U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing
Office of Housing

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

Notice PIH-2012-32 (HA~~)~~), REV-1

Issued: __July ~~26, 2012~~2, 2013

Expires: This Notice remains in effect until amended, superseded, or rescinded.

SUBJECT: Rental Assistance Demonstration – Final Implementation, Revision 1

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 (Public Law 112-55, approved November 18, 2011), which provided fiscal year 2012 appropriations for HUD (2012 Appropriations Act). RAD has two separate components:

- First component. The first component allows projects funded under the public housing and Section 8 Moderate Rehabilitation (Mod Rehab) programs to convert their assistance to long-term, project-based Section 8 rental assistance contracts.[1] Under this component of RAD, public housing agencies (PHAs) and Mod Rehab owners 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 and Mod Rehab owners will convert their assistance at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. Sections I

[1] Conversions of properties under the Mod Rehab program exclude single room occupancy (SRO) dwellings as authorized by Title IV of the McKinney-Vento Homeless Assistance Act.

and II of this Notice provide further instructions for PHAs and owners of Mod Rehab projects, respectively.

- 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, upon contract expiration or, for owners of Rent Supp and RAP projects, termination, occurring after October 1, 2006, and no later than September 30, 2013. 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, actions under this component are subject to the availability of TPVs. Sections II and III of this Notice provide further instructions for owners of Mod Rehab projects and owners of Rent Supp and RAP projects, respectively.

Collectively, projects that convert their form of assistance under the Demonstration are referred to in this Notice as "covered projects."

On March 8, 2012, HUD issued PIH Notice 2012-18, Rental Assistance Demonstration – Partial Implementation and Request for Comments. While PIH Notice 2012-18 sought public comment on all instructions and criteria, the instructions and criteria applicable to the Section III were effective immediately. ~~This final~~PIH Notice ~~incorporates~~2012-32 (July 26, 2012) incorporated consideration of public comment, including revisions to the Section III instructions and criteria. A copy of HUD's response to public comments received on PIH Notice 2012-18 may be obtained from the RAD website at: www.hud.gov/rad. Because Section III of PIH Notice 2012-18 was effective immediately, any Rent Supp or RAP owner that has submitted a complete RAD conversion request to the MF Hub for review under PIH Notice 2012-18 prior to the date of ~~this final~~PIH Notice ~~will be~~2012-32 were subject to PIH Notice 2012-18. All requests that have not yet been submitted are ~~to be~~ subject to the terms of this final revised Notice.

Explanation of Changes

This revised Notice, PIH 2012-32, REV-1, includes changes in eligibility and selection criteria as well as clarifications of existing instructions. A complete list of the revisions is included in Appendix V of the Notice. For the benefit of the reader, HUD is providing a redline version of this document, available at www.hud.gov/rad. Major revisions are summarized below. Where indicated, the provisions will be subject to a 30-day Notice and Comment period.

Public Housing

- Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 1.9.E). [Subject to 30-day Notice & Comment]

- Allowing a PHA to apply for a Portfolio Award for a set of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the portfolio, provided the PHA submits individual completed RAD Applications for at least 50% of the projects. The PHA then has 365 days to submit a completed application for each of the remaining projects (see Section 1.9.F, Attachment 1C). [Subject to 30-day Notice & Comment]

- Providing contract rents at FY 2012 rent levels (as posted in the RAD Application) for all applications submitted prior to the end of CY 2013. This provision facilitates conversion of a public housing project, a multi-phase project, or a PHA-defined portfolio of projects by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5; Section 1.7.A.5, Attachment 1C).

- Allowing PHAs to adjust subsidy (and initial contract rents) across multiple projects to facilitate financing. The combined subsidy for these "bundled" projects may not exceed the aggregate funding for all of the projects the PHA is proposing to bundle (see Section 1.6.B.5; Section 1.7.A.5, and Section 1.9.D).

- Allowing Moving to Work (MTW) agencies who are applying for two or more projects to use their MTW block grant flexibility to set initial contract rents, subject to RAD rent caps and continued service requirements (see Section 1.6.B.5, Section 1.7.A.5, and Section 1.9.D).

- Expanding eligibility of HOPE VI projects (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

- Eliminating the caps on awards to PHAs and to Mixed-Finance projects (see Section 1.11.C.2.c).

- Exempting awarded public housing projects from scoring under the Public Housing Assessment System (PHAS) to support redevelopment planning and need for temporary relocation during construction (see Section 1.5.I).

- Allowing PHA's to use the Choice Neighborhoods Implementation (CNI) Notice of Funding Availability (NOFA) to apply for Joint RAD/CNI Awards (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

Mod Rehab

- Opening the Mod Rehab Ongoing Application Period under the First Component and removing the cap on Mod Rehab Projects applying under the First Component (see Section 2.2.10). [Subject to 30-day Notice & Comment]

- Allowing a Mod Rehab owner to request a Portfolio Award for a grouping of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the grouping, provided the owner submits a completed application for at least 50% of the projects. The owner then has 365 days to submit a completed application for the remaining projects (see Section 2.2.8.C). [Subject to 30-day Notice & Comment]

- Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 2.2.8.D). [Subject to 30-day Notice & Comment]

Notice and Comment

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

PHAs and Owners applying to RAD under the new eligibility may submit their applications during the 30-day window. 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 Owner may amend an application previously submitted. However, CHAPs and Portfolio Awards for projects satisfying eligibility and selection criteria subject to notice and comment shall 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 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, who can convert the assistance of these projects under the first or 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 ~~5~~ 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 is currently developing an evaluation design.

- 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 on the ratio of tenant-~~based~~protection vouchers to project-based vouchers.

Further Information

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

Paperwork Reduction Act

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.

Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

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

Program Instructions

Table of Contents

1

DEFINITIONS 10

SECTION I: PUBLIC HOUSING PROJECTS 16

1.1 PURPOSE 16
1.2 GENERAL PROGRAM DESCRIPTION 17
1.3 ELIGIBILITY 19
1.4 REHABILITATION AND FINANCING CONSIDERATIONS 21
1.5 WAIVERS, ALTERNATIVES, AND OTHER PUBLIC HOUSING REQUIREMENTS 27
1.6 SPECIAL PROVISIONS AFFECTING CONVERSIONS TO PBVS 32
1.7 SPECIAL PROVISIONS AFFECTING CONVERSIONS TO PBRA 47
1.8 RESIDENT NOTIFICATION 62
1.9 APPLICATION REQUIREMENTS 63
1.10 SUBMISSION OF APPLICATIONS 68
1.11 SELECTION CRITERIA 68~~69~~
1.12 CHAP MILESTONES 78
1.13 CLOSING 82~~83~~
1.14 PHA RAD DEVELOPER FEE 84
1.15 ADDITIONAL INFORMATION 85
ATTACHMENT 1A – CONVERSION DOCUMENTATION AND GUIDELINES 86
1A.1 FINANCING PLAN REQUIREMENTS AND FEASIBILITY BENCHMARKS 86
1A.2 CONTENTS OF THE RAD CONVERSION COMMITMENT (RCC) 93
ATTACHMENT 1B – RESIDENT PROVISIONS IN CONVERSIONS OF ASSISTANCE FROM PUBLIC HOUSING TO PBRA AND PBV 95
1B.1 SUMMARY OF RESIDENT PROVISIONS 95
1B.2 RESIDENT PARTICIPATION AND FUNDING 97
ATTACHMENT 1C – CALCULATION OF HAP CONTRACT RENTS FOR CONVERSIONS OF ASSISTANCE FROM PUBLIC HOUSING TO PBRA OR PBV 101
ATTACHMENT 1D – REQUIREMENTS FOR RAD-SPECIFIC SIGNIFICANT AMENDMENT SUBMISSIONS 106
ATTACHMENT 1E - HOUSE RULES: ADDENDUM A – RESIDENT PROCEDURAL RIGHTS 115

SECTION II: MODERATE REHABILITATION PROJECTS 117

2.1 PURPOSE 117
2.2 CONVERSIONS UNDER THE FIRST COMPONENT OF RAD: CONVERSIONS TO PBRA OR PBVS, SUBJECT TO COMPETITION 117
2.2.1 GENERAL PROGRAM DESCRIPTION 118
2.2.2 ELIGIBILITY 120
2.2.3 REHABILITATION AND FINANCING CONSIDERATIONS 122

2.2.4 SUBSTANTIAL CONVERSION OF ASSISTANCE 122
2.2.5 SPECIAL PROVISIONS AFFECTING CONVERSIONS TO PBVS 123
2.2.6 SPECIAL PROVISIONS AFFECTING CONVERSIONS TO PBRA 127
2.2.7 RESIDENT NOTIFICATION AND CONSULTATION 132
2.2.8 APPLICATION REQUIREMENTS 132
2.2.9 SUBMISSION OF APPLICATIONS 136
2.2.10 SELECTION CRITERIA 136
2.2.11 NOTIFICATION OF AWARD, ISSUANCE OF CHAP, AND RELATED MILESTONES 143
2.2.12 COMPLIANCE WITH ALL APPLICABLE NOTICES REGARDING CONTRACT EXPIRATION OR TERMINATION 143
2.3 CONVERSIONS UNDER THE SECOND COMPONENT OF RAD: PROJECT-BASING ENHANCED VOUCHER ASSISTANCE 143~~144~~
2.3.1 GENERAL PROGRAM DESCRIPTION 144
2.3.2 ELIGIBILITY 145
2.3.3 WAIVER OF PBV RULES 147
2.3.4 SUBMISSION OF REQUESTS FOR PROSPECTIVE CONVERSIONS 150
2.3.5 SUBMISSION REQUIREMENTS FOR RETROACTIVE CONVERSIONS 153
2.3.6 FUNDING AVAILABILITY 156
2.4 ADDITIONAL INFORMATION 157
ATTACHMENT 2A – SAMPLE 30-DAY NOTIFICATION LETTER TO RESIDENTS FOR PROSPECTIVE CONVERSION OF SECTION 8 MODERATE REHABILITATION (MOD REHAB) ASSISTANCE TO PROJECT-BASED VOUCHERS 158
ATTACHMENT 2B – SAMPLE NOTIFICATION LETTER TO RESIDENTS FOR RETROACTIVE CONVERSION OF ENHANCED VOUCHERS TO PROJECT-BASED VOUCHERS 160

SECTION III: RENT SUPPLEMENT AND RENTAL ASSISTANCE PAYMENT PROJECTS 162

3.1 PURPOSE 162
3.2 NOTE ON EFFECTIVE DATE 162
3.3 GENERAL PROGRAM DESCRIPTION 162
3.4 ELIGIBILITY 165
3.5 WAIVER OF PBV RULES AND SPECIAL PROVISIONS 170
3.6 PROCESSING REQUIREMENTS FOR PROSPECTIVE CONVERSIONS 173
3.6.1 SUBMISSION OF REQUESTS FOR PROSPECTIVE CONVERSIONS 175
3.6.2 HUD REVIEW OF RAD REQUEST 179
3.6.3 ALLOCATION OF TPV RESOURCES FOR CONVERSIONS 180
3.6.4 SELECTION OF PHA 181
3.6.5 CONSENT OF PHA AND EXECUTION OF PBV HAP OR AHAP CONTRACT 181
3.7 PROCESSING REQUIREMENTS FOR RETROACTIVE CONVERSIONS 182
3.7.1 SUBMISSION OF REQUESTS FOR RETROACTIVE CONVERSIONS 183
3.7.2 REVIEW AND CONSENT OF PHA AND EXECUTION OF PBV HAP OR AHAP CONTRACT 185
3.8 COMPLIANCE WITH ALL APPLICABLE NOTICES REGARDING CONTRACT EXPIRATION OR TERMINATION 186
3.9 FUNDING AVAILABILITY 187
3.10 ADDITIONAL INFORMATION 187

ATTACHMENT 3A - SAMPLE 30-DAY NOTIFICATION LETTER TO RESIDENTS FOR PROSPECTIVE CONVERSION OF RENT SUPPLEMENT (RENT SUPP) AND RENTAL ASSISTANCE PAYMENT (RAP) ASSISTANCE TO PROJECT BASED VOUCHERS 188
ATTACHMENT 3B - SAMPLE NOTIFICATION LETTER TO RESIDENTS FOR RETROACTIVE CONVERSION OF REGULAR VOUCHERS TO PROJECT BASED VOUCHERS 190

APPENDIX I – 24 CFR PART 880 REGULATION, STRICKEN FOR PBRA CONVERSIONS 192

APPENDIX II –THE U.S. HOUSING ACT OF 1937, WAIVED FOR PBRA CONVERSIONS 225

APPENDIX III – PBRA SITE AND NEIGHBORHOOD STANDARDS 226

APPENDIX IV– NEW CODES FOR SPECIAL PROGRAMS REPORTED ON THE FAMILY REPORT (FORM HUD-50058) FOR THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM. 228

APPENDIX V– LIST OF PROGRAM REVISIONS AND CLARIFICATIONS FOR PIH NOTICE 2012-32, REV-1. 229

DEFINITIONS

The Act. The United States Housing Act of 1937.

Agreement to enter into HAP contract (AHAP). A written contract between a PHA contract administrator and the owner that defines requirements for development of housing to be assisted under project-based vouchers. When development is completed by the owner in accordance with the AHAP, the PHA enters into a HAP contract with the owner.

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.

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 8(o)(13)(E) of the Act for PBV conversions, for further details on the Choice-Mobility component.)

Closing. The transaction during which any converting units are released from legacy contracts (e.g., the public housing Annual Contributions Contract), the new PBRA or PBV contract and RAD Use Agreement are executed, any debt and/or equity financing agreement is entered into, and the terms and conditions of the RAD Conversion Commitment are recorded. The closing is the event at which conversion of subsidy takes place; "conversion" has not occurred until completion of closing. (See 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). Document provided to the PHA or owner for projects that have been selected during the RAD competition under the first component of the Demonstration that describes the terms under which HUD will enter into a HAP contract with the project owner. (See Section 1.12 for further details on the CHAP milestones.)

Contract Administrator. HUD or a PHA that executes a HAP contract with a project owner or to which HUD assigns the HAP contract and is responsible for monitoring and reporting to HUD on activities related to the HAP contract.

Contract Rent.[2] The total amount of rent specified in the HAP contract as payable to the owner for a unit occupied by an eligible family.

Covered Project. A project that converts 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.)

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

Distributions. Any withdrawal or taking of surplus cash by the owner/PHA (see definition for "surplus cash").

Date of Full Availability (DOFA). For a public housing project, the date when the dwelling units become available for occupancy.

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 funding for EVs 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 rent in a particular housing market area needed to obtain privately owned, decent, safe and sanitary rental housing. HUD establishes and publishes in the Federal Register separate 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.

[2] In the PBV program this concept is referred to as "rent to owner."

Family Self-Sufficiency (FSS). Funding under this program is made available to PHAs to hire a program coordinator who links residents with training opportunities, job placement organizations, and local employers. 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.

Financing Plan. Documentation submitted to HUD for review that is intended to demonstrate that the covered project will be sustained physically and financially for the term of the HAP contract at the rent levels permitted under the Demonstration, including the means by which 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 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 HUD-required rental contribution from eligible residents.

Housing Quality Standards (HQS). Standards set forth in 24 CFR Part 982, which all units in the HCV program, including vouchers that are project based, must meet before assistance can be paid on behalf of a household and at least annually throughout the term of the assisted tenancy.

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

Mixed-Finance Project. A public housing project that has been developed with a combination of private financing and public housing development funds in accordance with 24 CFR Part 941 (subpart F).

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

Ownership or Control. Applicable only to public housing conversions, ownership or control of a covered project is satisfied as follows:

- Ownership. Where a public or non-profit entity has legal title to the real property.
- Control. Where a public or non-profit entity 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, legal, beneficial or other interests of the owner of a project or has 51 percent or more interest of the general partner share in a limited partnership.

PHA. A Public Housing Agency that administers programs under the Act, which could include public housing and HCVs. Unless otherwise noted, for the purposes of this Notice, the term PHA refers to the owner of a public housing project or a converted public housing project, and not to the HCV administrator. In addition, this Notice always uses the term PHA to refer to the owner of the project, even though, in some cases, the owner may be another public, non-profit, or for-profit owner (e.g., mixed-finance projects).

Physical Condition Assessment (PCA). A detailed physical inspection of a property to determine critical repair needs, short- and long-term rehabilitation needs, market comparable improvements, and environmental concerns. Owners of public housing and Mod Rehab properties converting assistance under RAD will use HUD's PCA for the Mark-to-Market program, as may be modified to specifically meet the requirements of RAD, or a substantial equivalent standard as approved in writing by HUD, which contains a Green Building component. The PCA tool can be accessed at www.hud.gov/rad. (See Section 1.4(A)(1) for further details on the PCA.)

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

Public Housing Project. A public housing development with 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, wherein a PHA can attach voucher assistance to specific housing units through a HAP contract with an owner.

Project-Based Rental Assistance (PBRA). Rental assistance 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). Contract executed by HUD and the PHA or owner, following HUD approval of the submitted Financing Plan, that describes the terms and conditions of the conversion. (See Section 1.12 and Attachment 1A for further details on the RCC.)

RAD Use Agreement. Document specifying the affordability and use restrictions on the covered project, which will be coterminous with the HAP contract and will be recorded prior to the lien of the first mortgage. The RAD Use Agreement is used only in connection with public housing conversions under the Demonstration. (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 to hire and maintain Service Coordinators who assess the needs of residents of conventional public housing and coordinate available resources in the community 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, help improve living conditions and enable residents to age-in-place.

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

Surplus Cash. Following completion of initial repairs, any amounts remaining 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 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 funding for TPVs 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 during HUD Real Estate Assessment Center (REAC) physical inspections in accordance with 24 CFR 5 Subpart G.

Utility Allowance. The amount that a PHA or owner determines is necessary to cover reasonable tenant-paid utility costs. In the case where the utility allowance exceeds the total tenant payment, 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

This Section provides RAD program instructions to public housing agencies (PHAs) and their partners seeking to convert assistance of public housing projects.[3] (For the purposes of this Section, HUD uses the term "PHA" to refer to the owner of a converting or covered project. In some instances the owner of a project could be a public, non-profit, or for-profit, e.g., mixed-finance projects). See Sections 1.6(B)(3) and 1.7(A)(3).)

Major Revisions in PIH Notice 2012-32, REV-1.

All changes contained in this revised Notice, except where noted, are effective immediately for all applicants and current RAD awardees. A complete list of the revisions is included in Appendix V of the Notice. For the benefit of the reader, HUD is providing a redline version of this document, available at www.hud.gov/rad. Major revisions in this Section include:

- Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 1.9.E). [Subject to 30-day Notice & Comment]

- Allowing a PHA to apply for a Portfolio Award for a set of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the portfolio, provided the PHA submits individual completed RAD Applications for at least 50% of the projects. The PHA then has 365 days to submit a completed application for each of the remaining projects (see Section 1.9.E, Attachment 1C). [Subject to 30-day Notice & Comment]

- Providing contract rents at FY 2012 rent levels (as posted in the RAD Application) for all applications submitted prior to the end of CY 2013. This provision facilitates conversion of a public housing project, a multi-phase project, or a PHA-defined portfolio of projects by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5; Section 1.7.A.5, Attachment 1C).

- Allowing PHAs to adjust subsidy (and contract rents) across multiple projects to facilitate financing. The combined subsidy for these "bundled" projects may not

[3] For the purposes of this section, a project is defined as a public housing project with a unique project identification number in the Public and Indian Housing Information Center (PIC). For more details on the different types of conversion awards, see Section 1.9.

exceed the aggregate funding for all of the projects the PHA is proposing to bundle (see Section 1.9.C and Attachment 1C).

- Allowing Moving to Work (MTW) agencies who are applying for two or more projects to use their MTW block grant flexibility to set initial contract rents, subject to RAD rent caps and continued service requirements (see Section 1.9.D and Attachment 1C).

- Expanding eligibility of HOPE VI projects (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

- Eliminating the caps on awards to PHAs and to Mixed-Finance projects (see Section 1.11.C.2.c).

- Exempting awarded public housing projects from scoring under the Public Housing Assessment System (PHAS) to support redevelopment planning and need for temporary relocation during construction (see Section 1.5.I).

- Allowing PHA's to use the Choice Neighborhoods Implementation (CNI) Notice of Funding Availability (NOFA) to apply for Joint RAD/CNI Awards (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

1.2 General Program Description

~~PHAs will apply competitively to convert assistance of projects in accordance with the terms of this Notice.~~ 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. For applications received prior to the end of Calendar Year (CY) 2013, including multi-phase and portfolio awards, PHAs will convert their assistance at ~~current~~Fiscal Year (FY) 2012 subsidy levels~~,~~ as described more fully in Section 1.6.B.5, Section 1.7.A.5, and Attachment 1C.[4] All contract rents established at conversion will be subject to applicable program rent caps. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. Applications ~~must~~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

[4] For purposes of rent calculation under this Demonstration, the FY 2012 funding calculation adds back in the amounts reduced due to the Operating Subsidy Allocation Adjustment. For more details, see Attachment 1C.

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 ~~application~~a RAD Application, HUD will provide the PHA with a Commitment to enter into a Housing Assistance Payment (CHAP), ~~following~~after which the PHA will have to present a Financing Plan for HUD to approve. After HUD approval of the long-term viability of the Financing Plan and successful closing of the conversion, ~~the~~a project will receive a long-term Section 8 HAP contract. Upon conversion, covered projects will be removed from the public housing program and will be released from the public housing Declaration of Trust (DOT).

PBV Conversions. Where the PHA converts assistance of a public housing project to Section 8 PBVs, the project will be administered by the agency on whose Annual Contributions Contract (ACC) the vouchers are assigned (which in many cases will be the same agency that is converting assistance). ~~PBV contract~~ Contract rents will be ~~equal to the project's current funding, subject to a cap~~ established according to the terms described in ~~the~~this Notice~~,~~ and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term~~.~~ (see Section 1.6.B.5 and Attachment 1C). The initial contract will be for a period of at least 15 years (up to 20 years upon approval of the administering voucher agency) and will be subject to annual appropriations. At expiration of the initial contract, the agency administering the vouchers shall offer, and the PHA shall accept, a renewal contract. Each project with a PBV contract will also carry a concurrent renewable RAD Use Agreement. Further, PHAs will provide a Choice-Mobility option to residents of covered projects in accordance with PBV program rules. With the exception of provisions identified in this Notice, regulatory and statutory requirements of the PBV program in 24 CFR Part 983 shall apply.

PBRA Conversions. Where the PHA converts assistance of a public housing project to Section 8 PBRA, the project will be administered by HUD's Office of Housing. ~~PBRA contract~~Contract rents will be ~~equal to the project's current funding, subject to a cap~~ established according to the terms described in ~~the~~this Notice~~,~~ and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term~~.~~ (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, HUD shall offer, and the PHA shall accept, a contract which shall be eligible for renewal under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). Each project with a PBRA contract will also carry a concurrent 20-year renewable RAD Use Agreement. Further, the provision of a Choice-Mobility option to residents of covered projects will be a condition of conversion, 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, 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 a major goal of the first component of RAD is to test, in large part, the conversion of the public housing assistance to long-term, project-based Section 8 assistance available to private owners of assisted multifamily housing in order to generate additional sources of private financing, HUD believes that it is important to offer the Section 8 PBV and PBRA forms of assistance largely in the manner that they have been established and proven effective for private owners, managers, financing entities and residents using them. Accordingly, HUD is applying its waiver authority and ability to establish alternative requirements for the effective conversion assistance on a limited basis to facilitate the major goals of the Demonstration in order to maintain existing distinctions between the PBV and PBRA forms of contract assistance. Such distinctions will enable a PHA or owner to choose one or the other form of assistance to best meet the circumstances and needs of a possible conversion of assistance under RAD. 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.

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.

1.3 Eligibility

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 program finding or deficiency;

E. Not have debarments, suspensions, or Limited Denials 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; and

G. Be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a) and not, without resolving any of the following to HUD's satisfaction, have any of the charges, cause determinations, lawsuits, or letter of findings referenced below against a PHA, its proposed partners, subrecipients, contractors, or the prospective project owner:

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 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 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, then the applicant is ineligible for the demonstration.

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

- Current compliance with a voluntary compliance agreement (VCA) signed by all the parties;
- Current compliance with a HUD-approved conciliation agreement signed by all the parties;

- Current compliance with a conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Current compliance with a consent order or consent decree; or
- Current compliance with a final judicial ruling or administrative ruling or decision.

While only PHAs may apply under this section of the Notice, PHAs may consider enlisting partners to facilitate recapitalization and development of their 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.[5]

1.4 Rehabilitation and Financing Considerations

As one of the main purposes of RAD is to demonstrate how the conversion of current assistance to two different forms of 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, eligible applicants and their development partners are encouraged to consider any and all viable forms of debt and equity financing, including available grant funding, to support conversion.

A. Rehabilitation and Construction Considerations

1. **Physical Condition Assessment (PCA).** Projects selected for award, regardless of whether the PHA is pursuing third-party financing, will be required to perform a detailed physical inspection of the ~~subject property~~project(s) to determine short-term rehabilitation needs, and long-term capital needs to be funded through a Reserve for Replacement account.[6] The inspection must use the PCA Statement of Work that is currently used for debt restructuring transactions in HUD's Mark-to-Market program, as may be modified to specifically meet the requirements of RAD, or a substantially equivalent standard approved in advance in writing by HUD (in HUD's sole and absolute discretion).[7] The PCA must be completed by a qualified, independent third-party

[5] This requirement also applies to directly-funded Resident Management Corporations (RMCs).

[6] A PCA will be required on any units except those replaced with new construction. When replacing existing units with new construction, the replacement reserve deposit for those units shall not be less than FHA standards.

[7] The PCA tool and Statement of Work used ~~in HUD's Mark-to-Market program~~for RAD can be accessed at ~~http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/mhrpaes/training.~~www.hud.gov/rad. For purposes of this notice "PCA" includes any approved substantially equivalent standard.

inspector as required in the Statement of Work and submitted to HUD with the Financing Plan subsequent to issuance of the CHAP (see Attachment 1A of this Notice). PHAs pursuing debt financing should discuss this PCA standard with their lenders. If a lender prescribes its own PCA, it must meet or exceed this RAD requirement, in HUD's discretion.

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.[8] 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 PCA described above. The PCA 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, utilizing the components that the PCA indicates make financial sense, and non-utility saving components that the PCA indicates will improve indoor air quality and/or reduce overall environmental impact where those components have little or no cost premium, consistent with the principles and best practices of the green building industry.

   Where a PHA is planning to use a RAD conversion in conjunction with new construction, projects shall at a minimum meet or exceed the 2006 International Energy Conservation Code (IECC) or ASHRAE 90.1-2004 standard or any successor code that is deemed feasible by HUD under the requirements of the Energy Independence 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.

   ~~Applicants that have indicated~~During the Initial Application Period only, applicants that indicate a commitment to green building utilizing an industry-recognized standard will receive preference points in the selection process (see Section 1.11(D) of this Notice). In this case, determinations about scope of rehabilitation or construction, and components and materials to utilize in that rehabilitation or construction, will be driven by the requirements of the green building program to which the PHA has committed.

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

3. **Temporary Relocation.** Any temporary relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and its implementing regulations (49 CFR Part 24).[9]

4. **Accessibility Requirements.** When a project's rehabilitation meets the definition of a "substantial rehabilitation" under 24 CFR Part 8.23, a PHA must comply with all applicable accessibility features under Section 504 of the Rehabilitation Act of 1973. Where a PHA is planning to use RAD conversion in conjunction with new construction, the project must comply with section 504 of the Rehabilitation Act of 1973 and ~~its~~it's implementing regulations at 24 CFR Part 8, and the design and construction requirements of the Fair Housing Act.

5. **Site Selection and Neighborhood Standards**. Where a PHA is planning to convert assistance under RAD in conjunction with new construction on an alternate site, the PHA must comply with all applicable site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR §§ 1.4(b)(3) and 983.57 (for PBV) or Appendix III (for PBRA).

B. Financing Considerations

1. **Debt Financing.** RAD projects are eligible for financing from private and public lending sources. All loans made that are secured by covered projects are subject to a RAD Use Agreement that will be recorded in first position.

   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 maturity date or balloon no earlier than 18 years, except in the case of PBV conversions when the contract is less than 18 years, in which case the maturity date or balloon cannot be less than the

[9] ~~For a step by step process to comply with the URA, follow the steps in Exhibit 3-1 in the~~ The URA (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24, apply to acquisition of real property and displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property, for a project that receives federal financial assistance, including Section 8 PBV assistance or PBRA. For purposes of this footnote, the term "project" is defined at 49 CFR 24.2(a)(22). URA requirements must be implemented in compliance with all applicable fair housing and civil rights laws, including but not limited to, Title VI of the Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973, and the obligation to affirmatively further fair housing. Pursuant to Title VI, a PHA or owner must, among other things, take reasonable steps that ensure meaningful access to programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). For more information on complying with this requirement, consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, which HUD published in the Federal Register on January 22, 2007. For HUD guidance on complying with Section 504 when administering the URA, see Exhibit 3-1 in HUD ~~Relocation~~ Handbook 1378 ~~CHG 9. Note the language assistance plans and policies including the requirement to prepare appropriate translation and provide other language assistance that comport with individuals with limited English proficiency.~~.

term of the contract.[10] The debt service coverage cannot be less than 1.11 or lender requirements. Any excess loan proceeds may be used to support other purposes consistent with the PHA's mission, e.g., renovations to other properties.

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 (HOME) funding is not permitted in any project that utilizes public housing Capital or Operating Funds, covered projects would be eligible to use HOME funding.

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 an additional source of capital to support conversion (see Section 1.5 of this Notice for more details). MTW PHAs 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 submitted to HUD for review.

3. **Existing PHA Indebtedness and Contractual Obligations.** In its application, a PHA must disclose the estimated amount of any indebtedness—including energy performance contracts, Capital Fund Financing, Operating Fund Financing, Public Housing Mortgage Program, or other sources—that is associated with the subject property. Any outstanding debt on the project must be addressed in the project's Financing Plan. The PHA may want to consider refinancing these existing debt obligations as part of conversion. Conversion does not relieve the PHA of these or other obligations (e.g., VCAs).[11] PHAs

[10] The conditions in this paragraph are not applicable to 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 section 8.9 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.

[11] RAD does not constitute a waiver of any CFFP requirements, including any provisions restricting the removal of units from the inventory that would affect the debt service coverage ratio through diminished Capital Funding or

should be aware that any new first mortgage lender, where applicable, may require that existing indebtedness be paid off or subordinated in connection with the refinancing and conversion of the project.

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

   Some properties converting under RAD may qualify for financing under section 223(f) of the National Housing Act, which provides mortgage insurance for a permanent loan and may include project repairs. FHA ~~will release~~has released separate guidance detailing how HUD ~~will modify~~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"). 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. Section 221(d)(4) provides a combined construction and permanent loan under one commitment for mortgage insurance and permits extensive rehabilitation.

   Risk sharing programs offered by state housing financing agencies, Freddie Mac, and/or Fannie Mae should be considered as well as the basic FHA-insured programs. 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, potentially, historic preservation tax credits, to support recapitalization of their projects. Some properties converting under RAD may also be eligible to participate in HUD's recently announced 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.[12] 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-

requiring defeasance or prepayment, arising from program regulations or contractual relationship with the secured party.

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

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 the latest guidance on how to most effectively compete for awards

While the applicant ~~should~~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. However, for 9% credits, there are special application requirements that are described further in Section 1.9 of this Notice.

If an applicant proposes to use 9% tax credits and the project is selected and offered a CHAP, the PHA will have one opportunity to apply for the tax credits in the next scheduled application round administered by the state or local issuing agency. If 9% tax credits cannot be secured during that first application cycle~~,~~ the CHAP will be terminated unless, within 90 days of notification, the ~~PHA's~~PHA can provide a Financing Plan~~, upon amendment, can demonstrate feasibility without~~ that does not rely on 9% tax credits. HUD may extend this period if needed to obtain 4% LIHTC to meet a State's registration deadline. If tax credits have been secured, all other RAD milestones (see Section 1.12) will apply.

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 that PHAs should explore. Beyond being a source of debt, state and local CDBG and HOME funds are often applied as "gap" grants in other forms of 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.

To the extent that PHAs or owners 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 their capacities. In reviewing the Financing Plan for final approval, HUD will assess the capacity of the development team relative to the proposed redevelopment plan.

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, as an additional 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 submitted to HUD for review. (A PHA may not use public housing program funds on a project following 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 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 correspondingly be also extended. Such extensions will prevent PHAs from otherwise losing its unobligated Capital Funds prior to conversion.

Prior to the approval of a project's Financing Plan, a PHA may expend up to $100,000 in public housing program funds in related pre-development conversion costs per project~~.~~ without HUD approval . Predevelopment assistance may be used to pay for materials and services related to proposed 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 necessary additional predevelopment costs supported by public housing funds.

In the case of a PHA that is converting all units under ACC, there is no restriction on the amount of public housing funds that may be contributed to the converting project(s) at the

point of conversion, i.e., the PHA may convey all program funds to the project undergoing conversion. In the case where the PHA will continue to maintain other units in its inventory under public housing ACC, a contribution to the converting project of Operating Funds 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 funds, will trigger a subsidy layering review.

~~Following execution of the HAP~~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 calendar year of conversion (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. Inapplicability of Section 18 of the Act for Properties Converting All or Substantially All Units.[13] Conversion of assistance does not require approval through Section 18, unless the proposal would reduce the number of assisted units by more than a de minimis amount. Section 18 will similarly not apply for any units that will be replaced off-site. A de minimis reduction is defined as the greater of five percent of the number of project units under ACC immediately prior to conversion or five units. A unit is excluded from this de minimis threshold if any of the following apply:

1. The unit has already received approval from HUD under Section 18 for Demolition or Disposition;[14]

---

[13] Section 18 covers the conditions upon which PHAs may demolish or dispose of public housing units.

[14] If a PHA has requested or received HUD approval under Section 18 for a project, but the project could otherwise be preserved through conversion under RAD~~,~~ the PHA may submit a RAD application for the project.

If a PHA has applied for demolition or disposition under Section 18 of the U.S. Housing Act of 1937 and units are ~~under review by HUD and~~ in "~~demo-dispo proposed status~~"Proposed" or "Under Review" Status in PIC, the PHA ~~must~~should notify the Special Applications Center (SAC) in writing that it wishes to ~~suspend~~withdraw its application because the PHA intends to propose the ~~project~~units for conversion~~.~~ under RAD. If the PHA does not receive HUD approval to convert the ~~project~~units under RAD, the PHA may ~~submit a new~~resubmit the Section 18 application ~~to the~~in withdrew for continued SAC ~~for approval to demolish or dispose of the project under Section 18. (~~processing. If a PHA does not submit a request to the SAC to ~~suspend~~withdraw its Section 18 application prior to submitting an application to convert the project under RAD, the SAC will reject the PHA's Section 18 application ~~upon notification that~~ and the PHA ~~has proposed~~will need to submit a new Section 18 application if it does not receive HUD approval to convert the ~~project~~units under RAD~~.) If units have already~~ and wishes to proceed with demolishing or disposing of the units.

