

Project, any Legacy Non-RAD PBV units located in the same property as the Covered Project shall be subject to the terms of this provision. To effectuate this provision, HUD is waiving 24 CFR 5.601 and 24 CFR § 983.2(c)(7)(iii) and 24 CFR § 983.301(f)(4).

1.7 Special Provisions Affecting Conversions to PBRA

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

For public housing projects converting assistance to PBRA under the First Component of the Demonstration, 24 CFR part 880, Section 8 Housing Assistance Payments Program for New Construction as modified for RAD and as set forth in Appendix I, and applicable existing and subsequent Office of Housing guidance⁴⁴ will apply, except for the provisions listed below. These “special” provisions are grouped into three categories: Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. Where applicable, reference is made to the affected statute and/or regulation. For additional background purposes, HUD has provided Appendix I, which is a copy of the existing 24 CFR part 880 regulation with the provisions stricken that will not apply to Covered Projects. Additionally, Appendix II includes the specific provisions of the Act that are inapplicable to PBRA conversions. Finally, Appendix III includes the site and neighborhood standards that apply to PBRA.

Conversions from a RAD/Section 18 Blend will result in a single form of RAD PBRA HAP contract for the Converting Public Housing Assistance and Converting TPV Assistance and will include all of the same requirements.

A. PBRA Contract Terms.

- 1. Length of Contract.** Covered Projects shall have an initial HAP Contract term of 20 years. To implement this provision, HUD is specifying alternative requirements for section 8(d)(2)(A) of the Act, which establishes a maximum term of 15 years for “an existing structure.” Additionally, 24 CFR § 880.502, which imposes maximum

⁴⁴ Examples of Office of Housing guidance include handbooks such as “Occupancy Requirements of Subsidized Multifamily Housing Programs” (4350.3) and “Multifamily Asset Management and Project Servicing” (4350.1). Future changes to part 880 would apply to RAD as long as the future changes are not provisions that have been stricken in the final Notice.

contract terms for New Construction projects consistent with statutory authority that was repealed in 1983, does not apply.

2. **Mandatory Contract Renewal.** Section 524 of MAHRAA and 24 CFR part 402 currently govern renewals of expiring or terminating project-based section 8 HAP Contracts and, in general, require HUD to renew such contracts “at the request of the owner.” Pursuant to the RAD Statute, upon expiration of the initial contract and each renewal contract, the Secretary or Contract Administrator must offer, and the Project Owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year of such renewal. The renewal contract(s) shall be for the prescribed number and mix of units but may, upon request of the Project Owner and subject to HUD approval, be on one or more transfer of assistance sites in lieu of the project site subject to the expiring contract. Consequently, to the extent that section 524 of MAHRAA and 24 CFR part 402 are in effect upon contract expiration, the various provisions stating or requiring that any renewal of an expiring contract for project-based assistance under Section 8 shall be “at the request of the owner” will not apply. The renewal contract shall have contract rents set in accordance with the renewal options available under MAHRAA (see [Section 8 Renewal Guide](#), as may be amended).
3. **Ownership or Control.** This section has been moved to [Section 1.4.A.11](#).
4. **RAD Use Agreement.** This section has been moved to Section 1.4.A.13.
5. **Initial Contract Rent Setting.** No additional or incremental funding is associated with this Demonstration. Consequently, HUD is specifying alternative requirements for section 8(c)(1) of the Act, which governs rent setting for project-based Section 8 units, and for section 8(c)(5) of the Act or 24 CFR § 880.503(b), which govern the “project account.” HUD has calculated initial contract rents for every public housing project based on each project’s subsidy under the public housing program. All RAD applications, including applications for Portfolio Awards, will have initial contract rents based on their “RAD rent base year,” described in [Attachment 1C](#). PHAs have additional discretion in establishing initial contract rents using the following flexibility:
 - a. **MTW Fungibility.** MTW agencies may use their MTW funds to set the initial contract rents higher than the normally applicable contract rent cap that is based on the project’s public housing subsidy. In addition to the rent cap described below, contract rents cannot exceed comparable market rent, as determined by a Rent Comparability Study. Any use of MTW funding flexibilities in setting initial contract rents shall be subject to

subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in Notice PIH 2013-02, or successor Notice. If an MTW agency converts a project to PBRA and uses this flexibility to increase their initial contract rents, HUD will reduce the agency's public housing subsidy by the additional amount (in addition to any funding modifications that would occur as a result of the conversion absent the rent increase) required to fund the PBRA HAP (see [Attachment 1C](#)). HUD will limit the number of projects an MTW agency may convert to PBRA if the PHA does not have sufficient public housing subsidy to convert into PBRA assistance.

