher unit;
- Homeownership housing;

- Private-market rental housing (affordable, non-subsidized).<sup>16</sup>

The plan should describe each type of replacement housing projected to be available, including:

1. Number of units, by bedroom size, expected to be available, and discussion of whether available units will meet dwelling requirements of relocated residents;
2. General area or location of unit(s);
3. Criteria for receiving relocation assistance; and
4. Any other information that might benefit residents in their consideration of housing choices.

The plan should include a description of the permanent relocation assistance the PHA will provide to residents. This assistance includes:

- Availability of Comparable Replacement Housing – Under URA, no displaced resident will be required to move unless at least one comparable replacement dwelling (49 CFR 24.2(a)(6)) is made available at least 90 days before the required move (49 CFR 24.203(c)). Comparable replacement dwellings must contain the accessibility features needed by displaced persons with disabilities (49 CFR 24.2(a)(8)(vii); 49 CFR part 24, Appendix A, §24.2(a)(8)(vii)). If the comparable replacement dwelling is not subsidized housing, the PHA should contact the RAD staff for advice on replacement housing payment requirements.
- Referral to Housing Not Located in an Area of Minority Concentration - Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are within their financial means and not located in areas of minority concentration (49 CFR 24.205(c)(2)(ii)(D)). However, this policy does not require a PHA to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling unit.
- Permanent Relocation Moving Expenses from Public Housing to Public Housing - The PHA may choose one of the following options for covering the expenses involved in moving public housing residents that are relocated into other public housing:
  - Undertake the move itself, using force account labor or a moving company. Residents should incur no moving costs under this option, but if such expenses are incurred, the PHA is responsible for reimbursing the resident for any such actual and reasonable expenses. In such case, the resident is also entitled to a dislocation allowance (currently \$100). The URA Fixed Residential Moving Cost Schedule lists the current dislocation allowance and is available at:  
[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)

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<sup>16</sup> Every effort should be made to find another subsidized unit as replacement housing for a resident relocating from subsidized housing so that the resident will continue receiving the housing subsidy as long as it is needed.

NOTE: Residents who prefer to pack their own personal possessions and items of value may be provided packing instructions, boxes, markers, and tape for their move. If a resident needs assistance in packing, they should contact the PHA. It is the responsibility of the PHA to pack and move all of their belongings and household goods, if so desired.

- Allow the resident to elect one of the following choices:
  - 1) The PHA will reimburse the resident for the cost of all actual reasonable and necessary moving and related expenses (49 CFR 24.301), such as:
    - Transportation of the resident and personal property. This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved. Transportation costs for a distance beyond 50 miles are not eligible, unless the PHA determines that relocation beyond 50 miles is justified.
    - Packing, crating, uncrating, and unpacking of personal property.
    - Storage of personal property for a period not to exceed 12 months, unless the PHA determines that a longer period is necessary.
    - Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
    - Insurance for the replacement value of the property in connection with the move and necessary storage.
    - 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.
  - 2) The PHA will pay directly to the resident the applicable and current fixed moving cost payment according to the URA Fixed Residential Moving Cost Schedule (49 CFR 24.302), available at:  
[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)
- Permanent Relocation Moving Expenses for All Other Moves – Under URA, residents who are permanently displaced, except for those residents displaced from public housing and moving to other public housing, are entitled to the assistance described in the brochure *Relocation Assistance To Residents Displaced From Their Homes*, available in English at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_16280.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16280.doc) and in Spanish at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_16281.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16281.doc). Residents may choose moving assistance from one of the following two options.
  - 1) The PHA will reimburse the resident for the cost of all actual reasonable moving and related expenses (49 CFR 24.301).
  - 2) The PHA will pay directly to the resident the applicable and current fixed moving cost payment according to the URA Fixed Residential Moving Cost Schedule (49

CFR 24.302), available at:

[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm).

- Replacement Housing Payment - In addition to covering moving expenses, displaced residents may be entitled to a replacement housing payment (RHP). This payment is intended to cover the increase, if any, in monthly housing costs for a 42-month period.

When calculating the RHP, the PHA must consider the comparable replacement housing unit offered to the resident. Since the PHA is not required to pay an RHP amount that exceeds the amount of RHP calculated for the offered comparable replacement dwelling, residents are cautioned to work closely with the PHA prior to their move.

- Accessible Housing for Persons with Disabilities - Under the URA, persons with disabilities who will be permanently displaced must be relocated to a replacement dwelling that contains the accessibility features they need (49 CFR 24.2(a)(8)(vii); 49 CFR Appendix A, 24.2(a)(8)(vii)). A person with disabilities who has been relocated must be offered a comparable replacement dwelling unit that contains accessible features comparable to the housing from which the tenant has been displaced or relocated. This is so even if the tenant has paid for the acquisition and/or installation of accessible features in the housing from which he or she has been relocated; in such instances, the recipient must ensure that the replacement housing contains comparable accessible features or provide relocation assistance to the tenant in an amount that covers the cost of acquiring and/or installing comparable accessible features. Under the URA, an agency may use project funds to remove architectural barriers for displaced owners and tenants with disabilities or take other last resort housing measures if comparable replacement dwelling units are not available within the monetary limits prescribed under the URA regulations (49 CFR 24.404(c)(vii); HUD Handbook 1378, Paragraph 3-8).

## VI. Relocation Budget

Based on the results of the planning process, the PHA 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.)

NOTE: This physical move cost total should be based on the move scenarios anticipated

or projected by the resident survey.

- 4) The cost estimated to pay for projected increases in monthly housing costs for temporary relocation.
- 5) The cost estimated to pay for the replacement housing payment (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. (The PHA should state where these costs are indicated in the application, or attach any other information required by HUD, to support these costs.)

## **VII. Appeal Process**

If a resident disagrees with the PHA'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, the resident may file a written appeal to the PHA. The Relocation Plan should describe the specific appeal procedures to be followed consistent with 49 CFR 24.10 (and 24 CFR 42.390 if section 104(d) is involved). At a minimum, the resident will have 60 days to file an appeal with the PHA after receiving written notification of a claim or ineligibility determination.

## **VIII. Certification**

The plan should contain a certification of compliance with the URA and, if applicable, section 104(d).

## **Technical Assistance**

The PHA should direct questions on this Notice's relocation assistance requirements to their RAD Transaction Manager or email [rad@hud.gov](mailto:rad@hud.gov).

## Appendix 2: SAMPLE RAD GENERAL INFORMATION NOTICE (GIN)

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### PHA LETTERHEAD

#### RENTAL ASSISTANCE DEMONSTRATION (RAD) GENERAL INFORMATION NOTICE (GIN)

[Date]

Dear [Resident Name],

The property you currently occupy is being proposed for participation in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. At this time, we expect that [the proposed acquisition, rehabilitation or demolition, may require you to be relocated (temporarily or permanently) from your unit]. We will provide further details to you as plans develop. **This notice does not mean that you need to leave the property at this time. This is not a notice of eligibility for relocation assistance.** The remainder of this letter only applies to situations where you will need to be relocated from your unit.

This notice serves to inform you of your potential rights under the RAD program and a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). If the proposed RAD project receives HUD approval and if you are displaced permanently as a result, you may become eligible for relocation assistance and payments under the URA, including:

- 1) Relocation advisory services that include referrals to replacement properties, help in filing payment claims and other necessary assistance to help you successfully relocate;
- 2) At least 90 days' advance written notice of the date you will be required to move;
- 3) Payment for moving expenses; and
- 4) Payments to enable you to rent a similar replacement home.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an immigrant lawfully present in the United States.

As a resident of a property participating in RAD, you have the right to return to the project after the project is complete. You will be able to lease and occupy a unit in the converted project when rehabilitation is complete.

If you are permanently displaced from your home, you will not be required to move until you are given at least 90-day advance written notice of any required move and at least one comparable replacement dwelling has been made available to you. If you are temporarily relocated and your temporary relocation lasts more than one year, you will be contacted and offered permanent relocation assistance as a displaced person under the URA. This assistance would be in addition



to any assistance you may receive in connection with temporary relocation and will not be reduced by the amount of any temporary relocation assistance you have already received.

If you are required to relocate from the property in the future, you will be informed in writing. [PHA] will inform you of what assistance and payments you are eligible for if you will be relocated because of RAD and how you will receive these payments. If you become a displaced person, you will be provided reasonable assistance necessary to complete and file any required claim to receive a relocation payment. If you feel that your eligibility for assistance is not properly considered, you will also have the right to appeal a determination on your eligibility for relocation assistance.

You should continue to pay your rent and meet any other requirements specified in your lease. If you fail to do so, [PHA] may have cause for your eviction. If you choose to move, or if you are evicted, prior to receiving a formal notice of relocation eligibility, you may become ineligible to receive relocation assistance. It is very important for you to contact us before making any moving plans.

You will be contacted soon so that we can provide you with more information about the proposed project. If the project is approved, we will make every effort to accommodate your needs. In the meantime, if you have any questions about our plans, please contact: [Name, Title, Address, Phone, Email Address]. This letter is important to you and should be retained.

Sincerely,

[Name]

[Title]

NOTES:

1. Files must indicate how this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378)
2. This is a sample GIN. PHAs should revise it to reflect project-specific circumstances.
3. PHAs may provide residents with HUD brochure "Relocation Assistance To Residents Displaced From Their Homes" available at:  
<http://www.hud.gov/offices/cpd/library/relocation/publications/1042.pdf>.