For units that received Section 18 approval~~, upon~~ following the publication of this Notice, HUD may disapprove a RAD application ~~to RAD, but have not yet been actually demolished or disposed of,~~ if the PHA ~~may apply~~ received

2. The unit has been vacant for more than 24 months; or

3. 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).

In such cases, the PHA, within the application, shall submit 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 permanent involuntary displacement of residents may not occur as a result a project's conversion of assistance, including as a result of a change in the 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. Any family temporarily relocated shall have a right to return to the project~~.~~, as defined in Section 1.6.C.2 and Section 1.7.B.2.

Units that qualify for the de minimis exemptions will not be eligible for tenant protection vouchers (excepting those units already approved for demolition or disposition).

C. Ineligibility for Asset Repositioning Fee (ARF) or Replacement Housing Factor (RHF) Fee. PHAs may not apply for ARF and will be ineligible to receive Capital Fund RHF grants for converted units/projects as is otherwise described in 24 CFR § 990.190(h) and 24 CFR § 905.10(i), respectively. RAD does not affect ARF or RHF fees for projects and PHAs previously receiving those fees.

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

---

an award of Tenant Protection Vouchers as a result of the Section 18 approval. In addition, for units with Section 18 approval that also receive approval for conversion ~~of the units~~ under RAD ~~so long as the~~, a PHA ~~commits (as part of its RAD application) to request HUD approval to rescind the Section 18 approval under~~may carry out the approved demolition action prior to RAD closing provided such actions are consistent with the RAD plan (e.g. demolition and new construction of the Section 8 units), but may not change the status of the units in PIC to "RMI." In such cases, HUD is waiving 24 CFR § 970.~~7(b)(1), upon HUD approval of the Financing Plan.~~35. However, if the CHAP for these units is revoked and the demolition has occurred, 24 CFR § 970.35 will apply and the PHA must change the units' status to "RMI."

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 would continue to count under the PHA's Faircloth cap.)

E. Conversion is a Significant Amendment to Annual/Five Year Plan. Conversion of assistance under the Demonstration will be considered a significant amendment to the PHA's Five-Year Plan for qualified and non-qualified PHAs, ~~and~~ the Annual Plan for non-qualified PHAs, and the Moving to Work (MTW) Plan for MTW PHAs. As such, ~~both~~ 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. 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. A PHA must submit this amendment to HUD within 60 days following the delivery of the CHAP. In addition to the information already required by 24 CFR Part 903 for PHA Plan amendments, all PHAs ~~must include~~shall be required to provide the ~~following~~ information listed in Attachment 1D in their ~~significant amendment:~~Significant Amendment.

1. ~~A description of the units to be converted, including the number of units, the bedroom distribution of units, and the type of units (e.g., family, elderly/disabled, or elderly-only);~~

2. ~~Any change in the number of units that is proposed as part of the conversion, including de minimis unit reductions and unit reductions that are exempt from the de minimis cap;~~

~~3.~~2. ~~Any change in the bedroom distribution of units that is proposed as part of the conversion;~~

4. ~~Any changes in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted. This includes any waiting list preferences that will be adopted for the converted project; and~~

5. ~~If there will be a transfer of assistance at the time of conversion, the significant amendment must include the location (including census tract) of any converted units that will be transferred off-site, as well as the information described above for the units that will be transferred. In addition, if some, but not all of the assisted units will be transferred to another site at the time of the conversion, the significant amendment~~

~~must also include a description of how the waiting list will be transferred and how households will be selected for the transfer.~~

HUD will review all significant amendments for compliance with civil rights laws, Executive Orders, and regulations. A PHA may be asked to provide further information on how the proposed conversion will meet civil rights requirements including, but not limited to, how the proposed conversion will: meet the applicable site and neighborhood requirements; provide housing in the most integrated setting appropriate to the needs of qualified persons with disabilities in accordance with 24 CFR § 8.4(d); and affirmatively further fair housing.

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, ~~and~~the covered project(s) will continue to be included in the PHA's MTW program. However, in the event that there's a conflict between the MTW Agreement and this final Notice, this final Notice will prevail for the covered project and HUD will work with the PHA to amend any of its MTW Agreements as needed.[15]

~~F.~~G. **Outstanding Debt Incurred Under Section 4 of the Act.** For any outstanding principal balance and interest due on loans held by HUD issued to finance original development or modernization of the covered 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.

~~G.~~H. **Resident Opportunities and Self Sufficiency Service Coordinators (ROSS-SC) and Public Housing Family Self-Sufficiency (PH FSS) programs.** So that residents currently participating in ROSS-SC or PH FSS may continue to do so upon conversion, HUD is waiving ~~section 34 of the Act (for ROSS-SC and PH FSS).~~provisions in section 34 of the Act that limit ROSS-SC and PH FSS to Public Housing. Additionally, PHAs may not terminate or withhold assistance for noncompliance with the FSS contract for PH FSS participants who convert to the HCV FSS program; as such, HUD is waiving 24 CFR 984.303(b)(5)(iii) for these participants.

[15] This arrangement would be similar to MTW administration of other HUD programs, including VASH vouchers and Section 202 Housing for the Elderly.

I. **Public Housing Assessment System (PHAS).** Upon issuance of a CHAP, all public housing units covered by the CHAP shall not be issued scores for the fiscal year in which the CHAP was issued, nor any subsequent fiscal year until such time as conversion, at which point the units shall be subject to applicable Section 8 program requirements. 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 concerning these units covered by the CHAP. HUD is therefore waiving 24 CFR 902, Subpart A in order to effectuate this treatment. Immediately after the issuance of the CHAP, PHAs must identify the units covered by a CHAP by submitting an application in the Inventory Removals module in PIC as either "RAD Conversion PBV" or "RAD Conversion PBRA."

J. **Section 33 Required Conversion Review.** 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 972, Subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

1.6 Special Provisions Affecting Conversions to PBVs

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

Listed below are the "special" requirements applicable to public housing projects converting assistance to long-term PBVs 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 shall apply, including resident choice, environmental review, relocation assistance, and fair housing requirements.[16]

A. PBV Project Selection

[16] Fair housing requirements include but are not limited to planning, siting, admissions and occupancy, accessibility for persons with disabilities, nondiscrimination and equal opportunity, and affirmatively furthering fair housing.

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 currently set at 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.

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.

   An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).[17]

   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 waiving 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 RAD converted project.[18]

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

[18] See also 73 FR 71037, which implements language in the Housing and Economic Recovery Act, allowing for the cap on the number of PBV units to apply to a project, rather than a building. Although this change is not yet reflected in 24 CFR § 983.56, these statutory changes are self-implementing.

3. **Owner Proposal Selection Procedures.** Selections of covered projects shall be made in accordance with program requirements outlined in this Notice. To implement this provision, HUD is waiving 24 CFR § 983.51.

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)**. HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.[19]

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 PHA and with approval by the agency administering the vouchers). To implement this provision, HUD is waiving 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).[20] Owners of covered projects 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 shall be subject to conditions that HUD may impose.

2. **Mandatory Contract Renewal.** By statute, upon contract expiration, the agency administering the vouchers shall offer, and the PHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. 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.[21]

3. **Ownership or Control.** Pursuant to the RAD statute, during the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of assisted units by a public or non-profit entity.[22] However, as HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of

[19] Site selection standards at 24 CFR 983.57 will apply to all off-site replacement projects and transfers of assistance.

[20] 24 CFR § 983.205 (a) has not been updated to reflect changes made to the initial contract term in the Housing and Economic Recovery Act of 2008. As reflected in 73 FR 71037, these statutory changes are self-implementing; therefore, the initial term of the contract is 15 years.

[21] See previous note.

[22] "Ownership or Control" as defined in the Definitions section of this Notice.

assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary. HUD may allow ownership of the project to be transferred to a for-profit entity to facilitate such entity's use of tax credits, but only if the PHA preserves its interest in the property in a manner approved by the Secretary.[23] All current and future ownership entities are subject to the eligibility requirements of Section 1.3 of this final Notice, including the civil rights threshold requirements.

4. **RAD Use Agreement.** Pursuant to the RAD statute, covered projects shall have an initial RAD Use Agreement that:

   a. Will be recorded superior to other liens on the property;

   b. Will run for the same term as the initial 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 owner requests a transfer of assistance;

   c. Requires 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 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

   d. Requires 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 requirements.

5. **Initial Contract Rent Setting.** ~~Pursuant to~~ 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.) For all RAD ~~statute,~~applications received prior to December 31, 2013, including

[23] Sufficient ~~control~~interest in the project could include, but not be limited to, the following: long-term ground lease on the land, seller take-back financing subordinate to the first mortgage financing and serviced by available cash flow from property operations; other seller funds lent to the property that is subordinate to the first mortgage financing and serviced by available cash flow from property operations; and right of first refusal for sale of property.

applications for Portfolio or Multi-phase Awards, this calculation is based on FY 2012 funding for each public housing project.[24] Accordingly, these rents will be established in HAP contracts for any conversions that occur in calendar year (CY) 2013. For applications received in CY 2013 where the conversion closes in CY 2014 or later, the HAP contract will carry these rents adjusted by the Operating Cost Adjustment Factor (OCAF).

Notwithstanding HUD's calculation, initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents ~~will apply~~ (see 24 CFR § 983.301~~), except that rents cannot exceed "current funding" (see Attachment 1C – Calculation of Contract Rent for more detail on the determination of current funding).~~). To this effect, initial contract rents cannot exceed the lower of: (a) ~~current funding (adjusted for bedroom size); (b)~~ the reasonable rent (as defined under 24 CFR § 983.303); (~~c) up to~~b) an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (~~d~~c) the rent requested by the owner.[25, 26]

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

a. **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 only exercise this flexibility to set initial contract rents 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.

b. **Rent Bundling.** PHAs may adjust subsidy (and 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

[24] FY 2012 funding calculation adds back in the Operating Subsidy Allocation Adjustment.

[25] In the event that current funding exceeds the amounts established above, a PHA may make a permanent transfer of any subsidy in excess of the allowable rent caps to its voucher program to support Choice-Mobility. ~~The transfer of subsidy will occur at the date of closing of the conversion of the contributing project.~~

[26] In a limited number of situations where converting projects with LIHTCs are located outside of a Qualified Census Tract, rents are determined in accordance with 24 CFR 983.301(c).

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 the subsidy is $200; and in Project B, the contract rent is $600 and the subsidy is $300. The PHA could bundle the two projects such that the rent at both projects will be $550 and the subsidy provided to each project is $250.

See Section 1.9 on instructions on how to submit applications with bundled rents.

c. **Future Replacement Housing Factor (RHF) funds.** PHAs that are scheduled to receive ongoing RHF funding in future years may choose to forgo any ongoing RHF grants and repurpose the foregone subsidy to augment the RAD rent. See Attachment 1C for the calculation of how foregone RHF funding may augment the RAD rent.

~~5.~~6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted annually by HUD's ~~Operating Cost Adjustment Factor (~~OCAF~~)~~ at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.[27] 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 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.[28]

~~6.~~7. **Transfer of Assistance.** Pursuant to the RAD statute, in order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, with HUD and lender and/or investor approval, after consultation with residents, and consistency with

[27] 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. For the most recent guidance on OCAF, please see: http://www.gpo.gov/fdsys/pkg/FR-2011-10-26/pdf/2011-27816.pdf.

[28] 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.

the Consolidated Plan, a PHA (as owner) may transfer part or all of a rental assistance contract and a RAD Use Agreement to unassisted units owned or controlled by a public or non-profit entity.[29] HUD may only approve a transfer if the project is economically non-viable, physically obsolete, severely distressed, or uninhabitable due to unforeseen circumstances such as natural disasters, or the transfer is in the best interest of the project's residents. A PHA may only request a transfer of assistance at conversion or after 10 years from the effective date of the initial contract (unless a transfer is needed sooner as a result of a natural disaster). A project to which assistance is transferred is subject to all of the contract terms as described in the HAP, RAD Conversion Commitment (RCC) (see section 1.12), and Use Agreement, as well as all applicable site and neighborhood standards (including, but not limited to, site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR §§ 1.4(b)(3) and 983.57). Any transfer of assistance at the time of initial conversion must be included in the significant amendment to the PHA's Annual Plan.

8. ~~**RAD Rehab Assistance.**~~**RAD Rehab Assistance.** Units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance 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 approved Financing Plan and RCC, the maximum RAD Rehab Assistance a PHA may receive (i.e. for occupied units, units eligible for vacancy payments, or units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion.[30] As a result, not all units included in the converting property will be eligible for rehab assistance payments. RAD Rehab Assistance Payments are separate and distinct from the two currently authorized PBV assistance payments: (i) regular housing assistance payments; and (ii) discretionary, post-occupancy vacancy payments under section 8(o)(13)(k) of the 1937 Act and 24 C.F.R. § 983.352. As necessary to implement this

[29] HUD's fair housing and civil rights review of each request to transfer assistance will include, but not be limited to, a review of: the site and neighborhood of the property receiving assistance; any change in the number and/or bedroom distribution of assisted units; and any change in the policies that govern eligibility, admission, selection, and occupancy of assisted units after the transfer of assistance, including any waiting list preferences that will be adopted after the transfer of assistance. If only part of the assistance will be transferred, HUD will also review the PHA's or owner's plan for transferring the waiting list and selecting households that will be transferred to the new site.

[30] 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.

provision, HUD is waiving the applicability of additional provisions in section 8 of the Act and 24 CFR Part 983 and instituting an alternative requirement.

Following the earlier of (1) the end of the construction period determined within the HUD-approved Financing Plan or (2) the end of 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.

~~To ensure that the amount of subsidy for the 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, for units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment. As necessary to implement this provision, HUD may waive the applicability of additional provisions in section 8 of the Act or 24 CFR Part 983, or may allow reserve or escrow accounts to be funded at or following conversion for the repairs to unoccupied units conducted in accordance with the RCC.~~

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 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. 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. Once that remaining household moves out, the unit must be leased to an eligible family.

2. **Right to Return.** Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to ~~the development once rehabilitation or construction is completed.~~an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved (see Section 1.6.B.7 and Section 1.7.A.8 on conditions warranting a transfer of assistance), residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

3. **Renewal of Lease.** Under current regulations at 24 CFR § 983.257(b)(3), upon lease expiration, a PHA can choose not to renew the lease, without good cause. In such a case, the regulatory consequence is the loss of the assisted unit. Under RAD, the PHA must renew all leases upon lease expiration, unless cause exists. Consequently, 24 CFR § 983.257(b)(3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate.

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 ~~years, which a PHA may extend to~~or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR ~~§§~~§ 983.3 (definition of "total tenant payment~~") and 983.353(b)(1),~~" (TTP)) only to the ~~limited~~ 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.

   The below method explains the set percentage-based phase-in an 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

   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 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 recertificaitons – 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 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.

5. **Public Housing Family Self Sufficiency (PH FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, ~~subject to the following:~~and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program, subject to the following:

   a. If a PHA has an HCV FSS program, a PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

   b. If a PHA does not have an HCV FSS program, the PHA must establish an HCV FSS program and convert the PH FSS program participants at the covered project into their HCV FSS program. PHAs are not required to offer enrollment in FSS to residents in converting projects and other HCV participants, other than to residents in converting projects that were enrolled in the PH FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

   All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984 and in accordance with the participants' contracts of participation. However, residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

~~**b.** If a PHA does not have an HCV FSS program, but is currently funded for PH FSS for that project, current participants at the covered project will continue to be eligible under PH FSS guidelines.~~

~~Once the property is converted, residents not then enrolled in PH FSS will not be eligible to participate in the program. PHAs will be allowed to use any funds already granted for PH FSS coordinator salaries until such funds are expended, at which point they are no longer required to include the families in the FSS program. Participants in converted units will not be counted towards future PH FSS funding once converted.~~

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 public housing ROSS-SC grants, nor will its residents be eligible to be served by future public housing ROSS-SC grants.

6. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of covered projects converting assistance to PBVs 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 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.

   a. **Termination Notification**. HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257, related to owner termination of tenancy and eviction, as modified by the waiver in Section 1.6(C)(3) above, 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:

      i. A reasonable period of time, but not to exceed 30 days:
      - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - In the event of any drug-related or violent criminal activity or any felony conviction;

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

iii. 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

b. Grievance Process. HUD is incorporating additional procedural rights to comply with the requirements of section 6 of the Act.

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

i. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),[31] an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a PHA (as 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.

- 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.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

ii. An informal hearing will not be required for class grievances or to disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

iii. The PHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).

iv. The PHA (as owner) provide 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.

[31] § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

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 to only 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 only disabled persons is waived. The waiver and resulting alternative requirement only applies 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. **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. To the greatest extent possible the community facility should continue to be available to public housing residents

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.[32]

3. **Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Under existing PBV program rules, projects that qualify as "existing housing" under 24 CFR § 983.52(a) are not subject to Davis-Bacon (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) or Section 3 (24 CFR Part 135). However, the Davis-Bacon Act and Section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation, regardless of whether the project qualifies as "existing housing." Developmental requirements under 24 CFR § 983.154 and fair housing provisions under 24 CFR § 983.152(c)(vi) continue to apply.[33]

4. **Establishment of Waiting List.** In establishing the waiting list for the converted project, the PHA shall utilize the project-specific waiting list that existed at the time of conversion., unless the assistance is being transferred to another neighborhood. If a project-specific waiting list does exist, but 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. In addition, the waiting list must be established and maintained in accordance with PBV program requirements.

   If a project-specific waiting list for the project does not exist, the PHA 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. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, PHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the PHA's policies for waiting list management, including the obligation to affirmatively further fair housing.

   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

[32] 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.

[33] Applicable to projects with nine or more units.

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 centralized public housing waiting list who wish to be placed onto the newly-established waiting list are 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 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).[34]

To implement this provision, HUD is waiving 24 CFR § 983.251(c)(2). 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 § 983.251(c).

5. **Mandatory Insurance Coverage.** The 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, except with the written approval of HUD to the contrary.

6. **Agreement Waiver.** 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 Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D are waived.

7. **Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within 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**. For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the PHA and HUD will cover the project units, but

[34] 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.

be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring PHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing 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 ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

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 URA requirements in 49 CFR part 24, and applicable standing and subsequent Office of Housing guidance[35] 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

[35] 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). These include fair housing requirements related to planning, siting, admissions and occupancy, accessibility for persons with disabilities, nondiscrimination and equal opportunity and affirmatively furthering fair housing. 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.

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 waiving 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 contract expiration, the Secretary shall offer, and the PHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year 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.** Pursuant to the RAD statute, during the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of assisted units by a public or non-profit entity. However, as HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary. HUD may allow ownership of the project to be transferred to a for-profit entity to facilitate such entity's use of tax credits, but only if the PHA preserves its interest in the property in a manner approved by the Secretary.[36] All current and future ownership entities are subject to the eligibility requirements of Section 1.3 of this final Notice, including the civil rights threshold requirements.

[36] Sufficient interest in the project could include, but not be limited to, the following: long-term ground lease on the land, seller take-back financing subordinate to the first mortgage financing and serviced by available cash flow from property operations; other seller funds lent to the property that is subordinate to the first mortgage financing and serviced by available cash flow from property operations; and right of first refusal for sale of property.

4. **RAD Use Agreement.** Pursuant to the RAD statute, covered projects shall have an initial RAD Use Agreement that:

   a. Will be recorded superior to other liens on the property;

   b. Will run for the same term as the initial 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 owner requests a transfer of assistance;

   c. Requires 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 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

   d. Requires compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR § 1.4(b)(3).

5. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. Consequently, section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, shall not apply. Nor shall section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the "project account," apply. ~~At the time that assistance will be converted,~~HUD has calculated initial contract rents ~~will be established~~for every public housing project based on ~~the funding for which a project is currently eligible, including pro-rated Operating Subsidy eligibility, the portion of the PHA's Capital Fund Formula Grant attributable to the project, and tenant rents (see~~each project's subsidy under the public housing program. (See Attachment 1C ~~of this Notice~~ for ~~more detail). Initial~~a full description of the methodology.) For all RAD applications received prior to December 31, 2013, including applications for Portfolio or Multi-phase Awards, this calculation is based on FY 2012 funding for each public housing project.[37] Accordingly, these rents will be established in HAP contracts for any conversions that occur in calendar year (CY) 2013. For applications received in CY 2013 where the

[37] FY 2012 funding calculation adds back in the Operating Subsidy Allocation Adjustment.

conversion closes in CY 2014 or later, the HAP contract will carry these rents ~~will be~~ adjusted by the OCAF.

Regardless of HUD's calculation, initial contract rents will be capped at ~~the lesser of (a) current funding; or (b)~~ 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when ~~current funding~~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 ~~current~~ rents are below comparable market rents.[38] Any such determination will be made by HUD in its sole and absolute discretion.[39] ~~-~~Where contract rents are at or below 120 percent of the FMR, no RCS is required.

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

a. **MTW Fungibility**. MTW agencies may use their MTW block grant funds to set their initial contract rents. In addition to the rent cap described above, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. MTW agencies may only exercise this flexibility to set initial contract rents 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.

[38] The Rent Comparability Study must be prepared in accordance with Chapter Nine of HUD's Section 8 Renewal Guide, including any changes to Chapter Nine that HUD publishes while the HAP contract is in effect. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8. A RCS will not be required in any other instance during the initial 20-year contract term.

[39] ~~A~~In the event that current funding exceeds the amounts established above, a PHA may make a permanent transfer of any subsidy in excess of the allowable rent caps ~~from a project converting under RAD~~ to its voucher program to support Choice-Mobility. ~~The transfer of subsidy will occur at the date of closing of the conversion of the project.~~

b. **Rent Bundling.** PHAs may adjust subsidy (and 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 the subsidy is $200; and in Project B, the contract rent is $600 and the subsidy is $300. The PHA could bundle the two projects such that the rent at both projects will be $550 and the subsidy provided to each project is $250.

See Section 1.9 on instructions on how to submit applications with bundled rents.

c. **Future Replacement Housing Factor (RHF) funds.** PHAs that are scheduled to receive ongoing RHF funding in future years may choose to forgo any ongoing RHF grants and repurpose the foregone subsidy to augment the RAD rent. See Attachment 1C for the calculation of how foregone RHF funding may augment the RAD rent.

6. **Method of Adjusting Contract Rents.** Contract rents 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 term.[40] Consequently, neither section 8(c)(2) of the Act nor 24 CFR § 880.609, which govern rent adjustments for project-based Section 8 units, shall apply. While the initial rent is capped, rent caps do not apply when calculating rent adjustments by OCAF and no RCS is required.

7. **Distributions.** Regardless of type of financing, converted projects will not be subject to any limitation on distributions, contingent on the availability of surplus cash as determined by year-end audited or certified financial statements. To implement this

[40] 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.

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**. Pursuant to the RAD statute, in order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, with HUD and lender and/or investor approval, after consultation with residents, and consistency with the Consolidated Plan, a PHA (as owner) may transfer part or all of a rental assistance contract and a RAD Use Agreement to unassisted units owned or controlled by a public or non-profit entity. [41] HUD may only approve a transfer if the project is economically non-viable, physically obsolete, severely distressed, or uninhabitable due to unforeseen circumstances such as natural disasters, or the transfer is in the best interest of the project's residents. A PHA may only request a transfer of assistance at conversion or after 10 years from the effective date of the initial contract (unless a transfer is needed sooner as a result of a natural disaster). A project to which assistance is transferred is subject to all of the contract terms as described in the HAP, RCC, and Use Agreement, as well as site and neighborhood standards specified in Appendix III and all applicable fair housing and civil rights requirements (including, but not limited to, site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR § 1.4(b)(3)). Any transfer of assistance at the time of initial conversion must be included in the significant amendment to the PHA's Annual Plan.

9. ~~**RAD Rehab Assistance.** To ensure that the amount of subsidy for the 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, for units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment.~~ **RAD Rehab Assistance Payments**. To ensure that the amount of subsidy for the 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, for units that are

[41] HUD's fair housing and civil rights review of each request to transfer assistance will include, but not be limited to, a review of: the site and neighborhood of the property receiving assistance; any change in the number and/or bedroom distribution of assisted units; and any change in the policies that govern eligibility, admission, selection, and occupancy of assisted units after the transfer of assistance, including any waiting list preferences that will be adopted after the transfer of assistance. If only part of the assistance will be transferred, HUD will also review the PHA's or owner's plan for transferring the waiting list and selecting households that will be transferred to the new site.

not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment. As necessary to implement this provision, HUD ~~may suspend~~is suspending the applicability of additional provisions in 24 CFR ~~Part~~§ 880~~, waive~~.504(a) until all contract units are made available for occupancy and waiving the applicability of ~~additional provisions in~~ section 8(c)(4) of the Act~~,~~.

Units that are not occupied and will be undergoing rehabilitation or ~~allow reserve or escrow accounts~~construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance equal to ~~be funded at~~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 approved Financing Plan and RCC, the maximum RAD Rehab Assistance a PHA may receive (i.e. for occupied units, units eligible for vacancy payments, or ~~following~~units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion ~~for the repairs to unoccupied units conducted in accordance with the RCC.~~.[42] As a result, not all units included in the converting property will be eligible for rehab assistance payments.

Following the earlier of (1) the end of the construction period determined within the HUD-approved Financing Plan or (2) the end of 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.

B. PBRA Resident Rights and Participation

1. **No Rescreening of Tenants upon Conversion.** Pursuant to the 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. 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),

[42] 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.

concerning determination of eligibility and selection of tenants, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family.

1.2. **Right to Return.** Any resident that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to the development once an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved (see Section 1.6.B.7 and Section 1.7.A.8 on conditions warranting a transfer of assistance), residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

3. **Phase-in of Tenant Rent Increases.** If a resident'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 years, which a PHA may extend to 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR § 880.201 (definition of "total tenant payment"), to the limited extent necessary 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.

The below method explains the set percentage-based phase-in an 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.

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) 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 recertificaitons – 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 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.~~ **Public Housing Family Self-Sufficiency (PH FSS) and Resident Opportunities and Self Sufficiency (ROSS-SC).** Current PH FSS participants ~~at the covered project~~ will continue to be eligible ~~under PH~~for FSS ~~guidelines until the PH FSS grant expires.~~

~~5.~~4.~~Once the property~~once their housing is converted~~,~~ under RAD. All owners will be required to administer the FSS program in accordance with the participants' contracts of participation and future guidance published by HUD. Owners may not offer enrollment in FSS to residents ~~not then~~ in projects converted to PBRA that were not enrolled in ~~FSS will not be eligible to participate in the program. PHAs~~the PH FSS program prior to RAD conversion, nor may owners offer FSS enrollment to any new residents at the project. Owners will be allowed to use any funds already granted for PH FSS coordinator salaries until such funds are expended~~, at which point they are no longer required to include the families in the FSS program. Participants in converted units will not be counted towards future~~ . All owners will be required to provide both service coordinators and payments to escrow until the end of the Contract of Participation. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator

funding eligibility under a RAD conversion. As the PH FSS grant is the source of funding for PH FSS ~~funding once converted.~~ , program compliance will continue to be monitored by the Office of Public and Indian Housing.

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 public housing ROSS-SC grants nor will its residents be eligible to be served by future public housing ROSS-SC grants.

~~6.~~5. **Resident Participation and Funding.** Residents of covered projects converting assistance to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, in accordance with Attachment 1B, residents will be eligible for resident participation funding.

~~7.~~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.

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

   i. *Termination of Tenancy and Assistance*. The termination procedure for RAD conversions to PBRA will additionally require that PHAs (as owners) provide adequate written notice of termination of the lease which shall not be less than:

      - A reasonable period of time, but not to exceed 30 days:
        - If the health or safety of other tenants, owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
        - In the event of any drug-related or violent criminal activity or any felony conviction; or
      - 14 days in the case of nonpayment of rent.

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

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

i. Residents be provided with notice of the specific grounds of the proposed owner adverse action, as well as their right to an informal hearing with the PHA (as owner);

ii. Residents will have an opportunity for an informal hearing with an impartial member of PHA's staff (as owner) within a reasonable period of time;

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

iv. PHAs (as 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 PHA (as owner) relied on as the basis for the adverse action.

The PHA (as owner) will be bound by decisions from these hearings, except if the:

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

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

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

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. **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. To the greatest extent possible the community facility should continue to be available to public housing residents.

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 Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** The Davis-Bacon Act (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) and Section 3 (24 CFR Part 135) apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation. (The Davis-Bacon Act only applies for projects with nine or more units.)

3. **Establishment of Waiting List.** In establishing the waiting list for the converted project, the PHA shall utilize the project-specific waiting list that existed at the time of conversion. If a project-specific waiting list does exist, but 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.

If a project-specific waiting list for the project does not exist, the PHA 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. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, PHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the PHA's policies for waiting list management, including the obligation to affirmatively further fair housing.

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 (i.e., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (i.e., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency's centralized public housing waiting list who wish to be placed onto the newly-established waiting list are 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 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).[43]

To implement this provision, HUD will not apply 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 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, except with the written approval of HUD to the contrary.

[43] 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.

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:[44]

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

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

   c. *Project Turnover Cap.* Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the property, in any year, a 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 less than 15.) While a voucher agency is not required to establish a project turnover cap, if implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

   HUD's goal is to have 100 percent of 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:

   - Provide ranking factor points where a voucher agency has committed to provide vouchers to the covered PBRA project of a PHA without a voucher program (see Section 1.11D). Additionally, voucher agencies that make such a commitment will receive:
     - Priority points for new HCV FSS coordinator positions in an upcoming FSS competition and

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

  - The bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.[45, 46]

- Grant a good-cause exemption from the Choice-Mobility requirement for no more than 10 percent of units in the Demonstration. HUD will only consider requests for good-cause exemptions from the following types of PHAs:
  - Public housing–only agencies, defined as agencies that own units under a public housing ACC, but do not administer, directly or through an affiliate, a Housing Choice Voucher program; 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.[47] 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.

  HUD will issue these exemptions in the following order of priority: 1) small public housing-only PHAs; 2) all other public housing-only PHAs; and 3) combined agencies that currently have more than one-third of their vouchers set aside for veterans and/or homeless. See Section 1.11 for more information on Choice-Mobility exemptions in the competition.

6. **Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within 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.)

[45] 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.

[46] 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.

[47] 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.

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 from time to time regarding submission of financial statements.[48]

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) of the US Housing Act of 1937, which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, 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. 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 waiving section 16(c)(2) of the US Housing Act of 1937 and 24 CFR §5.653(d)(2) and is instituting an alternative requirement that owners of projects converting to PBRA adhere to the requirements of section 16(c)(1) of the US Housing Act of 1937 and 24 CFR §5.653(d)(1).

1.8 Resident Notification

Prior to submitting an application to participate in the Demonstration, HUD requires a PHA to:

1. Notify residents of projects proposed for conversion and 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.

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.

In accordance with 24 CFR § 8.6, Title VI, Executive Order 13166 and HUD's Limited English Proficiency Guidance, published in the Federal Register on February 16, 2007 (72 FR 2732), the meetings and materials should include accessible communications for persons with disabilities

[48] 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).

and language assistance to persons with limited English proficiency. The PHA must make documents used to communicate with affected residents through the conversion process, including meeting materials and responses to resident comments, available either online or as hard copies.

The requirement for resident notification and meetings for the RAD program are separate from the resident notification and consultation requirements under the significant amendment process (24 CFR Part 903) and applicable relocation requirements. A PHA must comply with all applicable resident consultation and notification requirements.

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 of assisted units; or
- A substantial change in the scope of work.

Upon issuance of the RAD Conversion Commitment (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.

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 which incorporate rent flexibilities such as rent bundling or MTW fungibility. The requirements for each type of application are listed below:

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

Applications will be accepted on a project-by-project basis~~.~~, except where otherwise noted in this Section. If a PHA desires to convert only a portion of a project (e.g., only the high-rise portion of a project that is currently combined with scattered sites) and maintain the

remaining portion as public housing, the PHA should indicate as such in its application (i.e., the PHA will not need to request a change in configuration for the project in order to submit the application).

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.

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

1. A **RAD Board Approval Form**, which will include the proposed pro-forma and other key certifications, must be approved by the PHA's Board and signed by the authorized representative of the PHA. This form will be required for all submitted applications.
2. A **Financing Letter of Interest/Intent** from each lender or equity investor, indicating, among other conditions, that the proposed pro-forma is reasonable. This letter is required where third-party financing is indicated in the application pro-forma. (A Financing Letter of Interest/Intent is not required where the pro-forma indicates that no financing is required, e.g., where immediate and long-term project capital needs can be met through a Reserve for Replacements account.) 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 that is seeking to earn a Ranking

Factor, per Section 1.11(D) of this Notice); 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 a voucher agency evidencing their 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.

B. 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.

~~For all forms of tax credit, including 9%, 4%, or Historic, because HUD only has limited authority to make commitments for conversion of assistance under RAD, HUD will only make initial awards, known as a Commitment to enter into a Housing Assistance Payment (CHAP) for the number of units that can be awarded tax credits in a single QAP cycle. CHAP awards for multi-phase developments that rely on multiple LIHTC awards will only~~

~~cover the first phase HUD will consider future phase development if HUD has authority under the cap imposed by statute to convert additional units.~~

C. Applications for Multi-phase Development.[49] For projects requiring multi-phase development, a PHA's RAD Application for the first phase must include: 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). 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 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.

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. 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.

D. 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 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. 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.

E. MTW Contract Rent Flexibility. MTW agencies may only submit an application proposing to use their MTW block grant authority to set initial contract rents 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

[49] In administering URA requirements with respect to a multi-phase development, a PHA or owner may request that HUD approve phased initiation of negotiations (ION) for the project when it deems that a single ION date would be impracticable and/or detrimental to the smooth relocation of residents. The ION is a trigger date for issuance of a Notice of Eligibility for Relocation Assistance or the Notice of Nondisplacement to each resident. Phased ION dates may be particularly appropriate when a project is very large and/or is located in a community with insufficient housing resources to absorb residents who will be relocated, temporarily or permanently, from the project

continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02.

F. 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.[50] 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.

G. Joint Application under the FY 2013 Choice Neighborhoods Initiative (CNI) Implementation Notice of Funding Availability (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 NOFA application that their application is a joint RAD/CNI application and identify which projects they are applying to convert under RAD. In such cases, the 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, Joint applications will be issued a CHAP for each project identified in their joint application and will lock in

[50] 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.