- b. **Rent Bundling.** PHAs may adjust subsidy (and initial contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. For example, assume that a PHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The PHA could bundle the two projects such that the initial contract rents for both projects will be \$550. This use, which HUD refers to as “bundled” rents, can occur under the following scenarios:
 - i. When a PHA is converting two or more properties within its public housing portfolio. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract; and
 - ii. When PHAs have formed a Partnership in accordance with Section 1.5.M and are bundling rents between two or more converting projects. The execution and effective date of the HAP Contract for the donor HAP Contract must occur prior to or simultaneous with the effective date of the recipient HAP Contract;

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

- c. **Demolition Disposition Transition Funding (DDTF).** PHAs that are scheduled to receive ongoing DDTF subsidy for an approved Section 18 action that was not part of the Converting Project may choose to forego

any ongoing DDTF for the purpose of amending the initial RAD rent. In the case of RAD/Section 18 Blends, DDTF for which the PHA would become eligible for the units approved under Section 18 will immediately be cancelled and used to increase the initial RAD rents for the Covered Project that results from the RAD/Section 18 Blend, unless the resulting RAD rent would exceed the initial PBRA contract rent cap or HUD determines the Section 18 units would not have been eligible for DDTF. See [Attachment 1C](#) for the calculation of how HUD will determine the increase to the RAD rent.

- d. **Tenant Paid Utility Savings.** When conversion will result in the reduction of one or more utility components (e.g., gas, water & sewer, electric) used to establish the Utility Allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail. The Utility Allowance shall be recalculated based on actual consumption within a reasonable period following completion of the work.

- e. **New Construction or Substantial Rehab.** For any transaction that is proposed in its Financing Plan to undertake new construction or substantial rehabilitation in a designated Opportunity Zone, HUD may provide up to a \$100 per unit per month (PUM) increase to the RAD rents, subject to the availability of funds and such conditions as HUD may impose. For purposes of this subparagraph, new construction or substantial rehabilitation is defined as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Costs as published by HUD for a given market area. Funds for this purpose shall be allocated on a first-come, first served basis, subject to the availability of funds, based on the time of the request (communicated through the submission of a complete and acceptable Financing Plan), where the PHA demonstrates it is necessary for the viability of the transaction.⁴⁶

- f. **Restore-Rebuild Initial Contract Rents.** The initial contract rents for the Restore-Rebuild units will be based on the project's reasonably anticipated

⁴⁵ [Reserved]

⁴⁶ HUD will aggregate for this purpose a limited amount of funds associated with units excluded from conversions through a de minimis reduction pursuant to Section 1.4.A.4 ("Substantial Conversion of Assistance").

subsidy under the public housing program in accordance with a “RAD rent base year” described in Attachment 1C, as set forth in the NARR.

Additionally, PHAs may use any other applicable flexibility as set forth in this Section 1.7.A.5 to set the initial contract rents higher than the contract rent that is set forth in the NARR.

g. Rents in RAD/Section 18 Blends. HUD will produce a single, blended rent schedule for all units resulting from a RAD/Section 18 Blend. The rent schedule will be calculated as the unit-weighted average contract rent by bedroom of:

- the Converting Public Housing Assistance using the RAD rents based on their “RAD rent base year” described in Attachment 1C, and
- the Converting TPV Assistance using the lower of 110% of the applicable FMR (or approved exception payment standard) minus any Utility Allowance or the Reasonable Rent.

The initial contract rent in a RAD/Section 18 Blend can use any of the flexibilities referenced in subsections a. through e. above.