**Appendix 3: SAMPLE RAD NOTICE OF RELOCATION (For relocation anticipated for a year or less)**

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***THIS IS A GUIDE FORM.  
REVISE TO REFLECT THE PROJECT-SPECIFIC CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident Name*],

The property you currently occupy is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. On [*date*], the [*Public Housing Authority*] (PHA) notified you of proposed plans to [acquire/ rehabilitate/demolish] the property you currently occupy at [*address*]. On [*date*], HUD issued the RAD Conversion Commitment (RCC) and committed federal financial assistance to the project. [*In instances where a Notice of Intent to Acquire is applicable and this notice is being sent before the RCC is issued, in lieu of the previous sentence noting the RCC issuance date, insert: [Name of entity acquiring the property]*] (Displacing Agency) intends to acquire the property you currently occupy. **This is a Notice of Intent to Acquire.**]

In order for PHA to complete the project, you will need to be relocated for [*anticipated duration of relocation*]. Upon completion of the project, you will be able to lease and occupy your present unit or another decent, safe and sanitary unit in the completed project under reasonable terms and conditions. You are eligible for relocation payments and assistance.

However, **you do not need to move now**. This notice informs you that a decent, safe, and sanitary dwelling unit, listed below, has been made available to you and you will be required to move by [*insert date at least 30 days after the date of this notice*].

If your temporary relocation exceeds one year and you qualify as a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), you may be eligible for further relocation assistance and payments under URA.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

The relocation assistance to which you are entitled includes:

- **Payment for Moving Expenses**. You are entitled to be reimbursed for all reasonable out-of-pocket expenses incurred in connection with any temporary

move. *[PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 4 of this Notice.]*

- The location of your temporary replacement unit is *[address]*. This temporary housing has been determined to be decent, safe and sanitary.
- *[List appropriate relocation advisory services and any other services and assistance provided.]*

If you disagree with this determination, you may file a written appeal to the PHA in accordance with 49 CFR 24.10.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact *[Name, Title, Address, Phone, Email Address]* before you make any moving plans. He/she will assist you with your move to a temporary unit and help ensure that you preserve your eligibility for any relocation payments to which you may be entitled.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

\_\_\_\_\_  
Print name:

Title:

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*

**Appendix 4: SAMPLE RAD NOTICE OF RELOCATION (For relocation anticipated for more than a year)**

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***THIS IS A GUIDE FORM.  
REVISE TO REFLECT THE PROJECT-SPECIFIC CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident Name*],

The property you currently occupy is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. On [*date*], the [*Public Housing Authority*] (PHA), notified you of proposed plans to [acquire/ rehabilitate/demolish] the property you currently occupy at [*address*]. On [*date*], HUD issued the RAD Conversion Commitment (RCC) and committed federal financial assistance to the project. [*In instances where a Notice of Intent to Acquire is applicable and this notice is being sent before the RCC is issued, in lieu of the previous sentence noting the RCC issuance date, insert: [Name of entity acquiring the property] (Displacing Agency) intends to acquire the property you currently occupy. This is a Notice of Intent to Acquire.*]

In order for PHA to complete the project, you will need to be relocated for [*anticipated duration of relocation*]. Upon completion of the project, you will be able to lease and occupy your present unit or another decent, safe and sanitary unit in the completed project under reasonable terms and conditions. You are eligible for relocation assistance and payments. Because we expect your relocation to exceed one year, you have the choice to either:

- Receive temporary relocation assistance and return to a unit in the RAD project once it is complete; or
- Receive permanent relocation assistance and payments consistent with the URA instead of returning to the completed RAD project.

You must inform us of your choice within 30 days.

However, **you do not need to move now**. If you choose temporary relocation assistance, you will not be required to move sooner than 30 days after you receive notice that a temporary unit is available for you. If you choose permanent relocation assistance, you will not be required to move sooner than 90 days after you receive written notice that at least one comparable replacement unit is available to you in accordance with 49 CFR 24.204(a). [*Note to PHA: These time periods may start running as of the date of this Notice if the notice of relocation includes such information on the temporary and/or comparable replacement dwelling options, as applicable. In such circumstance, add applicable sentences to adequately notify the resident. For example: This notice informs you that a temporary unit, listed below, has been made available to you and, if you choose this option, you will be required to move by [date no sooner than 30 days after notice]. This notice informs you*

that a comparable unit, listed below, has been made available to you and, if you choose this option, you will be required to move by [*date no sooner than 90 days after notice*].]

If you choose temporary relocation, your relocation exceeds one year and you qualify as a “displaced person” under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), you may become eligible for further relocation assistance and payments under URA.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

If you choose to receive temporary relocation assistance, this assistance will include:

- Payment for Moving Expenses. You are entitled to be reimbursed for all reasonable out-of-pocket expenses incurred in connection with any temporary move. [*PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 4 of this Notice.*]
- The location of your temporary replacement unit is [*address*]. This temporary housing has been determined to be decent, safe and sanitary.
- [*List appropriate relocation advisory services and any other services and assistance provided.*]

If you elect to receive permanent relocation assistance, this assistance will include:

- Relocation Advisory Services. You are entitled to receive current and continuing information on available comparable replacement units and other assistance to help you find another home and prepare to move.
- Payment for Moving Expenses. [*PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 5 of this Notice.*]
- Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement unit, (2) the monthly rent and cost of utility services for your present unit, and (3) 30% of your average monthly gross household income. This payment is calculated on the difference between the old and new housing costs for a one-month period and multiplied by 42.
- [*PHA: list here any permanent relocation assistance offered, such as a Housing Choice Voucher.*]

- Listed below are three comparable replacement units that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement units.

	Address	Rent & Utility Costs	Contact Info
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

We believe that the unit located at [address] is most representative of your original unit in the converting RAD project. The monthly rent and the estimated average monthly cost of utilities for this unit is [\$ amount] and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this unit is not comparable to your original unit. We can explain our basis for selecting this unit as most representative of your original unit and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately [\$ (42 x monthly amount)], if you rent the unit identified above as the most comparable to your current home or rent another unit of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable unit, your replacement housing payment will be based on the actual cost of that unit. All replacement housing payments must be paid in installments. Your payment will be paid in [#]\_ installments.

You may choose to purchase (rather than rent) a decent, safe and sanitary replacement home. If you do, you would be eligible for a down-payment assistance payment which is equal to your maximum replacement housing payment, [\$amount.] *[PHAs should note that, at the agency's discretion, a down-payment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. (See 49 CFR 24.402(c)(1)).]* Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe and sanitary before any replacement housing payments are made.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact [Name, Title, Address, Phone, Email Address] before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for all relocation payments to which you may be entitled.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

\_\_\_\_\_  
Print name:

Title:

Enclosure/s

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*

**Appendix 5: SAMPLE NOTICE OF ELIGIBILITY FOR URA RELOCATION ASSISTANCE (For residents who have been temporarily relocated for more than a year)**

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***THIS IS A GUIDE FORM.  
IT SHOULD BE REVISED TO REFLECT THE CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident*]:

The property you formerly occupied at [*address*] is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. You have been temporarily relocated from that property since [*date*.] Your temporary relocation has exceeded one year.

It has been determined that you qualify as a "displaced person" according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). You are eligible for relocation assistance and payments under the URA.

**You may choose to remain temporarily relocated and return to a unit in the RAD project once it is completed.** It is currently estimated that you may return to the RAD project by [*date*]. If you choose to remain temporarily relocated, you will stay at your current location until the RAD project is completed.

Alternatively, you may choose permanent relocation assistance and payments for which you are eligible, as listed below. If you choose permanent relocation assistance, you give up your right to return to the completed RAD project. However, **you do not need to move now.** If you choose permanent relocation assistance instead of exercising your right to return to the completed RAD project, you will not be required to move sooner than 90 days from the date that at least one comparable replacement unit has been made available to you. [*Alternatively: You will not be required to move sooner than 90 days from the date of this notice, which informs you of a comparable replacement unit that has been made available for you.*]

**This is your Notice of Eligibility for relocation assistance.**

**The effective date of your eligibility is [*insert date that relocation exceeds one year.*]**

**NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h).** All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.



Enclosed is a brochure entitled, "Relocation Assistance to Tenants Displaced From Their Homes." Please read the brochure carefully. It explains your rights and provides additional information on eligibility for relocation payments and what you must do in order to receive these payments.

The relocation assistance to which you are entitled includes:

- Relocation Advisory Services. You are entitled to receive current and continuing information on available comparable replacement units and other assistance to help you find another home and prepare to move.
- Payment for Moving Expenses. [*PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 5 of this Notice.*] This is in addition to any amounts received to reimburse for any reasonable out-of-pocket expenses incurred in connection with the temporary move.
- Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement unit, (2) the monthly rent and cost of utility services for your present home, and (3) for low-income persons, 30 percent of your average monthly gross household income. This payment is calculated on the difference between the old and new housing costs for a one-month period and multiplied by 42.
- [*PHA list here any other relocation assistance offered the resident, such as Housing Choice Voucher .*]

Listed below are three comparable replacement units that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement units.

	Address	Rent & Utility Costs	Contact Info
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

We believe that the unit located at [*address*] is most representative of the original unit you occupied in the converting RAD project. The monthly rent and the estimated average monthly cost of utilities for this unit is \$[*amount*] and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this unit is not comparable to your original unit. We can explain our basis for selecting this unit as most representative of your original unit and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately \$ [42 x \$Amount], if you rent the unit identified above as the most comparable to your current home or rent another unit of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable unit, your replacement housing payment will be based on the actual cost of that unit. All replacement housing payments must be paid in installments. Your payment will be paid in [#] installments.