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 issued by HUD.

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.[51] 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 associated with the submission of an application or the withdrawal of an application or award. Additionally, there is no cap on the number of project applications that a PHA may submit or resubmit. However, applicants should be reminded that there is a 60,000 unit cap on overall RAD conversion authority.

Only applications that have met all applicable submission requirements will be considered. Rejected applicants will be notified and the PHA may choose to re-submit. If resubmitted, the application will be considered according to 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 for a new eligibility category (Portfolio Award, a Multi-phase Award, or Joint RAD/CNI CHAP Awards, as listed in Section 1.9, or for a HOPE VI project covered by the newly revised Section 1.11.C.2.c), then HUD shall consider the application to have been received the day following the expiration of the Notice and Comment Period. HUD will then consider those applications in the order in which they were received.

HUD reserves the right to close or reopen the application process at any time if it determines that sufficient applications have been received to utilize the allowable units. HUD also reserves the right to alter or waive any of the selection criteria listed within this Notice in future versions.

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

1.11 Selection Criteria

This section explains the criteria that HUD will use to select projects competitively for participation under the Demonstration, including targets, program caps, application periods, and ranking factors.

[51] The release date of the final RAD Application will be subject to Paperwork Reduction Act (PRA) approval.

~~A. Targets~~
A. Targets [THIS SECTION HAS BEEN SUPERSEDED BY SECTION 1.11.C.2.]

As required under the RAD statute, HUD seeks to offer awards to PHAs of varying sizes and across geographies. Awards will be made according to the CHAP Unit Commitment Targets (or pools) as indicated in the table below, representing approximately five percent of the public housing stock.[52] These targets reflect the share of public housing units within each Census Region by PHA size (from IMS/PIC extract December 31, 2011).

Upon receipt of applications, HUD may, to utilize all available units under the caps, make minor modifications to one or more of these caps in order to accommodate the number of units represented by the actual applicant properties. Further, if there are insufficient applications to meet the 1,250 units targeted for Mod Rehab conversions (see Section 2.2.10 of this Notice), representing approximately five percent of the Mod Rehab stock, HUD reserves the right to make additional awards to qualified public housing applications.

Public Housing CHAP Unit Commitment Targets, by Census Region and PHA Size ("Pools")[53]

PHA Size	Region				
	Northeast	**Midwest**	**South**	**West**	**Total**
Fewer than 250 units (Small)	1,314	2,985	5,437	764	10,500
250 – 1,249 units (Medium)	3,952	3,263	7,566	1,513	16,294
1,250 or more units (Large)	14,099	4,772	10,542	2,543	31,956
Total	19,365	11,020	23,545	4,820	**58,750**

B. Program Caps

1. **PHA Caps**. [THIS SECTION HAS BEEN SUPERSEDED BY SECTION 1.11.C.2.C] To seek diversity in awards, HUD will limit awards to any one PHA to no

[52] A PHA with an approved Section 18 Demolition/Disposition application may apply under the applicable pool, adjusted for the approved actions.

[53] For a list of the states contained in each Census regions, please see http://www.census.gov/geo/www/reg_div.txt. Puerto Rico and the Virgin Islands will be included in the South and Guam will be included in the West.

more than 1,000 units (or 4,000 in the case of the New York City Housing Authority).[54] This cap applies to the entire PHA and not per-project.

2. **Mixed-Finance Cap.** **[THIS SECTION HAS BEEN SUPERSEDED BY SECTIONS 1.11.C.2.C and 1.11.G]**While HUD recognizes the emerging capital needs of certain maturing Mixed-Finance public housing projects, and while HUD wishes to test the feasibility of converting public housing mixed-finance assistance to the Section 8 platform, HUD will make awards to not more than 1,200 mixed-finance units. Further, eligibility for projects developed with HOPE VI grants is limited to those with a Date of Full Availability (DOFA) prior to October 1, 2002. (Notwithstanding the above, current and future Choice Neighborhood Initiative Implementation grantees that are otherwise eligible for RAD are not prohibited from applying for conversion of assistance under RAD and are not subject to the indicated Mixed-Finance cap.)

C. Application Periods

The competition contains two application submission periods.

1. **Initial Application Period** **[THIS APPLICATION PERIOD HAS EXPIRED, SEE ONGOING APPLICATION PERIOD]**

   a. **Application Submission.** The Initial Application Period opens on September 24, 2012 (60 days from the date of issuance of this Notice) and closes on October 24, 2012 (90 days from the date of issuance of this Notice). During this time, HUD will sort the applications into their appropriate geographic and size pools. Each RAD Application will generate a score according to the four ranking factors described in Section 1.11(D) of this Notice. The maximum points that an application can receive is 100. Tiebreakers will be decided by random lottery. After the close of the Initial Application Period, applications will be ranked in their respective pools.

   b. **HUD Review.** During the 30-day period following the close of the Initial Application Period, HUD will rank all applications and review them in rank order to ensure that they are complete and meet the eligibility requirements under Section 1.3 of this Notice.[55] Applications that pass this review are referred to as "qualified applications." Incomplete applications or those that fail to meet eligibility requirements will be withdrawn from the competition. If an application is not accepted, a PHA may re-submit an application during the Ongoing Application Period.

[54] While NYCHA owns nearly 15 percent of the nation's public housing units, it will be limited to not more than 7 percent of total awards under RAD in order to ensure broad participation.

[55] HUD will reject applications that are incomplete or that have not satisfactorily met the feasibility benchmarks that have been built into the Application.

c. Awards. Beginning with the highest ranked applications, HUD will select projects until CHAP Unit Commitment Targets have been met in each pool.

If accepting an application would cause PHA cap (see Section 1.11.B of this Notice) to be exceeded, the application will be initially passed over but will be placed on a waiting list. Also, if the resulting selection of projects would exceed the 1,200 unit cap on awards to Mixed-Finance public housing projects, projects will be selected proportionately, by region, based on the highest ranked projects. In pools that are oversubscribed—where the units associated with qualified applications exceed the CHAP Unit Commitment Targets during the Initial Application Period—applications that are not selected will be placed on a waiting list in rank order.

Following the review and selection of applications submitted during the Initial Application Period, HUD will post a summary of applications selected for award, total units by pool, and waiting list status for all other qualified projects. All applicants will be notified of their status after the 30-day review period. For each project selected, HUD will notify the applicant of CHAP award via an award letter.

2. Ongoing Application Period

a. The Ongoing Application Period commences on October 25, 2012 (91 days from the date of issuance of this Notice). All applications submitted during the Ongoing Application Period will compete on a first-come, first-serve basis, i.e., ranking factors will not apply, but any applications submitted during the Initial Application Period and placed on a waiting list will receive priority. An application submitted during the Initial Application Period, rejected, and resubmitted during the Ongoing Application Period will be considered solely in accordance with its date of resubmission.

All applications submitted during the Ongoing Application Period will be reviewed in the order in which they are received, including the application for Multi-phase and Portfolio Awards listed in Section 1.9 of this Notice.[56]

Applications that HUD determines to meet the threshold criteria for eligibility will be placed into their applicable pools. Applications that fall into oversubscribed pools will be placed on the end of the waiting list in the order in which they were received electronically. Applications that fall into pools with available awards under the CHAP Unit Commitment Targets will be selected for CHAP awards in the order in which

[56] HUD will begin the review of applications submitted during the Ongoing Application Period only after it has completed its review of applications submitted during the Initial Application Period. Within any given pool, a qualified application submitted during the Ongoing Application Period cannot be ranked higher than a qualified application submitted during the Initial Application Period because, by definition, it was submitted later.

they were received until the Targets are met. To utilize all available units, HUD may make minor modifications to some or all of the caps for the pools in order to accommodate the number of units represented by the actual applicant properties.

b. If the applications submitted within the Initial Application Period do not produce sufficient qualified applications to meet the CHAP Unit Commitment Targets in any of the pools, HUD will combine the waiting lists from the 12 original pools into four consolidated pools by Census Region (see below). Waiting list applications from the original pools will be reordered according to their rank, i.e., by ranking points they received (if they were submitted during the Initial Application Period) and then by the date and time that they were submitted (if they were submitted during the Ongoing Application Period). HUD will make awards from these consolidated waiting lists until the Consolidated CHAP Unit Commitment Targets have been met, as indicated in the table below.

Consolidated CHAP Unit Commitment Targets, by Census Region

Census Regions				
Northeast	**Midwest**	**South**	**West**	**Total**
19,365	11,020	23,545	4,820	**58,750**

Applications received after the waiting list has been consolidated will continue to be reviewed in the order in which they are received. These unit targets may vary based upon the number of Mod Rehab units awarded.

c. If after 180 days from the start of the Initial Application Period there is insufficient demand for CHAP awards, HUD reserves the right to modify any applicable PHA cap, mixed-finance cap, or CHAP unit commitment targets that this Notice or subsequent Departmental discretion imposes. In accordance with this provision and as of the publication of this Notice revision, HUD is making the following changes:

1. There is no cap on the number of units a PHA may be awarded;[57]
2. There is no cap on the number of mixed finance units that HUD may award;
3. PHAs may submit applications for the following HOPE VI projects:
    a. Projects with a DOFA date of greater than 10 years;

[57] NYCHA's cap, noted in Footnote 54 for the initial application period, is eliminated for the Ongoing Application period, as of publication of 2012-32, REV-1.

b. Projects with a DOFA date of less than 10 years, if the development evidences a recent multi-year pattern of financial distress, indicated by:
   1) At least two of the three most recent audited financial statements for the development partnership show that the public housing funding for the public housing-restricted units has been below 90% of the operating cost of such units; and
   2) Evidence that withdrawals have been made from the operating deficit, transformation reserve or similar reserves 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.

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

To be eligible for this exception from the DOFA date 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.

d. During the Ongoing Application Period HUD will post a summary of applications selected for CHAP~~ award,~~, Portfolio or Multi-phase Awards; total units by pool~~,~~; and waiting list status for all other applicants. The summary will be updated monthly.

e. Unless the application process is closed, which HUD would announce through the RAD website, the last date that HUD will accept an application is September 30, 2015.

D. Ranking Factors for Initial Application Period

There are four categories of ranking factors, with a total of 100 points, as described below. There is no minimum number of points that must be achieved to be selected for conversion.

1. **High Capital Need Projects (0-50 points).** All project applications will be scored on a scale between zero and 50 points based on the level of immediate capital needs, as defined in the application, that the PHA proposes to address through conversion. Applications that propose to meet or exceed the established threshold for high capital

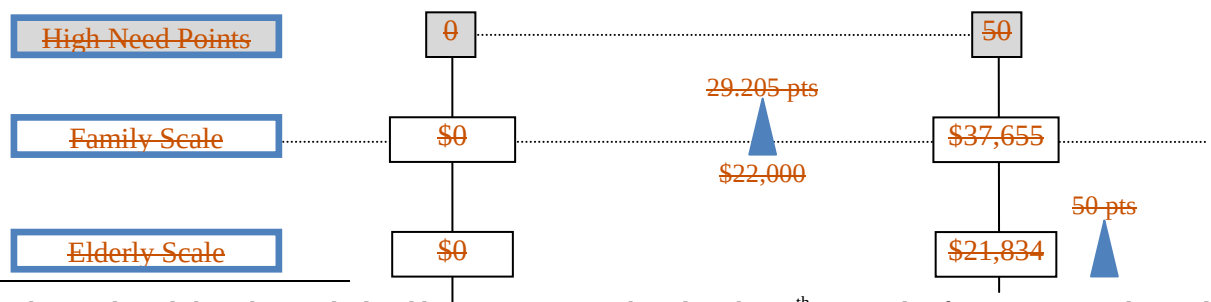
needs will receive the maximum 50 points.[58] The rehabilitation thresholds are indicated in the table below.

National Rehabilitation Thresholds to Qualify For Factor (per unit)

Occupancy Type[59]	High Need
Family Threshold	$37,665
Elderly Threshold	$21,834

The per-unit capital costs proposed in each application will be scored on this scale and assigned a value, rounded to three decimal places. For example, as shown below, a family project with capital needs of $22,000 per unit would receive the 29.205 points, while a proposal for an elderly project with capital needs of $25,000 per unit would receive the maximum 50 points under this ranking factor.[60]

~~**High Need Ranking Factor Scale (per unit)**~~

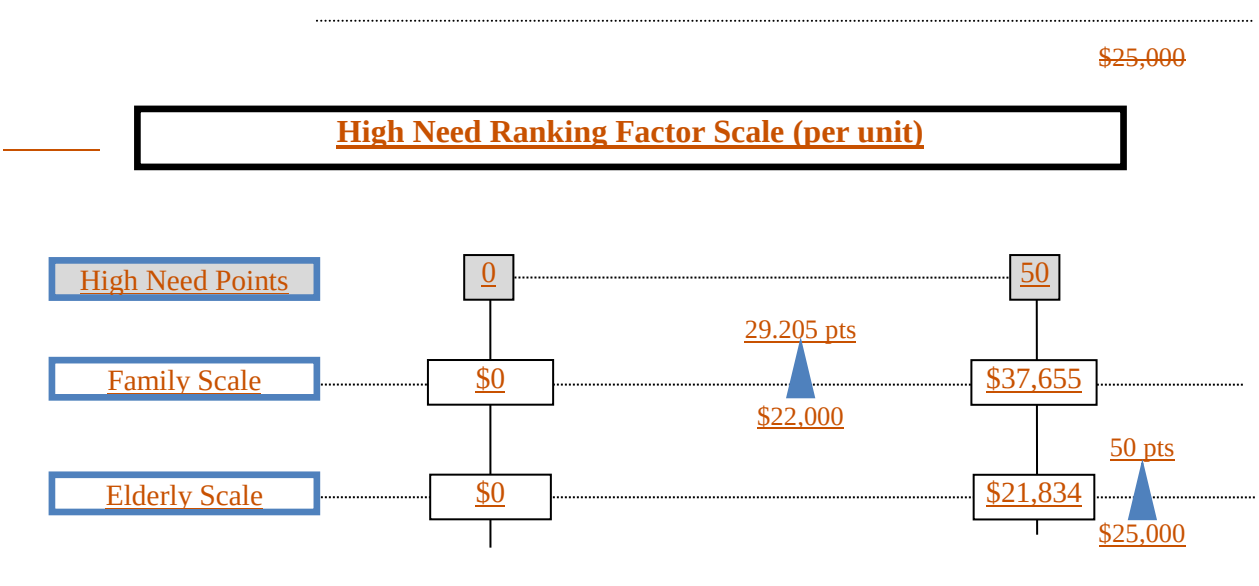


[58] High capital needs have been calculated by occupancy type based on the 75th percentile of per-unit national capital needs as identified in *Capital Needs in the Public Housing Program* (Cambridge, MA: Abt Associates. 2010), Starting with the inspection-based backlog at the 75th, the Department 1) made adjustments based on the average estimated difference identified in the study between family and elderly projects and then 2) added the estimated per unit amount needed for lead paint abatement, accommodating persons with disabilities, and improving energy-and water-efficiency.

[59] Consistent with the approach used in *Capital Needs in the Public Housing Program*, projects with an average bedroom size of at least 1.5, or those with an average bedroom size between 1.2 and 1.5 and at least 100 2+ bedroom units will be subject to the Family Threshold. Projects with average bedroom size less than 1.5, except when average bedroom size is between 1.2 and 1.5 and the property has at least 100 2+ bedroom units, will be subject to the Elderly Threshold.

[60] The family project was scored using the following calculation:

$$\left(\frac{(\$22{,}000)}{(\$37{,}665)}\right) \times 50\ pts = 29.205\ pts$$



HUD will revoke a CHAP if the scope of rehabilitation changes in such a way that would have affected the project's selection in the competition. Additionally, the PHA must submit a certification of completion once renovations have been completed.

2. **Choice-Mobility Commitment (20 points).** Where a voucher agency has committed to provide vouchers to the covered PBRA project of a PHA without a voucher program in order to achieve the Choice-Mobility component under PBRA, both agencies are eligible to earn points under this ranking factor.

   - The application of the covered project that will be served by the voucher agency will receive 20 points.

   - The voucher agency agreeing to provide needed Choice-Mobility vouchers to another PHA's covered project will earn 20 points.[61] The "donating" agency providing such vouchers will then be able to apply these points to a RAD Application of its own, if applicable. (If the voucher agency provides turnover vouchers for two projects, it can apply ranking factor points to two projects.) The voucher agency must demonstrate that it has sufficient annual turnover that it could reasonably offer 15 percent of the assisted residents a Choice-Mobility voucher on an annual basis.[62] (In addition to the

[61] 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.

[62] Note that the voucher agency committing vouchers does not need to have submitted an application for RAD. For example, a voucher –only agency with jurisdiction in the area in which a project is proposed (e.g., a state-wide PHA)) may choose to commit turnover vouchers in order to earn bonus points under SEMAP.

ranking factor points earned in the RAD competition, a donating agency will also receive priority points in upcoming FSS competitions and the bonus points provided under the SEMAP for deconcentration. See section 1.7(C)(5))

Both agencies must complete and sign the Choice-Mobility Commitment Letter attached to the Application. Neither application will receive the ranking factor points if HUD determines that the RAD Application from the project being served is incomplete or fails to meet the feasibility benchmarks that are required for eligibility.

If the application is approved and a CHAP is awarded, the donating agency will have 60 days from the date of the issuance of the CHAP to submit a significant amendment to its Annual Plan to HUD. The donating agency's significant amendment must be approved or the CHAP will be revoked and the donating agency will not receive any of the incentives outlined in this notice.

3. **Green Building and Energy Efficiency (10 points).** Project applications will receive 10 points if the PHA commits to pursue an industry-recognized standard and certification for green building, such as the Enterprise Green Communities Criteria,[63] LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard in HUD's sole discretion. This commitment indicates the PHA's intent to estimate and fund construction and reserves that will achieve these industry standards for new construction, moderate or substantial rehabilitation, and operation for the term of the HAP contract. The PCA submitted for the Financing Plan must include a certification that the planned scope of work is reasonably sufficient to achieve the certification. Additionally, the PHA must submit a certification of completion once renovations have been completed, and provide evidence that the green building standard has been achieved.

4. **PHA Priority Project (20 points).** A PHA may designate only one project for which it submits a RAD Application as a "priority project", except for small PHAs (those with fewer than 250 units), which may designate all projects as priority projects. The project will automatically earn 20 ranking factor points.

[63] The Enterprise Green Communities Criteria is applicable to new construction, moderate rehabilitation and substantial rehabilitation.

The Ranking Factors and associated points are summarized in the table below.

Summary of Ranking Factors	Points
High Capital Need Projects	0-50
Choice Mobility Commitment	20
Green Building and Energy Efficiency	10
PHA Priority Project	20
TOTAL	**100**

E. CHAP Termination and Replacement Awards

If a CHAP, Portfolio Award, or Multi-Phase Award that is issued to a PHA is revoked, withdrawn, or the PHA fails to comply with milestones detailed in Section 1.12 of this Notice, HUD will utilize the waiting list to make a replacement award to the next qualified applicant. HUD will first identify the highest ranked application that is within the same Census Region and of similar PHA size as the application it is replacing. If no qualified application exists that meets this criteria, HUD will select the highest ranked application from the consolidated waiting lists.

F. Exemptions from the Choice-Mobility Component in the Competition

All applicants will be required to meet the Choice-Mobility, except that HUD will grant good-cause exemptions for eligible PBRA projects (see Section 1.7(C)(5) of this Notice) up to 10 percent of awards under the Demonstration. Applicants must indicate in the RAD Application whether they are applying for the good-cause exemption. HUD will issue these exemptions to the highest ranked applications in the following order of priorities: 1) small public housing-only PHAs; 2) all other public housing-only PHAs; and 3) combined agencies that currently have more than one-third of their vouchers set aside for veterans and/or homeless. The number of good-cause exemptions awarded in each region will be based on the proportion of units in each region owned by PHAs without a voucher program. For a project that is selected for a good-cause exemption, all of the assisted units will count against these allowances.

If after the Initial Application Period all of the good-cause exemptions have not been allotted up to the 10 percent limit, HUD may allow good-cause exemptions during the Ongoing Application Period on a first-come, first-serve basis~~.~~ up to the 10 percent limit.[64]

[64] As of the date of publication of PIH Notice 2012-32, REV-1, 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.

A PHA that meets all requirements of the Notice and requests a good-cause exemption, but is not selected during the Initial Application Period, will be placed on the waiting list and considered for selection only in the Ongoing Application Period. While a PHA's rank on the waiting list will be determined by the ranking factors, a PHA will be passed over if all of the good-cause exemptions as indicated above have been exhausted. A PHA may be selected if a CHAP is terminated for a project that originally received a good-cause exemption. At any point during the Ongoing 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.

1.12 CHAP Milestones

All PHAs will be notified of selection via issuance of an award letter, signed by HUD. Attached to the award letter will be a CHAP, or Commitment to Enter into a Housing Assistance Payment, which shall indicate the HUD-approved terms and conditions for conversion of assistance. 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 will then be required to fulfill applicable milestones for submission of the applications for the remaining phases or projects. The CHAP will not be subject to negotiation by the PHA or any third party. If ~~selected for an award~~awarded a CHAP, the PHA will comply with all provisions of the CHAP, as applicable, or will indicate to HUD within 15 days that it is refusing the terms of the CHAP and is withdrawing from RAD participation.

HUD's provision of a CHAP includes contractual terms on which HUD will later issue the HAP. For this reason, the CHAP should be useful in the PHA's discussions with lenders, investors and other providers of financing.

The CHAP will include provisions that it may be revoked: (1) upon HUD's determination of financial infeasibility; (2) for PHA failure to meet required deadlines; (3) for PHA non-cooperation; (4) violation of program rules and restrictions, including fraud, (5) if the PHA fails to submit an approved significant amendment to HUD, or (6) 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.

The CHAP will require each PHA to meet contractual milestones. Milestones generally apply to all RAD transactions; however, some milestones apply only to transactions that include debt

and/or equity financing. In these cases, the PHA is responsible for ensuring the timelines are met by their lenders and/or investors. Milestones include the following (expressed in calendar days):

1. Within **30 days** following CHAP issuance the PHA must submit to HUD:
   a) **Accepted Lender Engagement or Commitment Letter** (if applicable), which must include language, specified by HUD, that the lender is aware of all relevant RAD policies including RAD Use Agreement provisions and ongoing requirements in the case of foreclosure or bankruptcy. The letter must include the proposed loan amount, proposed key business terms of the loan, pro forma sources and uses, and pro forma stabilized cash flow. The letter may be conditioned upon the lender's due diligence and underwriting determinations, and the lender's approval processes. If the PHA has paid a cash fee associated with this Engagement Letter, the amount of that fee must be reasonable and customary at this point in a loan transaction; and a

   b) **Statement of development team capacity**, which must identify its proposed development team members, with evidence demonstrating, as applicable, the team's recent successful experience financing, developing, rehabilitating, constructing, owning, and operating similar properties. The statement must describe teaming partner relationships, including resumes. If multiple sources of financing have been identified for the project, the development team must have experience with at least three transactions with mixed or multiple sources of financing. If, in HUD's determination, the applicant does not demonstrate it has sufficient relevant experience, HUD may require an applicant to bolster its development team as a condition of final approval of a RAD conversion application.

2. Within **60 days** following CHAP issuance, the PHA must submit to HUD:

   a) **The significant amendment to its Annual/Five Year Plan**. See section 1.5E and Attachment 1D of this Notice.

   b) **The PHA's decision whether the project will convert its assistance to PBV or to PBRA**. For conversions to PBV, where the PHA does not administer a Housing Choice Voucher program, the PHA must submit a signed letter from a voucher agency evidencing their willingness to administer the PBVs.

3. Within **90 days** following CHAP issuance, the PHA must submit to HUD a **certification from the PHA that all industry-standard due diligence has been performed for and received by the Lender and/or other financing source**. Due diligence must, in all cases, include a PCA and appropriate environmental reports

(with the exception of Phase II or other reports required by extraordinary circumstances).[65] Other due diligence required of financing sources, which may include an appraisal, a current survey report, and a pro forma title insurance policy, must also be received within this timeframe. All conversions, with or without financing, must submit a copy of the completed PCA to HUD by this milestone.

4. Within **150 days** following CHAP issuance, the PHA must submit to HUD certification that it has **applied for firm commitments of all financing**. For FHA-insured financing this must be in the form of the Firm Commitment Application to FHA.[66,67]

5. Within **180 days** following CHAP issuance, the PHA must submit to HUD a **Financing Plan**. (See Attachment 1A.1 for Financing Plan Requirements.) FHA will release separate guidance detailing what elements of the Financing Plan may be waived for projects using FHA insurance. HUD will have 60 calendar days from the date of submission of the Financing Plan to approve, reject, or request additional information. HUD's decisions regarding the acceptance of the Financing Plan will be made in HUD's sole discretion. If HUD determines that a Financing Plan is not feasible, the PHA may make corrections that satisfactorily address HUD's concerns, or may appeal that decision to HUD within 30 days of notification. If a Financing Plan is disapproved, HUD's letter of disapproval will discuss changes that would result in an acceptable Financing Plan.

   A PHA will be notified of HUD's acceptance of the Financing Plan via 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.[68] (See Attachment 1A.2 of this Notice for the contents of the

[65] A PCA will be required on any units except those replaced with new construction.

[66] PHAs applying for FHA financing will be required to fill out Section 1 and, if performing a relocation lasting longer than 12 months, Section 3 of the Accessibility and Relocation Plan Checklist and submit this Checklist at the same time as their Firm Commitment Application to FHA.

[67] PHAs applying for both PBRA and FHA financing should provide the Affirmative Fair Housing Marketing Plan at the same time as their Firm Commitment Application to FHA.

[68] 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.

RCC Letter.) The RCC will outline the key components of the planned RAD conversion and will discuss the conditions that need to be satisfied in order to close the conversion. The RCC will be a template document not subject to negotiation by the PHA or by the lender.

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, the PHA will forfeit its award.

Once the RCC is executed, HUD expects that the RAD conversion will close in a timely manner. The RCC will allow 90 calendar days (from the date the RCC is issued to the PHA) in which to close the RAD conversion transaction. The PHA and lender will need to work diligently to achieve closing within the timeframe required under this Notice in order to avoid rescission of the RCC.

The RCC will be an attachment to the recorded RAD Use Agreement. Therefore, the terms of the RCC will survive the closing.

6. Within **320 days** following issuance of the CHAP (and no later than 40 days prior to closing), the PHA must submit evidence of **firm commitment for financing** or equivalent milestone in securing all sources of financing required to close the transaction.

7. Within **360 days** following CHAP issuance **the PHA must reach closing,** upon which the RAD conversion is completed. See Section 1.13.

8. The Financing Plan and RCC must 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.

In addition to the milestones described above, any CHAP awarded to applicants proposing to use 9% LIHTCs or tax-exempt bonds and 4% LIHTCs, where a reservation has not been secured at the point of RAD Application, will include additional milestones, including, but not limited to:

- A date by which the RAD applicant must have submitted an application for LIHTC or bond authority, based on the deadlines for required application and related materials (e.g., inducement resolution for tax-exempt bonds) described in the applicable QAP
- A date by which the RAD applicant must notify HUD of the decision of the credit-issuing authority, 10 days after the Notification of award described in the applicable QAP.

In cases where the converting project is a mixed-finance project or where LIHTCs are proposed, as well as other special circumstances, HUD may work with the applicants to tailor their milestones to the particular requirements of their localities.

A PHA that fails to meet a ~~contractual~~ milestone will cause the CHAP to be revoked unless it has submitted, and HUD has approved, a request for extension of the ~~contractual~~ deadline. The extension request must include a justification and explain why failure to meet the milestone should not jeopardize the PHA's ability to complete the RAD conversion. Approval of extensions is at HUD's sole discretion. Extensions will not be approved if the delays resulted from factors that are within the PHA's control.

1.13 Closing

A. Closing Preparations.

The closing is a concurrent event that must include:

1. Release of the Public Housing Declaration of Trust (DOT~~);~~) or Declaration of Restrictive Covenants;
2. Removal from the public housing or mixed finance ACC;
3. Removal of any Regulatory and Operating agreements and provision of a streamlined regulatory agreement for affected mixed-finance partnerships;

~~3.~~4. The execution of the new PBRA or PBV HAP contract and RAD Use Agreement;

~~4.~~5. Recordation of the RAD Use Agreement,

~~5.~~6. Closing of any bridge, construction, or permanent debt or equity financing;[69]

7. Closing of any required subordination agreements;

~~6.~~8. Closing of the terms and conditions of the RCC.

When the closing escrow agent confirms that all documents have been properly executed and have been received into escrow, that all funds have been received into escrow, and that all preconditions to closing have been fully satisfied, the closing will take place.

At the closing, the closing escrow agent will distribute the proceeds of any new loan, any other sources of funds, and executed documents (including the HAP), and will deliver appropriate documents for recordation in the local land records. The lien of the new first mortgage loan (if any) shall be subject to the encumbrance of the RAD Use Agreement.

[69] In the event that construction or bridge financing will be used as part of the financing, HUD will require evidence at closing of firm commitment of take-out or permanent financing conditional only to the completion of construction or term of the bridge financing.

Closing preparations will include:

- Selection by the primary lender or other financing source of a closing escrow agent acceptable to HUD;
- Receipt by the closing escrow agent of the requisite number of copies of all closing documents, un-executed;
- Preparation of the settlement statement, by the closing escrow agent, to the satisfaction of all parties; and
- Receipt by the closing escrow agent of an opinion of counsel to the owner. This opinion assures that the owner signatory was authorized to sign, the closing documents do not conflict with any other agreements of the owner, the closing documents are effective, the owner entity is in good standing, and that all Closing Documents are valid and enforceable as against the owner.

Development proceeds will be placed into the account of the closing escrow agent. If the loan will be funded in draws or the equity funded in installments, the first draw or installment must be funded into the closing escrow and the closing escrow agent must determine that sources and uses are in balance at the Closing.

If the project is being financed with an FHA-insured loan, the closing requirements listed under the MAP guide will apply.

Following the closing, counsel to the lender will deliver an opinion to HUD, to include, at a minimum, that the closing took place in accordance with this Notice and with all other applicable HUD requirements.

B. Funding Upon Closing. In the initial year of conversion of assistance, projects will be funded through the public housing accounts. As such, at closing, a PHA shall provide a certification that it will make Operating and Capital funds available, in amounts determined by HUD, within RAD Budget Line Items in the Line of Credit Control System. The PHA must use all such funds to make monthly HAP payments for the remainder of that calendar year. Where HUD has not yet obligated the full FY's Operating and Capital Funds to the PHA, HUD shall obligate the remaining funds as soon as available. For the remaining months of the calendar year, the PHA can use its available public housing or other funds to make up any gap in rental subsidy as a result of Operating and Capital Fund allocations to a RAD project that are lower than the HAP subsidy due to the project.

In the Calendar Year following conversion, projects will be funded from the Project-Based Rental Assistance (PBRA) account or the Tenant Based Rental Assistance Account (TBRA), relative to the form of Section 8 assistance for the 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.

1.14 PHA RAD Developer Fee

HUD recognizes that in order to secure and administer debt and equity sources, and oversee the successful completion of significant rehabilitation, PHAs 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 PHA may earn a RAD Developer Fee to address these costs as permitted by the funding source(s):

A. For non-LIHTC transactions, the RAD 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 RAD Developer Fee will be made upon achievement of the following milestones:

\

1. At initial closing, up to 33 percent of the total RAD Developer Fee;
2. At 50 percent completion of rehabilitation, as certified by HUD's inspector, another 33 percent of the total RAD Developer Fee;
3. At 100 percent completion, as certified by HUD's inspector, the remainder of the total earned RAD Developer Fee. For projects where the PHA had earned competitive ranking factor points for committing to pursue an industry-recognized standard for green building (see Section 1.11(D) of this Notice), the final disbursement of the RAD Developer Fee will also be contingent on certification that the identified green building standard has been achieved.

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

Earned developer fees are not considered federal funds.

B. On LIHTC transactions (with or without private debt), PHAs may earn a developer fee payable from the tax credit equity subject to the LIHTC allocating agency's limitations on developer fees, and in no case to exceed 15 percent of total development costs, payable on the schedule allowed by the allocating agency and/or equity investor. PHAs eligible to earn a LIHTC developer fee are not eligible to earn the RAD Developer Fee.

1.15 Additional Information

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

Attachment 1A – Conversion Documentation and Guidelines

This Attachment contains two sections, describing:

1A.1 Financing Plan Requirements and Feasibility Benchmarks, and
1A.2 Contents of the RAD Conversion Commitment (RCC).

1A.1 Financing Plan Requirements and Feasibility Benchmarks

The following items must be included in a PHA's Financing Plan. A Financing Plan will not be reviewed until all required documentation specified in the submission requirements is submitted. HUD's purpose in reviewing Financing Plans is to ensure the long-term physical and financial viability of the project. 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.

Note: The Department will issue additional guidance on processing milestones, submission requirements, and feasibility benchmarks for RAD conversions that will utilize FHA mortgage insurance.

A. Type of conversion. The PHA must identify whether the project will convert to PBV or PBRA[70] assistance.

B. Physical Condition Assessment (PCA). The PCA submission is required on every property, regardless of whether third-party financing is involved, except for units replaced with new construction. The PCA must be performed by a qualified third-party provider under a Statement of Work and Contractor Qualifications that is currently used for debt restructuring transactions in HUD's Mark-to-Market program, as may be modified to specifically meet the requirements of RAD, or, in HUD's sole and absolute discretion, is substantially equivalent standard approved in advance in writing by HUD. (This prescribed PCA exceeds ASHRAE Level II requirements. Any substantial equivalent PCA must meet or exceed ASHRAE Level II requirements.)

[70] For PBRA, a completed Affirmative Fair Housing Marketing Plan (HUD 935.2A) must be submitted with the Financing Plan, unless the PHA is applying for both PBRA and FHA financing, in which case, the Affirmative Fair Housing Marketing Plan (HUD 935.2A) must be submitted with the Firm Commitment Application to FHA..

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

1. Identify and address all repairs required in the PCA (including all items identified in the PCA 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 PCA 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 fair housing law and regulations and the Americans with Disabilities Act and implementing regulations.[71]
4. Include a description of how the PHA will replace all utility consuming components that are past estimated useful life at the time of the RAD application (or that are not functioning at the time of the PCA inspection) with the most financially efficient alternative (taking into account initial cost and utility savings), as documented in the PCA. Additionally, for projects that had earned competitive ranking factor points for committing to pursue an industry-recognized standard for green building (see Section 1.11(D) of this Notice), all components necessary to achieve the green building standard must be included.
5. Include a construction contingency of 10% (HUD may require a higher contingency on a case-by-case basis).
6. Not provide for an amount less than the amount proposed in the PHA's application (or otherwise demonstrate that the reduced scope would not have affected the project's selection in the competition).