Notwithstanding HUD’s calculation or the above-mentioned flexibilities, initial contract rents will be capped at 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when HUD’s calculation of contract rents exceeds 120 percent of the FMR but where the PHA believes that such rents are below the comparable market rent, the PHA may request an exception under which the project may receive rents in excess of 120 percent of the FMR but not in excess of the lower of comparable market rents or 150 percent of FMR. HUD will grant such a request only when HUD determines that a Rent Comparability Study (RCS), which the PHA must procure and pay for, establishes that rents are below comparable market rents.⁴⁷ Any such determination will be made by HUD in its sole and absolute discretion. Where initial contract rents are at or below 120 percent of the FMR, no RCS is required.

6. Method of Adjusting Contract Rents. Contract rents will be adjusted only by HUD’s OCAF at each Anniversary of the HAP Contract, subject to (a) the availability

⁴⁷ The Rent Comparability Study must be prepared consistent with Chapter Nine of HUD’s Section 8 Renewal Guide, including any changes to Chapter Nine that HUD publishes while the HAP Contract is in effect. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8.

of appropriations for each year of the contract term, and (b) the Maximum Rent, as defined below.⁴⁸

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

7. **RAD Use Agreement.** This section has been moved to [Section 1.4.A.13](#)
8. **Distributions.** Regardless of type of financing, Covered Projects will not be subject to any limitation on distributions of Surplus Cash, contingent on the availability of Surplus Cash as determined by year-end audited or certified financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205, which, among other provisions, establishes certain limitations on distributions for profit-motivated owners and authorizes HUD to require the owner to establish a residual receipts account. Distributions are not considered program or project funds.
9. **RAD Rehab Assistance Payments.** HUD and the Project Owner typically will enter into a HAP Contract before construction begins. During the period of Work identified in the RCC, standard HAP Contract administration procedures will be used for occupied units. Except where the Section 8 Pass-Through⁴⁹ is used, units covered under the HAP Contract that are not occupied at any point during the period of Work identified in the RCC may be eligible, subject to the conditions below, for Rehab Assistance Payments equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents ([see Attachment 1C](#)). During the period of rehabilitation or construction as identified in the RCC, the maximum number of units for which a Project Owner can receive RAD Rehab Assistance Payments is limited to the number of units eligible for Operating Fund or Capital Fund subsidy prior to conversion. As a result, some units in the

⁴⁸ OCAFs are calculated and published each year by HUD in the Federal Register and are applied to the contract rent in order to calculate the contract rent for the project in the following fiscal year. For public housing conversions, the OCAF excludes the portion of the contract rent that is committed to debt service payments .

⁴⁹ As fully described in Handbook 4350.1, Chapter 38, Paragraph 38-32, under the Section 8 Pass Through Owners with residents under a project-based Section 8 HAP Contract whose unit was rendered uninhabitable may temporarily lease a unit in another building, which is habitable, under UPCS. The Owner can sign a temporary lease on behalf of the displaced Section 8 resident (i.e., a master lease) and begin to voucher for the contract rent for that temporary unit.

Covered Project may not be eligible for Rehab Assistance Payments. As necessary to implement this provision, HUD is suspending the applicability of additional provisions in 24 CFR § 880.504(a) until all contract units are made available for occupancy and waiving the applicability of section 8(c)(4) of the Act.

The Project Owner will no longer be eligible to receive RAD Rehab Assistance Payments upon the earlier of completion of the Work or expiration of the time period identified in the RCC for completion of all Work, which date is specified in the HAP contract. After such date, all units under the HAP Contract will be eligible for payment only for occupied units or for vacancy payments, as applicable.

10. Future Statutory or Administrative Changes. Consistent with PBRA HAP Contracts entered into under MAHRAA, any changes in HUD requirements, except to the extent required by statute, that are inconsistent with the PBRA HAP Contract entered into through RAD, shall not be applicable. Further, for any statutory change during the term of the contract affecting contract rents that HUD determines will threaten the physical viability of the property, the Owner may terminate the contract upon notification to HUD. Notwithstanding such termination, the project shall remain subject to the RAD Use Agreement encumbering the property on which the project is located.⁵⁰

11. Floating Units. Upon the request of the Project Owner of a Covered Project that is partially-assisted (i.e., fewer than 100% of the units are covered by the HAP Contract), HUD will permit the Section 8 assistance to float between units within the project that have the same bedroom size and the same contract rent; from the time of the initial execution of the HAP Contract, the property must maintain the same number and type of RAD units. As a condition for granting such request, HUD requires that the unassisted units be inspected with the same frequency as the assisted units are required to be inspected under 24 CFR part 200, subpart P. Assistance may float from a required UFAS unit only to another UFAS unit that has the same bedroom size and accessibility features. If assistance floats to a UFAS unit as a reasonable accommodation for a household that had not previously been in a UFAS unit, the assistance may float back to a non-Section 504 unit when there is no longer need for the reasonable accommodation provided the required number of UFAS units is maintained.