Should you choose to purchase (rather than rent) a decent, safe and sanitary replacement home, you would be eligible for a downpayment assistance payment which is equal to your maximum replacement housing payment, [\$ amount] [PHAs should note that, at the agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. (See 49 CFR 24.402(c)(1)).] Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe, and sanitary before any replacement housing payments are made.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact [Name, Title, Address, Phone, Email Address] before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for any applicable relocation payments.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

\_\_\_\_\_  
Print Name:

Title:

Enclosure/s

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*

PUBLIC NOTICE

The New Brunswick Housing Authority (NBHA) is revising its Annual Plan for the fiscal year beginning July 1, 2016 to account for the conversion of certain public housing units at the Hope Manor/Riverside complex to project-based vouchers.

The public is invited to comment on the revised Annual Plan. The revised Annual Plan can be viewed at the offices of the NBHA at 7 Van Dyke Avenue, from 9:00 AM to 4:00 PM, Monday through Thursday, from January \_\_\_ to \_\_\_\_\_, 2017. The NBHA will receive written comments on the revised Annual Plan during those dates.

A public hearing on the policy will be held at the address above on \_\_\_\_\_, 2017, at 10:00 AM.

### Sample PHA Plan Amendment

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

#### **Attachment R – Rental Assistance Demonstration (RAD)**

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

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

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

**Development #1**

<u>Name of Public Housing Project:</u>	<u>PIC Development ID:</u>	<u>Conversion type (i.e., PBV or PBRA):</u>	<u>Transfer of Assistance:</u> (if yes, please put the location if known, and # of units transferring)
<u>Total Units:</u>	<u>Pre- RAD Unit Type (i.e., Family, Senior, etc.):</u>	<u>Post-RAD Unit Type if different (i.e., Family, Senior, etc.)</u>	<u>Capital Fund allocation of Development:</u> (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)
<b>Bedroom Type</b>	<b>Number of Units Pre-Conversion</b>	<b>Number of Units Post-Conversion</b>	<b>Change in Number of Units per Bedroom Type and Why (De Minimis Reduction, Transfer of Assistance, Unit Reconfigurations, etc.)</b>

Studio/Efficiency			
One Bedroom			
Two Bedroom			
Three Bedroom			
Four Bedroom			
Five Bedroom			
Six Bedroom			
<u>(If performing a Transfer of Assistance):</u>	<u>(Explain any changes in in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted)</u>		

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

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

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

.....  
**Significant Amendment Definition**

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

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

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



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Public and Indian Housing  
Office of Housing**

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<b>Special Attention of:</b>	<b>Notice PIH-2012-32 (HA), REV-2</b>
Public Housing Agencies	
Public Housing Hub Office Directors	Issued: June 15, 2015
Public Housing Program Center Directors	
Multifamily HUB Directors	
Multifamily Program Center Directors	Expires: This Notice remains in effect until
Regional and Field Office Directors	amended, superseded, or rescinded.
Regional Administrators	
Performance Based Contract Administrators	

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**SUBJECT:** Rental Assistance Demonstration – Final Implementation, Revision 2

**Purpose**

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

**Background**

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

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

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

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

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

Previous versions of this Notice were published as follows:

- PIH Notice 2012-32 (July 26, 2012)
- PIH Notice 2012-32 REV-1 (July 2, 2013)
- PIH Notice 2012-32 REV-1 Technical Correction (February 6, 2014)<sup>2</sup>

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

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<sup>1</sup> Because the RAD statute now includes Mod Rehab SRO, all references in this Notice to Mod Rehab include Mod Rehab SRO unless otherwise stated.

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



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

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

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

#### First Component

- Reflecting the increase to the unit cap from 60,000 to 185,000 units
- Providing additional time for PHAs to plan for the redevelopment of multi-phase projects by extending the time period for submission of the application of the final phase to July 1, 2018 (see Section 1.9.C).
- Providing contract rents at FY 2014 rent levels for all awards made subsequent to the increase in the unit cap. This provision facilitates conversion of a public housing project, multi-phase project, or a PHA-defined portfolio of project by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5, 1.7.A.5).
- Ensuring residents retain rights and protections when their Total Tenant Payment (30% of adjusted gross income) exceeds the Gross Rent on the HAP contract (see Section 1.6.C.10; 1.7.B.9).
- Eliminating interim program milestones (e.g. submission of a Physical Conditions Assessment within 90 days of award) to streamline processing. The Notice also provides additional time to submit Financing Plans for tax credit transactions to better align those deadlines with those of tax credit providers (see Section 1.12).
- Identifying the specific HUD nondiscrimination and equal opportunity requirements that are applicable under different conversion plans and establishing an up-front HUD review of these requirements for certain transactions (see Section 1.2.E).

- Clarifying when non-dwelling property and land can be removed/released from the public housing program in conjunction with a conversion (see Attachment 1A.M).
- To provide greater incentives to undertake energy conservation measures, permitting RAD contract rents to increase by a portion of the estimated savings in resident utility allowances (see Section 1.6.B.5; 1.7.A.5; Attachment 1C).
- Permitting Section 8 assistance to “float” within certain mixed-income properties, so that assistance is not permanently tied to specific units in a project (see Section 1.6.B.10; Section 1.7.A.11).
- Providing additional flexibility for voucher agencies to implement Choice-Mobility provisions in project-based voucher (PBV) conversions (see Section 1.6.D.9).
- Clarifying the applicability of site and neighborhood standards to new construction replacement housing on the site of the existing public housing (see Section 1.4.A.7).
- Clarifying that a PHA may operate a PBV program-wide or HCV program-wide waiting list and that a Project Owner may operate a community-wide waiting list for its PBRA projects (see Section 1.6.D.4 and 1.7.C.3).
- Providing greater detail around conversions that would transfer the assistance to a new site, including a) criteria HUD will use to assess the new site and b) options for the use or disposition of the original public housing site (see Section 1.4.A.12).

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

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

#### Second Component

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

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

### **Notice and Comment for Changes in Eligibility and Selection Criteria**

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

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

### **Notice Organization**

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

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

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

### **Demonstration Goals**

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

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

### **Evaluation**

Each component of RAD will be evaluated separately:

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

### **Further Information**

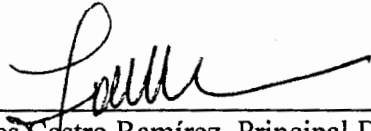
Please check [www.hud.gov/rad](http://www.hud.gov/rad) for the latest information on RAD or to join the RAD listserv. *Materials referenced in this Notice may be obtained from this RAD website.* Email questions to [RAD@hud.gov](mailto:RAD@hud.gov). Additionally, HUD will develop informational materials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

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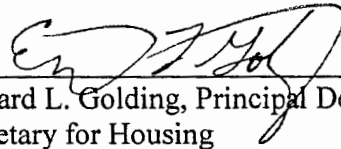
<sup>3</sup> [http://www.huduser.org/portal/RAD\\_Evaluation.html](http://www.huduser.org/portal/RAD_Evaluation.html)

**Paperwork Reduction Act**

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



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



\_\_\_\_\_  
Edward L. Golding, Principal Deputy Assistant  
Secretary for Housing

Program Instructions

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**APPENDIX IV– NEW CODES FOR SPECIAL PROGRAMS REPORTED ON THE  
FAMILY REPORT (FORM HUD-50058) FOR THE RENTAL ASSISTANCE  
DEMONSTRATION PROGRAM.**

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**DEFINITIONS**

*The Act.* The United States Housing Act of 1937.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Voucher Agency.* A PHA that administers a HCV program.

## SECTION I: PUBLIC HOUSING PROJECTS

### 1.1 Purpose

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

### 1.2 General Program Description

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

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

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

- B. PBRA Conversions.** Where the PHA converts assistance of a public housing project to Section 8 PBRA, the HAP Contract will generally be administered by HUD's Office of Housing, unless later assigned to a PHA that is under ACC with HUD for the purpose of administering project-based Section 8 HAP contracts. Contract rents will be established according to the terms described in this Notice and will be adjusted annually by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract (see section 1.7.A.5 and Attachment 1C). The initial contract will be for a period of 20 years and will be subject to annual appropriations. At expiration of the initial contract and each renewal contract, HUD shall offer, and the Project Owner shall accept, a contract that shall be eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). Each Covered Project with a PBRA HAP Contract will be subject to a 20-year RAD Use Agreement that will renew with the HAP contract. Further, Project Owners must offer a Choice-Mobility option to residents of Covered Projects, as specified in Section 1.7(C)(5) of this Notice, unless exempted from this requirement. With the exception of provisions identified in this Notice, all regulatory and statutory requirements of the PBRA program in 24 CFR Part 880, and applicable standing and subsequent Office of Housing guidance, including related handbooks, shall apply (as modified and published in Appendix I of this Notice).
- C. Waivers.** A major goal of the First Component of RAD is to test the conversion of the public housing assistance to long-term, project-based Section 8 assistance available to Project Owners of assisted multifamily housing in order to generate additional sources of private financing. Consequently, HUD is applying its waiver authority and ability to establish limited alternative requirements for the effective conversion assistance on a limited basis to facilitate the major goals of the Demonstration and maintain existing distinctions between the PBV and PBRA forms of contract assistance. Such distinctions will enable a PHA or Project Owner to choose the form of assistance to best meet its needs. It will also enable HUD and Congress to assess how effective each form of assistance proves to be in meeting such varied circumstances and needs.
- D. Tenant Rights.** Equally important for the success of RAD are meaningful resident participation, procedural rights, and mobility, which are addressed in detail in various sections of the Notice and summarized in Attachment 1B.