D. Completed Environmental Review. Under Federal Environmental Review Requirements the provision of a new contract for project-based rental assistance or project-based vouchers is subject to environmental review. In accordance with the instructions below, the PHA must submit a copy of the completed environmental review.

[71] This includes, as applicable, federal accessibility requirements under 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.

1. For all Moderate Rehabilitation conversions under Section II of this Notice where the assistance is converting to a PBRA contract and where the owner is not a PHA, HUD will perform the environmental review.
2. For all projects (including Moderate Rehabilitation, public housing, and Rent Supplement or RAP assisted properties) that will use FHA multifamily mortgage insurance in financing related to the conversion, HUD will perform the environmental review under 24 CFR Part 50, and no review will be required under 24 CFR Part 58.
3. For all other projects, the environmental review will be completed by a state or unit of general local government (Responsible Entity) under 24 CFR Part 58, or by HUD under 24 CFR Part 50 if a PHA objects to the RE or the RE objects to performing the review.

Note: While many projects will be categorically excluded from review under the National Environmental Policy Act because they do not involve major rehabilitation, they remain subject to review under related environmental laws and authorities. The environmental review may result in rejection of the site for this demonstration, or may result in a rejection of the application for multifamily mortgage insurance. Consequently, a completed environmental review (including a HUD approval of a Release of Funds, where required under Part 58) will be required as part of the Financing Plan. The environmental review may require carrying out mitigation measures. Any required environmental conditions will be included in the RCC and the HAP contract.

E. Accessibility and Relocation Plan. Checklist. [72] All PHAs shall complete and submit the Accessibility and Relocation Plan Checklist provided by HUD. The PHA mustchecklist shall include a relocation plan for the rehabilitation or new construction, including a relocation budget and 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)[72] as well as

[72] PHAs applying for FHA financing will be required to fill out Section 1 and, if performing a relocation lasting longer than 12 months, Section 3 of the Accessibility and Relocation Plan Checklist and submit this Checklist at the same time as their Firm Commitment Application to FHA Please Note: Section 2 of the Accessibility and Relocation Plan Checklist is not required for FHA-financed transactions.

[72] For a step by step process to comply with the URA, follow the steps in Exhibit 3-1 in the HUD Relocation Handbook 1378 CHG-9. Note the language assistance plans and policies including the requirement to prepare appropriate translation and provide other language assistance that comport with individuals with limited English proficiency.

Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §8.23).[73] 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:

1. Include a reasonable, balanced and comprehensive presentation of sources and uses of funds, prepared using a HUD-prescribed template and which is in accordance with all applicable HUD requirements.
2. Demonstrate that existing loans or debt will be paid off at the closing or supported through NOI.
3. 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).
4. 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.

G. Development Team. The PHA must 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.

   Note: All principals must have Previous Participation Certification in the Active Partners Performance System (APPS) (formerly the Form 2530) and must not be debarred, suspended, or subject to a Limited Denial of Participation.

2. Evidence of recent successful experience with similar rehabilitation or construction projects. For properties requiring substantial rehabilitation or new construction, PHAs

[73] The URA (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24, apply to acquisition of real property and displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property, for a project that receives federal financial assistance, including Section 8 PBV assistance or PBRA. For purposes of this footnote, the term "project" is defined at 49 CFR 24.2(a)(22). URA requirements must be implemented in compliance with all applicable fair housing and civil rights laws, including but not limited to, Title VI of the Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973, and the obligation to affirmatively further fair housing, Pursuant to Title VI, a PHA or owner must, among other things, take reasonable steps that ensure meaningful access to programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). For more information on complying with this requirement, consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which HUD published in the Federal Register on January 22, 2007. For HUD guidance on complying with Section 504 when administering the URA, see Exhibit 3-1 in HUD Handbook 1378.

are required to engage a general contractor, unless the PHA can demonstrate recent and comparable experience managing rehabilitation or if the PHA is using the 223(f) program with a repair program approved by HUD. If multiple sources have been identified for the project, the development team must demonstrate that they have experience with at least three transactions with mixed or multiple sources of financing.

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

1. Copy of an updated lender, investor or grant engagement letter 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;
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 subject to the Use Agreement;
4. Estimation of projected closing date for all indicated financing. Discuss any known impediments to closing within the timeframe required under the Notice. Include a discussion of key milestones in the closing process and when the PHA anticipates completing each such milestone.

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

1. Be prepared on a HUD-prescribed template that will include all major Revenues and Expenses. The Operating Pro-Forma must project out for the term of the initial contract.
2. 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.
3. Include an attached Rent Comparability Study for projects converting to PBRA where current funding[74] is greater than 120 percent of the FMR and where the PHA believes

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

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

4. Comply with at least the following feasibility benchmarks:[75]
   a. Rents shall not exceed the amounts permitted under program rules
   b. All other sources of income must be supported with a narrative or must not exceed the average for the last three years (other income should not include interest income on the replacement reserve account, which must remain in the reserve and is not available for other purposes).
   c. Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent.
   d. Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent.
   e. Real estate taxes for Mod Rehab shall be no less than the most recent tax bill amount. For public housing conversions where the PHA indicates continuation of a Payment In Lieu of Taxes (PILOT), the PHA must provide legal opinion based upon state and local law of continuation of PILOT post conversion. Where the PHA does not indicate continuation of a PILOT , the PHA must provide documentation of real estate tax estimates.
   f. Insurance cost must be documented, such as quotes from an insurance agent based on actual recent premiums for similar projects.
   g. All other operating expenses shall be no less than 85 percent of the average for the last three years.
   h. The annual replacement reserve deposit should be equal to that amount which, if deposited annually, will be sufficient to fund all capital needs, as identified in the PCA, 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.

J. Market Study. If a market study has been required by any financing source, the PHA must include a copy of that market study, including a summary of any identified competiveness issues and how they are addressed in the rehabilitation scope.

[75] If a Financing Plan fails one or more feasibility benchmarks, HUD 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.

K. Rehabilitation/Construction Management. The PHA must provide a discussion on how rehabilitation or construction will be managed, including:

1. How construction funds will be controlled, including identification of any escrow agent as applicable, and any provisions for investing the funds,
2. The fees that will be paid for administration of the rehabilitation or construction,
3. The procurement (bid) process, including anticipated timing,
4. The inspection and draw processes,
5. Whether there will be a general contractor,
6. Whether work will begin within 30 days after closing; if not, explain why, and
7. A reasonable schedule for completion of rehabilitation or construction, from the date of closing the conversion and any financing.

1A.2 Contents of the RAD Conversion Commitment (RCC)

The RCC letter will include key conditions of the conversion, including but not limited to:

A. The Effective Date of the HAP. HUD will execute the HAP pre closing and deliver it to the closing escrow agent, but the HAP will not be effective until the closing date.

B. Level of Rehab-Construction / Contingency / Rehab Management. Rehabilitation or construction amount (including contingency) and requirements for establishment and administration of the rehabilitation or construction funds.

- If FHA financing under Section 221(d) of the National Housing Act is used, rehabilitation will be funded by draws during construction rather than through an escrow.
- Escrow will be managed by the lender (if applicable), with inspection and draw requirements that are commercially available and reasonable.
- If there is no lender or investor, and rehabilitation or construction funds are provided by the PHA or other sources, rehabilitation or construction will be managed by the PHA.

C. Rehabilitation/Construction Timeline. A timeline for completion of all rehabilitation or new construction items acceptable to HUD, from the date of closing the conversion and any financing, depending on the scope of rehabilitation funded.

D. Regulation of Uses of Funds.

- The required rehabilitation or construction must be funded and administered in a commercially standard and reasonable manner.

E. Key Aspects of the Planned Conversion Transaction. To include key business terms of all loans, equity contributions and grants, pro forma stabilized cash flow, pro forma sources and uses, transaction costs, and disposition of existing loans and equity investments as applicable.

F. Special Conditions. Transaction-specific conditions such as environmental remediation, or key requirements regarding funding sources other than a new first mortgage loan.

G. Replacement Reserves. The RCC will specify the annual funding for replacement reserves.

H. Requirements for Management of Rehabilitation or Construction. The following requirements will be applicable for the management of initial repairs identified in the approved Financing Plan:

- Any temporary relocation of families that is necessitated by any rehabilitation to the project may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and its implementing regulations (49 CFR Part 24).

- Any alterations of converted projects must meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR § 8.23) and any other applicable design and construction standards including the Fair Housing Act, where applicable. Additionally, housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR § 100.25, as applicable. Furthermore, any substantial alterations of existing housing as defined in 24 CFR § 8.23, will trigger the new construction requirements of 24 CFR § 8.22, which requires that a minimum of five percent or at least one unit, whichever is greater, is accessible for persons with mobility impairments and that an additional two percent of units or not less than one unit shall be made accessible for individuals with visual or hearing impairments.
- In the event of owner default under the rehabilitation/construction agreement, the escrow agent, lender, or agent of the lender (as applicable) must notify HUD. Upon default, HUD will require the owner to submit an action plan within 30-days. HUD reserves the right (but is not obligated), at any point during the remaining life of the rehabilitation/construction escrow agreement, to take over administration of the rehabilitation/construction, contract for the remaining repairs, pay for completion of repairs from rehabilitation/construction funds, place a lien on the project for any actual costs of rehabilitation/construction and administration that exceed available funds in the escrow, and enforce the lien in the event of nonpayment.
- The project owner shall not be entitled to earn or receive cash flow distributions from the project until after completion of construction, inspection, certification of all costs, and HUD acceptance of all rehabilitation/construction work.
- Covered projects will be subject to the requirements of Section 3 of the Housing Act of 1968 for any repairs included in the approved Financing Plan that qualify as development, including rehabilitation. See 24 CFR Part 135.
- Projects with nine or more assisted units will be subject to Davis-Bacon prevailing wages, the Contract Work Hours and Safety Standards Act, and all other related regulations, rules and requirements for any repairs included in the approved Financing Plan that qualify as development, including rehabilitation.

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

This Attachment contains two sections, describing:

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

1B.1 Summary of Resident Provisions

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

- Conversion will be considered a significant amendment to a PHA Plan (see Section 1.5(E) of this Notice);
- Notification of proposed conversion, meetings during the conversion process, written response to residents comments on conversion, and notification of conversion approval and impact (see Section 1.8 of this Notice);
- No rescreening at conversion (see Section 1.6(C)(1) of this Notice for conversions to PBV and Section 1.7(B)(1) for conversions to PBRA);
- Right to return after temporary relocation to facilitate rehabilitation or construction (see Section 1.6(C)(2) of this Notice for conversions to PBV and Section 1.7(B)(2) for conversions to PBRA);
- Renewal of lease at expiration in the PBV program, unless good cause exists (see Section 1.6(C)(3) of this Notice);
- Phase-in of tenant rent increases (see Section 1.6(C)(4) of this Notice for conversions to PBV and Section 1.7(B)(3) for conversions to PBRA);
- Continued participation in the ROSS-SC and FSS programs (see Section 1.6(C)(5) of this Notice, for conversions to PBV and Section 1.7(B)(4) for conversions to PBRA);
- Continued Earned Income Disregard (see Section 1.6(C)(8) of this Notice, for conversions to PBV and Section 1.7.(B)(7) for conversions to PBRA);
- Continued recognition of and funding for legitimate residents organizations (see Section 1.6(C)(6) of this Notice for conversions to PBV, Section 1.7(B)(5) of this Notice for conversions to PBRA, and below in Attachment 1B.2 for additional requirements for both programs);

- Procedural rights consistent with section 6 of the Act (see Section 1.6(C)(7) of this Notice for conversions to PBV and Section 1.7(B)(6) of this Notice for conversions to PBRA); and
- Choice-mobility option allowing a resident to move with a tenant-based voucher after tenancy in the covered project (see 24 CFR § 983.260 for conversions to PBV and Section 1.7(C)(5) of this Notice for conversions to PBRA).

1B.2 Resident Participation and Funding[76]

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

A. PBRA: Resident Participation and Funding

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

In the absence of a legitimate resident organization at a covered project:

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

B. PBV: Resident Participation and Funding

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

1. **Legitimate Resident Organization.** A PHA must recognize legitimate resident organizations and give reasonable consideration to concerns raised by legitimate resident organizations. A resident organization is legitimate if it has been established by the

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

residents of a covered project, meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of PHAs, management, and their representatives.

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

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

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

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

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

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

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

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

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

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

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

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

6. **Funding.** PHAs must provide $25 per occupied unit annually for resident participation, of which at least $15 per occupied unit shall be provided to the legitimate resident organization at the covered property. These funds must be used for resident education, organizing around tenancy issues, and training activities.

   In the absence of a legitimate resident organization at a covered project:

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

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

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

> Note: HUD has posted presumptive contract rent calculations for every public housing project at www.hud.gov/rad based on the FY 2012 Appropriation of operating and capital fund subsidies. These rents will be the basis for initial contract rent setting for all applications for public housing projects, PHA-defined portfolios of projects, or multi-phase projects, received prior to December 31, 2013.

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

1. Step One – Determine Current Funding

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

- Per unit monthly (PUM) subsidy eligibility at full occupancy under the Operating Fund program, based on the current year's Operating Fund appropriation (incorporating any pro-ration and excluding Asset Repositioning Fee).[77]

[77] The 2012 Operating Subsidy was derived from Form-52723 from February 9, 2012, taking the following steps:

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

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

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

The Result is the derived PUM Operating Subsidy under RAD. Note that in this calculation the Operating Subsidy Allocation Adjustment is added back in.

- The amount of the PHA's Capital Fund Formula Grant attributable to the project, divided by the units recognized under the Capital Fund formula, i.e., "standing units", divided by twelve, and
- PUM adjusted formula income under the Operating Fund program, i.e. tenant rent.[78]

Thus, if the operating subsidy eligibility for a project is $340 PUM (adjusted for proration), the Capital Fund formula grant attributable to the project is $135 PUM, and adjusted formula income is $308 PUM, then current funding totals $783 PUM.[79]

2. Step Two – Apply Bedroom Adjustment Factor

The weighted average current funding amount will then be adjusted by a bedroom adjustment factor to arrive at bedroom-specific rent schedule. HUD will use the same bedroom adjustment factors as reflected in the metropolitan FMR schedules for the area in which the project is located. The following is an illustration:

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

3. Step Three – Apply Rent Caps

Finally, HUD would compare the Current Funding Rents calculated in Step Two with the applicable rent caps to determine the HAP Contract Rent for conversions to either PBRA or

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

[79] The calculation of contract rents for MTW agencies with an alternative subsidy calculation under the public housing program differs from the approach illustrated above because their Operating subsidy is not currently allocated at a project level. For these agencies, the project's Operating subsidy ~~will be~~is determined based on a pro rata share of the agency's Operating Fund grant. For tenant rents~~, if a project converts to PBV,~~ HUD ~~would use~~used data provided in the Form HUD-50058 MTW in 2012~~; if a project converts to PBRA, where an MTW would no longer be able to implement an existing rent reform policy, HUD will re-calculate presumptive tenant rents based on tenant incomes and PBRA rent policies.~~.

PBV (see Sections 1.6(B)(5) and 1.7(A)(5) of this Notice for a discussion of rent caps), as illustrated in the continuing example below.

Conversion to PBRA			
Bedroom Size	*1BR*	*2BR*	*3BR*
Current Funding Rents (Step Two)	**$646**	**$770**	**$894**
120% of FMR	$780	$930	$1,080
- Utility Allowance	$50	$60	$70
FMR Rent Cap	**$730**	**$870**	**$1,010**
Market Rent	$640	$740	$830
-- Lower of Current Funding Rent and FMR rent cap --			
PBRA Contract Rent	**$646**	**$770**	**$894**

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

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

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

Notes

1. -HUD will post presumptive contract rent calculations for every public housing project at www.hud.gov/rad.The rents, calculated based on ~~the~~ FY 2012 Appropriation~~. If a project converts in a future fiscal year, the~~ , will be the basis

for initial contract rent ~~will be determined~~setting for all projects that complete conversion and whose applications were received prior to December 31, 2013, including .

a. Applicants issued a CHAP award in CY 2013;
b. Approved applications for CHAP awards received during CY 2013; and
c. Approved applications for Multi-phase Portfolio Awards received during CY 2013.

The 2012 contract rent levels will apply for any conversions that occur in CY 2013. For applications received prior to December 31, 2013 where the conversion closes in CY 2014 or later, the HAP contract will carry these rents, adjusted by the ~~appropriation in effect at the time.~~ Operating Cost Adjustment Factor (OCAF).

2. Once a project's assistance is converted under RAD, the PHA and project will no longer receive public housing Operating or Capital Fund subsidies for that project. For conversions to PBV, HUD will add a new increment of vouchers to the PHA's Voucher ACC. For MTW agencies converting to PBV that are utilizing MTW Fungibility, as described in Section 1.6, the agency will use existing voucher funding to supplement rents (no incremental voucher funding will be provided). For MTW agencies converting to PBRA that are utilizing MTW Fungibility, as described in Section 1.7, HUD will permanently reduce the agency's public housing funds by the full amount established for the HAP Contract.

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

~~1.~~3. For applications where the PHA proposes a de minimis reduction of units, projects will not be permitted to retain the subsidy of any units that are not included in the conversion application. An exception is made when the PHA is proposing a de minimis reduction in dwelling units, but certain units will be

designated for special purpose uses. The special purpose units will not receive contract rents; instead, the contract rents for the dwelling units will increase by a share of the foregone subsidy. (i.e., the Operating Fund and Capital Fund portion of the weighted Contract Rent).

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

5. PHAs that are scheduled to receive ongoing Replacement Housing Factor funding in future years may choose to forego any ongoing RHF grans and repurpose the foregone subsidy to augment the initial RAD rent. The RAD rent may be augmented by the following amount:

   2012 RHF grant × Years of RHF funding the PHA is eligible to receive, but has not yet received = Total Anticipated RHF grants

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

   The PUM RAD Rent Augmentation would be reflected in the initial rents established in the HAP contracts. The contract rents will still be subject to applicable rent caps.

Attachment 1D – Requirements for RAD-Specific Significant Amendment Submissions

The following items must be covered in a PHA's Significant Amendment request or MTW's revision to the MTW plan:

1. A description of the units to be converted. The description should include the following:
    a. The number of units;
    b. The bedroom distribution of units, and
    ~~6.~~3. The type of units (e.g., family, elderly/disabled, or elderly-only);

2. Any change in the number of units that is proposed as part of the conversion, including:
    a. De minimis unit reductions and
    b. Unit reductions that are exempt from the de minimis cap;
    ~~7.~~4. Any change in the bedroom distribution of units that is proposed as part of the conversion;

3. Changes in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted.
    a. If Converting to PBV: This includes any waiting list preferences that will be adopted for the converted project as well as the Resident Rights and Participation, Waiting List and Grievance Procedures for residents stated in Section 1.6.C and Attachment 1B of PIH Notice 2012-032 (see Table 1 below for more specific guidance).
    b. If Converting to PBRA: This includes any waiting list preferences that will be adopted for the converted project as well as the Resident Rights and Participation, Waiting List and Grievance Procedures for residents stated in Section 1.7.B and Attachment 1B of PIH Notice 2012-032 (see Table 1 below for more specific guidance).
4. If there will be a transfer of assistance at the time of conversion, the significant amendment must include:
    a. The location (including census tract if known) of any converted units that will be transferred off-site,
    b. The number of units to be transferred;
    c. The bedroom distribution of the units in the new building(s), and
    d. The type of units, if changed (e.g., family, elderly/disabled, or elderly-only); and
    e. Any reduction or change in the number of units and what reduction category they fall under (i.e. de minimis)
    f. How the waiting list will be transferred and how households will be selected for the transfer, where applicable (please see Table 2 below for more specific guidance).

5. An indication of whether the PHA is currently under a voluntary compliance agreement, consent order or consent decree or final judicial ruling or administrative ruling or decision and a statement that compliance will not be negatively impacted by conversion activities.
6. All other required information and certifications necessary to submit a Significant Amendment to the PHA Plan, including Resident Advisory Board comments and responses, challenged elements, and all required certifications.
7. For MTWs utilizing MTW Fungibility as defined in Section 1.9.E and Section 1.6.B.5 or 1.7.A.5, as applicable, a statement explaining how the MTW will be able to maintain continued service level requirements.

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

8. During the significant amendment stage, a PHA shall notify the public that the current and future Capital Fund Budget grants will be reduced as a result of any projects converting to RAD, requiring revised Annual and Five-Year Plans.
    a. The PHA should provide an estimate of the amount of the current Capital Fund grant that is associated with the proposed project(s) and the impact on the PHA's current Five-Year PHA Plan and Five-Year Capital Fund Action Plan.
    b. If the RAD conversion will impact an existing CFFP or utilize RHF funds to facilitate conversion, the PHA should also indicate the estimate impact of those activities.

Finally, PHAs may want to redefine its definition of Substantial Deviation in Section 10 of the PHA Plan to exclude the following items:

1. The decision to convert to either Project Based Rental Assistance or Project Based Voucher Assistance;
2. The date the Significant Amendment is submitted to the PHA Plan website; and
3. To avoid the need for a possible subsequent significant amendment, the PHA should examine its definition of "Substantial Deviation". The PHA may want to redefine its definition of Substantial Deviation in Section 10 of the PHA Plan to exclude the following items:

    a. Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
    b. Changes to the construction and rehabilitation plan for each approved RAD conversion; and
    c. Changes to the financing structure for each approved RAD conversion.

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

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

Below, please find a table listing out each of the provisions affecting residents' rights and participation, waiting list and grievance procedures that must be included in a PHA's Significant Amendment. The table lists out the provisions applicable to the type of conversion (PBV or PBRA) that the PHA is proposing.

Project Based Voucher Requirements (Section 1.6.C & D of PIH Notice 2012-32)	Project Based Rental Assistance Requirements (Section 1.7.B & C of PIH Notice 2012-32)
1. No re-screening of tenants upon conversion;	1. No re-screening of tenants upon conversion;
2. Resident right to return if relocated as a result of conversion;	2. Resident right to return if relocated as a result of conversion;
3. Phase-in of tenant rent increase: If the rent increase is the greater of 10% or $25, the increase will be phased in over 3 years or five years, as determined by the PHA;	3. Phase-in of tenant rent increase: If the rent increase is the greater of 10% or $25, the increase will be phased in over 3 years or five years, as determined by the PHA;
4. Continued eligibility for PH-FSS and ROSS-SC programs;	4. Continued eligibility for PH-FSS and ROSS-SC programs;
5. Resident Participation and Funding. Residents will have the right to establish and operate a resident organization and be eligible for resident participation funding. See Attachment 1B of PIH Notice 2012-032.	5. Resident Participation and Funding. Residents will have the right to establish and operate a resident organization and be eligible for resident participation funding. See Attachment 1B of PIH Notice 2012-032.
6. Termination notification: PHA must provide written notification of termination of lease within a reasonable time: i. not to exceed 30 days if health or safety of other tenants, PHA employees or persons residing in the vicinity are threatened or in the event of drug-related or violent criminal activity or any felony conviction; ii. 14 days for non-payment of rent; iii. 30 days in any other case unless State or local law provide for a shorter time period.	6. Termination notification: PHA must provide written notification of termination of lease within a reasonable time: i. not to exceed 30 days if health or safety of other tenants, PHA employees or persons residing in the vicinity are threatened or in the event of drug-related or violent criminal activity or any felony conviction; ii. 14 days for non-payment of rent; iii. in all other cases, the requirements at 24 CFR §880.603, as revised for RAD in PIH Notice 2012-32, the Multifamily HUD Model Lease and any other HUD multifamily administrative guidance shall apply;

7. Grievance process See PIH Notice 2012-32 Section 1.6.C.7	7. Grievance process See PIH Notice 2012-32 Section 1.7.B.6
8. Establishment of Waiting List See PIH Notice 2012-32 Section 1.6.D	8. Establishment of Waiting List See PIH Notice 2012-32 Section 1.7.C
9. Earned Income Disregard. 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. (Please See PIH Notice 2012-32, Section 1.6.C.8)	8. Earned Income Disregard. 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 § 960.255. If a tenant requests that the EID cease, or upon the expiration of the EID for such tenants, 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 rise to the appropriate rent level based upon tenant income at that time. (Please See PIH Notice 2012-32, Section 1.7.B.7)
10. PHA's are required to renew the lease at expiration unless good cause exists for non-renewal.	**N/A**

Table 2: Elements to Include in Significant Amendment to Facilitate Site and Neighborhood Standards Review for Transfers of Assistance

Below, please find a table listing out each of the elements affecting Site and Neighborhood Standards that must be included in a PHA's Significant Amendment when they are conducting a Transfer of Assistance. The table lists out the requirements of what must be in the Significant Amendment based upon the type of neighborhood to which the assistance will be transferred.

1. For All Transfers:	Description of the new site and how it is adequate for the needs of the tenants and is consistent with or furthers the goal of deconcentrating poverty.
2. If transferring assistance to an area of concentrated poverty:	Various methods for demonstrating furthering the goals of deconcentrating poverty include: • Mixed income developments; • Development in a HUD Enterprise Zone, Economic Community, Renewal Community or a Revitalization Zone, including any areas where current or future HOPE VI or Choice Neighborhoods Initiative developments exist.
3. If transferring assistance to a development qualifying as new construction in an area of minority concentration:	1) Sufficiency of comparable opportunities for minority families in the income range to be served by the project outside areas of minority concentration; ○ Please examine 24 CFR §983.57(e)(3)(iv) & (v) to see more on comparable opportunities. 2) If there is an overriding housing need, which includes whether this is an integral part of an overall redevelopment strategy in a revitalizing area; ○ Please see 24 CFR §983.57(e)(3)(vi) for more information on overriding housing needs.

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.C & 1.6.D of PIH Notice 2012-32, REV-1; *For conversions to PBRA:* Section 1.7.B & 1.7.C of PIH Notice 2012-32, REV-1). These resident rights, participation, waiting list and grievance procedures are appended to this Attachment. Additionally, the (insert PHA name here) is currently compliant with all fair housing and civil rights requirements and is (not under a Voluntary Compliance Agreement *or* under a Voluntary Compliance 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 and Capital Funds in the amount of $XXX towards the conversion.] [Insert only if applicable: The (insert PHA name here) currently has debt under the Capital Fund Financing Program and will be working with (insert lender or bond trustee name) to address outstanding debt issues, which may result in additional reductions of capital funds.] [Insert only if applicable: The (insert PHA name here) currently has debt under an Energy Performance Contract and will be working with (insert EPC provider's name) to address outstanding debt issues, which may result in additional reductions of capital or operating funds.]

[For MTWs only, insert the following: Regardless of any funding changes that may occur as a result of conversion under RAD, (insert MTW name here) certifies that it will maintain its continued service level at (insert continued service level).]

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

Development #1

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

Bedroom Type	**Number of Units Pre-Conversion**	**Number of Units Post-Conversion**	**Change in Number of Units per Bedroom Type and Why** **(De Minimis Reduction, Transfer of Assistance, Unit Reconfigurations, etc.)**
Studio/Efficiency			
One Bedroom			
Two Bedroom			
Three Bedroom			
Four Bedroom			
Five Bedroom			
Six Bedroom			

(If performing a Transfer of Assistance):	**(Explain how transferring waiting list)**

Resident Rights, Participation, Waiting List and Grievance Procedures

If converting to PBV: (Insert Section 1.6.C & Section 1.6.D, as a whole, into this Attachment to your PHA Plan)

If converting to PBRA: (Insert Section 1.7.B & Section 1.7.C, as a whole, into this Attachment to your PHA Plan)

Site Selection and Neighborhood Standards Review

If Transferring Assistance to a new site, please list the applicable site selection and neighborhood review standards as explained in Attachment 1D, Table 2. *If a new site has not been selected, please append no later than when submitting the Financing Plan.*

Relocation Plans

If relocating residents, please append the Accessibility and Relocation Plan Checklist here. *If relocation plans have not been developed yet, please fill out the Accessibility and Relocation Checklist and submit with the Financing 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. Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
b. Changes to the construction and rehabilitation plan for each approved RAD conversion; and
c. Changes to the financing structure for each approved RAD conversion.

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

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

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

iii. *Termination of Tenancy and Assistance*. The termination procedure for RAD conversions to PBRA will additionally require that PHAs (as owners) provide adequate written notice of termination of the lease which shall not be less than:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction; or
- 14 days in the case of nonpayment of rent.

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

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

v. Residents be provided with notice of the specific grounds of the proposed owner adverse action, as well as their right to an informal hearing with the PHA (as owner);

vi. Residents will have an opportunity for an informal hearing with an impartial member of PHA's staff (as owner) within a reasonable period of time;

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

viii. PHAs (as 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 PHA (as owner) relied on as the basis for the adverse action.

The PHA (as owner) will be bound by decisions from these hearings, except if the:

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

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

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

SECTION II: MODERATE REHABILITATION PROJECTS

2.1 Purpose

This Section provides RAD program instructions to owners of Section 8 Moderate Rehabilitation (Mod Rehab) projects.[80]

Under the Demonstration, Mod Rehab owners have two application options:

- Conversion of Mod Rehab contracts to project-based vouchers (PBVs) or Project-Based Rental Assistance (PBRA) assistance at current funding levels, subject to competition (Section 2.2 of this Notice), or
- Project-basing of Enhanced Vouchers (EVs) (Section 2.3 of this Notice).

Mod Rehab owners may apply under either the first or second component of the demonstration for a given property. If an owner's application is rejected or withdrawn under one component, the owner may apply under the other component within the indicated application timeframes.

Please refer to the applicable sections for more background information and associated program instructions.

Note: Because Mod Rehab owners have two different options under the Demonstration, HUD requires similar criteria that can be reviewed in order to ensure preservation of the property. Consequently, all Mod Rehab projects, regardless of option, will submit Financing Plans for HUD review and approval, as described further in this Section II of the Notice.

2.2 Conversions Under the First Component of RAD: Conversions to PBRA or PBVs, Subject to Competition

This Section of the Notice applies to Mod Rehab owners wishing to convert assistance to PBRA or PBVs, at current funding levels.[81]

Major Revisions subject to Notice and Comment in Section 2 of PIH Notice 2012-32, REV-1.

[80] Conversions of properties under the Moderate Rehabilitation program exclude single room occupancy (SRO) dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act.

[81] Congress authorized no more than 60,000 public housing and Section 8 Moderate Rehab units to convert assistance under the first component of the Demonstration. ~~HUD intends to permit approximately five percent of the public housing stock (58,750 units) and up to five percent of the Mod Rehab stock (1,250 units) to convert.~~

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

PHAs and Owners applying to RAD under the new eligibility may submit their applications during the 30-day window. 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 Owner may amend an application previously submitted. However, CHAPs and Portfolio Awards for projects satisfying eligibility and selection criteria subject to notice and comment shall only be issued upon expiration of the comment period.

Key changes subject to the Notice and Comment Period:

- Opening the Mod Rehab Ongoing Application Period under the First Component and removing the cap on Mod Rehab Projects applying under the First Component (see Section 2.2.10).

- Allowing a Mod Rehab owner to request a Portfolio Award for a grouping of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the grouping, provided the owner submits a completed application for at least 50% of the projects. The owner then has 365 days to submit a completed application for the remaining projects (Please See Section 2.2.8.C).

- Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 2.2.8.D). [Subject to 30-day Notice & Comment]

2.2.1 General Program Description

Owners will apply competitively to convert assistance of projects in accordance with the terms of this Notice. Under this component of RAD, owners may choose between two forms of long-term Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component.

Owners will convert their assistance at current contract rent levels. Applications ~~must~~may be submitted for specific projects or a portfolio of Mod Rehab projects. Up to 1,250 Mod Rehab units will be selected competitively to convert assistance under this component~~.~~ in the Initial Application Period. Following review and selection of application, HUD will provide the owner with a Commitment to enter into a Housing Assistance Payment (CHAP), following which the owner will have to present a Financing Plan for HUD to approve. After HUD approval of the long-term viability of the Financing Plan and successful closing of the conversion, the project will receive a long-term Section 8 HAP contract.[82] Additionally, the owner is advised that they may be subject to certain civil rights and relocation requirements based upon their conversion actions.[83]

Pursuant to Section 2.2.10 of PIH Notice 2012-32 REV 1, HUD has established an Ongoing Application Period for Mod Rehab projects.

PBV Conversions. Where the owner converts assistance to Section 8 PBVs, the project will be administered by a consenting PHA on whose Annual Contributions Contract (ACC) the vouchers are assigned. PBV contract rents will be determined based on the project's current contract rent levels and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The initial contract will be for a period of at least 15 years (up to 20 years upon approval of the administering voucher agency) and will be subject to annual appropriations. At expiration of the initial contract, the PHA may renew the contract at the owner's request. Further, PHAs that administer the vouchers will provide a Choice-Mobility option to residents of covered projects, in accordance with PBV program rules. With the exception of provisions identified in this Notice regulatory and statutory requirements of the PBV program in 24 CFR Part 983 and URA requirements in 49 CFR part 24 shall apply.

[82] In the case where all units in a project do not substantially meet HQS, the owner will enter into an AHAP prior to executing the HAP.

[83] The URA (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24, apply to acquisition of real property and displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property, for a project that receives federal financial assistance, including Section 8 PBV assistance or PBRA. For purposes of this footnote, the term "project" is defined at 49 CFR 24.2(a)(22). URA requirements must be implemented in compliance with all applicable fair housing and civil rights laws, including but not limited to, Title VI of the Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973, and the obligation to affirmatively further fair housing, Pursuant to Title VI, a PHA or owner must, among other things, take reasonable steps that ensure meaningful access to programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). For more information on complying with this requirement, consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which HUD published in the Federal Register on January 22, 2007. For HUD guidance on complying with Section 504 when administering the URA, see Exhibit 3-1 in HUD Handbook 1378.

PBRA Conversions. Where the owner converts assistance to Section 8 PBRA, the project will be administered by HUD's Office of Housing. PBRA contract rents will be determined based on the project's current contract rent levels and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The initial contract will be for a period of 20 years and will be subject to annual appropriations. At expiration of the initial contract, the owner is eligible to renew the contract under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). Further, the provision of a Choice-Mobility option to residents of covered projects will be a condition of conversion, as specified in Section 2.2.6(C)(3) of this Notice, unless exempted from this requirement. With the exception of provisions identified in this Notice, regulatory and statutory requirements of the PBRA program in 24 CFR Part 880, URA requirements in 49 CFR part 24, and applicable standing and subsequent Office of Housing guidance, including handbooks, shall apply.