⁵⁰ Until HUD revises the currently approved PBRA HAP Contract for RAD, PHAs may request amendments to the HAP Contract in accordance with this provision.

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

B. PBRA Resident Rights and Participation.

1. No Rescreening of Tenants upon Conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.⁵¹ Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBRA requirements regarding continued occupancy unless explicitly modified in this Notice (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, the first clause of section 8(c)(4) of the Act and 24 CFR § 880.603(b), concerning determination of eligibility and selection of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Further, so as to facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the Converting Project that will reside in Legacy Non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR § 983 for Legacy Non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units.⁵²

2. Right to Return. See section 1.4.A.5.b. and the RAD Fair Housing, Civil Rights, and Relocation Notice regarding a resident's right to return.

⁵¹ These protections (as well as all protections in this Notice for current households) apply when a household is relocated to facilitate repairs following conversion and subsequently returns to the Covered Project, even if they are considered a "new admission" upon return.

⁵² For Legacy Non-RAD PBV households, applicable program requirements includes the requirement that any admission to the project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time.

- 3. Phase-in of Tenant Rent Increases.** If, purely as a result of conversion, the amount a tenant would pay for rent and utilities under the PBRA program (the tenant's TTP) would increase the tenant's TTP by more than the greater of 10 percent or \$25, the rent increase will be phased in over 3 or 5 years. Eligibility for the phase-in is to be determined at the Initial Certification which occurs at the time the household is converted to PBRA. A phase-in must not be applied after the household's Initial Certification. To implement the phase-in, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 880.201 (definition of "total tenant payment" (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase-in period at three years, five years, or a combination depending on circumstances and must communicate such policy in writing to affected residents. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

The method described below explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section "Calculated Multifamily TTP" refers to the TTP calculated in accordance with regulations at 24 CFR § 5.628 (not capped at Gross Rent) and the "most recently paid TTP" refers to the TTP recorded on the family's most recent HUD Form 50059. If a family in a project converting from Public Housing to PBRA was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1, as illustrated below.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the Calculated Multifamily TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR – 50% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and all subsequent recertifications – Year 3 AR and any IR in Year 3: Full Calculated Multifamily TTP⁵³

⁵³ For example, where a resident's most recently paid TTP is \$100, but the Calculated PBV TTP is \$200 and remains \$200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of \$100 to \$133. At the second AR, the resident's

Five Year Phase-in

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP or flat rent and the Calculated Multifamily TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 25% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 33% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 50% of difference between most recently paid TTP and Calculated Multifamily TTP
- Year 5 AR and all subsequent recertifications – Full Calculated Multifamily TTP

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

4. **Family Self-Sufficiency (FSS).** PHAs and Project Owners must follow the FSS regulations at 24 CFR part 984. Public Housing residents that are currently FSS participants must be allowed to continue to participate in the PHA's FSS program once their housing is converted through RAD for the duration of the grant's period of performance. The Project Owner must ensure that these participants continue to be served by an FSS program: The PBRA owner may administer their own FSS program or enter into a Cooperative Agreement with the PHA, another PHA or another owner, allowing the partner entity to provide service coordination to PBRA participants in accordance with the requirements of 24 CFR parts 984 and 877, and current and future guidance published by HUD. In all program administration scenarios, the Project Owner must submit an FSS Action Plan to HUD for approval upon RAD conversion where there are converted participants. Under a Cooperative Agreement, the Project Owner must assume responsibility for the administrative duties associated with FSS such as calculating and crediting escrow and reporting. The Project Owner may choose to continue to enroll new participants but is not required to continue enrollment if they plan to phase out the FSS program.

contribution would increase by 50% of the \$66 differential to the standard TPP, increasing to \$166. At the third AR, the resident's contribution would increase to \$200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

If, upon conversion, the PHA ceases to be a PHA and no longer has public housing or HCV participants, or if the PHA converts all units that were eligible for FSS and no longer wishes to run an FSS program, the FSS grant may be transferred to the PBRA Project Owner for the remainder of the FSS grant period of performance. Following such a transfer, an otherwise eligible entity will be identified as a renewal or new applicant under future FSS Funding Notices.