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

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

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

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

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

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

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

### 1.3 **Eligibility**

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

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

To be eligible for the Demonstration, a PHA must:

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

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

- C. Be classified as a Standard or High Performer under the Section Eight Management Assessment Program (SEMAP) if the PHA will be administering the PBV contract under RAD. If classified as Troubled, the PHA must be making substantial progress under the CAP and HUD must have determined that the factors resulting in the PHA's Troubled status will not affect its capacity to carry out a successful conversion under this Demonstration;
- D. Be otherwise in substantial compliance with HUD reporting and programmatic requirements and/or satisfactorily in compliance with any CAP or MOA related to any 1) program finding or 2) failure to carry out, to the satisfaction of the Department, management decisions relating to an audit by the Office of Inspector General;
- E. Not have a debarment, suspension, or Limited Denial of Participation in Federal programs lodged against the applicant, PHA Executive Director, Board members, or affiliates;
- F. Submit a completed application that complies with all RAD Application instructions.
- G. Not have a charge, cause determination, lawsuit, or letter of findings referenced in subparagraphs (1)-(5) below against a PHA, its transferees, proposed development partners, or sub-recipients that has not been resolved to HUD's satisfaction:
  - 1. A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability or familial status;
  - 2. A Fair Housing Act lawsuit filed by the Department of Justice (DOJ) alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. § 3614(a);
  - 3. A letter of findings or lawsuit filed by DOJ identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974;
  - 4. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation or gender identity; or
  - 5. A cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a state or local law proscribing discrimination in housing based on lawful source of income.

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

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

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

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

**H. HOPE VI Projects.** PHAs may submit applications for the following HOPE VI projects:

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

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

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

#### 1.4 Project Conversion Requirements and Financing Considerations

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

##### A. Conversion Planning Requirements.

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

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

<sup>5</sup> The PCA tool and Statement of Work described in Revision 1 can be accessed at [www.hud.gov/rad](http://www.hud.gov/rad).

- ii. Projects that qualify as new construction or “substantial rehabilitation” (generally defined as meeting Level 3 Alterations per the 2012 International Building Code for Existing Buildings);  
or
  - iii. Projects that will be financed with Low Income Housing Tax Credits (“tax credits”).
- b. For FHA transactions, PHAs should follow applicable requirements in the MAP Guide governing exemptions.

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

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

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

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

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

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

3. **Environmental Review.** Under Federal environmental review requirements, proposed RAD projects are subject to environmental review. Environmental documents are required to be submitted as part of the applicant's Financing Plan. HUD will not issue an RCC if the project plan does not meet the environmental review requirements described in **Attachment 1A**.
4. **Substantial Conversion of Assistance.** Conversions may not result in a reduction of the number of assisted units, except by a de minimis amount, defined as no more than the greater of five percent of the number of project or portfolio units under ACC immediately prior to conversion or five units. However, a unit is excluded from this de minimis threshold if any of the following apply:
  - i. The unit has been vacant for more than 24 months at the time of RAD Application; or
  - ii. Reducing the total unit number will allow the PHA to more effectively or efficiently serve assisted households through: 1) reconfiguring apartments (e.g., converting efficiency units to one-bedroom units); or 2) facilitating social service delivery (e.g., converting a basement unit into community space).

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

In all cases, the PHA shall submit within their PIC removal application (See Section I.12) a narrative explanation of the proposed reduction, including a description of the units to be removed, an explanation of why the project can better serve assisted residents at the reduced number, and any supporting evidence. The assigned Transaction Manager will approve any reduction of units by project or portfolio.

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

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

## 5. Relocation Requirements.

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

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

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<sup>7</sup> “Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component” [http://portal.hud.gov/hudportal/documents/huddoc?id=RAD\\_Note2.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Note2.pdf). For properties being redeveloped with funding under a Choice Neighborhoods Implementation (CNI) grant, the RAD Relocation Notice is superseded by guidance regarding relocation included in the CNI NOFA.



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

- ii. **Right to Return.** Any resident that may need to temporarily be relocated to facilitate rehabilitation or construction has a right to return to an assisted unit at the Covered Project once rehabilitation or construction is completed. Permanent involuntary displacement of residents may not occur as a result of a project's conversion of assistance, including, but not limited to, as a result of a change in bedroom distribution, a de minimis reduction of units, the reconfiguration of efficiency apartments, or the repurposing of dwelling units in order to facilitate social service delivery. Where the transfer of assistance to a new site is warranted and approved (see Section 1.2.A.12), residents of the Converting Project will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. For more information on how to implement these provisions see the RAD Relocation Notice.
- iii. **Ineligibility of Tenant Protection Vouchers.** PHAs are not eligible to receive Tenant Protection Vouchers as a result of a RAD conversion.<sup>8</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

connectivity, occupant health and welfare, basic environmental stewardship, and climate change resilience.<sup>9</sup>

- 9. Demolition.** Conversion plans may include the partial or complete demolition of the Covered Project and replacement of assistance on-site or off-site.<sup>10</sup> Unless approved in writing by HUD, a PHA may only demolish and/or dispose of units following the closing of construction financing for the Covered Project. Demolition will be considered as part of the Environmental Review.
- 10. Change in Unit Configuration.** Where a PHA is proposing to change the unit configuration as part of the conversion, the PHA must demonstrate that the change in bedroom distribution will not result in the involuntary permanent displacement of any resident and will not result in discrimination based on race, color, national origin, religion, sex, disability, or familial status. For example, if three and four-bedroom units are replaced with one and two-bedroom units, the conversion may, but in not all cases, result in discrimination against families with children.
- 11. Ownership and Control.** Except where permitted to facilitate the use of tax credits, during both the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of the Covered Project by a public or non-profit entity . Public or non-profit entity or ownership control requirements may be satisfied if a public or non-profit entity: (1) holds a fee simple interest in the real property of the Covered Project; (2) has the direct or indirect legal authority (via contract, partnership share or agreement of an equity partnership, voting rights, or otherwise) to direct the financial and legal interests of the Project Owner or (3) has 51 percent or more interest of the general partner share in a limited partnership; is the managing member of an LLC or has 51 percent or more of the membership shares of an LLC.

If HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted

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

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

units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary.

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

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

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

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

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

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

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<sup>11</sup> The analysis can be found in Section VIII B.1 of H-2014-14 "Transferring Budget Authority of Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act." A copy of the criteria is available at [www.hud.gov/rad](http://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](http://www.hud.gov/rad).

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

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

- 1) as a condition of the RCC, the PHA will sell the property at Fair Market Value to a third party and use the proceeds to finance a RAD transaction;
- 2) as part of the Financing Plan, the PHA provides plans to sell the land within one year of the RAD closing so that it can be used for affordable housing purposes, in which case the property will be placed under a restrictive covenant that restricts its use to affordable housing; or
- 3) as part of the Financing Plan, the PHA provides plans to sell the land within one year at Fair Market Value to a third party and use the proceeds for affordable housing.

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

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

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

- b. **Transfer After Conversion.** a Project Owner may only request a transfer of assistance after 10 years from the effective date of the initial HAP Contract (unless a transfer is needed sooner as a result of unforeseen events such as a natural disaster). HUD may consider a partial or complete transfer of assistance to a new location. If applicable, any lender and/or investor of the Converted Project must approve the transfer of the assistance. In the event of such transfer, the Project Owner may request, subject to HUD consent, that the original RAD Use Agreement on the Covered Project be modified or released to reflect such transfer of assistance. A RAD Use Agreement will be recorded against the new location to which assistance is transferred.
- c. **Transfers as a Result of Default.** In the event of default of a Covered Project's Use Agreement or HAP Contract, HUD may terminate the HAP Contract and transfer the assistance to another location. HUD will determine the appropriate location and owner entity for such transferred assistance consistent with the statutory goals and requirements of the Demonstration.

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

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



**B. Financing Requirements and Considerations.**

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

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

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

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

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

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

- 2. Public Housing Capital and Operating Program Funds.** PHAs are permitted under the Demonstration to use available public housing funding, including Operating Reserves (as defined in PIH Notice 2011-55) and unobligated Capital Funds, as a source of capital to support conversion (see Section 1.5 of this Notice for more details). With written HUD approval, PHAs may also use Section 18 disposition proceeds. MTW agencies may use their block grant as an additional source of capital to support conversion. These funds, either as a source of debt or equity (grant), must be identified in the Financing Plan. Financing proceeds in excess of transaction costs will not be allowed when public housing Capital or Operating funds are contributed to the project conversion. However, in the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the Covered Project(s) at Closing; the PHA may convey all program funds to the Covered Project.
- 3. Existing PHA Indebtedness and Contractual Obligations.** A PHA must disclose in its application and address in its Financing Plan the amount of project debt including energy performance contracts, Capital Fund Financing, Operating Fund Financing, Public Housing Mortgage Program, or other sources. The PHA may refinance existing debt obligations as part of conversion. Conversion alone does not relieve the PHA of these or other obligations. RAD does not constitute a waiver of any CFFP requirements and is not treated as a CFFP ACC Amendment, including any provisions restricting the removal of units from the inventory that would affect the debt service coverage ratio through diminished Capital Funding or requiring defeasance or prepayment, arising from program regulations or contractual relationship with the secured party. PHAs should be aware that any new first mortgage lender, to the extent permissible within the existing financing documents, may require that existing indebtedness be paid off or subordinated in connection with the refinancing and conversion of the Covered Project.

