



OFFICE OF HOUSING

# RAD for Public Housing: Changes to Documents

September 2021

OFFICE OF MULTIFAMILY HOUSING PROGRAMS

# Overview

## 1. Highlight Changes Made to Key Documents

- RAD Conversion Commitment (RCC)
- RAD Use Agreement
- Section 18 Non-RAD PBV Rider to RAD Use Agreement
- RAD PBRA HAP Contract, Parts 1 and 2
- RAD PBV HAP Contract, Parts 1 and 2
- Opinions of Project Owner and PHA Counsel
- Transfer of Assistance Restrictive Covenant

## 2. Implementation/Use of New Documents

# Major Changes: RAD Conversion Commitment (RCC), Form HUD-52624

## Changes to Pages 1-2 (Transaction-specific details)

- Timing of Initial Deposit to the Replacement Reserves (IDRR) & Start Date of Monthly Replacement Reserve Deposit: choice between at closing or at substantial completion
  - Defines “substantial completion” as completion of 95% of the dollar amount of the work.
- Changes information in Key Features of Covered Project section:
  - Adds new check boxes for RAD/Section 18 Blends, RAD/CHOICE projects, Tenant-Paid Utility Savings, and Existing Mixed Finance projects.
  - Adds additional check boxes for more information about relocation, existing EPC/CFFP/OFFP debt, and ground leases.
  - Removes check boxes for projects with major non-dwelling assets, PHA’s last public housing project to convert, multi-phase conversions, and partial conversions.

# Major Changes: RAD Conversion Commitment (RCC), Form HUD-52624

## Changes to Boilerplate Terms & Conditions

- Changes the “Closing Date” from the date of recording to the date on which all parties unconditionally release from escrow fully executed and binding versions of all legal documents
- Specifies that from the date of Closing until the HAP effective date, the project remains public housing.
- Requires PHA/Owner to promptly disclose any Sources change greater than 5% and any Uses change which could impact the Project Owner’s ability to complete the Scope of Work.
- Adds provision on fungibility: RAD does not require tracking of specific funds to specific uses.

# Major Changes: RAD Conversion Commitment (RCC), Form HUD-52624

## Changes to Boilerplate Terms & Conditions

- Memorializes that Project Owner is required to update Exhibit D, RAD Scope of Work, to reflect final pricing prior to closing.
- Specifies that PHA and Project Owner are responsible for entering into any necessary agreements for conveying non-real property assets meant for the Covered Project.
- Explains what happens in case of breach and/or default.
- Adds PHA and Project Owner commitment to submit the RAD Completion Certification as directed.

## Major Changes: RAD Use Agreement, Form HUD-52625

- Specifies effective date as date when Agreement is unconditionally released from escrow in connection with the RAD conversion.
- Removes reference to exact year-length of term; instead shall remain in effect for a term not less than the stated length of the RAD HAP Contract and any subsequent renewals.
- Adds provision of survival of abatement of assistance or termination of the HAP.
- Adds provision that in event of default, HUD may terminate the Owner's interest in the HAP Contract and transfer the HAP Contract to another Owner.
- Specifies that the Project books and records shall be established and maintained in accordance with HUD requirements.



# Major Changes: Section 18 Non-RAD PBV Rider to RAD Use Agreement, Form HUD-5900

- Document has separate OMB approval for the first time.
- Recorded as part of the RAD Use Agreement.
- Document is used in RAD/Section 18 Blend transactions to cover the non-RAD PBV units removed from public housing through Section 18 Disposition.
- Changes from previous version of Rider:
  - Adds provision that applies all terms and conditions of the RAD Use Agreement to the non-RAD PBV Units.
  - Adds use restriction for the non-RAD PBV Units.
  - Adds provision that adjusts the Use Agreement term language for the non-RAD PBV Units.

## Major Changes: RAD PBRA HAP Contract, Forms HUD-52620 and 52620B

- Allows for second Schedule of Contract Units and Contract Rents when there are changes in the responsibility of utility payments as part of the RAD conversion. You must also have a CHAP or CHAP Amendment with this second schedule in order to use it on the HAP.
- Additional information regarding Replacement Reserve Requirement, including that the deposit amount will be adjusted annually by no less than the OCAF
- Adds owner warranty that units and common areas comply with applicable accessibility requirements.
- Removes Section 3 guidance.
- Specifies additional corrective actions which HUD can take when Owner defaults.



## Major Changes: RAD PBV HAP Contract, Forms HUD-52621A and 52621B

- Adds provision that rent to Owner shall not be adjusted below the initial rent to Owner.
- Spells out remedies that the Contract Administrator can take if they determine a breach of the HAP Contract has occurred.
- Grants HUD the right to exercise rights and remedies if a breach of the HAP Contract has occurred.
- Additional information regarding Replacement Reserve Requirement, including that the deposit amount will be adjusted annually by no less than the OCAF

# Major Changes: Project Owner (HUD Form-5890) and PHA Legal Opinion (HUD Form-5892) Templates

- First time as OMB-approved forms
- Adds assumption that each submitted document is accurate and complete, authentic, and has authentic signatures.
- Adds space for HUD-approved additional assumptions
- Adds Schedule A-1: Litigation or Other Claims Pending or Threatened Against PHA or the Covered Project
- On Project Owner Opinion only, adds Exhibit B: Pro Forma Title Insurance Policy

# Major Changes: Transfer of Assistance Restrictive Covenants, HUD Form-5887

- Document is used on transfer of assistance transactions to replace released Declaration of Trust until former public housing property:
  - Is sold at Fair Market Value with proceeds restricted to Affordable Housing Purposes, or
  - Receives an alternative restrictive covenant (e.g., LIHTC extended use agreement) that, in HUD's determination, satisfies the Affordable Housing Purposes requirement.
- On mixed use or mixed income developments, new version specifies that if at least sixty percent (60%) of the square footage of improvements on the Property is restricted to residential use by households with incomes at or below 80% of area median income, can be considered a residential use serving households with incomes at or below 80% of area median income.

# Implementation & Use of New Documents

- All new documents can be found on [www.radresource.net](http://www.radresource.net). Once there, click on the blue “Doc Library” link and open up the “Closing” tab.
- All transactions which have HUD docs signed on or after 11/1/21 are required to use the new forms, regardless of when the draft closing package was submitted.
- All transactions with the new version of the RCC are required to use the new forms.
- Talk to your assigned RAD Closing Coordinator and/or HUD Counsel if you have questions or concerns about what forms to use.