5. **Resident Participation and Funding.** Residents of Covered Projects with assistance converted to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR part 245 (Tenant Participation in Multifamily Housing Projects). In addition, in accordance with Attachment 1B, residents will be eligible for resident participation funding.
6. **Resident Procedural Rights.** The information provided below must be included as part of the House Rules for the associated project and the House Rules must be submitted to HUD for review prior to Closing. See Attachment 1E for a sample Addendum to the House Rules.
 - a. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects converting assistance under RAD, that supplement notification requirements in regulations at 24 CFR § 880.607 and the Multifamily HUD Model Lease.
 - i. *Termination of Tenancy and Assistance.* The termination procedure for RAD conversions to PBRA will additionally require that Project Owners provide adequate written notice of termination of the lease which shall be:
 1. A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction;
 2. Not less than 30 days in the case of nonpayment of rent and in conformance with 24 CFR part 247; and
 3. Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

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

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

- i. Residents be provided with notice of the specific grounds of the Project Owner's proposed adverse action, as well as their right to an informal hearing with the Project Owner;
- ii. Residents have an opportunity for an informal hearing with an impartial member of the Project Owner's staff within a reasonable period of time;
- iii. Residents have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the Project Owner as the basis for the adverse action. With reasonable notice to the Project Owner, prior to hearing and at the residents' own cost, residents may copy any documents or records related to the proposed adverse action; and
- iv. Project Owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action and the evidence the Project Owner relied on as the basis for the adverse action.

The Project Owner shall be bound by decisions from these hearings, except if (x) the hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing, or (y) the decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law. If the Project Owner determines that it is not bound by a hearing decision, the Project Owner must promptly notify the resident of this determination, and of the reasons for the determination.

c. **Family Right to Move.** [Pursuant to Section 1.7.C.5](#) and unless the Covered Project received a specific good cause exemption to such

provision, families have a choice-mobility right which must be stated in the House Rules as shown in sample in Attachment 1E.

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

8. **Jobs Plus.** Jobs Plus grantees awarded FY2014 and/or subsequent fiscal year funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance unless significant relocation and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus grant agreement and/or work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project (see provisions in the relevant Jobs Plus NOFO and/or Grant Agreement). If the Jobs Plus program is continued, the grantee must agree to continue to implement the program according to HUD's program requirements. During the term of the Jobs Plus grant period after conversion, residents previously enrolled in the Jobs Plus rent incentive may continue their enrollment and any project resident may enroll in services or the rent incentive after conversion. To facilitate the uniform treatment of residents and units in a Jobs Plus program at a target project(s), any Jobs Plus program at a target project(s) may also enroll residents in any Legacy Non-RAD PBRA units in a Covered Project that replaced former public housing at the time of conversion in Jobs Plus services and in the Jobs Plus financial/rent incentive. To facilitate the ongoing availability of services for resident participants of Jobs Plus, HUD is waiving and establishing an alternative requirement to the "Self Sufficiency Programs" account in the Consolidated Appropriations Act, 2024 (and subsequent Appropriations Acts, as applicable) that restrict Jobs Plus grants to serving only public housing residents.

9. **When Total Tenant Payment Exceeds Gross Rent.** Under normal PBRA rules, any new admission to the PBRA program must require a subsidy payment at admission to the program, which means their TTP may not equal or exceed the Gross Rent for the

unit at that time (Section 3-6 F.4 of HUD Handbook 4350.3, REV-1). Further, a resident's eligibility ends and a Project Owner must process a termination of assistance when the family's TTP has risen to a level that is equal to or greater than the Gross Rent and increase the tenant rent to the contract rent (assuming that the tenant does not receive the benefit of any other type of subsidy) (24 CFR 880.603(c)(3) and Section 8-5 C and 8-6 A.1 of HUD Handbook 4350.3, REV-1).