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

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

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

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

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

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

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

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

### **1.5 Waivers, Alternatives, and Other Public Housing Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>16</sup> This does not apply to any dispositions approved or any TPVs received in conjunction with a Choice Neighborhood award.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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<sup>17</sup> Section 33 of the Act requires PHAs to identify projects that must be removed from the stock of public housing.

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

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

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

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

**M. Lease Termination at Conversion is Not an Adverse Action.** 24 CFR 966.4(e)(8)(i) classifies lease terminations as an adverse actions for which a tenant can seek a hearing under the PHA's grievance procedure. Public housing lease terminations that occur as part of a RAD conversion do not qualify as an adverse action, provided that the tenants are provided with a notice of termination in accordance with 24 CFR 966.4(1)(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.

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<sup>18</sup> HUD will issue further guidance on the intersection of RAD and EPCs that will be available at [www.hud.gov/rad](http://www.hud.gov/rad)

### 1.6 Special Provisions Affecting Conversions to PBVs

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

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

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

#### A. PBV Project Selection.

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

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

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

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

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

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

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

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

**B. PBV Contract Terms.**

1. **Length of Contract.** Covered Projects shall have an initial HAP term of at least 15 years (up to 20 years upon request of the Project Owner and with approval by the administering Voucher Agency). To implement this provision, HUD is specifying alternative requirements for section 8(o)(13)(F) of the Act (which establishes a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term). Project Owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the contract and may not reduce the number of assisted units without HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under the contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.
2. **Mandatory Contract Renewal.** In accordance with RAD Statute, upon expiration of the initial contract and each renewal contract, the administering Voucher Agency must offer, and the Project Owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently, section 8(o)(13)(G) of the Act, as well as 24 CFR § 983.205(b), governing the PHA discretion to renew the contract for terms of up to 15 years, will not apply. MTW agencies may not alter this requirement.
3. **Ownership or Control.** This section has been moved to Section 1.4.G
4. **RAD Use Agreement.** Pursuant to the RAD statute, a Covered Project shall have an initial RAD Use Agreement that will:
  - i. Be recorded in a superior position to all liens on the property;
  - ii. Run until the conclusion of the initial term of the HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that coincides with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary approves termination of the RAD Use Agreement in the case of a transfer of assistance;

- iii. Provide that in the event that the HAP contract is removed due to breach, non-compliance or insufficiency of Appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below eighty percent (80%) of the area median income (AMI) at the time of admission and rents may not exceed thirty percent (30%) of eighty percent (80%) of AMI for an appropriate size unit for the remainder of the term of the RAD Use Agreement; and
- iv. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and all applicable site selection and neighborhood standards.

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

- i. All properties awarded under the original 60,000 unit cap have initial contract rents based on FY 2012 funding levels ("FY 12 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 14 and established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2012 funding, with an OCAF adjustment for both 2014 and 2015.
- ii. All properties awarded above HUD's original 60,000 unit cap but subject to the increased 185,000 cap in effect as of the date of this Notice will have initial contract rents based on FY 2014 funding levels ("FY 14 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 15 and established in the HAP contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2014 funding, with an OCAF adjustment for 2015.
- iii. Subsequent to authority to convert additional units, properties will have initial contract rents based on a future RAD rent base year in HUD's sole discretion.

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

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

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

- **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle.

For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The PHA could bundle the two projects such that the initial contract rents for both projects will be \$550.

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

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

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

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

6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted only by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.<sup>21</sup> As such, section 8(o)(13)(I) of the Act and 24 CFR §§ 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303.<sup>22</sup> However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.<sup>23</sup> MTW agencies may not alter this requirement.
7. **Transfer of Assistance.** This section has been moved to Section 1.4.H.
8. **Agreement Waiver and RAD Rehab Assistance Payments.** For public housing conversions to PBV there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the AHAP, including regulations under 24 CFR § 983 subpart D are waived. Instead, the PHA and Project Owner will enter into a HAP contract before construction begins.

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

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

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

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



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

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

9. **HQS Inspections.** Under current regulations at 24 CFR 983.103(b) a unit covered under a HAP contract must be inspected and must meet HQS before assistance can be paid on behalf of a household. In addition, section 8(o)(8)(A) of the Act provides that HAP Contract units must be inspected to ensure compliance with HQS prior to payment of any assistance on behalf of a family. Under RAD, HUD requires that all units meet HQS no later than the date of completion of initial repairs as indicated in the RAD Conversion Commitment. Consequently, HUD is waiving and establishing an alternative requirement to 24 CFR 983.103(b) and section 8(o)(8)(A) of the Act.
  
10. **Floating Units.** For mixed-income Converting Projects where PHAs are currently exercising their discretion to allow subsidized units to float within a project redeveloped with funding under a Choice Neighborhoods Implementation or HOPE VI grant, or as part of a Mixed-Finance project, upon the request of the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among unoccupied units within the project having the same bedroom size. A unit to which assistance is floated must be comparable in condition to the unit it is replacing (i.e., the unit must be of the same quality and amenities as the unit it is replacing). Assistance may float from a Section 504 accessible unit only to another Section 504 accessible unit that has the same bedroom size and accessibility features. Units that float are not specifically designated under the HAP contract. Therefore, the requirements in 24 CFR 983.203(c) that the HAP contract provide “the location of each contract unit” and “the area of each contract unit” are waived. Instead, the HAP contract must specify the number and type of units in the property that are designated as RAD units, including any excepted units. From the time of the initial execution of the PBV RAD HAP contract, the property must maintain the same number and type of RAD units, including the same number and type of Section 504 accessible units.

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

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

**C. PBV Resident Rights and Participation.**

- 1. No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households.<sup>24</sup> Once that remaining household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement.
- 2. Right to Return.** See section 1.4.A.4(b) regarding a resident's right to return.
- 3. Renewal of Lease.** Since publication of the PIH Notice 2012-32 Rev 1, the regulations under 24 CFR § 983.257(b)(3) have been amended requiring Project Owners to renew all leases upon lease expiration, unless cause exists. MTW agencies may not alter this requirement.
- 4. Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

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

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

**Three Year Phase-in:**

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

**Five Year Phase in:**

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

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

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

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

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

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

6. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of Covered Projects with converted PBV assistance will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
7. **Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the Project Owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.

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

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

For issues related to tenancy and termination of assistance, PBV program rules require the Project Owner to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will specify alternative requirements for 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, to require that:

- a. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),<sup>26</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a Project Owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
  - i. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR § 982.555(e)(4)(i).
  - ii. For any additional hearings required under RAD, the Project Owner will perform the hearing.

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<sup>26</sup> § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

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

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

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

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

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

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

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

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

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

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

**D. PBV: Other Miscellaneous Provisions**

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
- 2. Additional Monitoring Requirement.** The PHA's Board must approve the operating budget for the Covered Project annually in accordance with HUD requirements.<sup>28</sup>
- 3. Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14.
- 4. Establishment of Waiting List.** 24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
  - i.** Transferring an existing site-based waiting list to a new site-based waiting list. If the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being

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



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

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

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

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

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

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

5. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed project property.
6. **Agreement Waiver.** This section has been moved to 1.6.(B)(7).
7. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of permanent debt during the HAP contract term, to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
8. **Administrative Fees for Public Housing Conversions during Transition Period.** For the remainder of the Calendar Year in which the HAP Contract is effective (i.e. "transition period"), RAD PBV projects will be funded with public housing funds. For example, if the project's assistance converts effective July 1, 2015, the public housing Annual Contributions Contract (ACC) between the PHA and HUD will be amended to reflect the number of units under HAP contract, but will be for zero dollars, and the RAD PBV contract will be funded with public housing money for July through December 2015. Since TBRA is not the source of funds, PHAs should not report leasing and expenses into VMS during this period, and PHAs will not receive section 8 administrative fee funding for converted units during this time. .

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

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

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

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

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

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

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

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

### **1.7 Special Provisions Affecting Conversions to PBRA**

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

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

#### **A. PBRA Contract Terms.**

- 1. Length of Contract.** Covered Projects shall have an initial HAP term of 20 years. To implement this provision, HUD is specifying alternative requirements for section 8(d)(2)(A) of the Act, which establishes a maximum term of 15 years for “an existing structure.” Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, does not apply.
- 2. Mandatory Contract Renewal.** Section 524 of MAHRAA and 24 CFR Part 402 currently govern renewals of expiring or terminating project-based section 8 HAP contracts and, in general, require HUD to renew such contracts “at the request of the owner.” Pursuant to the RAD statute, upon expiration of the initial contract and each renewal contract, the Secretary must offer, and the Project Owner must accept,

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

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

3. **Ownership or Control.** This section has been moved to Section 1.4.G.
4. **RAD Use Agreement.** Pursuant to the RAD Statute, Covered Projects shall have an initial RAD Use Agreement that will:
  - i. Be recorded superior to other liens on the property;
  - ii. Run until the conclusion of the initial term of the HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that runs with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary provides approval for the RAD Use Agreement to be terminated when an Project Owner requests a transfer of assistance;
  - iii. Provide that in the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract new tenants must have incomes at or below eighty (80%) percent of the area median income (AMI) at the time of admission, and rents may not exceed 30% of 80% of median income for an appropriate-size unit for the remainder of the term of the RAD Use Agreement; and
  - iv. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing.
5. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. Consequently, HUD is specifying alternative requirements for section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, and for section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the “project account.” HUD has calculated initial contract rents for every public housing project based on each project’s subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) All RAD applications, including applications for Portfolio or Multi-Phase awards, will have initial contract rents based on their “RAD rent base year:”
  - All properties awarded under the original 60,000 unit cap have initial contract rents based on FY 2012 funding levels (“FY 12 RAD rent base year”). These rents will be adjusted each year by HUD’s OCAF starting in CY 14 and

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

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

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

- i. **MTW Fungibility.** MTW agencies may use their MTW block grant funds to set their initial contract rents. In addition to the rent cap described below, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. MTW agencies may exercise this flexibility to set initial contract rents only when they have submitted an application for two or more projects. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02. If an MTW agency converts a project to PBRA, the agency's public housing subsidy will be permanently reduced by the amount required to fund the PBRA HAP (see Attachment 1C). HUD will limit the number of projects a MTW agency may convert to PBRA if the PHA does not have sufficient public housing subsidy to convert into PBRA assistance.
- ii. **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as "bundled" rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle. For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The PHA could bundle the two projects such that the initial contract rent at

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

- iii. **Future RHF or DDTF.**<sup>31</sup> PHAs that are scheduled to receive ongoing RHF or DDTF funding in future years may choose to forgo any ongoing RHF or DDTF grants and repurpose the subsidy to augment the RAD rent. See Attachment 1C for the calculation of how RHF or DDTF funding may augment the RAD rent.
- iv. **Tenant Paid Utility Savings.** When conversion will result in the reduction of one or more utility components (e.g. Gas, water & sewer, electric) used to establish the Utility Allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail.