As a major goal of the first component of RAD is to test, in large part, the conversion of the Mod Rehab assistance to long-term, project-based Section 8 assistance in order to generate additional sources of private financing, HUD believes that it is important to offer the Section 8 PBV and PBRA forms of assistance largely in the manner that they have been established and proven effective for private owners, managers, financing entities and residents using them. Accordingly, HUD is applying its waiver authority and ability to establish alternative requirements for the effective conversion assistance on a limited basis to facilitate the major goals of the Demonstration in order to maintain existing distinctions between the PBV and PBRA forms of contract assistance. Such distinctions will enable an owner to choose one or the other form of assistance to best meet the circumstances and needs of a possible conversion of assistance under RAD. 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.

2.2.2 Eligibility

Owners of Mod Rehab projects are eligible to submit a request to convert assistance under this Section of the Notice if all eligibility requirements outlined below are satisfied.

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

B. Eligible Properties. Eligible properties are those properties currently receiving assistance through a Mod Rehab contract or a one-year Mod Rehab renewal HAP contract (excluding SRO dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act). The Mod Rehab contract or one-year renewal HAP contract must be active and may not have expired or been terminated. HUD may consider requests for early terminations of one-year Mod Rehab contracts to facilitate a RAD conversion on a case-by-case basis.

C. Physical Condition. For units that do not meet either Housing Quality Standards (HQS) or receive a passing score on the Uniform Physical Condition Standards (UPCS) prior to conversion, the owner must be able to demonstrate in its Financing Plan that the units will undergo sufficient rehabilitation to meet the physical standards applicable to the program to which it converts (HQS for conversions to PBV and UPCS for conversions to PBRA).

D. Fair Housing and Civil Rights Compliance. An owner must be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a) and not, without resolving any of the following to HUD's satisfaction, have any of the charges, cause determinations, lawsuits, or letter of findings referenced below against a PHA, its proposed partners, subrecipients, contractors, or the prospective project owner:

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 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 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, then the applicant is ineligible for the demonstration.

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

- Current compliance with a voluntary compliance agreement signed by all the parties;
- Current compliance with a HUD-approved conciliation agreement signed by all the parties;
- Current compliance with a conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Current compliance with a consent order or consent decree; or
- Current compliance with a final judicial ruling or administrative ruling or decision.

2.2.3 Rehabilitation and Financing Considerations

As one of the main purposes of RAD is to demonstrate how the conversion of current assistance to two different forms of 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, eligible applicants and their development partners are encouraged to consider any and all viable forms of debt and equity financing—including available grant funding—to support their conversion application(s). For more background and applicable program requirements, please see the discussion on Rehabilitation and Financing Considerations under Section 1.4 of this Notice. (Where the term "PHA" is used to refer to the PHA as owner, the term "owner" applies to Mod Rehab applicants.)

2.2.4 Substantial Conversion of Assistance

Owners may not submit RAD Applications that would reduce the number of assisted units, unless the proposal would reduce the number of assisted units by a de minimis amount, defined as the greater of five percent of the current project size (i.e., the number of units under HAP immediately prior to conversion) or five units. A unit is excluded from this de minimis threshold if it has been vacant for more than 24 months, or if reducing the total number of units will allow the owner to more effectively or efficiently serve assisted households through: (a) reconfiguring efficiency apartments; or (b) facilitating social service delivery (e.g., converting a basement unit into community space).

In such cases, the owner, within the application, shall submit 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 permanent involuntary displacement of residents may not occur as a result of a project's conversion of assistance, including as a result of a change in the 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. Any family temporarily relocated due to rehabilitation or construction shall have a right to return to the project.

Units that qualify for the de minimis exemptions will not be eligible for tenant protection vouchers.

2.2.5 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 Mod Rehab projects converting assistance to long-term PBVs 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, Tenant 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 shall apply, including resident choice, environmental review, and fair housing requirements.[84]

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 currently set at 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.

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.

[84] Fair housing requirements include but are not limited to planning, siting, admissions and occupancy, accessibility for persons with disabilities, nondiscrimination and equal opportunity, and affirmatively furthering fair housing.

An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).[85]

For purposes of RAD, 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 waiving 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 RAD converted project.[86]

3. **Owner Proposal Selection Procedures.** Selections of covered projects shall be made in accordance with program requirements outlined in this Notice. To implement this provision, HUD is waiving 24 CFR § 983.51

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)**. HUD waives these provisions, having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

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

1. **Length of Contract.** Covered projects shall have an initial HAP term of at least 15 years (up to 20 years upon request of owner and approved by the agency administering the

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

[86] See also 73 FR 71037, which implements language in the Housing and Economic Recovery Act, allowing for the cap on the number of PBV units to apply to a project, rather than a building. Although this change is not yet reflected in 24 CFR § 983.56, these statutory changes are self-implementing.

vouchers). To implement this provision, HUD is waiving 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).[87] Owners of covered projects are required to make available for occupancy by eligible tenants the number of assisted units.

2. **Initial Contract Rent Setting.** Pursuant to the RAD statute, the statutory and regulatory PBV requirements governing contract rents will apply (see 24 CFR § 983.301), except that initial rents cannot exceed the current contract rent levels. As such, initial contract rents cannot exceed the lower of: (a) the current contract rent (adjusted for bedroom size); (b) the reasonable rent (as defined under 24 CFR § 983.303); (c) ~~up~~an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (d) the rent requested by the owner.[88]

3. **Method of Adjusting Contract Rents.** Contract rents will be adjusted annually by HUD's Operating Cost Adjustment Factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.[89] 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 (or a third-party entity, if applicable) in accordance with 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.[90]

C. PBV Resident Rights and Participation

[87] 24 CFR 983.205 (a) has not been updated to reflect changes made to the initial contract term in the Housing and Economic Recovery Act of 2008. As reflected in 73 FR 71037, these statutory changes are self-implementing; therefore, the initial term of the contract is 15 years.

[88] In a limited number of situations where converting projects with Low Income Housing Tax Credits (LIHTCs) are located outside of a Qualified Census Tract, rents are determined in accordance with 24 CFR 983.301(c).

[89] OCAF are calculated and published each year in the Federal Register 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. For the most recent guidance on OCAFs, please see: http://www.gpo.gov/fdsys/pkg/FR-2011-10-26/pdf/2011-27816.pdf.]

[90]There are three exceptions. 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; 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.

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 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. 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. Once that remaining household moves out, the unit must be leased to an eligible family.

2. **Right to Return.** Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to ~~the development once~~an assisted unit at the development once rehabilitation or construction is completed. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

3. **Renewal of Lease.** Under current regulations at 24 CFR § 983.257(b)(3), upon lease expiration, an owner can choose not to renew the lease, without good cause. In such a case, the regulatory consequence is the loss of the assisted unit. Under RAD, the owner must renew all leases upon lease expiration, unless cause exists. Consequently, 24 CFR § 983.257(b)(3) will not apply.

D. PBV: Other Miscellaneous Provisions

1. **Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** Owners 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. **Mandatory Insurance Coverage.** The 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, except with the written approval of HUD to the contrary.

3. **Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within 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.)

2.2.6 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.

For Mod Rehab 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[91]) will apply[92], except for the provisions listed below.[93] These "special" provisions are grouped into three categories: Contract Terms, Tenant 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 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. Furthermore, Appendix III includes site and neighborhood standards that apply to PBRA projects.

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 waiving section 8(d)(2)(A) of the Act, which establishes a maximum term of 15 years for "an existing structure." as Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, will not apply. Owners of covered projects 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 an owner's request to reduce the number of assisted units under the contract shall be subject to conditions that HUD may impose.

[91] 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).

[92] These include fair housing requirements related to planning, siting, admissions and occupancy, accessibility for persons with disabilities, nondiscrimination and equal opportunity and affirmatively furthering fair housing.

2. **Contract Renewal.** Pursuant to the RAD statute, after the initial term of the HAP contract, the owner is eligible for renewal of the contract under section 524 of MAHRAA, subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal.

3. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. Consequently, section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, shall not apply. Nor shall section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the "project account," apply. At the time that assistance will be converted, initial contract rents will be established based on current contract rent levels. Initial contract rents will be capped at the lesser of: (a) current contract rent or (b) 120 percent of the applicable Section 8 FMR minus any utility allowance. However, when the current contract rent exceeds 120 percent of the FMR but where the owner believes that such rents are below the comparable market rent, the owner may request an exception in which the project may receive rents in excess of 120 percent of the FMR. The exception rent, if approved, shall be set at the lesser of comparable market rents or 150 percent of FMR. Comparable market rents shall be determined by HUD in its sole and absolute discretion, based on a Rent Comparability Study (RCS), procured and paid for by the owner.[94] Where contract rents are at or below 120 percent of the FMR, no RCS is required.

4. **Method of Adjusting Contract Rents.** Contract rents 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 term. Consequently, neither section 8(c)(2) of the Act nor 24 CFR § 880.609, which govern rent adjustments for project-based section 8 units, shall apply. While the initial rent is capped, rent caps do not apply when calculating rent adjustments by OCAF and no RCS is required.

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

6. **Transfer of Assistance.** Pursuant to the RAD statute, in order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, with HUD and lender and/or investor approval, and after consultation with residents, an owner may

[94] 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.

transfer part or all of a rental assistance contract and a RAD Use Agreement to unassisted units.[95] HUD may only approve a transfer if the project is economically non-viable, physically obsolete, severely distressed, or uninhabitable due to unforeseen circumstances such as natural disasters, or the transfer is in the best interest of the project's residents. An owner may only request a transfer of assistance at conversion or after 10 years from the effective date of the initial contract (unless a transfer is needed sooner as a result of a natural disaster). A project to which assistance is transferred is subject to all of the contract terms as described in the HAP, RCC, and Use Agreement, as well as site and neighborhood standards specified in Appendix III and all applicable fair housing and civil rights requirements (including, but not limited to, site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR § 1.4(b)(3)).

B. PBRA Resident Rights and Participation

1. **No Rescreening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements. 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 that remaining household moves out, the unit must be leased to an eligible family. .

2. **Right to Return.** Any resident that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

[95] HUD's fair housing and civil rights review of each request to transfer assistance will include, but not be limited to, a review of: the site and neighborhood of the property receiving assistance; any change in the number and/or bedroom distribution of assisted units; and any change in the policies that govern eligibility, admission, selection, and occupancy of assisted units after the transfer of assistance, including any waiting list preferences that will be adopted after the transfer of assistance. If only part of the assistance will be transferred, HUD will also review the PHA's or owner's plan for transferring the waiting list and selecting households that will be transferred to the new site.

C. Other Miscellaneous Provisions

1. **Access to Records, including Requests for Information Related to Evaluation of Demonstration.** Owners 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. **Mandatory Insurance Coverage.** The 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, except with the written approval of HUD to the contrary.

3. **Choice-Mobility.** HUD seeks to provide all residents of covered projects with viable Choice-Mobility options. Owners that are applying to convert the assistance of a project to PBRA are required to provide a Choice-Mobility option to residents of covered projects (through a PHA willing to provide vouchers to residents of covered projects) in accordance with the following:[96]

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

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

   c. *Project Turnover Cap.* Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the property, in any year, an owner may limit the number of Choice-Mobility moves exercised by eligible tenants to 15 percent of the assisted units in the project. (For example, if the project has 100 assisted units, the owner could limit the number of families exercising Choice-Mobility to 15 in any year but not less than 15.) While a voucher agency is not required to establish a project turnover cap, if

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

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 100 percent of residents in the Demonstration offered a Choice-Mobility option within a reasonable time after conversion. However, as HUD recognizes that not all Mod Rehab owners will have access to sufficient vouchers to support this effort, HUD will:

- Provide ranking factor points where a voucher agency has committed to provide vouchers to the covered PBRA project of an owner without a voucher program (see Section 2.2.10(C)(2)). Additionally, voucher agencies that make such a commitment will receive:
  - Priority points for new funding for HCV FSS coordinator positions in an upcoming FSS competition and
  - The bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.[97, 98]
- Grant a good-cause exemption for no more than 10 percent of units in the Demonstration. All Mod Rehab owners are eligible to request a good-cause exemption, unless the project owner administers, directly or through an affiliate, a Housing Choice Voucher program.

4. **Future Refinancing.** The owner must receive HUD approval for any refinancing or restructuring of permanent debt within 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.)

5. **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 from time to time regarding submission of financial statements.[99]

[97] 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.

[98] 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.

2.2.7 Resident Notification and Consultation

The owner is required to notify residents in writing of its intent to convert assistance under Section 2.2 of this Notice. The owner must conduct a resident meeting with all impacted residents and provide the residents with an opportunity to comment on the conversion. In accordance with 24 CFR § 8.6, Title VI, Executive Order 13166 and HUD's Limited English Proficiency Guidance, published in the Federal Register on February 16, 2007 (72 FR 2732), the meetings and materials ~~should~~must include accessible communications for persons with disabilities and language assistance to persons with limited English proficiency. Owners must provide a certification in the application that they have held the required meeting with residents and have provided residents with a reasonable time period to submit comments on the conversion. The owner's application for conversion must include all comments received from residents. The owner must also provide a description of how the residents' comments will be addressed in their plan for conversion. Upon conversion approval, the owner must notify each affected family that the project has been approved.

2.2.8 Application Requirements

Under the Ongoing Application Period in the Demonstration, applicants may apply to convert a single project, an owner-defined portfolio of projects or a multi-phase project. The requirements for each type of application are listed below:

A. General Requirements. All applicants must complete the Microsoft Excel-based RAD Application, which HUD will make available on the RAD website (www.hud.gov/rad), along with all other required submittals.[100] The RAD Application 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 Application.

Upon completion of required entries, the owner 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 owner has sufficiently considered the long-term preservation needs of the

[99] 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).

[100] The release date of the RAD Application will be subject to PRA approval.

property and the means by which those needs will be financed. In completing the financing pro-forma, the owner must identify likely sources of debt and/or equity financing.

The applicant must submit the following with their RAD Application, where applicable:

1. 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, which is a template document attached to the Application, 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.) The Financing Letter of Interest/Intent does not promise or imply a commitment to make a loan or equity investment but does require 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;
2. A **Choice-Mobility Commitment Letter** signed by: (a) the voucher agency that has committed to provide Choice-Mobility vouchers to the covered PBRA project converting from Mod Rehab for the initial term of the HAP (and that wants to earn a Ranking Factor, per Section 2.2.10(C)(2) of this Notice); and (b) the owner that obtains a commitment from a voucher agency to support Choice-Mobility for a specified PBRA project. This letter is a template document attached to the Application;
3. A copy of the **Mod Rehab HAP contract**, including all exhibits;
4. A PDF attachment of all **comments received from residents** as described in Section 2.2.7; and
5. If an owner chooses to convert assistance to PBVs, a signed letter from a voucher agency evidencing their willingness to administer the PBV contract. If the PHA that currently administers the Mod Rehab contract does not consent to administer the PBV contact, the owner 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.[101] If there is no voucher agency with overlapping legal jurisdiction that is willing to administer the PBV contract, the owner may want to consider converting the project to PBRA. However, in so doing, the owner would still be required to meet the Choice-Mobility requirement described earlier.

[101] HUD will make a reasonable effort to find a PHA with operational jurisdiction willing to enter into a PBV contract with the owner for eligible units at the project, taking into account the reasons why the original administering agency declined.

B. 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 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.

For all forms of tax credit, including 9%, 4%, or Historic, because HUD only has limited authority to make commitments for conversion of assistance under RAD, HUD will only make initial awards, known as a Commitment to enter into a Housing Assistance Payment contract, or CHAP, for the number of units that can be awarded tax credits in a single QAP cycle. CHAP awards for multi-phase developments that rely on multiple LIHTC awards will only cover the first phase. HUD will consider future phase development if HUD has authority to convert additional units.

C. Portfolio Awards. A Mod Rehab owner may apply for a Portfolio Award. A Portfolio Award allows an owner to reserve RAD conversion authority for several projects. In order to apply for a Portfolio Award, a Mod Rehab owner 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. 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. The owner will have 365 days from issuance of the Portfolio Award Letter to submit acceptable

applications for the remaining projects included in the Portfolio Award, which will result in the issuance of a CHAP for each project.[102] 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 an owner has failed to make sufficient progress towards the submitted conversion of the proposed portfolio, HUD may revoke the RAD conversion authority provided under the Portfolio Award for all projects where a CHAP has yet to be issued.

D. Applications for Multi-phase Development[103]. For projects requiring multi-phase development, a Mod Rehab Owner's RAD Application for the first phase must include: 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). Upon acceptance of the Owner'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 an Owner to reserve conversion authority for a project with multiple distinct development phases.

The Owner will have until July 1, 2015 to submit an application for the final phase of the project covered by the Multi-phase Award. Recipients of Multi-phase Awards shall still be required to fulfill all CHAP milestones for each of the CHAPs awarded by HUD. If the Owner 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.

[102] For Mod Rehab owners proposing a Portfolio conversion of over 3,000 public housing units, HUD may provide additional time for the owner to submit the remaining applications.

[103] In administering URA requirements with respect to a multi-phase development, a PHA or owner may request that HUD approve phased initiation of negotiations (ION) for the project when it deems that a single ION date would be impracticable and/or detrimental to the smooth relocation of residents. The ION is a trigger date for issuance of a Notice of Eligibility for Relocation Assistance or the Notice of Nondisplacement to each resident. Phased ION dates may be particularly appropriate when a project is very large and/or is located in a community with insufficient housing resources to absorb residents who will be relocated, temporarily or permanently, from the project.

2.2.9 Submission of Applications

All required materials (including narratives and attachments) must be submitted electronically. In addition to submitting the RAD application as an Excel file, the attachments must be included as PDF files. No paper or fax submissions are permitted. Applications must be sent to RADapplicationsMR@hud.gov.

There is no fee associated with the submission of an application or the withdrawal of an application or award. Additionally, there is no cap on the number of project applications that an owner may submit or resubmit.

Only applications that have met all applicable submission requirements will be considered. Rejected applicants will be notified and the owner may choose to re-submit. If resubmitted, the application will be considered according to the date of the resubmission.

HUD reserves the right to close or reopen the application process at any time if it determines that sufficient applications have been received to utilize the allowable units.

2.2.10 Selection Criteria

This Section explains the criteria that HUD will use to select projects competitively for participation under the Demonstration, including targets, application periods, and ranking factors.

A. Targets

As required under the statute, HUD seeks to offer awards across geographies. Awards in the Initial Application Period will be made according to the Mod Rehab CHAP Unit Commitment Targets (i.e., pools) contained in the table below, representing approximately five percent of the units currently assisted through Mod Rehab contracts.

Upon receipt of applications, HUD may, to utilize all available units, make minor modifications to one or more of these caps in order to accommodate the number of units represented by the actual applicant properties.

Mod Rehab CHAP Unit Commitment Targets,
by Census Region ("Pools")[104]

[104] For a list of the states contained in each Census regions, please see http://www.census.gov/geo/www/reg_div.txt. Puerto Rico and the Virgin Islands will be included in the South and Guam will be included in the West.

Mod Rehab	Region				
	Northeast	Midwest	South	West	Total
Units	349	220	412	269	**1,250**

B. Initial Application Period[THIS APPLICATION PERIOD HAS EXPIRED, SEE ONGOING APPLICATION PERIOD]

a. Application Submission- for Mod Rehab Initial Application Period. HUD will begin accepting applications for the Mod Rehab Initial Application Period on September 24, 2012 (60 days from the date of issuance of this Notice) and will close on October 24, 2012 (90 days from issuance of this Notice), coinciding with the public housing Initial Application Period. During this time, HUD will sort the applications into their appropriate pools. Each RAD Application will generate a score according to the four ranking factors described below. The maximum points that an application can receive is 100. Tiebreakers will be decided by random lottery. After 30 days, the Mod Rehab Initial Application Period will close and applications will be ranked in their respective pools.

b. HUD Review. During the 30-day period following the close of the Mod Rehab Initial Application Period, HUD will rank all applications and review them in rank order to ensure that they are complete and meet the eligibility requirements under Section 2.2.2 of this Notice. Applications that pass this review are referred to as "qualified applications." Incomplete applications or those that fail to meet eligibility requirements will be withdrawn from the competition. All applicants will be notified of their status after the 30-day review period.

c. Awards. Beginning with the highest ranked applications, HUD will select projects until CHAP Unit Commitment Targets have been met in each pool.

In pools that are oversubscribed—where the units associated with qualified applications exceed the CHAP Unit Commitment Targets during the Initial Application Period—applications that are not selected will be placed on a waiting list in rank order.

Because of the limited number of awards that may be available, HUD anticipates that sufficient qualified applications will be received to make awards. If insufficient qualified applications are received during the Mod Rehab Application Period, HUD will make additional awards to public housing applications.

Following the review and selection of applications submitted during the Initial Application Period, HUD will post a summary of applications selected for award, total units by pool, and waiting list status for all other qualified projects. All applicants will be notified of their status

after the 30-day review period. For each project selected, HUD will notify the applicant of CHAP award via an award letter.

C. Mod Rehab Ranking Factors

There are four categories of ranking factors that will be used in the Mod Rehab Initial Application Period:

1. **High Capital Need Projects (0-50 points).** All project applications will be scored on a scale between zero and 50 points based on the level of immediate capital needs, as defined in the application, that the owner proposes to address through conversion. Applications that propose to meet or exceed the established threshold for high capital needs will receive the maximum 50 points.[105] The rehabilitation thresholds are indicated in the table below.

National Rehabilitation Thresholds to Qualify For Factor (per unit)

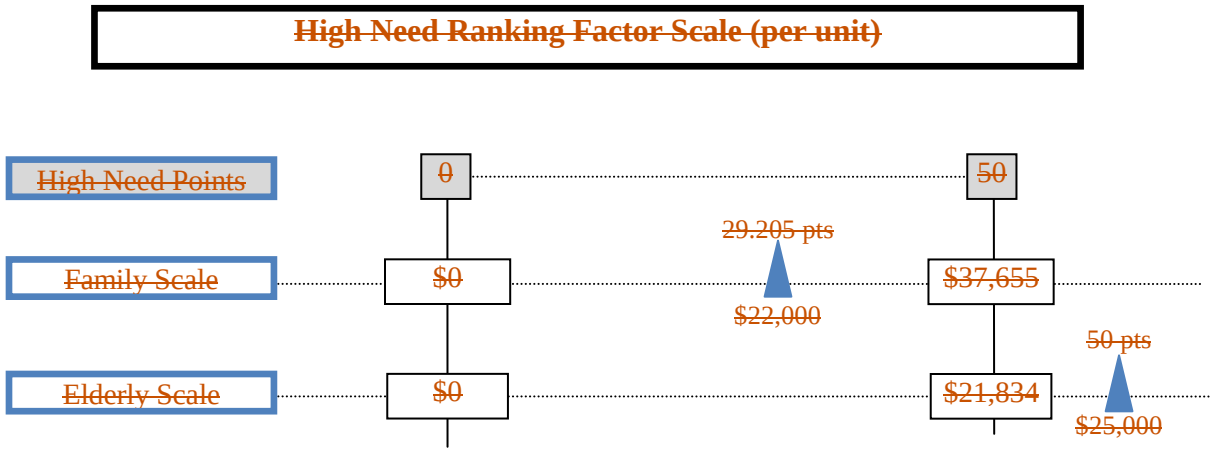
Occupancy Type[106]	High Need
Family Threshold	$37,665
Elderly Threshold	$21,834

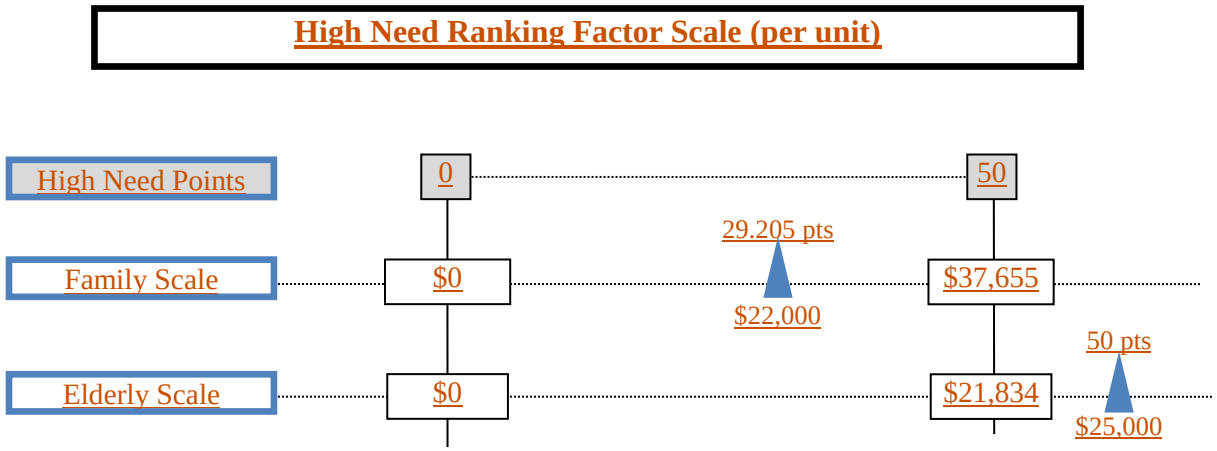
The per-unit capital costs proposed in each application will be scored on this scale and assigned a value, rounded to three decimal places. For example, as shown below, a family project with capital needs of $22,000 per unit would receive 29.205 points, while a

[105] Lacking national data on the capital needs in the Mod Rehab assisted stock, HUD is using the same high capital needs thresholds as are being used for the public housing stock, for the purposes of the High Need Ranking Factor. See Section 1.12.D, for a description of the methodology.

[106] Projects with an average bedroom size of at least 1.5, or those with an average bedroom size between 1.2 and 1.5 and at least 100 2+ bedroom units will be subject to the Family Threshold. Projects with average bedroom size less than 1.5, except when average bedroom size is between 1.2 and 1.5 and the property has at least 100 2+ bedroom units, will be subject to the Elderly Threshold.

proposal for an elderly project with capital needs of $25,000 per unit would receive the maximum 50 points under this ranking factor.[107]





HUD will revoke a CHAP if the scope of rehabilitation changes in such a way that would have affected the project's selection in the competition. Additionally, the owner must submit a certification of completion once renovations have been completed.

2. **Choice-Mobility Commitment (20 points).** Where a voucher agency has committed to provide vouchers to a covered PBRA project in order to achieve the Choice-Mobility component under PBRA, both parties are eligible to earn points under this ranking factor.

[107]The family project was scored using the following calculation:

$$\left(\frac{(\$22{,}000)}{(\$37{,}665)}\right) \times 50\ pts = 29.205\ pts$$

- The application of the covered PBRA project that will be served by the voucher agency will receive twenty points.
- The voucher agency agreeing to provide needed Choice-Mobility vouchers to an owner's covered project will earn 20 points. The "donating" agency providing such vouchers will then be able to apply these points to a RAD Application of its own, if applicable. (If the voucher agency provides turnover vouchers for two projects, it can apply ranking factor points to two projects.) The voucher agency must demonstrate that it has sufficient annual turnover that it could reasonably offer 20 percent of the assisted residents a Choice-Mobility voucher on an annual basis.[108] (In addition to the ranking factor points earned in the RAD competition, a donating agency will also receive priority points for new funding for HCV FSS coordinator positions in an upcoming FSS competition and the bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.[109, 110]

Both the voucher agency and the owner must complete and sign the Choice-Mobility Commitment Letter attached to the Application. Neither application will receive the ranking factor points if HUD determines that the RAD Application from the project being served is incomplete or fails to meet the feasibility benchmarks that are required for eligibility.

If the application is approved and a CHAP is awarded, the donating agency will have 60 days from the date of the issuance of the CHAP to modify its Section 8 Administrative Plan and submit a significant amendment to its Annual Plan to HUD. The donating agency's significant amendment must be approved or the CHAP will be revoked and the donating agency will not receive any of the incentives outlined in this notice.

3. **Green Building and Energy Efficiency (10 points).** Project applications will receive 10 points if the owner commits to pursue an industry-recognized standard and certification

[108] Note that the voucher agency committing vouchers does not need to have submitted an application for RAD. For example, a performance-based contract administrator (PBCA) who also administers vouchers with jurisdiction in the area in which a project proposed by another PHA is located may choose to commit turnover vouchers to that project if it is converting to PBRA.

[109] 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.

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

for green building, such as the Enterprise Green Communities Criteria,[111] LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard in HUD's sole discretion. This commitment indicates the owner's intent to estimate and fund construction and reserves that will achieve these industry standards for new construction, moderate or substantial rehabilitation, and operation for the term of the HAP contract. The PCA submitted for the Financing Plan must include a certification that the planned scope of work is reasonably sufficient to achieve the certification. Additionally, the owner must submit a certification of completion once renovations have been completed, and provide evidence that the green building standard has been achieved.

4. **Owner Priority Project (20 points).** An owner may designate only one project for which it submits a RAD Application as a "priority project." The project will automatically earn 20 ranking factor points.

The Ranking Factors and associated points are summarized in the table below.

Summary of Ranking Factors	Points
High Capital Need Projects	0-50
Choice Mobility Commitment	20
Green Building and Energy Efficiency	10
Owner Priority Project	20
TOTAL	**100**

D. CHAP Terminations and Replacement Awards

If a CHAP or Portfolio Award that is issued to an owner is revoked, withdrawn, or the owner fails to comply with milestones, HUD will utilize the waiting list to select a replacement award to the next qualified applicant. HUD will first identify the highest ranked application that is within the same Census Region as the application it is replacing. If no qualified application exists that meets this criteria, HUD will select the highest ranked application from the other pools.

[111] The Enterprise Green Communities Criteria is applicable to new construction, moderate rehabilitation and substantial rehabilitation.

E. Exemptions from the Choice-Mobility Component in the Competition

All applicants will be required to meet the Choice-Mobility component, except that HUD will grant a limited number of good-cause exemptions for eligible PBRA projects up to 10 percent of awards under the Demonstration. Applicants will need to indicate in the RAD Applications for each project whether they are applying for the good-cause exemption, which HUD will issue to the highest ranked applications that are eligible.

An owner that requests a good-cause exemption, but is not awarded one will be placed on the waiting list and may be selected if a CHAP is terminated for a project that originally received a good-cause exemption. An owner may revise its application only to certify that it will meet the Choice-Mobility component. An application modified in this way would retain its place on the waiting list.

F. Ongoing Application Period.

The Ongoing Application Period commences 30 days after publication of PIH 2012-32 REV-1, unless HUD receives adverse public comment that would require it to reconsider the opening of the Mod Rehab Ongoing Application Period. If HUD receives adverse comment that leads to reconsideration, HUD shall notify the public in a new revision immediately upon the expiration of the comment period.

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

All applications submitted during the Ongoing Application Period for both public housing and Mod Rehab under the first component will compete on a first-come, first-serve basis, i.e., ranking factors will not apply, and applications will be reviewed in the order in which they are received.[112] There will be no applicable unit cap, i.e., the 1,250 unit cap during the Initial Application Period will not apply. If a Mod Rehab Owner provides an application prior to the expiration of the 30-day public comment period, then HUD shall consider the application to have been received on the date the Ongoing Mod Rehab Application Period opens, in the order in which applications are received.

[112] This provision also applies to applications for Awards under Section 1.9.C, Section 1.9.F and Section 2.2.9.C.

During the Ongoing Application Period, HUD will post a summary of applications selected for CHAPs or Portfolio Awards and waiting list status for all other applicants. The summary will be updated monthly.

Unless the application process is closed, which HUD would announce through the RAD website, the last date that HUD will accept an application under the first component of the Demonstration is September 30, 2015.

2.2.11 Notification of Award, Issuance of CHAP, and Related Milestones

Please see Section 1.12 of this Notice for information regarding notification of award, issuance of CHAP, and related milestones. (Where the term "PHA" is used to refer to the PHA as owner, the term "owner" applies to the Mod Rehab applicants.) Please Note, the RCC is not applicable for mod rehab conversions to PBV. The RCC is only applicable to public housing conversions and mod rehab projects converting to PBRA.

2.2.12 Compliance with all Applicable Notices Regarding Contract Expiration or Termination

Section 8(c)(8)(A) of the Act requires that not less than one year before the termination or expiration of the Section 8 Mod Rehab HAP contract, the owner must provide written notice to tenants assisted under the Mod Rehab HAP contract. This notice is required to inform residents of the impending HAP contract expiration. An owner requesting conversion under this Section of the Notice must comply with this requirement. The law also requires that the owner submit the notice to HUD; however, since local PHAs administer the Mod Rehab program, the owner shall submit the notice to the appropriate PHA instead of HUD. If the owner has not provided tenants with the one-year statutory notification at the time of the owner's request to convert assistance under this Notice, the owner must provide such notice prior to submitting its application for conversion. The conversion may be processed during the one-year notification period; however, the statutory protections accorded to tenants pursuant to Section 8(c)(8)(A) of the Act are applicable until such time as the one year notification period has been satisfied.

2.3 Conversions Under the Second Component of RAD: Project-Basing Enhanced Voucher Assistance

This Section 2.3 of the Notice applies to owners of Mod Rehab properties wishing to project-base enhanced vouchers (EVs) (a form of tenant protection vouchers (TPVs)), i.e., the second component of the Demonstration.

2.3.1 General Program Description

Under the Demonstration, an owner may request to enter into a 15-year Section 8 project-based voucher (PBV) contract with the administering PHA at the Mod Rehab property, in lieu of the EVs that would otherwise be provided or have been provided to eligible families. This component is non-competitive but is subject to annual appropriations and the availability of TPV funding. In such cases, EVs converted to PBVs will have rents determined in accordance with PBV program requirements.[113] HUD will consider two types of conversions:

- **Prospective Conversions**. For prospective conversions, the contract expiration must occur no earlier than 120 days following the date of issuance of this Notice, and no later than September 30, 2013. Owners and PHAs must comply with the resident consultation procedures described in this Notice. Where the contract expiration has not occurred as of the effective date of this Notice, but will occur prior to 120 days following the issuance of this Notice, and EVs have not been issued to residents pursuant to an owner's decision not to renew the Mod Rehab HAP contract, the administering PHA and the owner may enter into a short term Mod Rehab renewal contract for the period necessary to pursue the conversion to PBV assistance under this Section.

  For prospective conversions, the request for conversion must first be made to the PHA that serves as the Mod Rehab Contract Administrator. If the PHA that administers the Mod Rehab contract declines to consent, HUD will make a reasonable effort to find a PHA with operational jurisdiction willing to enter into a PBV contract with the owner for eligible units at the project, taking into account the reasons why the original administering agency declined. If no PHA consents to enter into the PBV contract, the owner's conversion request will not be approved. HUD Headquarters will verify the PHA consent as part of the review of the Mod Rehab owner's request.