Since the rent limitation under this Section of the Notice may prevent the admission to a RAD PBRA Unit of existing residents or new admissions otherwise eligible for PBRA assistance, HUD is establishing an alternative requirement and requiring that families with a TTP that equals or exceeds Gross Rent who would otherwise qualify for assistance in the unit, shall be admitted and allowed to occupy the unit. HUD is also requiring that the units occupied by such families shall be placed on and/or remain under the HAP Contract when TTP equals or exceeds the Gross Rent.

For residents living in the Converting Project prior to conversion and for all new admissions to the Covered Project during the initial term of the contract, HUD is establishing the alternative requirement that, during any period when the family's TTP is equal to or above the Gross Rent, the zero-HAP family will pay an alternate rent to owner that is the lower of:

- a. the family's TTP less the Utility Allowance, subject to any required phase-in pursuant to Section 1.6.C.3 of this Notice; or
- b. the Zero-HAP Rent Cap, which is the lower of either:
 - i. The applicable FMR less the Utility Allowance; or
 - ii. In the event the units are subject to more restrictive rent setting requirements under another federal, state, or local program (e.g. LIHTC or HOME), the rent to owner set to comply with such requirements.

As necessary to implement this alternative requirement, HUD is waiving 24 CFR 880.603(c)(3) and sections 3-6 F.4, 8-5 C., and 8-6 A.1. of HUD Handbook 4350.3, REV-1. Tenants will retain all of the rights under the Model Lease, including the right to occupy the unit, as well as those provided through this Notice. Additionally, tenants will still be subject to the requirements for Section 8 tenants, including the requirements concerning reexamination of family income and composition found in 24 CFR part 5 in order to determine the Zero-HAP Rent Cap. When TTP equals or exceeds Gross Rent, the Zero-HAP Rent Cap collected by the Project Owner is

⁵⁴ [Reserved]

considered project funds and must be used for project purposes. Subsidy may subsequently be reinstated if the tenant becomes eligible for subsidy.

The Project Owner is not required to process these individuals through Multifamily Housing's Tenant Rental Assistance Certification System (TRACS) but may be required to do so in the future when a future revision of the TRACS can accept such certifications. All normal actions for the contract rent in TRACS shall continue for these units, including application of the OCAF adjustment to the contract rent indicated in the HAP Contract, since the OCAF adjusted rent will still be in effect whenever the unit is occupied by a family eligible for rental subsidy.

- 10. Under-Occupied Units.** If at the time of conversion, an eligible family assisted under the HAP Contract is occupying a unit that is larger than appropriate because of the family's composition, the family may remain in the unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized within a reasonable period of time. In order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project, HUD is waiving the portion of 24 CFR § 880.605 that assumes the unit has become under-occupied as the result of a change in family size.

C. PBRA: Other Miscellaneous Provisions.

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs and the Project Owner must cooperate with any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work.
- 2. Davis-Bacon prevailing wages and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** These sections have been moved to [1.4.A.13](#) and [1.4.A.14](#).
- 3. Establishment of Waiting List.** The Project Owner can utilize a project-specific or community waiting list. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
 - a. Transferring an existing site-based waiting list to a new site-based waiting list.
 - b. Transferring an existing site-based waiting list to a PBRA program-wide waiting list.

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

To the extent the wait list relies on the date and time of application, the applicants shall have priority on the wait list(s) to which their application was transferred in accordance with the date and time of their application to the original waiting list.

If the PHA is transferring assistance to another neighborhood and, as a result of the transfer of the waiting list, the applicant would only be eligible for a unit in a location which is materially different from the location to which the applicant applied, the PHA must notify applicants on the waiting list of the transfer of assistance, and on how they can apply for residency at other sites.

If using a site-based waiting list, PHAs shall establish a waiting list in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the Covered Project's initial waiting list. In all cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Any activities to contact applicants on the public housing waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and with the obligation to provide meaningful access for persons with limited English proficiency (LEP).⁵⁵

When using a site-based waiting list, PHAs should consider waiting list and transfer policies that expand opportunities for tenants seeking an emergency transfer under, or consistent with, the PHA's Emergency Transfer Plan. This allows for easier moves

⁵⁵ 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.

between assisted properties. Any such preference must be approved by HUD in accordance with Notice H 2013-21, prior to implementation.