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

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

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<sup>31</sup> 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.

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

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

7. **Distributions.** Regardless of type of financing, Converted Projects will not be subject to any limitation on distributions of surplus cash, contingent on the availability of surplus cash as determined by year-end audited or certified financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205, which, among other provisions, establishes certain limitations on distributions for profit-motivated owners and authorizes HUD to require the owner to establish a residual receipts account. Distributions are not considered program or project funds.
8. **Transfer of Assistance.** This section has been moved to Section 1.4.H.
9. **RAD Rehab Assistance Payments.** HUD and the Project Owner will enter into a HAP contract before construction begins. To ensure that the amount of subsidy for the Covered Project is retained at the pre-conversion level once the assistance is converted to the HAP contract, Covered Projects will be eligible for assistance equal to current funding, as defined in this notice, less adjusted formula income, per Attachment 1C, for units that are not occupied at any point during the initial repairs as a result of rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment. As necessary to implement this provision, HUD is suspending the applicability of additional provisions in 24 CFR § 880.504(a) until all contract units are made available for occupancy and waiving the applicability of section 8(c)(4) of the Act.

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

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



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

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

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

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

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

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

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

**B. PBRA Resident Rights and Participation.**

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

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

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

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

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

#### Three Year Phase-in:

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

#### Five Year Phase-in

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

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

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

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

5. **Resident Participation and Funding.** Residents of Covered Projects with assistance converted to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, in accordance with Attachment 1B, residents will be eligible for resident participation funding.
6. **Resident Procedural Rights.** The information provided below must be included as part of the House Rules for the associated project and the House Rules must be furnished to HUD as part of the Financing Plan submission. See Attachment 1E for a sample Addendum to the House Rules.

- i. Termination Notification.** Pursuant to the RAD Statute, HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects converting assistance under RAD, that supplement notification requirements in regulations at 24 CFR § 880.607 and the Multifamily HUD Model Lease.
- a. *Termination of Tenancy and Assistance.* The termination procedure for RAD conversions to PBRA will additionally require that Project Owners provide adequate written notice of termination of the lease which shall not be less than:
    - i. A reasonable period of time, but not to exceed 30 days:
      - o If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - o In the event of any drug-related or violent criminal activity or any felony conviction; or
    - ii. 14 days in the case of nonpayment of rent.
  - b. *Termination of Assistance.* In all other cases, the requirements at 24 CFR § 880.603, the Multifamily HUD Model Lease, and any other HUD multifamily administrative guidance shall apply.
- ii. Grievance Process.** Due to requirements in the RAD statute, HUD is incorporating resident procedural rights to comply with the requirements of section 6 of the Act. In addition to program rules that require that tenants are given notice of covered actions under 24 CFR Part 245 (including increases in rent, conversions of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant paid utility allowances), HUD requires that:
- a. Residents be provided with notice of the specific grounds of the Project Owner's proposed adverse action, as well as their right to an informal hearing with the Project Owner;
  - b. Residents have an opportunity for an informal hearing with an impartial member of the Project Owner's staff within a reasonable period of time;
  - c. Residents have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the Project Owner as the basis for the adverse action. With reasonable notice to the Project Owner, prior to hearing and at the residents' own cost, residents may copy any documents or records related to the proposed adverse action; and
  - d. Project Owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action and

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

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

- a. Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing.
- b. Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

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

7. **Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID exclusion after conversion, in accordance with regulations at 24 CFR § 960.255. After conversion, no other tenants will be eligible to receive the EID. If a tenant receiving the EID exclusion undergoes a break in employment, ceases to use the EID exclusion, or the EID exclusion expires in accordance with 24 CFR §960.255, the tenant will no longer receive the EID exclusion and the Owner will no longer be subject to the provisions of 24 CFR §960.255. Furthermore, tenants whose EID ceases or expires after conversion shall not be subject to the rent phase-in provision, as described in Section 1.7.B.3; instead, the rent will automatically be adjusted to the appropriate rent level based upon tenant income at that time.
8. **Jobs Plus.** Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target project(s) under RAD will be able to finish out their Jobs Plus grant at that site unless significant relocation and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project. If the program is continued, the Project Owner must agree to continue to implement the program according to HUD's program requirements.
9. **When Total Tenant Payment Exceeds Gross Rent.** Under the PBRA program, assisted families are responsible for paying 30% of adjusted gross income towards rent and utilities, referred to as Total Tenant Payment (TTP). Under normal PBRA rules, a Project Owner must process a termination of assistance pursuant to section 8-5 C. of Housing Handbook 4350.3, REV-1 when the family's TTP has risen to a level

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

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

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

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

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

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

**C. PBRA: Other Miscellaneous Provisions.**

- 1. Access to Records, including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work.
- 2. Davis-Bacon prevailing wages and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14.
- 3. Establishment of Waiting List.** The Project Owner can utilize a project-specific or community waiting list. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
  - i. Transferring an existing site-based waiting list to a new site-based waiting list. If the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list.
  - ii. Informing applicants on the site-based waiting list on how to apply for a community-wide waiting list.
  - iii. Informing applicants on a public housing community-wide waiting list on how to apply for a new community-wide or site-based waiting list. If using a site-based waiting list, PHAs shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. In both cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list, given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the



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

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

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

4. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project.
5. **Choice-Mobility.** HUD seeks to provide all residents of Covered Projects with viable Choice-Mobility options. PHAs that are applying to convert the assistance of a project to PBRA are required to provide a Choice-Mobility option to residents of Covered Projects in accordance with the following:<sup>38</sup>

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<sup>37</sup> 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.

<sup>38</sup> The Choice-Mobility requirements that apply to covered PBRA projects differ from the requirements that apply to covered PBV projects.

- i. *Resident Eligibility.* Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of: (a) 24 months from date of execution of the HAP or (b) 24 months after the move-in date.
- ii. *Voucher Inventory Turnover Cap.* Recognizing the limitation on the availability of turnover vouchers from year to year, a voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.
- iii. *Project Turnover Cap.* Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the property, in any year, a PHA may limit the number of Choice-Mobility moves exercised by eligible households to 15 percent of the assisted units in the project. (For example, if the project has 100 assisted units, the PHA could limit the number of families exercising Choice-Mobility to 15 in any year, but not to less than 15.) While a voucher agency is not required to establish a project turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

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

- Provide voucher agencies that make such a commitment bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.<sup>39 40</sup>
- 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:

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

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

- Public housing–only agencies, defined as agencies that own units under a public housing ACC, but do not administer, directly or through an affiliate, a Housing Choice Voucher program; or
  - Combined agencies that currently have more than one-third of their turnover vouchers set aside for veterans, as defined for the purpose of HUD-VASH, or homeless populations, as defined in 24 CFR § 91.5.<sup>41</sup> To be eligible for this exemption, the PHA’s admission policies must have been formally approved by the PHA’s board prior to the time of application.
- 6. Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of permanent debt during the HAP contract term to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
- 7. Submission of Year-End Financial Statements.** Covered Projects converting assistance to PBRA must comply with 24 CFR Part 5 Subpart H, as amended, revised, or modified by HUD.<sup>42</sup>
- 8. Classification of Converting Projects as Pre-1981 Act Projects under Section 16(c) of the United States Housing Act of 1937.** For purposes of ensuring maximum flexibility in converting to PBRA, all such projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the US Housing Act of 1937. Section 16(c)(1), which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, Project Owners of projects converting to PBRA may admit applicants with incomes up to the low-income limit. HUD Headquarters tracks the 25% restriction on a nationwide basis. Project Owners of projects converting to PBRA do not need to request an exception to admit low-income families. In order to implement this provision, HUD is specifying alternative requirements for section 16(c)(2) of the US Housing Act of 1937 and 24 CFR §5.653(d)(2) to require Project Owners of projects

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<sup>41</sup> 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.

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

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

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

### 1.8 Resident Notification

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

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

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

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

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

- Transfer of assistance or ownership;

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

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

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

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

## 1.9 Application Requirements

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

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

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

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

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

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<sup>43</sup> See Attachment IA for a discussion of environmental review requirements.

<sup>44</sup> Field Environmental Officer contact information is available at, <https://www.hudexchange.info/environmental-review/hud-environmental-staff-contacts/>.