- **Retroactive Conversions**. For retroactive conversions, where contract expiration occurred after October 2, 2006, and EVs have been issued to project residents, an owner may request that the EV assistance be converted to PBV assistance, subject to PHA and resident consent.

  For retroactive conversions, the request can only be made to the PHA that serves as the administrator of the EVs. The RAD statue requires the consent of the "administering PHA." If the actively-administering PHA does not consent to the long-term conversion of

[113] In a limited number of situations where converting projects with Low Income Housing Tax Credits (LIHTCs) are located outside of a Qualified Census Tract, rents are determined in accordance with 24 CFR § 983.301(c).

the contract to PBV assistance, HUD would have no legal basis to transfer the voucher assistance provided on behalf of the residents of the Mod Rehab project to another PHA.

The owner is advised that early planning is critical to reduce any delays in the execution of the PBV HAP contract and gaps in rental assistance payments. Additionally, the owner is advised that they may be subject to certain civil rights and relocation requirements based upon their conversion actions.[114]

2.3.2 Eligibility

Owners of Mod Rehab projects may submit a request to convert EVs to PBVs under this Section of the Notice if all eligibility requirements described below are met.

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

B. Eligible Properties. For prospective conversions, eligible properties are multifamily housing projects assisted under a Section 8 Mod Rehab HAP contract (excluding Section 8 Mod Rehab SROs authorized by title IV of the McKinney-Vento Homeless Assistance Act) that are subject to a one-year renewal that has not yet expired, but will expire prior to September 30, 2013. HUD will consider requests for early terminations of one-year Mod Rehab renewal contracts to facilitate a RAD conversion. For retroactive conversions, eligible properties are those where the Mod Rehab HAP contract or one-

[114] The URA (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24, apply to acquisition of real property and displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property, for a project that receives federal financial assistance, including Section 8 PBV assistance or PBRA. For purposes of this footnote, the term "project" is defined at 49 CFR 24.2(a)(22). URA requirements must be implemented in compliance with all applicable fair housing and civil rights laws, including but not limited to, Title VI of the Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973, and the obligation to affirmatively further fair housing, Pursuant to Title VI, a PHA or owner must, among other things, take reasonable steps that ensure meaningful access to programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). For more information on complying with this requirement, consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which HUD published in the Federal Register on January 22, 2007. For HUD guidance on complying with Section 504 when administering the URA, see Exhibit 3-1 in HUD Handbook 1378.

year Mod Rehab renewal contract expired on October 1, 2006 or later, provided that households residing in units covered by the Mod Rehab HAP contract were issued EVs and are still in occupancy at the time of the owner's request.

Properties that were previously assisted under the Mod Rehab program where the HAP contract has been terminated by the administering PHA due to non-compliance are ineligible to participate under this Notice.

C. Eligible Units. For prospective conversions, eligible units are those on the Mod Rehab contract that are occupied at ~~contract expiration or were occupied at some point 24 months prior to~~ HAP contract expiration or termination. For retroactive conversions, eligible units include those units occupied at the time of the RAD conversion by households that received EV assistance as a result of the Mod Rehab contract expiration.

D. Physical Condition. For units that do not meet either Housing Quality Standards (HQS) or receive a passing score on the Uniform Physical Condition Standards (UPCS) prior to conversion, the owner must be able to demonstrate in its Financing Plan that the units will undergo sufficient rehabilitation to meet HQS.

E. Fair Housing and Civil Rights Compliance. An owner must be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a) and not, without resolving any of the following to HUD's satisfaction, have any of the charges, cause determinations, lawsuits, or letter of findings referenced below against a PHA, its proposed partners, subrecipients, contractors, or the prospective project owner:

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 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 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, then the applicant is ineligible for the demonstration.

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

- Current compliance with a voluntary compliance agreement signed by all the parties;
- Current compliance with a HUD-approved conciliation agreement signed by all the parties;
- Current compliance with a conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- Current compliance with a consent order or consent decree; or
- Current compliance with a final judicial ruling or administrative ruling or decision.

2.3.3 Waiver of PBV Rules

Under the Demonstration, the provisions of section 8(o)(13)(B) of the Act, governing the maximum amount of HCV assistance that may be project-based, do not apply to properties converting their assistance under Section 2.3 of this Notice. Therefore, HUD is waiving the associated implementing regulation at 24 CFR § 983.6 (concerning the maximum amount of PBV assistance). Accordingly, selections under Section 2.3 of this Notice do not count against the 20 percent limitation on the maximum amount of assistance a PHA may utilize for the PBV program.

In addition, HUD has the authority to waive or alter the provisions of sections 8(o)(13)(C) and (D) of the Act, governing the cap on the number of PBV units in each building and goals of deconcentrating poverty and expanding housing and economic opportunities, respectively. Accordingly, for properties converting their assistance under Section 2.3 of this Notice, HUD is making the following changes to the regulations implementing these two statutory provisions:

- **Cap on the Number of PBV Units in Each Project, 24 CFR § 983.56(a).** 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.

An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exemption, see 24 CFR § 983.56(b)(2)(II)(B).[115]

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 waiving 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 RAD converted project.[116]

- **Site Selection – Compliance with PBV goals, 24 CFR §§ 983.57(b)(1) and (c).** HUD is waiving these provisions, concerning deconcentration of poverty.
- **Owner Proposal Selection Procedures, 24 CFR § 983.51.** HUD waives the owner proposal selection requirements. Selections under Section 2.3 of this Notice shall be made in accordance with program requirements detailed in this Notice and selection requirements under § 983.51 are not applicable.
- **Under-occupied Units.** For households of more than two individuals (or single-person households, where that individual is elderly or disabled) occupying a unit determined by

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

[116] See also 73 FR 71037, which implements language in the Housing and Economic Recovery Act, allowing for the cap on the number of PBV units to apply to a project, rather than a building. Although this change is not yet reflected in 24 CFR § 983.56, these statutory changes are self-implementing.

HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-size unit becomes available. When an appropriate size unit becomes available in the project, the family living in the oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit. In order to effectuate this provision HUD is waiving 24 CFR §983.259(b)(1)&(2) and (c).

For households consisting of single individuals who are not elderly, disabled, displaced or the remaining member of a tenant family, the unit shall not be included in the PBV HAP contract. The PHA shall provide an enhanced voucher to such individuals who have the statutory right to remain in the project (see PIH Notice 2001-41 for enhanced voucher requirements and PIH Notice 2008-12 for guidance on enhanced voucher requirements for overhoused households). If the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available.

- **Initial and Re-Determined Rents.** Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR Part 983 Subpart G for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. In order to effectuate this provision, HUD is waiving 24 CFR §983.301(e); 24 CFR §983.302(c); and 24 CFR §983.303(a).

  PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts, and any other local concerns prior to electing to establish the initial contract rent as the rent floor. If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:
    - To correct errors in calculations in accordance with HUD requirements;

- If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR § 983.55; or
- 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.

Finally, for all projects that will use FHA multifamily mortgage insurance in financing related to the conversion, HUD will perform the environmental review under 24 CFR Part 50, and no review will be required under 24 CFR Part 58.

All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 shall apply to conversions pursuant to Section 2.3 of this Notice, including Family Right to Move under 24 CFR § 983.260 (i.e., Choice-Mobility), environmental review, and fair housing requirements.

2.3.4 Submission of Requests for Prospective Conversions

This Section covers prospective conversions of EVs to PBVs.

A. Submission of Preliminary Request to Administering PHA

For prospective conversions (initial or renewal contract expirations expected to occur prior to September 30, 2013) the owner must first contact the administering PHA and make a preliminary request to assess whether the PHA is interested in administering the PBV contract, copying HUD through RAD@hud.gov.

The owner must make the request to the administering PHA at least 120 days, but no more than 12 months, prior to the date of expiration of the HAP contract. Where the contract expiration has not occurred as of the effective date of this Notice, but will occur prior to 120 days following the date of issuance of this Notice, and EVs have not been issued to residents pursuant to an owner's decision not to renew the Mod Rehab HAP contract, the PHA and the owner may enter into a short term Mod Rehab renewal contract for the period necessary to pursue the conversion to PBV assistance under this Section of the Notice.

The administering PHA has 15 days to consent or decline the owner's preliminary request. If the PHA consents to the preliminary request, the owner may proceed with household notification (paragraph B under this Section). If the PHA declines the owner's request, the owner may not proceed with household notification and the PHA must submit to the owner and HUD (at RAD@hud.gov), a letter describing its reasons for its decision to decline the request. Such reasons may include lack of capacity to administer a PBV program, inconsistency with PHA plan, or other reasons. HUD will, in a timely manner, make a reasonable effort to find a PHA with operational jurisdiction interested in entering into a PBV contract with the owner for

eligible units at the project, taking into account the reasons why the original administering agency declined.

B. Household Notification and Comment

For prospective conversions, the owner is required to notify residents in writing of its request for PBV assistance in lieu of the provision of EV assistance to eligible families (see Attachment 2A). The administering PHA must schedule resident briefings in order to fully inform residents of the PBV program rules, including the statutory Choice-Mobility option. Residents must have the opportunity to comment on the owner's request. In accordance with 24 CFR § 8.6, Title VI, Executive Order 13166 and HUD's Limited English Proficiency Guidance, published in the Federal Register on February 16, 2007 (72 FR 2732), the meetings and materials should include accessible communications for persons with disabilities and language assistance to persons with limited English proficiency. The PHA must take these resident comments into consideration and follow the requirements outlined below.

1. The notification letter, which must include the date and time of the PHA's resident briefings, must be delivered to all project residents, including each Mod Rehab-assisted household, as well as posted in the project office or other common area, the PHA's office, and at no fewer than three prominent locations on the project site.

2. The notification letter must include a description of the anticipated contract expiration, the date of the expiration, the units that are affected by the expiration of the contract, and the units that would be covered under a HAP contract for PBV assistance. A sample resident notification letter is attached to this Notice as Attachment 2A of this Notice.

3. If temporary relocation of households will be required due to rehabilitation or construction, the notification letter must state the owner's plan for relocation, including the expected length of the relocation, and must specify that all relocation costs will be the responsibility of the owner. All households temporarily relocated will have a right to return. No permanent involuntary displacement may occur as a result of conversion.

4. The notification letter must supply information on the method to submit comments to the PHA and provide for a 30-day comment period.

5. The PHA must provide the owner with a copy of all comments received. The owner must provide a description of how the residents' comments will be addressed in their plan for the conversion of EV assistance to PBV assistance. The PHA must consider all resident comments and the owner's plan to address the comments before entering into a PBV HAP contract with the owner.

6. The owner shall not employ any tactics to pressure a household during the notification and comment period and may not terminate a household's lease based on a household's comments.

C. PHA Review and Consent

The PHA will review the owner's submission and the resident comments. If more than 50 percent of written resident comments disapprove of the conversion of assistance, the PHA may contact the owner to discuss options for proceeding with the conversion request or may decline the request. Within 14 days of the date of owner's submission of the resident comments, the PHA must respond (copying HUD at RAD@hud.gov) with either a letter of support that indicates the PHA's consent or a letter that declines the owner's request describing the reasons the PHA is declining the request. In the latter case, HUD will make a reasonable effort to find a PHA with operational jurisdiction willing to enter into a PBV contract with the owner for eligible units at the project, taking into account the reasons why the original administering agency declined. If no PHA consents to enter into the PBV contract, the owner will be considered ineligible to participate under Section 2.3 of the Notice. (The owner may, however, submit an application to HUD Headquarters under Section 2.2 of this Notice.)

D. Submission of Request to HUD Headquarters

Once the owner obtains the administering PHA's consent to provide PBV assistance for eligible units in lieu of EV assistance to eligible families, the owner must submit to RADApplications@hud.gov its request, including:

a. A certification from the PHA that the applicant has met all requirements described in paragraphs A through C above;

b. A Financing Plan. Please see Attachment 1A.1 for Financing Plan Requirements. (Where the term "PHA" is used to refer to the PHA as owner, the term "owner" applies to Mod Rehab applicants.) HUD will release separate guidance detailing what elements of the Financing Plan may be waived for projects using FHA insurance; and

c. Any other information necessary to evaluate the application that HUD may request at its discretion.

E. Approval and Execution of PBV HAP or Agreement to Enter into a Housing Assistance Payment (AHAP) Contract

Within 60 days of the owner's submission, HUD Headquarters will review the Mod Rehab owner's request; make a determination of whether the Financing Plan is approved and if tenant protection funding is available; and notify the owner and the administering PHA of the determination, and, if accepted, invite the PHA to request TPV funding through HUD's Public Housing Field Office Director.

Upon receipt of such request, HUD will process the request and amend the PHA's annual contributions contract (ACC), to provide tenant-protection funding for the conversion. Subsequent to such amendment, the PHA and owner will enter into a PBV HAP contract for projects that qualify as existing housing under the PBV program, or an Agreement to Enter into Housing Assistance Payment (AHAP), in accordance with all PBV program requirements, for projects requiring rehabilitation under the PBV program.[117]

The PHA will verify the number of units that are eligible to receive PBV assistance under the conversion, and will perform income re-examinations on households whose incomes have not been re-determined within 12 months of the owner's approved application. The owner is advised that if households do not meet income requirements, those units will not be assisted under the PBV program. Therefore, the total number of units assisted under the PBV HAP contract may be fewer than originally requested by the owner. If a unit that was vacant at the time of the owner's request is re-occupied with an eligible household prior to the approval of the owner's application, the unit may be included in the conversion provided the household is informed, by the PHA, of the pending application for conversion prior to occupying the unit.

The PHA will also inspect the converting units to determine that they meet HQS, as required by PBV program rules. Units must meet HQS prior to execution of the PBV HAP Contract. If the units do not meet the definition of existing housing under the PBV program, the PHA and owner must enter into an AHAP and all rehabilitation must be performed pursuant to the terms of the AHAP. Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-065 and Appendix IV.

2.3.5 Submission Requirements for Retroactive Conversions

A Mod Rehab owner may submit a request to convert EVs that were previously issued to assisted households of the former Mod Rehab project to PBV assistance, provided that the EVs were issued to eligible residents of the project following a contract expiration that occurred after October 1, 2006. For such retroactive conversions, the processing requirements are stated below. A sample resident notification letter for retroactive conversions is attached to this Notice (Attachment 2B).

A. Submission of Request to Administering PHA

[117] Mod Rehab conversions under the second component of the Demonstration will not receive a CHAP or execute a RCC.

For retroactive conversions the owner must first contact the administering PHA and make a preliminary request to assess whether the PHA is interested in administering the PBV contract, copying HUD through RAD@hud.gov. The administering PHA has 15 days to consent or decline the owner's preliminary request. If the PHA consents to the preliminary request, the owner may proceed with household notification (paragraph B under this Section). If the PHA declines the owner's request, the owner may not proceed with household notification and the PHA must submit to the owner and HUD (at RAD@hud.gov), a letter describing its reasons for its decision to decline the request. Such reasons may include lack of capacity to administer a PBV program, inconsistency with PHA plan, or other reasons. If the administering PHA declines the owner's preliminary request to convert assistance pursuant to this Section, the owner is ineligible to participate in RAD. (The RAD statute requires the consent of the "administering PHA." If the actively-administering PHA does not consent to the long-term conversion of the contract to PBV assistance, HUD would have no legal basis to transfer the voucher assistance provided on behalf of the residents of the Mod Rehab project to another PHA.)

B. Household Notification

The owner is required to notify residents in writing of its request to convert EV assistance to PBV assistance for eligible families (see Attachment 2B). The notification letter, which must include the date and time of resident briefings the PHA will perform (discussed below), must be delivered to all project residents, including each Mod Rehab-assisted household, as well as posted in the project office or other common area, the PHA's office, and at no fewer than three prominent locations on the project site.

1. The notification letter must include a description of the anticipated conversion, the units that are affected by the conversion, and the units that would be covered under a HAP contract for PBV assistance. A sample resident notification letter is attached to this Notice as Attachment 2B.

2. If temporary relocation of households will be required due to rehabilitation, the notification letter must state the owner's plan for relocation, including the expected length of the relocation, and must specify that all relocation costs will be the responsibility of the owner. All households temporarily relocated will have a right to return. No involuntary displacement may occur as a result of conversion.

C. Resident Briefings

The administering PHA must schedule resident briefings in order to inform residents of the requested conversion. During the PHA's briefing of affected residents, the PHA must explain and provide written documentation that completely and accurately describes both the EV and

PBV programs, including different rights under the affected programs (Mod Rehab, EVs, and PBVs) and how these programs impact tenant rent payments and resident mobility.[118] Households must be made aware that if they elect to remain in the unit with EV assistance, the unit would be ineligible for the conversion. A household currently assisted with an EV would retain the right to move from the project with tenant-based voucher assistance. If the household were to move prior to the execution of the PBV HAP contract, the unit would not receive PBV assistance. Households must also be informed that in order to effectuate the conversion of EV assistance to PBV assistance, the household is required to relinquish its EV assistance and accept PBV assistance. Such relinquishment must be a voluntary decision of the assisted household. The owner shall not employ any tactics to pressure a household into relinquishing its EV assistance and may not terminate a household's lease based on its decision to remain in the unit with EV assistance.

D. Household Consent and PHA Review

During the briefing, each affected household must be provided with a form that acknowledges their consent or non-consent and given at least 30 days from the date of the briefing to make the decision. The consent form must be signed by the head of household and returned to the PHA. Units occupied by households that affirmatively withhold consent are ineligible for conversion and shall not be included in the PBV contract. If a household does not reply within the timeframe outlined, the PHA must attempt to contact the household; however, if the PHA is unsuccessful at obtaining the household's consent, the unit shall not be included in the PBV contract. Units occupied by households that consent to the conversion are eligible for PBV assistance, provided all other requirements are satisfied.

As part of its review, the PHA will verify the number of families that have consented to convert the EV assistance to PBV assistance and, within 45 days of the resident briefing, will provide the owner with either a letter of support that indicates the PHA's consent or a letter that declines the owner's request describing the reasons the PHA is declining the request.

E. Submission of Request to HUD Headquarters

Once the owner obtains the administering PHA's and eligible households' consent to retroactively convert EV assistance to PBV assistance, the owner must submit to RAD@hud.gov its request, including:

[118] In accordance with 24 CFR § 8.6, Title VI, Executive Order 13166 and HUD's Limited English Proficiency Guidance, published February 16, 2007 (72 FR 2732), the briefing should include accessible communications for persons with disabilities and language assistance to persons with limited English proficiency.

1. A certification from the PHA that the applicant has met all requirements described in paragraphs A through D above;
2. A Financing Plan. Please see Attachment 1A.1 and 1A.2 for Financing Plan submission requirements and Feasibility Benchmarks. (Where the term "PHA" is used to refer to the PHA as owner, the term "owner" applies to Mod Rehab applicants.) HUD will release separate guidance detailing what elements of the Financing Plan may be waived for projects using FHA insurance; and
3. Any other information necessary to evaluate the application that HUD may request at its discretion.

F. Approval and Execution of PBV HAP or Agreement to Enter into a Housing Assistance Payment (AHAP) Contract

Within 60 days of the owner's submission, HUD Headquarters will review the Mod Rehab owner's request, make a determination of whether the conversion of assistance is approved, and notify the administering PHA.[119]

The PHA will verify the number of units that are eligible to receive PBV assistance under the conversion, and will perform income re-examinations on households whose incomes have not been re-determined within 12 months of the owner's approved application. The owner is advised that if households do not meet income requirements, those units will not be assisted under the PBV program. Therefore, the total number of units assisted under the PBV HAP contract may be fewer than originally requested by the owner.

The PHA will also inspect the converting units to determine that they meet HQS, as required by PBV program rules. Units must meet HQS prior to execution of the PBV HAP Contract. If the units do not meet the definition of existing housing under the PBV program, the PHA and owner must enter into an AHAP and all rehabilitation must be performed pursuant to the terms of the AHAP. Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-065 and Appendix IV.

2.3.6 Funding Availability

Funding for TPVs is subject to the availability of appropriations. Therefore, conversions under Section 2.3 of this Notice may be suspended if HUD determines there to be insufficient

[119] Mod Rehab conversions under the second component of the Demonstration will not receive a CHAP or execute an RCC.

appropriations to satisfy requests under this Notice and to adequately fund other activities that require tenant protection funding (e.g., certain prepayments, opt outs, etc.).

2.4 Additional Information

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

Attachment 2A – Sample 30-Day Notification Letter to Residents for Prospective Conversion of Section 8 Moderate Rehabilitation (Mod Rehab) Assistance to Project-Based Vouchers

Date _____

Dear Resident:

I/We the Owner(s) of **[Name of Project]** are writing to inform you that the project-based rental assistance contract in place at this property under the Mod Rehab program is anticipated to expire on **[date]**. This expiration may impact the form of assistance you currently receive, as summarized below. Your comments on these potential changes will be welcomed and considered; details on how to provide comments and to obtain additional information are provided at the end of this letter.

Under the Department of Housing and Urban Development's Rental Assistance Demonstration, I/we, the owner(s) of the property, are requesting authority to enter into a Project-Based Voucher (PBV) contract at this property to provide rental assistance to all units occupied by households that would otherwise receive Enhanced Vouchers (EVs) when the Mod Rehab contract expires. The PBV assistance would be administered through a contract between the owner and the **[Public Housing Agency name].** The PBV contract would provide project-based assistance to the property. Households that choose to move one year or more after the PBV contract is put in place would receive a Housing Choice Voucher, or other comparable tenant-based assistance, if available, to use to seek housing elsewhere. Households will have the right to remain in their units whether or not the conversion to PBV occurs. <u>No household will be displaced or made to relocate as part of the conversion, nor will they be subject to a rent increase as a result of the conversion</u>.

The PBV contract would provide assistance to this property for a 15-year period, with renewal options. [Indicate if the Owner is planning to use the PBV contract to obtain financing to make project repairs/upgrades, if residents are expected to be relocated and the expected length of the relocation, and specify that all relocation costs will be the responsibility of the owner.]

The expiration of the Mod Rehab contract at this property, and our intent to provide Project-Based Voucher assistance rather than tenant-based assistance, may impact your household's housing options. However, your household will not experience an increase in rent due to the proposed conversion of assistance to PBV assistance, nor will residents be displaced from the property.

The PHA will hold briefings for the potentially affected households to explain the different forms of assistance, and the potential benefits and drawbacks of the conversion. The initial briefing is scheduled for **[date and time]**, at **[location]**. We welcome your comments. If you have comments, please submit them to the PHA office located at **[location]** no later than 30 days from the date of this letter. All comments will be reviewed and, where appropriate, a response will be provided.

If you have any questions, please call the owner at **[owner's contact/representative]**. For additional information, you may also contact **[the administering PHA]** at **[Office phone number].**

Sincerely,

Owner

cc: Local HUD Office
Local Public Housing Agency

Attachment 2B – Sample Notification Letter to Residents for Retroactive Conversion of Enhanced Vouchers to Project-Based Vouchers

Date _____

Dear Resident:

I/we, the Owner(s) of this property, are writing to notify you of some potential changes to your rental assistance. Your comments on these potential changes will be welcomed and considered; details on how to provide comments and to obtain additional information are provided at the end of this letter. As you are aware, your household receives assistance in the form of a Housing Choice Voucher. This voucher was provided as an Enhanced Voucher when the **[Section 8 Moderate Rehabilitation]** assistance at the property terminated or expired on **[date]**. Households with Enhanced Vouchers have the right to reside at this property, or to move out of the property and use the voucher to seek housing elsewhere. The payment standard used to determine the amount of subsidy paid on your behalf is equal to the gross rent for your unit provided that such rent is reasonable in relation to rents for other comparable unassisted units. This enhanced payment standard may exceed the otherwise applicable payment standard established by the Public Housing Agency (PHA) for its regular housing choice voucher program.

Under the Department of Housing and Urban Development's Rental Assistance Demonstration, I/we, the owner(s) of the property, are requesting authority to convert your tenant-based enhanced voucher assistance to Project-Based Voucher (PBV) assistance. The PBV assistance would be administered through a contract between the owner and the Public Housing Agency (PHA) that now administers your tenant-based voucher assistance. The PBV contract would provide project-based assistance to the property. Households that choose to move one year or more after the PBV contract is put in place would receive a Housing Choice Voucher, or other comparable tenant-based assistance, if available, to use to seek housing elsewhere. Households will have the right to remain in their units whether or not the conversion to PBV occurs. <u>No household will be displaced or made to relocate as part of the conversion, nor will they be subject to a rent increase as a result of the conversion</u>.

The PBV contract would provide assistance to this property for a 15-year period, with renewal options. [Indicate if the Owner is planning to use the PBV contract to obtain financing to make project repairs/upgrades, if residents are expected to be relocated and the expected length of the relocation, and specify that all relocation costs will be the responsibility of the owner.]

<u>Your tenant-based assistance will not be converted to project-based assistance without your consent</u>. The PHA will hold briefings for the affected households to explain the different

forms of assistance, and the potential benefits and drawbacks of the conversion. The initial briefing is scheduled for **[date and time]**, at **[location]**. During the briefing, each affected household will receive a form to complete and return to the PHA to acknowledge their consent or non-consent to the conversion; each household will be provided at least 30 days from the date of the PHA briefing to make the decision. The form must be signed by the head of household and returned to the PHA, with a copy to the owner. Your current assistance will be converted to PBV assistance only if your household has signed a document consenting to the conversion of assistance. (Households that do not provide consent will continue to receive enhanced voucher assistance and shall not be forced to relocate). If your household does not complete and return the form within 30 days, your non-response will be considered non-consent. Non-consent to the conversion is not grounds for lease termination by the owner.

If you have any questions, please call the **[owner contact]** at **[owner's contact/representative]**. For additional information, you may also contact **[administering PHA]** at **[office phone number].**

Sincerely,

Owner

cc: Administering Public Housing Agency

SECTION III: RENT SUPPLEMENT AND RENTAL ASSISTANCE PAYMENT PROJECTS

3.1 Purpose

This Section of the Notice provides RAD program instructions to owners of Rent Supplement (Rent Supp) and Rental Assistance Payment (RAP) projects.

3.2 Note on Effective Date

Section III of PIH Notice 2012-18 was effective immediately (on March 8, 2012); any Rent Supp or RAP projects that converted assistance, and any owners that submitted a complete request that met all requirements to Multifamily field offices for conversions of Rent Supp or RAP assistance prior to the issuance of this final Notice will be governed by the terms of PIH Notice 2012-18. All subsequent conversions under this Section (Section III) are to be subject to the instructions issued in this final Notice.

3.3 General Program Description

Under the Demonstration, an owner may elect to receive a 15-year Section 8 project-based voucher (PBV) contract at the property, subject to annual appropriations, in lieu of tenant protection vouchers (TPVs) that would be provided to eligible project residents or have been provided to eligible project residents as the result of a Rent Supp or RAP contract expiration or termination. This component is non-competitive but is subject to annual appropriations and the availability of TPV funding. In such cases, TPVs (including Enhanced Vouchers [EVs]) that convert to PBVs will have rents determined in accordance with PBV program requirements.[120]

Subject to the availability of appropriations, owners of expiring Rent Supplement or RAP contracts may seek short-term extensions of contracts at current funding levels for a ~~one-~~period of less than a year ~~term. The one-year~~with expiration dates no later than 9/30/13. This short-term extension may be used in conjunction with RAD to provide adequate time for owners to prepare and submit requests under RAD before contracts reach expiration dates. ~~Extension~~Short-term extension requests are made to the Multifamily Hub office with jurisdiction over the project. The

[120] In a limited number of situations where converting projects with Low Income Housing Tax Credits (LIHTCs) are located outside of a Qualified Census Tract, rents are determined in accordance with 24 CFR 983.301(c).

~~one-year~~short-term extension contract may be terminated early if the RAD conversion occurs prior to the ~~one-year~~short-term extension contract expiration.

HUD will consider two types of conversions: prospective conversions and retroactive conversions.

- **Prospective conversions** include projects where the contract expiration or termination will occur during FY12 or FY13 (between publication of this Notice and September 30, 2013). To be eligible for a prospective conversion, the contract termination must occur no sooner than 60 days following the date of publication of this Notice. To be considered a prospective conversion, the expiration/termination date of the contract must also be at least 60 days after the owner's RAD request. In a prospective conversion, the project will receive PBV assistance in lieu of the TPV assistance that would have been otherwise provided to project residents. *Because the provision of TPVs is subject to the availability of appropriations, prospective conversions may be suspended in a particular fiscal year if HUD does not have sufficient appropriations for the TPV assistance that would otherwise be issued*.

  If the contract termination will occur within 60 days of the owner's request, or within 60 days of publication of this Notice, the owner may either: 1) request a ~~one-year~~short-term extension of the Rent Supp or RAP contract, to provide time to complete a prospective RAD conversion request prior to contract termination; or 2) allow the contract to expire and TPVs to be issued to eligible project residents, at which time the owner may pursue a retroactive conversion, as discussed below.

  In accordance with current HUD regulations, in conjunction with a Housing Conversion Action (mortgage prepayment, expiration of a Rent Supp or RAP contract, enforcement action or Opt-out), a PHA may receive special administrative fees for TPV funding allocations. A special administrative fee must be provided in accordance with current HUD instructions and subject to the availability of appropriations. In order to obtain the special administrative fee, the PHA must submit the information requested in PIH Notice 2012-9 or any successor notices regarding the implementation of funding provisions for the Housing Choice Voucher Program.

- **Retroactive conversions** are conversions of TPVs that have already been issued to project residents as a result of a Rent Supp or RAP contract expiration or the termination of a Rent Supp or RAP contract due to prepayment of a mortgage. The contract expiration or termination and issuance of TPVs must have occurred on or after October 1, 2006. Only the units occupied by eligible low-income residents that received TPV assistance and consent to the conversion may be assisted under the PBV HAP contract. As described above, HUD will not process prospective conversions in projects where the contract termination will occur in fewer than 60 days following the submission of the

owner's conversion request. If the contract termination will be fewer than 60 days from the owner's RAD submission, or if TPV funding has been requested by the Office of Public and Indian Housing on behalf of eligible project residents and processed, TPVs will be issued to the eligible residents, and the conversion request will be processed as a retroactive conversion to PBVs.

Further, as required under the RAD statute (Public Law 112-55), the PHA currently administering the TPVs must approve a request for a retroactive conversion as it is the agency charged with the active administration of the TPVs with tenants of record—in contrast to a prospective conversion of assistance where it is not yet charged with the active administration of TPVs.

The table below summarizes key characteristics of prospective and retroactive conversions.

Conversion Type	Characteristics Determining Conversion Type
Prospective	1. Termination or expiration occurs at least 60 days after the issuance of this Notice 2. Termination or expiration occurs less than 60 days after the issuance of this Notice, but the owner receives a ~~one-year~~short-term extension from the Office of Multifamily Housing and the new expiration date is 60 days or more after the issuance of this Notice
Retroactive	1. Termination or expiration occurred on or after 10/1/2006 and TPVs were provided 2. Termination or expiration occurs within 60 days of the issuance of this Notice, and the owner does not receive a ~~one-year~~short-term contract extension to pursue a prospective conversion 3. Termination or expiration occurs within 60 days of the owner's request for conversion, and the owner does not receive a ~~one-year~~short-term contract extension to pursue a prospective conversion 4. Funding for TPVs has been requested by the Office of Public and Indian Housing on behalf of eligible project residents and processed

3.4 Eligibility

Owners of Rent Supp and RAP projects that meet all eligibility requirements described below may submit a request to convert TPVs to PBVs under this Notice.

A. Eligible Owners. For prospective conversions, the owner must demonstrate a rating of Satisfactory or higher in the most recent Management and Occupancy Review, or must certify that the management company is being replaced by a management agent with a record of successful operation of HUD-assisted multifamily housing. The HUD Departmental Enforcement Center must have no active referrals attributable to the owner. If a contract terminates due to an enforcement action, the project will not be eligible to convert assistance under this Demonstration. If the request to enter into a PBV contract is in the context of an acquisition, the purchaser must provide evidence of successful experience owning and operating HUD or other affordable multifamily housing properties. Examples of the standard for this review may be found in HUD Handbook 4350.1, Chapter 13, *Transfer of Physical Assets*.

For retroactive conversions where TPVs have already been issued, the owner must be in good standing with the PHA administering the TPVs at the project and must receive the consent of the PHA and affected residents to convert the TPV assistance to PBV assistance.

B. Eligible Properties. Eligible properties must have an active Rent Supp or RAP assistance contract at the property, or must have previously received Rent Supp or RAP assistance that terminated on or after October 1, 2006. In addition, the property must have experienced (on or after October 1, 2006) an event that has triggered the provision of TPVs, or anticipate a triggering event no later than September 30, 2013. Under RAD, a triggering event is defined as the termination (or expiration) of a Rent Supp or RAP rental assistance contract, at which time regular Housing Choice Vouchers will be or have been provided, or in some cases EVs will be or have been provided, in the context of certain prepayments (discussed in C.2, below).

Projects that participated in a Section 236 Interest Reduction Payments (IRP) Decoupling transaction that did not terminate a Rent Supp or RAP contract are ineligible for RAD unless the Rent Supp or RAP contract has an expiration date on or before September 30, 2013. Typically, when the underlying mortgage on a Rent Supp or RAP project is prepaid, the prepayment terminates the Rent Supp or RAP contract. In some cases, an owner may receive a waiver from HUD to leave a Rent Supp or RAP contract in place at the time of prepayment of an FHA-insured or state-insured mortgage. If a mortgage on a project has previously been prepaid and the Owner received a waiver from HUD to maintain the Rent Supplement or RAP contract (which is most common in the context of an IRP Decoupling transaction), the project is ineligible for RAD because there has been

no triggering event related to the Rent Supp or RAP contract that resulted in the issuance of TPVs. The project is not eligible for RAD unless the Rent Supp or RAP contract is scheduled to naturally expire no later than September 30, 2013. Rent Supp and RAP contracts that will terminate in conjunction with a mortgage prepayment on or before September 30, 2013 are eligible for RAD~~,~~; however HUD will not authorize the early termination of Rent Supp or RAP contracts outside of the context of a mortgage prepayment for the purposes of the Demonstration.

C. Eligible Units. Units eligible for the RAD conversion are described below.

1. **Rent Supp and RAP contract units.** HUD has authority to provide TPVs to eligible households for all units on the Rent Supp or RAP contract that are occupied at the time of contract expiration or termination~~, or that were occupied at some point 24 months prior to contract expiration or termination.~~.

   For prospective conversions, therefore, eligible units resulting from termination of rental assistance are all units on the original Rent Supp or RAP contract (this number may be higher than the number of "actively billing" units in FHA-insured projects) that are occupied at contract expiration or termination, or were occupied at some point 24 months prior to contract expiration or termination. The Rent Supp or RAP contract must be scheduled to expire on or before September 30, 2013, or, if the Rent Supp or RAP contract termination is due to the prepayment of an underlying mortgage, the prepayment must be completed, triggering the termination of the contract, on or before September 30, 2013.