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

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

4. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project.
5. **Choice-Mobility.** HUD seeks to provide all residents of Covered Projects with viable Choice-Mobility options. Unless provided an exemption as described below, PHAs that are applying to convert the assistance of a project to PBRA are required to provide a Choice-Mobility option to residents of Covered Projects in accordance with the following:⁵⁶
 - a. *Resident Eligibility.* Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of: (a) 24 months from date of effective date of the HAP or (b) 24 months after the move-in date.
 - b. *Voucher Inventory Turnover Cap.* Recognizing the limitation on the availability of turnover vouchers from year to year, a voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.
 - c. *Project Turnover Cap.* Also recognizing the limited availability of turnover vouchers and the importance of managing turnover in the best interests of the property, in any year, a Project Owner and voucher agency

⁵⁶ The Choice-Mobility requirements that apply to covered PBRA projects differ from the requirements that apply to covered PBV projects.

may agree to limit the number of Choice-Mobility moves exercised by eligible households to 15 percent of the assisted units in the project. (For example, if the project has 100 assisted units, the Project Owner and voucher agency could limit the number of families exercising Choice-Mobility to 15 in any year, but not to less than 15.) While a Project Owner and voucher agency are not required to establish a project turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

The voucher agency must maintain a written agreement with the owner describing how the Choice-Mobility option will be administered in accordance with these requirements and the process by which households may request a voucher. For example, the written agreement must specify whether the owner will receive requests from families or refer families to the PHA.

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

- Provide voucher agencies that make such a commitment bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.⁵⁷
- Grant a good-cause exemption from the Choice-Mobility requirement for no more than 10 percent of units in the Demonstration. HUD will consider requests for good-cause exemptions only from the following types of PHAs:
 - Public housing–only agencies, defined as agencies that own units under a public housing ACC, but do not administer, directly or through an affiliate, a Housing Choice Voucher program with non special-purpose vouchers; or
 - Combined agencies that currently have more than one-third of their turnover vouchers set aside for veterans, as defined for the purpose of

⁵⁷ The sponsoring agency must commit to the full term of the initial HAP Contract, must undergo a significant amendment to its Annual Plan (no later than 60 days after execution of the project's CHAP), and must comply with section 8(o)(6)(A) relating to selection preferences. In order to implement this incentive, HUD is waiving provisions under 24 CFR § 985.3(h) to provide donating agencies with bonus points under the SEMAP for deconcentration.

HUD-VASH, or homeless populations, as defined in 24 CFR § 91.5.⁵⁸ To be eligible for this exemption, the PHA's admission policies must have been formally approved by the PHA's board prior to the time of application.

6. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of secured debt during the HAP Contract term to ensure the financing is consistent with long-term preservation of the Covered Project. With respect to any financing contemplated at the time of conversion (including any permanent financing which is a conversion or take-out of construction financing), such consent may be evidenced through the RCC, but HUD review of liens must be performed prior to execution.
7. **Submission of Year-End Financial Statements.** Projects converting assistance to PBRA must comply with 24 CFR part 5, Subpart H, as amended, revised, or modified by HUD and must file annual financial statements to HUD in accordance with the following provisions.⁵⁹ HUD may require the Project Owner to amend the HAP Contract to incorporate these requirements:
 - a. Within ninety (90) days, or such alternative period established in writing by HUD, following the end of the Project Owner's fiscal year, the Project Owner shall prepare a financial report for the Project Owner's fiscal year, or the portion thereof that started with the Project Owner's assumption of the HAP Contract, based on an examination of the books and records of the Project Owner in accordance with generally accepted accounting principles and in such other form and substance as specified by HUD in supplemental guidance, and provide such report to HUD in such form, substance, and manner as may be specified by HUD under the Uniform Financial Reporting Standards at 24 CFR § 5.801 ("UFRS"), or any successor regulations.
 - b. Unless specifically waived or modified by HUD or to the extent otherwise exempt, the Project Owner shall: (a) engage an independent, licensed Certified Public Accountant ("CPA") to audit the Project Owner's annual financial report and to produce an audit report in accordance with both Generally Accepted Government Auditing Standards and Generally Accepted Auditing Standards; (b)

⁵⁸ 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.