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

1. A **RAD Board Approval Form**, which will include the proposed pro-forma and other key certifications, must be approved by the PHA's Board and signed by the authorized representative of the PHA. This form will be required for all submitted applications.
2. A **Financing Letter of Interest/Intent** from each lender or equity investor, indicating, among other conditions, that the proposed pro-forma is reasonable. This letter is required where third-party financing is indicated in the application pro-forma. (A Financing Letter of Interest/Intent is not required where the pro-forma indicates that no financing is required, e.g., where immediate and long-term project capital needs can be met through a Reserve for Replacements account, or where the PHA is providing the financing.) The Financing Letter of Interest/Intent does not promise or imply a commitment to make a loan or equity investment but does signify that the lender or investor has reviewed the pro-forma for the subject project and considers it reasonable to proceed with further analysis and due diligence.
3. A **Mixed-Finance Affidavit** is required where the PHA is requesting to convert the public housing assistance in a mixed-finance project. This affidavit must be signed by both the PHA administering the public housing ACC and the Owner Entity of the project. Since only PHAs can apply under the Demonstration (see Section 1.3 of this Notice), the purpose of this affidavit is to ensure that both parties (the Owner Entity and the PHA) agree in principle to the conversion. Please note, however, that the HAP contract for a mixed-finance conversion will be executed between the Contract Administrator and the mixed-finance Owner Entity, not the PHA administering the public housing ACC. (The PHA may be part of the ownership structure, however.)
4. A **Choice-Mobility Commitment Letter** signed by: (a) the voucher agency that has committed to provide Choice-Mobility vouchers to the covered PBRA project of another PHA for the term of the initial HAP ; and (b) the agency that obtains a commitment from a voucher agency to support Choice-Mobility for a specified PBRA project. 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 is willing to administer the PBV contract. If another PHA is proposed as the contract administrator and the project is selected, the PHA will need

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

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

- **Applications Proposing to Use 9% LIHTCs.** Applicants are encouraged to use both 4% and 9% LIHTCs in their project financing. However, as the demand for the allocation of 9% LIHTCs is typically excessive, applicants proposing to use 9% LIHTCs, if a reservation has not already been secured, are required to submit a letter from the credit-issuing authority addressing:
  1. Whether the property and proposed transaction appear eligible;
  2. Whether the applicant PHA or owner entity has acceptable experience to proceed;
  3. The timing of application and award; and
  4. Whether a typical reservation of credits is sufficient to address the expected need of the first or only phase of the subject project.

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

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

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<sup>45</sup> A Multi-Phase Application template is available at [www.hud.gov/rad](http://www.hud.gov/rad)



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

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

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

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

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

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<sup>46</sup> HUD has prepared a sample Rent Bundling Worksheet that is available at [www.hud.gov/rad](http://www.hud.gov/rad)

- **MTW Contract Rent Flexibility.** MTW agencies may submit an application proposing to use their MTW block grant authority to set initial contract rents only when it has submitted applications for two or more projects. The application must indicate the additional proposed subsidy dedicated to the Converting Project(s). Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02.
- **Portfolio Awards.** A PHA may apply for a Portfolio Award, which allows a PHA to reserve RAD conversion authority for a set of projects and locks in the applicable contract rent in the year of application. In order to apply for a Portfolio Award, a PHA must submit:
  1. A list of all projects proposed for a Portfolio Award, that includes, for each project, the project's name, PIC Development Number, units to be converted, total estimated capital needs, and the major anticipated financing sources, where applicable; and
  2. RAD Applications for at least 50% of the projects identified in the portfolio.

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

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

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

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

#### 1.10 Submission of Applications

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

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

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

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

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

Applications must be sent via email to [RADapplications@hud.gov](mailto:RADapplications@hud.gov).

### 1.11 Selection Criteria

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

- A. **Initial Application Period (CLOSED)**. As required under the RAD statute, HUD first conducted an initial competition period to ensure that awards were made to PHAs of various sizes and across geographies. HUD created target pools for awards based on PHA size and in four Census regions and made awards pursuant to those target pools. This initial application period opened on September 24, 2012 (60 days after the initial version of this Notice was issued) and closed on October 24, 2012 (30 days after the initial application period opened).
- B. **Second Application Period**. The Second Application Period commenced on October 25, 2012 and closes 30 days following the publication of this Notice. All applications submitted during the Initial Application Period compete on a first-come, first-serve basis, where HUD issues a PHA an award for any Application that meets all eligibility criteria and that was received while HUD had available authority under the statutory cap.
- C. **Third Application Period**. The Third Application Period commences 30 days following the publication of this Notice. During this period, for all applications that meet all eligibility criteria, HUD will utilize the Priority Categories below to issue CHAPs or to determine the Application's placement on the waiting list. HUD will review each Application in the order in which it is received and rank each qualified application, first by the Priority Category in which it falls and then by the date the Application was submitted. At the end of each calendar month, HUD will award CHAPs beginning with the highest ranked applications, up until the point at which issuing an additional award would exceed the statutory cap. If in any given month a qualified application cannot be awarded because HUD has reached its available authority under the statutory cap, the application will be placed on the waiting list. Its position on the waiting list will be determined first by the priority category in which it falls and then by the date the Application was submitted.

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

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

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

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

2. **Replacement Awards.** If a CHAP, Portfolio Award, or Multi-Phase Award that is issued to a PHA is revoked or withdrawn (including revocations when the PHA fails to comply with the requirements of this Notice), HUD will issue a replacement award from the waiting list, if one has formed. In issuing such replacement awards, HUD will utilize the foregoing provisions regarding prioritization of applications received during the Second Application Period.
3. **Online Summary.** HUD will post a summary of applications selected for CHAP, Portfolio, or Multi-phase Awards and waiting list status for all other applicants. The summary will be updated monthly.

- D. Exemptions from the Choice-Mobility Component.** For PBRA conversions, HUD will allow good-cause exemptions on a first-come, first-served basis up to the 10 percent limit.<sup>48</sup> An Application that meets all requirements of the Notice, but that cannot be awarded a CHAP because it has requested a good-cause exemption and HUD reached its 10% cap will be placed on the waiting list. The Application will be passed over if all of the good-cause exemptions as indicated above have been exhausted. An Application may be selected for a good-cause exemption if a CHAP is terminated for a project that originally received a good-cause exemption. At any point during the Second or Third Application Period, a PHA may revise its application only to certify that it will meet the Choice-Mobility component. If an application is modified in this way, it would retain its place on the waiting list.
- E. Application Denials.** If HUD determines that a PHA does not meet the eligibility requirements in Section 1.3, HUD will issue a letter denying a CHAP to the PHA citing the specific grounds for the denial of its application. The PHA then has 14 days from the date of the letter to appeal the denial in writing. The appeal must include the grounds for appealing the denial and supporting documentation. The Department will review the appeal and will notify the PHA of its decision within 60 days of the appeal. If applicable, the PHA's position on the waiting list will not be adversely affected if a decision is made in favor of the PHA. If a PHA's application is denied, the PHA may revise the application and resubmit; such resubmittals will be reviewed in the order of date of resubmission. The appeal should be sent to [RADapplications@hud.gov](mailto:RADapplications@hud.gov), with the Name of the project included in the Subject Line, e.g., "Subject: Lincoln Townhomes, Appeal."

## 1.12 CHAP Award and Financing Plan Submission

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

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

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

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

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

- B. Acceptance of CHAP.** Within 30 days of CHAP issuance, a PHA must confirm its acceptance of the CHAP by submitting an application into the Inventory Removals module in PIC identifying the units that will be removed from the public housing Annual Contributions Contract (ACC) when the project completes conversion.<sup>49</sup> Failure to submit an application into PIC according to the instructions provided by HUD will result in a suspension of the CHAP and a revocation if not corrected within 15 days of notification, unless HUD identifies just cause for an extension. If the CHAP is re-instated, it will retain its original issuance date. Similarly, if the transaction changes and HUD determines that the PIC application needs to be modified by the PHA, the PHA will have 30 days to resubmit the Inventory Removal application and HUD will follow the above-described procedure for failure to comply.
- C. Milestones and Financing Plan.** For every project that receives a CHAP, the PHA must submit a Financing Plan. See Attachment 1A for Financing Plan Requirements. For all CHAP awards made prior to January 1, 2015, the Financing Plan is due according to the existing agreement between the PHA and HUD. For CHAP awards issued after January 1, 2015, the Financing Plan is due according to the instructions below. For purposes of Financing Plan Milestones, the term "CHAP issuance date" refers to the later of the issuance of the CHAP or 30 days following the publication of this Notice (all days are expressed in calendar days):

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

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

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

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

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<sup>50</sup> Application for a tax credit round prior to this date that is unsuccessful is not grounds for CHAP revocation.



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

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

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

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

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

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

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

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<sup>51</sup> 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.

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

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

### 1.13 Closing

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

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

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

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

#### B. Preparations for leaving the public housing program.<sup>53</sup>

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

<sup>53</sup> HUD intends to publish a Public Housing Closeout Quick Reference Guide to standardize the procedures PHAs will use to closeout a public housing operation.