   For retroactive conversions, eligible units related to the termination of rental assistance are those units occupied at the time of the RAD conversion by households that resided in Rent Supp or RAP contract units and that received TPV assistance as the result of the expiration or termination of a Rent Supp or RAP contract.

2. **Other units at the Rent Supp or RAP property.** In certain cases, the prepayment of a mortgage on a property with a Rent Supp or RAP contract may trigger provision of Enhanced Vouchers (EVs) to unassisted project residents that may qualify for conversion to PBVs under RAD. These units are eligible to include in the PBV conversion only if the prepayment meets all conditions of PIH Notice 2001-41, *Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) for Housing Conversion Actions – Policy and Processing Guidance*, and if the following conditions are met:

   a. **The project falls within the definition of "eligible low-income housing" set out in section 229 of the Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA),** and discussed below, which means that the prepayment triggers provision of EVs to eligible families residing in the

unassisted units at the property. This includes units that are not assisted by a Section 8 HAP contract, or a Rent Supp or RAP contract. To be included as eligible units in the RAD conversion, the EVs must be provided or already have been provided in the context of a *qualifying preservation-eligible mortgage prepayment.*

Qualifying preservation-eligible prepayments in eligible low-income housing, for the purposes of Rent Supp and RAP properties, include only the following cases*:*

- Prepayment of an underlying FHA-insured mortgage at a RAP property;[121]
- Prepayment of a mortgage held by a state agency as a result of a sale by HUD without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA; which mortgage (1) for LIHPRHA projects is, or is within 2 years of being, eligible for prepayment by contract or regulation in effect before February 5, 1988 without HUD's prior approval; or (2) for Emergency Low Income Housing Preservation Act (ELIHPA) projects is, or is within 1 year of being, eligible for prepayment under regulation or contract in effect before February 5, 1988; ~~or~~
- Prepayment of a mortgage for a state-assisted project that is eligible for preservation assistance under LIHPRHA or ELIHPA~~.~~[122]; or
- Prepayment of a mortgage for project that has a Flexible Subsidy Loan with a HUD determination that the project meets the requirement of Section 536 of the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act.

b. The families that would receive EVs must meet the income requirements for the PBV program. The income eligibility requirements for EVs provided due to the mortgage prepayment may be different than the income eligibility requirements for the PBV program. Some moderate-income families may be eligible for EVs (or in the case of a retroactive conversion, may have already

[121] Please note: for properties with FHA-insured mortgages, this applies only to properties assisted with RAP contracts, not Rent Supp contracts. Prepayment of an FHA-insured mortgage on a Rent Supp property does not trigger the provision of EVs and therefore no units beyond the Rent Supp units would be eligible for the RAD conversion.

[122] Rent Supp or RAP contracts must be expiring or in the process of being terminated in order for state-held mortgages to be eligible under RAD.

received EVs), but may be over-income with respect to PBV assistance. To be eligible for the PBV program, project residents must be very low-income as described in 24 CFR § 982.201, unless specified in the PHA's Section 8 Administrative Plan. In the case of a prepayment of a mortgage in eligible low income housing, only units occupied by families that meet the income requirements (and all other voucher eligibility requirements) for PBV will receive assistance under the PBV contract. Income eligibility will be determined in accordance with voucher program requirements.

c. **Timing concerning the issuance of EVs.** In the case of a retroactive conversion, the PBV contract may include those units occupied at the time of the RAD conversion by families that received EV assistance as the result of a preservation eligible prepayment in eligible low-income housing described in paragraph a, above. These families must have accepted the EVs at the time of the mortgage prepayment, and the families must be in residence at the property and receiving the EV assistance at the time of the RAD conversion. However, the conversion may also include units occupied by residents who have been offered and accepted vouchers, have not leased up with such vouchers, and the PHA has not used the allocated funds to assist other applicants on the PHA's HCV waiting list.

D. **Physical Conditions.** The owner must provide evidence that the property meets one of the following standards:

1. **For prospective conversions**, the most recent Real Estate Assessment Center (REAC) score at the property must be 60 or above. HUD may make exceptions, but only if the owner demonstrates that there is a plan in place to obtain debt or equity financing that will address the physical needs of the project over the course of the PBV contract period.

   Please note: as required by statute, prior to entering into a PBV HAP Contract, the PHA will inspect the units proposed for conversion to ensure compliance with Housing Quality Standards (HQS). The HAP Contract will not be executed unless and until the converting units meet HQS. This requirement stands even if HUD grants an exception to the requirement that the REAC score be 60 or above. If the converting units do not qualify as existing housing, and therefore cannot be selected as such under the PBV program, the PHA and owner must enter into an Agreement to Enter into a HAP (AHAP) and all rehabilitation must be performed pursuant to the terms of the AHAP. Upon completion of the rehabilitation, and when all other regulatory requirements are satisfied, the PHA and owner shall enter into the HAP contract for the eligible units. If an AHAP is required, the project must meet Uniform Relocation Act (URA) requirements, if temporary or permanent relocation is required during

repairs or substantial rehabilitation. The owner must also ensure that residents do not experience rent increases during the AHAP period.

2. **For retroactive conversions**, units to be converted must meet HUD's HQS as determined by the PHA. The PBV contract will not be executed unless and until the units meet HQS. If rehabilitation is required to meet this standard, the PHA and owner shall execute an AHAP and all rehabilitation must be performed pursuant to its terms.

E. Fair Housing Compliance. An owner must be in compliance with all fair housing and civil rights requirements at 24 CFR §5.105(a) and not, without resolving any of the following to HUD's satisfaction, have any of the charges, cause determinations, lawsuits, or letter of findings referenced below against a PHA, its proposed partners, subrecipients, contractors, or the prospective project owner:

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 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 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, then the applicant is ineligible for the demonstration.

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

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

In addition, owners shall maintain compliance with applicable relocation, fair housing and civil rights requirements[123].

3.5 Waiver of PBV Rules and Special Provisions

Under the Demonstration, the provisions of section 8(o)(13)(B) of the Act, governing the maximum amount of HCV assistance that may be project-based, do not apply to properties converting their assistance under Sections 3.6 and 3.7 of this Notice. Therefore, HUD is waiving the associated implementing regulation at 24 CFR § 983.6 (concerning the maximum amount of PBV assistance). Accordingly, selections under Sections 3.6 and 3.7 of this Notice do not count

[123] The URA (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24, apply to acquisition of real property and displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property, for a project that receives federal financial assistance, including Section 8 PBV assistance or PBRA. For purposes of this footnote, the term "project" is defined at 49 CFR 24.2(a)(22). URA requirements must be implemented in compliance with all applicable fair housing and civil rights laws, including but not limited to, Title VI of the Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973, and the obligation to affirmatively further fair housing, Pursuant to Title VI, a PHA or owner must, among other things, take reasonable steps that ensure meaningful access to programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). For more information on complying with this requirement, consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which HUD published in the Federal Register on January 22, 2007. For HUD guidance on complying with Section 504 when administering the URA, see Exhibit 3-1 in HUD Handbook 1378.

against the 20 percent limitation on the maximum amount of assistance a PHA may utilize for the PBV program.

In addition, HUD has the authority to waive or alter the provisions of sections 8(o)(13)(C) and (D) of the Act, governing the cap on the number of PBV units in each project and the PBV goals of deconcentrating poverty and expanding housing and economic opportunities, respectively. Accordingly, for properties converting their assistance under Sections 3.6 and 3.7 of this Notice, HUD is making the following changes to the regulations implementing these two statutory provisions:

A. **Cap on the Number of PBV Units in Each Project, 24 CFR § 983.56(a).** 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, i.e., eligible assisted households in units that exceed the cap would be provided with tenant-based vouchers, which they may use to remain at the project or move to a new unit.[124]

   An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exemption, see 24 CFR § 983.56(b)(2)(II)(B).[125] An owner that wishes to include more than 50 percent of the units at the property under the PBV HAP contract pursuant to the supportive service exception should work closely with the administering PHA to ensure proper implementation of the requirement.

   For purposes of RAD, the requirement that a household must actually receive services to reside in the excepted unit has been modified. Households 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).

---

[124] Residents may, however, be temporarily relocated to facilitate rehabilitation or conversion. In such cases, any resident that may need to move out of the project to facilitate rehabilitation or construction will have a right to return.

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

To implement these provisions, HUD is waiving 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 RAD converted project.[126]

B. Site Selection – Compliance with PBV goals, 24 CFR §§ 983.57(b)(1) and (c). HUD is waiving these provisions, having to do with income mixing and deconcentration of poverty. However, HUD reserves the right to assess and consider as part of the RAD request the impact of the proposed RAD conversion on deconcentration of poverty or concentration of assistance in properties where the RAD conversion would result in an increase in the number of units at the property receiving project-based rental assistance.

C. Owner Proposal Selection Procedures, 24 CFR § 983.51. Selections under Sections 3.6 and 3.7 of this Notice shall be made in accordance with program requirements detailed in this Notice and selection requirements under § 983.51 are not applicable.

D. Initial and Re-Determined Rents. Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents generally cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR Part 983 Subpart G for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. In order to effectuate this provision, HUD is waiving 24 CFR §983.301(e); 24 CFR §983.302(c); and 24 CFR §983.303(a).

PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts, and any other local concerns prior to electing to establish the initial contract rent as the rent floor. If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:

a. To correct errors in calculations in accordance with HUD requirements;
b. If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR § 983.55; or

[126] See also 73 FR 71037, which implements language in the Housing and Economic Recovery Act, allowing for the cap on the number of PBV units to apply to a project, rather than a building. Although this change is not yet reflected in 24 CFR § 983.56, these statutory changes are self-implementing.

c. 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.

E. Under-occupied Units Converting to PBV. For households of more than two individuals (or single-person households, where that individual is elderly or disabled) occupying a unit determined by HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-sized unit becomes available. When an appropriate size unit becomes available in the project, the family living in the oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit. To effectuate this new alternative requirement, HUD is waiving 24 CFR §983.259(b)(1)(2) and (c).

For households consisting of single individuals who are not elderly, disabled, or displaced, the unit shall not be included in the PBV HAP contract. The household member shall be provided a tenant protection voucher and may choose to move with such voucher or enter into a tenant-based tenancy with the owner provided the unit is eligible under the tenant-based voucher program; or if a qualifying mortgage pre-payment would trigger the provision of enhanced vouchers, the tenant has the statutory right to remain in the project (see PIH Notice 2001-41 for enhanced voucher requirements and PIH Notice 2008-12 for guidance on enhanced voucher requirements for overhoused households). In either case, if the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available.

Finally, for all projects that will use FHA multifamily mortgage insurance in financing related to the conversion, HUD will perform the environmental review under 24 CFR Part 50, and no review will be required under 24 CFR Part 58.

All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 shall apply to conversions pursuant to Sections 3.6 and 3.7 of this Notice, including Family Right to Move under 24 CFR § 983.260 (i.e., choice-mobility), environmental review, and fair housing requirements.

3.6 Processing Requirements for Prospective Conversions

For prospective conversions, the owner is required to contact the HUD field office, contact a local PHA, and comply with all required tenant notification and briefing requirements, prior to submitting the RAD request to HUD.

With the exception of owners of properties with Rent Supp or RAP contracts that expire after September 30, 2013, the first step for the owner is to contact the Multifamily Hub/Program Center to express interest in a RAD conversion. (Owners of properties with Rent Supp or RAP contracts that expire after September 30, 2013, need only to submit a letter of interest at this point in the process. See Section 3.6.3(B) below.) With this initial contact, the owner or owner's representative will schedule a briefing for project residents, to be held by the Public Housing field office staff and with participation from HUD Multifamily field office staff, in a manner that is feasible (e.g. in-person, teleconference, etc~~).~~.).

The Public Housing field office staff will also provide the owner with contact information for PHAs with jurisdiction over the project. Prior to submission of the RAD request, the owner is required to contact a PHA to have a preliminary conversation about the RAD conversion. The intent of this conversation is for the owner to determine: a) the PBV rents that are anticipated for the project (up to 110% of FMR, subject to rent reasonableness); and b) whether the PHA has interest in administering the PBV contract at the project. The formal consent of the PHA will occur at a later stage of the process, once HUD has determined the request meets all the requirements of this Notice. The owner is advised that HUD will make the final selection of the PHA. However, this initial discussion will help the owner determine the viability of the conversion request.

After making contact with the HUD field office and the PHA with jurisdiction over the property, the owner must complete the following tenant briefing, tenant notification and tenant comment activities prior to submission of the RAD conversion request: The owner is required to notify all project households and legitimate tenant organizations (as defined in 24 CFR Part 245 and Housing Notice 2011-29) of the owner's request to provide PBV assistance in lieu of TPV assistance. The owner or owner's representative is also required to schedule a residents' briefing, with participation from HUD field office staff in a manner that is feasible, in order to fully inform residents and legitimate tenant organizations of the features of TPV and PBV assistance and the impact of the proposed conversion on residents' mobility options and anticipated rent payments. The briefing will include information on the anticipated contract termination, the date of the termination, the units that are affected by the termination of the Rent Supp or RAP contract, and the units that would receive PBV assistance in lieu of TPV assistance. The briefing will also provide residents with information on the features of TPV assistance and PBV assistance, including mobility options, rent levels, rent payments, provision of supportive services, and any proposed repair or project improvements that may be planned as part of the RAD conversion transaction. The owner or owner's representative must attend the briefing and be available to respond to residents' questions and comments. In accordance with 24 CFR § 8.6, Title VI, Executive Order 13166 and HUD's Limited English Proficiency Guidance, published in the Federal Register on February 16, 2007 (72 FR 2732), the briefing should include accessible communications for persons with disabilities and language assistance to persons with limited English proficiency.

Residents of units where assistance is proposed for conversion must have the opportunity to comment on the owner's request and the owner must take these written and oral resident comments into consideration and follow the requirements outlined below:

1. The notification letter must offer the residents a description of the anticipated contract termination, the date of the termination, the units that are affected by the termination of the Rent Supp or RAP contract, and the units that would receive PBV assistance in lieu of TPV assistance. The notification letter must also include a description of the different rights under the affected programs (Rent Supp or RAP, TPVs, and PBVs) and how these programs impact resident rent payments and resident mobility. A sample resident notification letter is attached to this Notice as Attachment 3A.
2. The notification letter must provide a 30-day comment period during which residents and legitimate tenant organizations will have the opportunity to comment, and must contain instructions on how to submit comments (in writing, by email, etc.) and to whom to submit the comments. This 30-day comment period must begin within 5 days following the resident briefing.
3. The notification letter must be delivered to each unit in the project, specifying which units are proposed for conversion, with a copy to all legitimate tenant organizations; it must also be posted in the project office and at least three prominent locations on the project site.
4. The notification letter must indicate a date and time for the required residents briefing and provide a contact name and method of contact for questions and comments.

Once the owner completes these activities and compiles all the required materials (listed below), the request is made via email to RAD@hud.gov. HUD will carefully review the owner's request to ensure it is eligible under the Notice and complies with RAD requirements.

3.6.1 Submission of Requests for Prospective Conversions

The owner must submit the conversion request via email to RAD@hud.gov at least 60 days, but no more than 12 months, prior to the anticipated termination of the Rent Supp or RAP Contract. The owner is advised that early planning is critical to ensure the PBV contract is effective upon termination of the Rent Supp or RAP Contract. If the Rent Supp or RAP contract is anticipated to expire or terminate fewer than 60 days following the date of application for the RAD conversion, the owner may request a ~~one-year~~short-term extension of the contract for a date no later than 9/30/13, or may pursue a retroactive conversion (see Section 3.7). If the term of the Rent Supp or RAP Contract extends beyond September 30, 2013, the owner should not submit a request in accordance with this Section, but should submit a letter of interest in accordance with Section 3.6.3(B) below.

The owner is not responsible for locating a PHA to administer the PBV contract. As described below, the HUD Public Housing Field Office Director will make this determination. However, the owner must contact a PHA in the local area prior to submitting the conversion request to obtain information on the likely rent levels the PBV contract will provide, and to gauge if there is a PHA with jurisdiction over the project that has interest in administering the PBV assistance.

If all conditions described below are met, the Office of Multifamily Housing shall issue a recommendation to the applicable HUD Public Housing Field Office Director that the owner be permitted to convert TPV assistance to PBV assistance pursuant to a PBV HAP contract.

The owner's electronic request must include the following information:

A. Statement Requesting PBV Assistance in lieu of TPV Assistance.

This narrative statement must include:

1. Project Information and Description of Triggering Event

The project information and description of event that will trigger the termination of the Rent Supp or RAP contract includes the Rent Supp or RAP contract number, expiration date, and number of units on the original contract; as well as mortgage information, such as whether the existing mortgage is FHA insured or state-financed, and mortgage maturity date. The statement must verify the contract will expire, or if there will be a prepayment anticipated no later than September 30, 2013. The statement must verify that the date of the contract termination is no later than September 30, 2013. If the owner is prepaying the underlying mortgage, the statement must provide detail on the anticipated prepayment, including proposed closing date of the transaction, whether the transaction is an acquisition or a refinance, and must identify any external financing deadlines, for example Low Income Housing Tax Credit bond closing or placed-in-service deadlines.

2. Number of Units Proposed for the Conversion

The statement must identify the number of units proposed for the RAD conversion. This includes project residents that would be eligible for TPVs due to a termination of the Rent Supp or RAP contract. To correctly identify the units eligible for conversion to PBV assistance, the owner should refer to the following points:

- *Number of Rent Supp or RAP contract units*. The owner should review the original Rent Supp or RAP contract to obtain the correct number of TPVs that would be provided. This is the total number of Rent Supp or RAP units on the original rental assistance contract that are currently occupied by income-eligible (low-income) households, or, that were occupied by income-eligible households at some point 24 months prior to expiration or termination of the contract. (Please note: this may be an estimate. The final determination of income eligibility will be

performed by the PHA). If the Rent Supp or RAP contract provides assistance to a property with an FHA-insured mortgage, it is likely that the number of actively billing Rent Supp or RAP units is less than the total number of Rent Supp or RAP units authorized in the original assistance contract. This is because, over time, the amount of Rent Supp or RAP funding has stayed constant while costs have increased, so the owner has reduced the number of units actively billing under the Rent Supp or RAP program. TPV (and, under RAD, PBV) assistance will be provided for the total number of units on the original contract that are occupied at contract expiration or termination or were occupied within 24 months of expiration or termination. This figure may be higher than the number of actively billing units.

- *Number of non-Rent Supp/RAP units at the property.* If the conversion involves a preservation prepayment in an eligible low-income housing project, as defined above in Section 3.4(C), "Eligible Units," the RAD request may include units occupied at the time of the RAD conversion by residents who would otherwise receive EVs as a result of the mortgage prepayment. The request must list the total number of EV units proposed for conversion (subject to income eligibility as determined by the PHA).

- *Supportive services. The statement must clearly identify if more than 50 percent of the units in the project are proposed for conversion to PBVs*. If the assistance in more than 50 percent of the project units is proposed for conversion to PBVs and the project is a family project (not an elderly and/or disabled project) the requirements stated in Section 3.5(A) must be followed concerning supportive services.

- *Conversion of selected units in project*. If the assistance in more than 50 percent of the units at a family project is eligible for conversion to PBVs, but the households will not receive supportive services, only the assistance in 50 percent of the units may be converted to PBVs. For example, if the property has 100 units, 75 units are covered by a Rent Supp contract that is expiring, and the owner is not proposing that the residents receive supportive services, only 50 of the units may receive assistance through the PBV contract (the other 25 households would receive TPVs). In such a case, the owner must clearly identify the specific units where assistance is to be provided in the form of PBV assistance rather than TPV assistance. Because not all assistance at the project will convert to PBVs, and because the owner is proposing to convert assistance for some, but not all households, the owner must, in such a case, receive consent of all households where assistance is proposed for conversion to PBVs, following the guidelines for Retroactive Conversions in Section 3.7 of this Notice. The signed consent forms,

as discussed in Section 3.7 of this Notice, must be submitted with the owner's application to RAD@hud.gov for the prospective conversion.

B. Resident Notification and Comment

The owner must provide evidence that resident notification and comment procedures described in 3.6, above, have been met. *The RAD conversion request must include a copy of the notification letter, the date of the resident briefing and the names and titles of participating HUD staff, copies of all comments received, and a description of how the owner has considered the comments and addressed them in the plan for the conversion of TPVs to PBVs.* HUD will carefully consider the comments from residents and legitimate tenant organizations as part of the review of the proposal, as discussed below.

C. Statement of Compliance

A statement of compliance with business practices detailed in Section 3.4(A) of this Notice for owner eligibility, along with evidence of the most recent REAC score and Management and Occupancy Review ratings that comply with Sections 3.4(D) and 3.4(A) of this Notice must be included in the materials as part of the conversion request to HUD. If the project does not meet the required Management Occupancy Review standards, the statement should provide evidence that the transaction will put in place a qualified owner and management entity to successfully operate the project as affordable housing. If the project does not meet the required REAC score standards, the statement should detail how the proposed conversion will address the physical needs of the project. This statement must also include the date and contact name of the PHA contacted by the owner prior to submitting the RAD request.

D. Property Agreements and Contracts

As part of the RAD conversion request made to ~~RAD@hud.gov~~RAD@hud.gov , the owner must submit scanned, PDF copies of all relevant and applicable project legal agreements and documents, including: Rent Supplement or RAP original contract documents; mortgage note; Use or Regulatory Agreement; IRP Agreement; IRP Decoupling Approval; FHA prepayment approval, and, potentially, other information necessary to evaluate the application that HUD may request at its discretion.

E. LIHTC Award or Allocation Information

If the proposed prepayment transaction will involve LIHTC equity investment, the owner must submit with the RAD conversion request scanned, PDF copies of all award or allocation letters from the state LIHTC allocating agency evidencing the award/allocation, and information on related LIHTC deadlines affecting the project.

F. Prepayment Application

If the RAD conversion is part of a transaction that involves prepayment of an FHA-insured or Direct mortgage, the mortgage prepayment request must be submitted via email to RAD@hud.gov along with the RAD request.

3.6.2 HUD Review of RAD Request

HUD will review the owner's request to verify that the conditions of this Notice are met. Specifically, the review will verify the following:

- The owner has correctly identified the number of units proposed for conversion and to be included in the PBV HAP contract to be executed by the PHA and the owner (the final number is subject to family program eligibility and income verification by the PHA). This includes verifying the owner has correctly determined if EVs triggered by a prepayment are eligible to convert under the PBV HAP contract following the requirements of Section 3.4(C), "Eligible Units";
- The owner has complied with the resident notice and briefing requirements in this Notice, and satisfactorily addressed resident comments;
- The project and owner meet all eligibility requirements listed in Section 3.4 of this Notice; and
- The owner has satisfactorily addressed residents' comments. HUD will carefully review residents' comments and owner response to the comments. If more than 50 percent of written resident comments disapprove of the conversion of assistance, HUD must contact the owner to discuss options for proceeding with the conversion request.
- HUD reserves the right to deny the conversion request if the conditions of this Notice are not met, or if the owner does not satisfactorily address concerns raised in residents' comments.
- HUD will also verify the correct rent setting for the PBV contract units, which may be up to 110% of FMR subject to rent reasonableness as determined by the PHA. HUD Headquarters will notify the PHA if any special rent setting provisions apply to the project, for example, for LIHPRHA (Title VI) projects.

3.6.3 Allocation of TPV Resources for Conversions

A. Contract Expirations on or before September 30, 2013. For all prospective requests that involve a Rent Supp or RAP contract with an expiration date on or before September 30, 2013, HUD will: review submissions according to the instructions in Section 3.6.2, above; make a determination of whether tenant protection funding is available; and within 45 days of receipt of request notify the owner of the determination, and, if accepted, forward the RAD project request to the HUD Public Housing Field Office Director to identify an eligible PHA to administer the PBV contract (as described in Section 3.6.4), who would request funding (as described in Section 3.6.5).

B. Contract Expirations after September 30, 2013. Because the Department has limited TPV resources, it is not known at this time whether HUD will be able to provide PBV assistance under RAD for properties where the Rent Supp or RAP contract expires after September 30, 2013. Owners of properties with Rent Supp/RAP contracts that expire after September 30, 2013, that would like to participate in RAD must submit a signed letter of interest via email to RAD@hud.gov no later than April 1, 2013 (such owners do not submit electronic submission materials in accordance with Section 3.6.1 at this time).[127] The letter of interest must at minimum include:

- The date the Rent Supp/RAP contract expires.
- The number of Rent Supp or RAP contract units. (This is the total number of Rent Supp or RAP units on the original rental assistance contract.)
- The number of non-Rent Supp or RAP contract units at the property that would also be potentially eligible for RAD PBVs or EVs (e.g., if a preservation-eligible prepayment is the triggering action that would terminate the Rent Supp or RAP contract, please provide the number of non-Rent Supp/RAP units where families might qualify for EVs by virtue of the prepayment. See Section 3.6.1(A)(2) above).
- HUD will maintain a list of the properties with Rent Supp/RAP contracts that expire October 1, 2013 or later where owners have submitted a letter of interest. Properties will be prioritized in order of Rent Supp or RAP contract expiration date, with projects having earlier expiration dates receiving higher priority and projects having later expiration dates receiving lower priority.
- HUD will contact owners in the final quarter of fiscal year 2013 if there is sufficient funding to convert these properties under RAD and at that time will invite owners to

[127] In the fourth quarter of fiscal year 2012 HUD will review conversion requests for properties where the Rent Supp or RAP contract expires after September 30, 2013 from owners that submitted complete requests under PIH Notice 2012-18.

submit a formal RAD request. Should there not be sufficient funding to cover all properties for which letters of interest have been submitted, HUD will prioritize the invitations for owners to formally submit a request based on the fiscal year, month and date that the Rent Supp/RAP contract is expiring (e.g., first priority will go to properties where the Rent Supp/RAP contract is expiring in October 2013; second priority will go to properties where the Rent Supp/RAP contract is expiring in November 2013, and so forth).

If and when the owner is invited by HUD to formally submit a request to participate in RAD, the owner must then follow the process outlined by this notice, including the tenant notification process and submitting a formal electronic request in accordance with Section 3.6.1 above for HUD processing. The HUD approval process from that point on will be the same as it is for all other RAD applications (i.e. HUD will review all prospective RAD requests according to the instructions in Section 3.6.2).

3.6.4 Selection of PHA

Once HUD Headquarters determines that TPV funding will be available for a RAD conversion request, HUD will forward the RAD project request to the HUD Public Housing Field Office Director. The field office will determine the appropriate PHA to administer the PBVs in accordance with established criteria for selection of PHA administration of TPVs, including, but not limited to, jurisdiction and PHA administrative capacity. However, the PHA will have the opportunity to consent to entering into a PBV HAP contract for eligible units at the project. In the case that the initially-selected PHA does not wish to enter into a PBV HAP contract, the HUD Public Housing Field Office Director will make a reasonable effort to find a PHA willing to enter into a PBV contract with the owner for eligible units at the project. If no PHA consents to enter into the PBV contract, the owner's conversion request will not be approved.

3.6.5 Consent of PHA and Execution of PBV HAP or AHAP Contract

The selected PHA must inform the local HUD Public Housing Field Office within 15 days of the date of its selection if it consents or does not consent to enter into the PBV contract at the Rent Supp or RAP property. Once the PHA consents, it will request funding for the conversion; the PHA must submit Form HUD-52515, Funding Application, to the local Office of Public Housing requesting tenant protection funding for the RAD conversion. After the PHA's application is received, based on the availability of funding, HUD will inform the owner that the RAD request is approved. HUD will then amend the PHA's annual contributions contract (ACC), to provide tenant-protection funding for the conversion. Subsequent to such amendment, the PHA and owner will enter into a PBV HAP contract for projects that qualify as existing housing under the PBV program. However, prior to execution of the HAP contract, the units proposed for conversion must meet HQS. If the units do not meet HQS, an AHAP will be required and all repair work must be performed pursuant to AHAP requirements. Once the rehabilitation work is

completed, and all other program requirements are satisfied, the PHA and owner shall enter into a HAP contract on eligible, occupied units.

The administering PHA will perform income verification and determine program eligibility for the households to receive assistance under the PBV HAP contract.

The PHA will also determine which units will be included in the PBV contract. In some cases, the number of actively billing Rent Supp or RAP units has reduced over time, so the number of units on the contract exceeds the number of actively billing units. The original contract specified the number of units to receive Rent Supp or RAP assistance, but did not specify which units were covered by this contract. This can create confusion in determining which families may receive assistance. For example, a 100-unit project may have a Rent Supp contract that covers 50 units, but may have only 30 actively billing units. The 30 families that reside in the actively billing units will receive TPVs (provided they are income-eligible), and an additional 20 units at the property would be eligible for the award of TPVs (provided there are 20 income- eligible families). Once a RAD application is accepted by HUD and a PHA is selected to administer the PBV contract, the PHA must determine which 20 families of the 70 families residing in units not actively billing under the Rent Supp contract will receive vouchers. To award the vouchers, the PHA will perform income verification on all households that do not reside in the actively billing Rent Supp or RAP units, and will then hold a lottery among the income-eligible residents to select the families who will receive the vouchers. Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-065 and Appendix

3.7 Processing Requirements for Retroactive Conversions

Retroactive conversions are conversions of TPVs that have already been issued to project residents as a result of a Rent Supp or RAP contract expiration or the termination of a Rent Supp or RAP contract due to prepayment of a mortgage. The contract expiration or termination must have occurred on or after October 1, 2006. These TPVs may include EVs provided to eligible residents at the Rent Supp or RAP-assisted property as the result of a mortgage prepayment, as detailed in Section 3.4(C). In such cases, EVs provided to all project residents as part of the mortgage prepayment may be converted to PBVs as part of the RAD proposal, provided that households that received these EVs are still residing at the property and are eligible for PBV assistance. To be eligible for the PBV program, project residents must be low-income as described in 24 CFR § 982.201, and meet all program eligibility requirements of the PBV program.

For retroactive conversions, the owner will submit a conversion request directly to the PHA that administers the TPVs that were issued in response to the Rent Supp or RAP contract termination, with a complete copy to HUD Headquarters by email to RAD@hud.gov. Only the Housing Choice Vouchers originally provided as TPVs at the time of contract termination or expiration

are eligible for conversion to PBVs, and only the units occupied by households that received TPVs and are still residing at the project are eligible to have their assistance converted to PBV assistance.

As described in Section 3.3 General Program Description—Prospective Conversions, an owner may not submit a request for a prospective conversion if the Rent Supp or RAP contract is anticipated to expire or terminate fewer than 60 days following the date of application for the RAD conversion. If the Rent Supp or RAP contract is expected to expire or terminate within 60 days, the owner must pursue a retroactive conversion unless a ~~one-year~~short-term extension is approved. In these instances, eligible residents will receive TPVs in accordance with current practice described in PIH Notice 2001-41. After the TPVs are issued, the owner may apply for a retroactive conversion of assistance.

Residents that were previously issued TPVs will be considered continuing participants and no re-certification must be done at the time of conversion, provided that the PHA has completed an income re-certification within the past 12 months from the date of conversion. However, if the vouchers were provided as EVs due to a preservation-eligible mortgage prepayment, the PHA will perform income verification to determine if the families that received EVs meet the low-income requirements for the PBV program. Subsequent to all conversions, households will be required to comply with income re-certification as required under the PBV program.

The owner is advised that the final number of units where assistance is converted may change between the time the owner submits the request to the PHA and the time the PHA and the owner execute the PBV HAP contract, due to higher than expected tenant non-consent or tenants who vacate the unit with their vouchers or where EV holders have elected to remain in their unit with EV assistance. Any household that has consented would relinquish its voucher at the time of conversion. However, residents retain the right to move from the property with their voucher assistance or remain with EV assistance, up until the time the PBV HAP contract is executed. If a household with a TPV moves from the property prior to the execution of the PBV HAP contract, the unit that was occupied by that household will not receive assistance under the PBV HAP contract. Only income-eligible households that consent to the conversion will receive assistance under the PBV HAP contract.

3.7.1 Submission of Requests for Retroactive Conversions

A Rent Supp or RAP project owner must submit their request to the PHA administering the TPVs to convert such assistance to PBV assistance, and submit a complete copy to HUD Headquarters by email to RAD@hud.gov. Owners are strongly encouraged to contact the PHA early in the process to determine if the PHA administering the TPVs is interested in approving the PBV RAD request. The owner may request conversion of TPVs that were issued to residents of the project following a contract termination that occurred on or after October 1, 2006. The owner's request must include the following information:

A. Statement Requesting Conversion of TPV Assistance to PBV Assistance

This narrative statement must:

1. Identify the households for which a conversion of TPVs to PBVs is requested. The owner must list the specific households, by name and unit number, that received TPVs because of a contract termination due to prepayment or contract expiration that occurred on or after October 1, 2006 and who still reside at the project with HCV assistance. Additionally, the owner must supply supporting documentation that these households have consented to conversion of the TPV assistance to PBV assistance, as described below.

2. The statement must clearly identify if more than 50 percent of the units in the project are proposed for conversion to PBVs. If the assistance in more than 50 percent of the project units is proposed for conversion to PBVs, and the project is a family project (not an elderly and/or disabled project), the supportive services that the residents will receive in accordance with the PBV program requirements at 24 CFR §§ 983.56 (b) and (c) must be detailed in the statement. Please refer to Section 3.6.1(A)(2).

   If the assistance in more than 50 percent of the units at a family project is eligible for conversion to PBVs, but the owner is not proposing to offer supportive services, only the assistance in 50 percent of the units may be converted to PBVs. In such a case, the owner must clearly identify the specific units where assistance is to be converted where the occupying households have consented to the conversion to PBVs.

3. Verify that the date of the contract termination/expiration was no earlier than October 1, 2006.

B. Documentation of Resident Consent

The owner is required to notify affected households of its plans to request conversion of TPV assistance to PBV assistance using the language in the sample Resident Notification document attached to this Notice (Attachment 3B). Additionally, the activities below must be documented and submitted with the owner's request:

1. The notification letter must be delivered to all project residents and legitimate tenant organizations (meeting 24 CFR Part 245), including each eligible unit occupied by an eligible household; it must also be posted in the project office, the PHA office, and at least three prominent locations on the project site.

2. The notification letter must include a list of the potentially-affected units and must indicate that consent by each affected household must be obtained prior to any such

conversion. The notification letter must also indicate that the administering PHA will schedule and hold resident briefings; the time and date of such briefings must be stated in the letter.