⁵⁹ This provision is included to clarify existing requirements for PHAs that own PBRA-assisted projects through Single Asset Entities. Such owners are considered reporting entities under 24 CFR § 5.801 (a)(3) and (a)(4).

engage an independent, licensed CPA to perform an agreed-upon procedure, in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements, to compare the financial data template information submitted electronically by the Project Owner to HUD against the annual financial report examined by, and the audit report prepared by, the independent, licensed CPA, and report any variances to HUD; and (c) furnish to the Contract Administrator and HUD (if a PHA is the Contract Administrator) the audit report, and any other reports relating to the annual financial report or the audit report as required by HUD, by such means and in such form, substance, and manner as may be specified by HUD under UFRS, or any successor regulations.

- c. To the extent certain non-profit Project Owners' requirement to submit annual financial reports may be waived or modified by HUD, or such Project Owners may otherwise be exempt from compliance, such waiver, modification, or exemption shall not be construed to relieve the Project Owner of any requirements of this provision, except for those requirements specifically waived, modified, or from which they are exempt.
- d. If the Project Owner fails to perform as required pursuant to this provision, the Contract Administrator or HUD (if a PHA is the Contract Administrator) may, at its sole election, and in a manner determined by HUD, and without affecting any other provisions herein, and after first providing to the Project Owner a notice of default of the HAP Contract with a reasonable opportunity to cure, initiate or cause to be initiated a forensic audit of the Project Owner's books, records, and accounts in such a manner as to provide to the Contract Administrator and HUD (if a PHA is the Contract Administrator) with as much of the same information that would have been provided had the Project Owner not failed to perform as required. Any such audit initiated by the Contract Administrator or HUD does not relieve Project Owner of the requirement to submit to the Contract Administrator and HUD (if a PHA is the Contract Administrator) an annual audited financial report as required pursuant to this provision.

- 8. Classification of Converting Projects as Pre-1981 Act Projects under Section 16(c) of the United States Housing Act of 1937.** For purposes of ensuring maximum flexibility in converting to PBRA, all projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the Act. Section 16(c)(1), which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, Project Owners of projects converting to PBRA may admit applicants with incomes up to the low-income limit. HUD Headquarters tracks the 25% restriction on a nationwide basis. Project Owners of

projects converting to PBRA do not need to request an exception to admit low-income families. In order to implement this provision, HUD is specifying alternative requirements for section 16(c)(2) of the Act and 24 CFR § 5.653(d)(2) to require Project Owners of projects converting to PBRA to adhere to the requirements of section 16(c)(1) of the Act and 24 CFR § 5.653(d)(1).

- 9. Owner-Adopted Preferences.** Covered Projects are not permitted to establish or, where previously approved under public housing rules, maintain a designation (i.e., a set-aside of units) for elderly families or for disabled families; unlike the statute governing public housing, the Section 8 statute does not authorize designations. However, owners of Covered Projects may adopt a selection preference (e.g., for elderly individuals and/or elderly families) which permits those applicants to be selected from the waiting list and housed before other eligible families. Project Owners who wish to adopt a preference for populations that are not identified in 24 CFR § 5.655(c)(5) (e.g., elderly families, near-elderly single persons, near-elderly families), must obtain HUD approval from the prospective Multifamily Housing Account Executive (field office) prior to execution of the HAP contract to do so in accordance with Notice H 2013-21 (July 25, 2013). This approval must be secured prior to conversion if the owner intends to implement the preference for new admissions immediately following conversion.
- 10. Initial Certifications and Tenant Rent Calculations.** Owners are to use the resident's pre-existing public housing 50058 data and maintain the tenant rent and utility allowance until the resident's next annual or interim certification. To effectuate this provision, HUD is waiving 24 CFR 5.601.

1.8 Resident Engagement

- A. Before Application.** Prior to submitting an application to participate in the Demonstration, the PHA must:
 - 1.** Provide written notification of the PHA's intent to pursue a conversion to duly elected resident organizations (in accordance with 24 CFR Part 964) representing the buildings or developments proposed for conversion. Additionally, HUD encourages PHAs to partner with resident leaders to help communicate information about the RAD conversion to the broader resident population through peer-to-peer engagement;
 - 2.** Provide written notification in the form of a RAD Information Notice (RIN) to residents of projects proposed for conversion to inform the residents of the PHA's intent to pursue a conversion, their rights in connection with a proposed conversion (whether or not any relocation is anticipated), the nature of current