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

2. **Leases.** PHAs must provide residents with notification of public housing lease termination in accordance with 24 CFR 966.4(1)(3)
3. **Use of Capital Funds or Operating Reserves in the Development Budget.** All Capital Funds, including RHF and DDTF, or Operating Reserves that have been approved in the Financing Plan must be drawn down at closing and placed in an escrow account. If there is new debt being placed on the Covered Project, these funds can be held by the lender. If no new debt will be utilized, the PHA must place the funds in a separate bank account covered under a General Depository Agreement.<sup>55</sup>
4. **Preparations for Entering PBV or PBRA.** PHAs should be aware that many tasks must be undertaken well in advance of closing (e.g. preparation of new leases).<sup>56</sup>
5. **Funding Upon Closing.** For the remainder of the first Calendar Year in which a HAP contract is effective, Operating Funds and Capital Funds will be obligated to the PHA for the Covered Project at the level of public housing subsidy available to that project in that fiscal year regardless of the initial contract rent amount or OCAF.<sup>57</sup> Operating Fund and Capital Fund amounts will be moved into specific RAD Budget Line Items (BLIs) in LOCCS.
  - i. **Operating Fund.**
    - a. PHAs must submit Operating Subsidy tools and follow the normal Operating Subsidy process (including revisions where corrections are needed) for the project for the year in which the project converts.

<sup>54</sup> 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](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/faq/58view#6)

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

<sup>56</sup> 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](http://www.hud.gov/rad)

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

- b. Eligible Operating funds must be drawn down and conveyed to the property by December 31<sup>st</sup> of the year the HAP contract becomes effective.
- ii. **Capital Fund.** The amount of Capital Funds that can be used for HAP payments during this initial year is based on the PHA's Capital Fund Formula Grant attributable to the project ("Project amount") in the year of conversion, pro-rated by the number of units in the PIC Development that are converting and then by the months remaining in the year in which the HAP contract became effective. For the purposes of RAD, the project amount is spread over the Calendar Year, rather than the Fiscal Year. Where HUD has not yet obligated the full FY's Capital Funds to the PHA, HUD shall obligate the remaining funds as soon as available.

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

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

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

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

### 1.14 Developer Fee

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

- A. For non-LIHTC transactions, the developer fee may be up to 10 percent of the total development budget (all hard costs and reasonable soft costs), less developer fee and reserves and less any acquisition costs in non-arms-length acquisitions, e.g., transfers of property title to related or wholly-owned entities for the purpose of meeting single asset entity ownership requirements. The release of the developer fee will be made upon achievement of the following milestones:
1. At initial closing, up to 33 percent of the total developer fee;
  2. At 50 percent completion of rehabilitation, as certified by HUD's inspector, another 33 percent of the total developer fee;
  3. At 100 percent completion, as certified by HUD's inspector, the remainder of the total earned developer fee.

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

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

Earned developer fees are not considered program income.

### 1.15 Additional Information

For additional information on this section of the Notice, please check [www.hud.gov/rad](http://www.hud.gov/rad) or email questions to [RAD@hud.gov](mailto:RAD@hud.gov).

**Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks**

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

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

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

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

- A. Type of conversion.** Identify whether the Covered Project will convert to PBV or PBRA assistance.
- i. For PBV conversions, identify the PHA that will administer the PBV HAP contract.
  - ii. For PBRA conversions, where the PHA does not administer a voucher program and did not receive a good cause exemption for Choice-Mobility, upload a fully executed Choice Mobility Letter of Agreement signed by the PHA converting units and the PHA that has agreed to administer the vouchers in order to comply with the Choice Mobility requirement.

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

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

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

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

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

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

## Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks

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

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

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

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

1. For PBRA conversions, (or where HUD has determined to conduct the PBV conversion review under Part 50) PHAs are not required to follow the radon testing requirements of HN 2013-03. However, HUD strongly recommends testing for all projects and mitigation of any structures with elevated radon (4 pCi/L or above).
2. For PBRA conversions (or where HUD has determined to conduct the PBV conversion review under Part 50) that do not include substantial rehabilitation or new construction activities, PHAs shall provide HUD with one of the following:<sup>61,62</sup>
  - 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

<sup>59</sup> Additional guidance on environmental review requirements is available on the HUD Environmental Review website, at <https://www.hudexchange.info/environmental-review/>.

<sup>60</sup> The MAP Guide is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430).

<sup>61</sup> 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.

<sup>62</sup> Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-13.



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

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

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

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

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

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<sup>63</sup> The current HUD Form 4128 will soon be replaced with an online system for conducting environmental reviews, called the HEROS system. HUD is currently piloting the HEROS system, and RAD is one of the programs involved in the pilot.

<sup>64</sup> 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/>.

<sup>65</sup> Form HUD-7015.15 is available at <https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>.

## Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks

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

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

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

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

**G. Development Team.** Include the following information:

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

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<sup>66</sup> For additional information see “Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component”

[http://portal.hud.gov/hudportal/documents/huddoc?id=RAD\\_Notice2.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Notice2.pdf)

2. Evidence of recent successful experience with similar rehabilitation or construction projects. For properties requiring substantial rehabilitation or new construction, the Project Owner is required to engage a general contractor, unless recent and comparable experience managing rehabilitation can be demonstrated or if the development team is using the FHA-insured Section 223(f) program or a repair program approved by HUD. If multiple funding sources will be used for the Covered Project, the development team must demonstrate that it has experience with at least three transactions with multiple sources of financing.
3. For PBRA conversions, evidence that all principals have Previous Participation Certification in the Active Partners Performance System (APPS) (formerly the Form 2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation<sup>67</sup>

**H. Proposed Financing.** For each proposed loan, equity contribution, or grant, the PHA must include a:<sup>68</sup>

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

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<sup>67</sup> 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.

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

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

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

1. Be entered into the Transaction Log of the RAD Resource Desk (stabilized cash flow)
2. In a PHA provided template, project out for the term of the initial contract.
3. Include an attached discussion of the extent of energy and water savings that are anticipated as a result of the rehabilitation or construction and the basis for those estimates. The discussion must explain to what extent anticipated savings in utility costs have been included in the pro forma operating expenses.
4. Include an attached Rent Comparability Study for projects converting to PBRA where current funding<sup>69</sup> is greater than 120 percent of the FMR and where the PHA believes current funding is below the market rent. The Rent Comparability Study must be prepared in accordance with Chapter 9 of HUD's Section 8 Renewal Guide. See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhsec8](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.

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<sup>69</sup> Current Funding, for purposes of this Attachment, is the funding determined using Attachment 1C of this Notice.

## Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks

- g. All other operating expenses shall be no less than 85 percent of the average for the last three years, unless justified.
- h. The annual replacement reserve deposit should be equal to that amount which, if deposited annually, will be sufficient to fund all capital needs, as identified in the CNA, arising during the first 20 years and otherwise not addressed upfront in either the rehabilitation or an initial deposit to the replacement reserve account, and sufficient to maintain a minimum balance at the end of each year during that 20-year period that is at least 5 percent of the total, aggregate projected capital needs for that period. The PHA should use reasonable estimates in the inflation but in doing so the rate for escalating the increase in repair costs should not exceed the rate of interest on reserve deposits by more than 1%.
- i. For non-leveraged transactions, the stabilized cash flow should not be less than \$12 per unit monthly. For leveraged transactions, the debt-coverage ratio should not be less than 1.11 over a ten year period using 2% growth in revenue and 3% growth in expenses.

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

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

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

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

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

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

1. Buildings that contain units to be converted under RAD, including:
  - units designated as “non-dwelling units” in IMS/PIC (laundry facilities, storage, management offices);
  - community and common space;
  - units that are not public housing, but are part of a mixed-income community amongst mixed-finance public housing units and are documented in IMS/PIC as “non-ACC” units;<sup>70</sup> and
  - underlying land at those buildings;
2. Necessary appurtenances for the RAD units (e.g., parking lots, playgrounds);

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<sup>70</sup> 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 will be demolished as part of the conversion, provided such demolition is included in the approved RAD RCC;
4. Free standing non-dwelling buildings or other non-dwelling real property that will be used primarily to “support” the RAD units (e.g., project-specific community centers, maintenance building, management office building), provided such property is contiguous, adjacent or in close proximity to the RAD dwelling units parcel, and the PHA evidences the property will support the RAD units through either direct supportive services for residents or direct administrative and/or management support for RAD units. Such property may also serve other residents or projects of the PHA provided the property primarily serves and supports the RAD units; and
5. Vacant land and other real property necessary to support the RAD units (e.g., landscaping, community gardens, or reasonable green-space that is required for zoning).

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

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

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

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

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

<sup>72</sup> If a PHA is converting more than one project to PBRA, a separate AFHMP must be submitted for each project.

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

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

- P. Estimate of public housing funds available for HAP subsidy.** The PHA shall provide an estimate of the public housing subsidy that will be used to support payments under the HAP contract in accordance with Section 1.13.B.5. HUD will provide tools for PHAs to make such estimates.
- Q. Transfer of Assistance.** For all conversions involving a transfer of assistance to a new site, the PHA must submit:
1. Evidence of HUD approval of the site and
  2. A request from the PHA, based on the conditions established in Section 1.4.A.12 and subject to HUD approval, for the DOT to be released at closing. Absent a request and HUD approval, the DOT will remain on the current public housing site.

### **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 FHA Multifamily Accelerating (MAP) Guide as revised by Mortgagee Letter 2012-20. In addition to submissions made in an FHA insured loan Application for Firm Commitment, PHAs must also upload the following items to the RAD Resource Desk. (Unless otherwise indicated, the PHA must submit all of the items listed in the cited paragraph):

- A. Type of Conversion
- E. Accessibility and Relocation Plan Checklist
- F. Development Budget (Sources and Uses of Funds).
  - Sources and Uses submitted with the FHA Application must be entered into the Transaction Log on the RAD Resource Desk.
  - 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



## Attachment 1A – Financing Plan Requirements and Feasibility Benchmarks

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

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