3. The administering PHA must conduct a briefing for affected residents and legitimate resident organizations, during which the PHA must explain and provide written documentation that completely and accurately describes the different rights under the affected programs, TPVs and PBVs, as well as how these programs impact resident rent payments and resident mobility. Households must be made aware that they may remain in the unit with the voucher assistance, and, if a household does not consent to the conversion of their voucher assistance to PBV assistance, they must not be made to move out of the unit. The owner cannot employ any tactics to pressure the household into relinquishing its HCV and may not terminate a household's lease on such a basis.

4. If relocation of households will be required due to rehabilitation, the notification letter and briefing must state the owner's plan for relocation, including the expected length of the relocation, and must specify that all relocation costs will be the responsibility of the owner. All relocating households will have a right of first return.

5. During the briefing, each affected household must be provided with a form to complete and return to the PHA to acknowledge their consent or non-consent; each household must be provided at least 30 days from the date of the PHA briefing to make the decision. The form must be signed by the head of household and returned to the PHA, with a copy to the owner.

6. TPV assistance will be converted to PBV assistance only for units where the household has signed a document consenting to the conversion of assistance. Households that do not provide consent will continue to receive HCV assistance and shall not be forced to relocate. Non-consent to the conversion is not grounds for lease termination by the owner.

C. Statement of Compliance

A statement of compliance with business practices for owner eligibility detailed in paragraph Section 3.4(A) of this Notice, along with evidence that the property meets HQS.

3.7.2 <u>Review and Consent of PHA and Execution of PBV HAP or AHAP Contract</u>

The PHA will review the request of the owner to verify that the owner has complied with all required tenant notification and consent procedures, and to determine that the PBV contract will

only cover those units where tenants have consented to the conversion. The PHA will have an opportunity to consent to enter into a PBV HAP contract with the project owner. The PHA must inform the HUD within 15 days of the date of the owner's request to the PHA if they do not consent to enter into the PBV contract at the Rent Supp or RAP property. The consent or non-consent must be submitted to rad@hud.gov.

If the PHA consents, upon receipt of the PHA's consent, HUD will review the owner's submission described in 3.7.1 to ensure that it meets all Notice requirements and notify the owner and the PHA within 15 calendar days whether the conversion request is approved. If the PHA does not consent, the conversion of assistance will not be authorized. Per the RAD statute, the PHA that is actively administering the TPVs for the project must consent to the conversion.

Following HUD approval, the PHA and owner will enter into a PBV AHAP for units requiring rehabilitation in accordance with PBV program requirements or a PBV HAP contract if the units meet the PBV regulatory requirements for existing housing. The contract will have a term of 15 years. The owner is advised that the PBV HAP contract will only cover eligible units as described in Section 3.4. If an AHAP is required, the HAP contract will only include those units that are deemed suitable for occupancy upon rehabilitation under the AHAP and have not become vacant since the completed conversion request was submitted to HUD. If units have become vacant since the request was submitted, the PBV HAP contract may cover fewer units.

Subsequent to conversion, the PHA administering the contract shall enter data into the Form HUD-50058, in accordance with PIH Notice 2011-065 and Appendix IV.

3.8 Compliance with all Applicable Notices Regarding Contract Expiration or Termination

The owner must adhere to all applicable Notice requirements, including, but not limited to, the Notification of Prepayment (where an FHA direct or insured loan prepayment is occurring). A project where contract termination is anticipated within 60 days of the date of issuance of this Notice is ineligible for a prospective conversion of TPV assistance to PBV assistance. HUD and the PHA must have sufficient time to assess the viability of the request, process funding, and enter into a PBV HAP or AHAP contract. For prospective conversions, if the contract termination is anticipated within 60 days of the date of issuance of this Notice, the owner must instead follow the process for retroactive conversions described in this Notice, unless a short-term extension of the Rent Supplement or RAP contract is provided.

3.9 Funding Availability

Funding for TPVs is subject to the availability of appropriations on an annual basis. Therefore, conversions under Section 3 of this Notice may be suspended in a particular year if HUD determines there to be insufficient appropriations to satisfy requests under this Notice and to adequately fund other activities that require tenant protection funding (e.g., certain prepayments, opt outs, etc.) in that fiscal year.

3.10 Additional Information

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

Attachment 3A - Sample 30-Day Notification Letter to Residents for Prospective Conversion of Rent Supplement (Rent Supp) and Rental Assistance Payment (RAP) assistance to Project Based Vouchers

Date _____

Dear Resident:

I/We the Owner(s) of **[Name of Project]** are writing to inform you that the project-based rental assistance contract in place at this property under the **[Rent Supp or RAP program]** is anticipated to **[expire or terminate]** on **[date]**. This **[expiration or termination]** may impact the form of assistance you currently receive, as summarized below. Your comments on these potential changes will be welcomed and considered. Details on how to provide comments and to obtain additional information are provided at the end of this letter.

Under the Department of Housing and Urban Development's Rental Assistance Demonstration, I/we, the owner(s) of the property, are requesting authority to enter into a Project-Based Voucher (PBV) contract at this property to provide rental assistance to all units occupied by households that would otherwise receive Tenant Protection Vouchers (TPVs). The PBV assistance would be administered through a contract between the owner and a Public Housing Agency (PHA). The PBV contract would provide project-based assistance to the property. Households that choose to move one year or more after the PBV contract is put in place would receive a Housing Choice Voucher, or other comparable tenant-based assistance, if available, to use to seek housing elsewhere. Households will have the right to remain in their units whether or not the conversion to PBV occurs. <u>No households will be displaced or made to relocate as part of the conversion, nor will they be subject to a rent increase as a result of the conversion</u>.

The PBV contract would provide assistance to this property for a 15-year period, with renewal options. [Indicate if the Owner is planning to use the PBV contract to obtain financing to make project repairs/upgrades, if residents are expected to be relocated and the expected length of the relocation, and specify that all relocation costs will be the responsibility of the owner.]

The **[expiration or termination]** of the **[Rent Supp or RAP]** contract at this property, and our intent to provide Project-Based Voucher assistance rather than tenant-based assistance, may impact your household's housing options. However, your household will not experience an increase in rent due to the proposed conversion of assistance to PBV assistance, nor will residents be displaced from the property.

I/we, the owner of the property, will hold a briefing for the potentially affected households to explain the different forms of assistance, and the potential benefits and drawbacks of the conversion. The initial briefing is scheduled for **[date and time]**, at **[location]**. We welcome your comments. If you have comments, please submit them to **[the project office located at ___]** no later than 30 days from the date of this letter. All comments will be reviewed and, where appropriate, a response will be provided.

If you have any questions, please call the on-site property manager at **[On-site project manager's address or owner's contact/representative]**. For additional information, you may also contact **[Local Multifamily Hub office]** at **[Office phone number].**

Sincerely,

Owner

cc: Local HUD Office
Local Public Housing Agency

Attachment 3B - Sample Notification Letter to Residents for Retroactive Conversion of Regular Vouchers to Project Based Vouchers

Date _____

Dear Resident:

I/we, the Owner(s) of this property, are writing to notify you of some potential changes to your rental assistance. Your comments on these potential changes will be welcomed and considered. Details on how to provide comments and to obtain additional information are provided at the end of this letter. As you are aware, your household receives assistance in the form of a Housing Choice Voucher. This voucher was provided as a Tenant Protection Voucher when the **[Rent Supplement or Rental Assistance Payment]** assistance at the property terminated or expired on **[date]**. Households with Housing Choice Vouchers may use the tenant-based assistance to reside at this property, or may use the voucher to seek housing elsewhere.

Under the Department of Housing and Urban Development's Rental Assistance Demonstration, I/we, the owner(s) of the property, are requesting authority to convert your tenant-based voucher assistance to Project-Based Voucher (PBV) assistance. The PBV assistance would be administered through a contract between the owner and the Public Housing Agency (PHA) that now administers your tenant-based voucher assistance. The PBV contract would provide project-based assistance to the property. Households that choose to move one year or more after the PBV contract is put in place would receive a Housing Choice Voucher, or other comparable tenant-based assistance, if available, to use to seek housing elsewhere. Households will have the right to remain in their units whether or not the conversion to PBV occurs. <u>No families will be displaced or made to relocate as part of the conversion, and families will not be subject to a rent increase as a result of the conversion</u>.

The PBV contract would provide assistance to this property for a 15-year period, with renewal options. [Indicate if the Owner is planning to use the PBV contract to obtain financing to make project repairs/upgrades, if residents are expected to be relocated and the expected length of the relocation, and specify that all relocation costs will be the responsibility of the owner.]

<u>Your tenant-based assistance will not be converted to project-based assistance without your consent</u>. The PHA will hold briefings for the affected households to explain the different forms of assistance, and the potential benefits and drawbacks of the conversion. The initial briefing is scheduled for **[date and time]**, at **[location]**. During the briefing, each affected household will receive a form to complete and return to the PHA to acknowledge their consent or

non-consent to the conversion; each household will be provided at least 30 days from the date of the PHA briefing to make the decision. The form must be signed by the head of household and returned to the PHA, with a copy to the owner. Your current assistance will be converted to PBV assistance only if your household has signed a document consenting to the conversion of assistance. (Households that do not provide consent will continue to receive tenant-based voucher assistance and shall not be forced to relocate). If your household does not complete and return the form within 30 days of the date of this letter, your non-response will be considered non-consent. Non-consent to the conversion is not grounds for lease termination by the owner.

If you have any questions, please call the **[owner contact]** at **[owner's contact/representative]**. For additional information, you may also contact **[administering PHA]** at **[office phone number].**

Sincerely,

Owner

cc: Administering Public Housing Agency

APPENDIX I – 24 CFR PART 880 REGULATION, STRICKEN FOR PBRA CONVERSIONS

Title 24: Housing and Urban Development
PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

Section Contents

Subpart A—Summary and Applicability

§ 880.101 General.
§ 880.104 Applicability of part 880.
§ 880.105 Applicability to proposals and projects under 24 CFR part 811.

Subpart B—Definitions and Other Requirements

§ 880.201 Definitions.
~~§ 880.205 Limitation on distributions.~~
§ 880.207 Property standards.
§ 880.208 Financing.
§ 880.211 Audit.

Subparts C–D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 880.501 The contract.
~~§ 880.502 Term of contract.~~
§ 880.503 Maximum annual commitment and project account.
§ 880.504 Leasing to eligible families.
§ 880.505 Contract administration and conversions.
§ 880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).
§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).
§ 880.508 Notice upon contract expiration.

Subpart F—Management

§ 880.601 Responsibilities of owner.
§ 880.602 Replacement reserve.
§ 880.603 Selection and admission of assisted tenants.
§ 880.604 Tenant rent.
§ 880.605 Overcrowded and underoccupied units.
§ 880.606 Lease requirements.
§ 880.607 Termination of tenancy and modification of lease.
§ 880.608 Security deposits.
~~§ 880.609 Adjustment of contract rents.~~
§ 880.610 Adjustment of utility allowances.
§ 880.611 Conditions for receipt of vacancy payments.
§ 880.612 Reviews during management period.
§ 880.612a Preference for occupancy by elderly families.

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Source: 44 FR 59410, Oct. 15, 1979, unless otherwise noted.

Subpart A—Summary and Applicability

§ 880.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

[61 FR 13587, Mar. 27, 1996]

§ 880.104 Applicability of part 880.

~~(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal~~

~~before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.~~

~~(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:~~

~~(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.~~

~~(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.~~

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

(d) ~~Notwithstanding the provisions of paragraph (b) of this section,~~ the provisions of 24 CFR part 5 apply to all projects~~, regardless of when an Agreement was executed~~.

[61 FR 13587, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

~~**§ 880.105 Applicability to proposals and projects under 24 CFR part 811.**~~

~~Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.~~

Subpart B—Definitions and Other Requirements

§ 880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

~~*Agency.* As defined in 24 CFR part 883.~~

~~*Agreement.* (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.~~

Annual income. As defined in part 5 of this title.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator ~~upon satisfactory completion of the project~~, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA~~ in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects~~.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

~~*Elderly family.* As defined in part 5 of this title.~~

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

~~*Final proposal.* The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under §880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)~~

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment~~".~~" may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease ~~newly constructed~~ dwelling units assisted under this part. ~~The term owner also includes the person or entity submitting a proposal under this part.~~

~~*Partially-assisted Project.* A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.~~

~~*PHA-Owner/HUD Project.* A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.~~

~~*Private-Owner/HUD Project.* A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.~~

~~*Private-Owner/PHA Project.* A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.~~

~~*Project Account.* A specifically identified and segregated account for each project which is established in accordance with §880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.~~

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

Secretary. The Secretary of Housing and Urban Development (or designee).

~~*Small Project.* A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.~~

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 6714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984; 49 FR 19943, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13587, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

~~**§ 880.205 Limitation on distributions.**~~

~~(a) Non-profit owners are not entitled to distributions of project funds.~~

~~(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:~~

~~(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in theFederal Register.~~

~~(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in theFederalthe Federal Register.~~

~~(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see §880.405) unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.~~

~~(d) Any short-fall in return may be made up from surplus project funds in future years.~~

~~(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.~~

~~(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.~~

~~(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.~~

~~(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.~~

~~(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 49 FR 6714, Feb. 23, 1984; 61 FR 5212, Feb. 9, 1996; 65 FR 61074, Oct. 13, 2000]~~

§ 880.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

~~(d) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;~~

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors* —(1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[44 FR 59410, Oct. 15, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998]

§ 880.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act;

(3) Mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and

(4) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the ~~Agreement,~~ Contract, and/or ACC. ~~Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:~~

~~(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.~~

~~(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.~~

~~(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811 subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.~~

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, ~~an Agreement,~~ Contract or ACC entered into pursuant to this part: *Provided, however,* That such financing is in connection with a project ~~constructed~~ pursuant to this part and approved by HUD. Any pledge of the ~~Agreement,~~ Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture or HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The ~~Agreement, the~~ Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a ~~newly constructed~~ manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with §207.33(b) of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

~~§ 880.211 Audit.~~

~~(a) Where a State or local government is the eligible owner of a project or a contract administrator under §880.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.~~

~~(b) Where a non-profit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.~~

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986; 57 FR 33256, July 27, 1992]

Subparts C–D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD ~~upon satisfactory completion of the project.~~

(b) [Reserved]

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in §880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in §880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in §880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with §5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13587, Mar. 27, 1996; 65 FR 16722, Mar. 29, 2000]

~~**§ 880.502 Term of contract.**~~

~~(a) *Term (except for Manufactured Home Parks).* The term of the contract will be as follows:~~

~~(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.~~

~~(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.~~

~~(b) *Term for Manufactured Home Parks.* For manufactured home units or spaces in newly constructed manufactured home parks, the term of the Contract will be 20 years.~~

~~(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]~~

§ 880.503 Maximum annual commitment and project account.

(a) *Maximum Annual Commitment.* Where HUD is the contract administrator, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. Where the PHA is the contract administrator, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus an administrative fee for the PHA as approved by HUD.

~~(b) *Project Account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.~~

~~(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable~~

~~period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.~~

§ 880.504 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §880.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract* —(1) *Part 880 and 24 CFR part 881 projects.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(2) *For 24 CFR part 883 projects.* HUD and the Agency may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* For this part 880 and 24 CFR part 881 projects, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, and for 24 CFR part 883 projects,

HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, if:

(1) HUD determines (for 24 CFR part 883 projects, HUD and the Agency determine) that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with his obligations under the Contract, and

(3) Contract and budget authority is available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 31397, Aug. 7, 1984; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13652, Mar. 23, 1994; 60 FR 14841, Mar. 20, 1995; 61 FR 13587, Mar. 27, 1996; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

§ 880.505 Contract administration ~~and conversions~~.

(a) *Contract administration.* ~~For private-owner/PHA projects,~~ the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. ~~For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract.~~ The PHA ~~or HUD~~ may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA fee for Contract administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract ~~except under certain circumstances (see 24 CFR part 883) where a state housing finance agency is the PHA and finances the project~~.

~~(c) *Conversion of Projects from one Ownership/Contractual arrangement to another*. Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:~~

~~(1) The owner, the PHA and HUD agree,~~

~~(2) HUD determines that conversion would be in the best interest of the project, and~~

~~(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.~~

§ 880.506 Default by owner ~~(private-owner/HUD and PHA-owner/HUD projects)~~.

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner ~~(private-owner/PHA projects).~~

(a) *Rights of Owner if PHA defaults under ~~Agreement or~~ Contract.* The ~~ACC, the Agreement and the~~ Contract will provide that, in the event of failure of the PHA to comply with the ~~Agreement or~~ Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the ~~Agreement or~~ Contract and meet the obligations of the PHA under the ~~Agreement or~~ Contract including the obligations to enter into the Contract.

(b) *Rights of HUD if PHA defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default ~~and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract~~. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.

(c) *Rights of PHA and HUD if Owner defaults under Contract.* (1) The Contract will provide that if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

~~§ 880.508 Notice upon contract expiration.~~

~~(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.~~

~~(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.~~

~~(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.~~

~~(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.~~

~~(e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.~~

~~[49 FR 31283, Aug. 6, 1984]~~

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* ~~(1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.~~

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

(3) ~~With respect to non-elderly family units,~~ the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to ~~non-elderly~~ families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to ~~non-elderly~~ families expected to reside in the community by reason of current or planned employment.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

(c) *Contracting for services.* (1) For this part 880~~ and 24 CFR part 881 projects~~, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

~~(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.~~

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to the contract administrator:

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with §880.602 and to provide distributions to the owner~~ as provided in §880.205, §881.205 of this chapter, or §883.306 of this chapter~~, as appropriate.

~~(2) For this part 880 and 24 CFR part 881 projects:~~

~~(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.~~

~~(ii) Partially-assisted projects are exempt from the provisions of this section.~~

~~(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.~~

~~(3) For 24 CFR part 883 projects:~~

~~(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.~~

~~(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.~~

~~(Approved by the Office of Management and Budget under control number 2502–0204)~~

[44 FR 59410, Oct 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 1145, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39702, Sept. 27, 1989; 56 FR 7536, Feb. 22, 1991; 60 FR 14841, Mar. 20, 1995; 61 FR 13588, Mar. 27, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880* ~~*and 24 CFR part 881*~~ *projects.* ~~(i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.~~

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

~~(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.~~

~~(2) *Part 883 of this chapter projects.* (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:~~

~~(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or~~

~~(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.~~

~~(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.~~

~~(iii) All earnings, including interest on the reserve, must be added to the reserve.~~

~~(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.~~

~~(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.~~

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, ~~except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.~~

[61 FR 13588, Mar. 27, 1996]

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. For this part 880 ~~and 24 CFR part 881~~ projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. ~~For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.~~

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

(1) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign

and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5~~ and 813~~), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition* —(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers at

interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the contract rent plus any utility allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(Approved by the Office of Management and Budget under control number 2502–0204)

[61 FR 13589, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000; 70 FR 77744, Dec. 30, 2005]

§ 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

[49 FR 19943, May 10, 1984]

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of §880.611.

§ 880.606 Lease requirements.

(a) *Term of Lease*. The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form* —(1) *Part 880* ~~*and 24 CFR part 881*~~ *projects.* For this part 880 ~~and 24 CFR part 881~~ projects, the form of lease must contain ~~all required provisions, and~~ none of the prohibited provisions ~~specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.~~

~~(2) *24 CFR part 883 projects.* For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.~~

~~(i) *Required provisions (Addendum to lease).*~~

~~Addendum to Lease~~

~~The following additional Lease provisions are incorporated in full in the Lease between _____ (Landlord) and _____ (Tenant) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.~~

~~a. The total rent will be $____ per month.~~

~~b. Of the total rent, $____ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and $_____ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.~~

~~c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.~~

~~d. The Landlord will provide the following services and maintenance: _____~~

~~e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.~~

~~Landlord_____~~
~~By_____~~
~~Date_____~~

~~Tenant_____~~
~~Date_____~~

~~[End of addendum]~~

(ii) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

a. *Confession of Judgment.* Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. *Seize or Hold Property for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. *Waiver of Legal Notice.* Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease.

e. *Waiver of Legal Proceeding.* Agreement by the tenant to allow eviction without a court determination.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. *Waiver of Right to Appeal Court Decision.* Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit.* Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13590, Mar. 27, 1996]

§ 880.607 Termination of tenancy and modification of lease.

(a) *Applicability.* The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) *Entitlement of Families to occupancy* —(1) *Grounds.* The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any State landlord and tenant act;

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed “other good cause” under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) *Material noncompliance.* (i) Material noncompliance with the lease includes:

(A) One or more substantial violations of the lease; or

(B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) *Termination notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

(d) *Modification of Lease form.* The owner, with the prior approval of HUD ~~or, for a 24 CFR part 883 project, the Agency,~~ may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by §880.609 and other applicable HUD regulations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[44 FR 59410, Oct. 15, 1979, as amended at 51 FR 11225, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39703, Sept. 27, 1989; 56 FR 7537, Feb. 22, 1991; 60

FR 14842, Mar. 20, 1995; 61 FR 13590, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may

claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

~~§ 880.609 Adjustment of contract rents.~~

~~(a) *Automatic annual adjustment of Contract Rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR part 888.~~

~~(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.~~

~~(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.~~

~~[44 FR 59410, Oct. 15, 1979, as amended at 59 FR 22755, May 3, 1994; 61 FR 13591, Mar. 27, 1996]~~

§ 880.610 Adjustment of utility allowances.

In connection with annual ~~and special~~ adjustment~~s~~ of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility

Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502–0161)

[50 FR 39097, Sept. 27, 1985]

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with §880.601(a) and otherwise complied with §880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with §880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize

that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has ~~(for 24 CFR part 883 projects, the owner and the Agency have)~~ demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under §880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition:

(1)(i) For this part 880 ~~and 24 CFR part 881 private-owner/PHA~~ projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

~~(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.~~

(2) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§ 880.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families* —(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as "non-elderly disabled families") is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance

reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families* —(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of—

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:

(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or

(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with §880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65850, Dec. 21, 1994, as amended at 61 FR 9046, Mar. 6, 1996; 65 FR 16722, Mar. 29, 2000]

APPENDIX II –THE U.S. HOUSING ACT OF 1937, WAIVED FOR PBRA CONVERSIONS

The following lists the sections of the Act that are waived for PBRA conversions under the first component of the Demonstration:

- Section ~~8(b~~3(a)(1)
- Section 8(b)(1)
- Section 8(c)(1)
- Section 8(c)(2)
- Section 8(c)(4) (clause preceding the first comma)
- Section 8(c)(5)
- Section 8(d)(2)(A)
- Section 16(c)(2)

Please note that in addition to this list there are provisions of section 8 that are not germane to PBRA conversions under RAD and therefore do not apply.

APPENDIX III – PBRA SITE AND NEIGHBORHOOD STANDARDS

This Appendix describes site and neighborhood standards that apply to RAD projects converting to PBRA in conjunction with (1) New Construction; or (2) Acquisition and rehabilitation tied to a full or partial transfer of assistance to units in an existing housing project.

Site and neighborhood standards.
All proposals must be approved by HUD as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site must not be located in:

(1) An area of minority concentration unless:

(i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or

(ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, or vehicular traffic; rodent or vermin infestation; or fire

hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The site must comply with any applicable conditions in the applicable Consolidated Plan approved by HUD.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) Proposed sites for new construction, rehabilitation, and/or acquisition and proposals for the full or partial transfer of assistance to units in an existing housing project may not be on a site that has occupants unless the owner complies with all relocation requirements referred to in the URA and its implementing regulations 49 CFR Part 24 for the proposed site's current occupants.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

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

In order to implement the Demonstration, four new codes to be used with data submitted on Form HUD-50058 have been created to ensure proper monitoring and reporting. More specifically, the four new codes will allow the Department to track the project-based voucher (PBV) component of the Rental Assistance Demonstration (RAD) program. These codes must be entered in line 2n of the Form HUD-50058 in accordance with PIH Notice 2011-065.

The following codes have been assigned to the four types of housing eligible for the RAD.

- **RADPH** (Rental Assistance Demonstration/Public Housing)
- **RADMR** (Rental Assistance Demonstration/Moderate Rehabilitation)
- **RADRS** (Rental Assistance Demonstration/Rental Supplement)
- **RADRP** (Rental Assistance Demonstration/Rental Assistance Program)

Upon publication of this notice, public housing agencies must enter the appropriate program code on line 2n of the Family Report for families who are participating in the RAD program.

APPENDIX V– LIST OF PROGRAM REVISIONS AND CLARIFICATIONS FOR PIH NOTICE 2012-32, REV-1.

This appendix is meant to provide applicants with a guide to all provisions that have changed between the publication of PIH Notice 2012-32 on July 26, 2012, and the publication of PIH Notice 2012-32, REV-1. Below, please find two tables. Table 1 lists the new program provisions, by applicable section of the Notice. Table 2 lists the program clarifications, also by Notice section.

Table 1: New Program Revisions Table 1: New Program Revisions

New Program Revisions Section I of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. Low Income Housing Tax Credits	New language has been added to the Notice to indicate that if a proposed conversion is denied in their application for 9% tax credits that they will have 90 days to submit a Financing Plan indicating their ability to continue the proposed conversion with either 4% tax credits or other financing.	Section 1.4.B.5;
2. Alternative Requirement	Extending Capital Fund Obligation Dates for Unobligated Capital Funds to be used in support of conversion	Section 1.5.A
3. Waivers - PHAS	Exempts awarded projects from the Public Housing Assessment System (PHAS).	Section 1.5.I
4. Initial Contract Rents	Provides FY 2012 Contract rents to all applications received prior to the end of CY 2013.	Section 1.6.B.5; Section 1.7.A.5; and Attachment 1C.
5. Initial Contract Rents – Rent Bundling	Allows for "bundling" of rents for two or more applications	Section 1.6.B.5 and 1.7.A.5.b; Section 1.9.D
6. Use of Replacement Housing Factor Funds	Allows PHAs to use RHF funds to augment Contract Rents	Section 1.6.B.5; Section 1.7.A.5.c and Attachment 1C
7. MTW Rent Flexibility	Allowing MTW agencies who are applying for 2 or more projects to use their MTW block grant flexibility to set initial contract rents within applicable program limits	Section 1.6.B.5; Section 1.7.A.5.a; Section 1.9.E; and Attachment 1C

8. Eligibility – Multi-phase Projects (Subject to Notice and Comment)	For multi-phase proposals, HUD will issue a Multi-phase Award covering all phases proposed as well as individual CHAPs for all phases. All phases must have an application by July 1, 2015 to receive this benefit.	Section 1.9.C
9. Application Requirement-Portfolio Awards (Subject to Notice and Comment)	Provides for a new type of RAD award called a Portfolio Award that will cover a portfolio of projects. It will provide more flexible application requirements and lock in current applicable contract rents for all conversions within the portfolio. The PHA must submit an application covering each project in the portfolio within 365 days.	Section 1.9.F
10. Application Requirement – Joint CNI/RAD Awards	Provides for the ability to apply to CNI and RAD via the CNI NOFA.	Section 1.9.G
11. Eligibility	Eliminates the cap of 1,200 mixed-finance units	Section 1.11.C.2.C
12. Eligibility	Eliminates the cap of 1,000 units per agency	Section 1.11.C.2.C
13. Eligibility – HOPE VI (Subject to Notice and Comment)	Modifies eligibility for HOPE VI projects to allow for eligibility if the (1) the HOPE VI project is at-risk, as HUD defines it within the section; or (2) it is the only remaining project in the inventory;	Section 1.11.C.2.c

New Program Revisions Section II of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. Mod Rehab Ongoing Application Period –1st Component (Subject to Notice and Comment)	Opens up Ongoing Application Period and provides conditions for application	Section 2.2.1; Section 2.2.8; Section 2.2.10.F
2. Eligibility – 1st Component	Removes Mod Rehab Cap for first component	Section 2.2.1; Section 2.2.10.F
3. Application Requirement – Portfolio Conversions (Subject to Notice and Comment)	Provides for a new type of RAD award that will cover a portfolio of projects and provide more flexible application requirements.	Section 2.2.1; and Section 2.2.8.C
4. Eligibility – Multi-phase projects (Subject to Notice and	For multi-phase proposals, HUD will issue a Multi-phase Award covering all	Section 2.2.1 and Section 2.2.8.D

Comment)	phases proposed as well as individual CHAPs for all phases. All phases must have an application by July 1, 2015 to receive this benefit.	
5. Early Contract Termination – 1st and 2nd Component	Allows mod rehab owners to terminate early.	Section 2.2.2.B; Section 2.3.2.B
6. Initial and Re-Determined Rents	PHA's may elect for rent floors under certain conditions	Section 2.3.3
New Program Revisions Section III of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. Initial and Re-Determined Rents	PHA's may elect for rent floors under certain conditions	Section 3.5.D

Table 2: Program Clarifications

New Program Clarifications Section I of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. General Program Description	Clarifies that the competition for units is being performed on a first-come first-served basis	Section 1.2
2. General Program Description	Provides all major changes in General Program Description Section	Section 1.2
3. Tenant Protections - URA	Clarification on Uniform Relocation Act applicability	Section 1.4.A.3; Section 1.7 Attachment 1.A.1
4. Housing Notice	Identification of Housing Notice H 2012-20, which provides underwriting instructions for RAD	Section.1.4.B.4
5. Significant Amendment	Provides further guidance on what information should be included in a Significant Amendment by striking portions of Section 1.5 and creating a new attachment with all requirements listed in one place. Including a sample amendment.	Section 1.5 and Attachment 1D
6. Demolition and Disposition	Clarifies treatment of certain projects, where demolition and/or disposition has already been requested	Section 1.5.B
7. MTW Plan Amendments	Clarifies that RAD Significant Amendment requirements are applicable to MTW agencies	Section 1.5.E
8. MTW Flexibility	Clarifies that MTWs retain all program	Section 1.5.F

	flexibilities when converting to PBV, unless in direct conflict with the Notice.	
9. Tenant Protections and FSS	Clarifies a PHA's responsibilities in conducting the FSS and ROSS programs	Section 1.5.H (ROSS) Section 1.6.C.5 (FSS – PBV) Section 1.7.B.4 (FSS – PBRA)
10. Waivers	Clarifies that HUD considers the RAD conversion process to fulfill Section 33 of the Act and therefore required conversion assessments shall not be required for properties awarded a CHAP	Section 1.5.J
11. RAD Rehab Assistance Payments	Provides conditions for RAD Rehab Assistance Payments for units that were not vacant prior to conversion	Section 1.6.B.8, Section 1.7.A.9.
12. Tenant Protections – Right to Return	Clarifies Right to Return in PBV and PBRA.	Section 1.6.C.2; Section 1.7.B.2
13. Tenant Protections – Rent Phase-in	Clarifies how rent phase-in is set, including when it must be set and how it must be performed for both 3 and 5 year rent phase-ins	Section 1.6.C.4 and Section 1.7.B.3
14. Tenant Protections and PBV Requirements	Clarifies that PHAs converting to PBV are to include the protections listed in 1.6.C in their Section 8 Administrative Plan and the tenant lease.	Section 1.6.C.7
15. Tenant Protections - 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 each section of the Notice.	Section 1.6.C.8; Section 1.7.B.7; and Attachment 1B.1
16. Tenant Protections – CFCF Program	Residents residing in a project offering a CFCF program shall still qualify after conversion.	Section 1.6.C.9; Section 1.7.B.8
17. Reporting Requirements	Clarifies how to report RAD units in the HUD Form 50058	Section 1.6.D.1, Appendix IV
18. Waiting List	Clarifies waiting list obligations.	Section 1.6.D.4; Section 1.7.C.3
19. Administrative Fees – PBV	Clarifies when and how a PHA obtains administrative fees upon and after conversion.	Section 1.6.D.8
20. Tenant Protections and PBRA Requirements	Clarifies that PHAs converting to PBRA are to include the protections	Section 1.7.B.6; Attachment 1E

	listed in 1.7.B in their House Rules	
21. PBRA Requirements	Clarifies that conversions are treated as Pre-1981 Act for income eligibility	Section 1.7.C.8
22. Application Submission	Clarifies the treatment of certain applications before and after the Notice and comment period	Section 1.10
23. PBRA Requirements and CHAP Milestones	Clarifies that Affirmative Fair Housing Marketing Plan is required at Financing Plan stage	Section 1.12 and Attachment 1A.1
24. CHAP Milestones	Clarifies that PHA will need to complete an Accessibility and Relocation Plan Checklist with their Financing Plan submission	Section 1.12 and Attachment 1A.1.E
25. Closing Instructions	Provides information for closing preparations for mixed finance transactions	Section 1.13
26. Initial Contract Rents	Clarifies that PHA's will use public housing funds to fund the HAP in the initial year of conversion	Section 1.13.B
New Program Clarifications Section II of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. Tenant Protections - URA	Clarification on Uniform Relocation Act applicability	Section 2.2.1; Section 2.3.1
2. Reporting Requirements - 1st and 2nd Component	Clarifies how to report RAD units in the HUD Form 50058	Section 2.2.2.D.1; Section 2.3.4.E; Section 2.3.5.F and Appendix IV
3. Tenant Protections – Right to Return	Clarifies Right to Return in PBV and PBRA.	Section 2.2.5.C.2; Section 2.2.6.B.2
4. Program Requirements – 1st Component and 2nd Component	Clarifies that CHAP is only applicable for conversions of Mod Rehab to PBRA and that RCC is not applicable to Mod Rehab conversions	Section 2.2.11; Section 2.3.4.F; Section 2.3.5
5. Eligible Units	Clarifies that only units that are occupied are eligible for provision of HAP Contract	Section 2.3.2.C
6. Tenant Protections - 1st and 2nd Component	Clarifies that tenants may remain in under-occupied PBV units.	Section 2.3.3
New Program Clarifications Section III of PIH Notice 2012-32, REV-1		
Category	**Provision**	**Applicable Notice Section**
1. Administrative Fees	Clarifies that applicants shall receive a special administrative fee for units	Section 3.3

	receiving TPV in RAD	
2. Extensions of RS/RAP Contracts	Conforming edits to adhere to Multifamily's policy that short-term extensions of RS/RAP Contracts cannot be extended beyond FY 2013.	Section 3.3 and Section 3.6.1
3. Uniform Relocation Act	Informs that the URA applies to all conversions under Section III.	Section 3.4
4. Eligible Units	Clarifies that only units that are occupied are eligible for provision of HAP Contract	Section 3.4.C.1
5. Enhanced Vouchers	Clarifies that prepayment of a mortgage for a project that has a Flexible Subsidy Loan will qualify for the provision of Enhanced Vouchers	See Section 3.4.C.2.a
6. Tenant Protections	Clarifies different rules for RS/RAP applicants who are housing tenants in under-occupied PBV units	Section 3.5.E
7. Reporting Requirements	Clarifies how to report RAD units in the HUD Form 50058	Section 3.6.5; Section 3.7.2; and Appendix IV