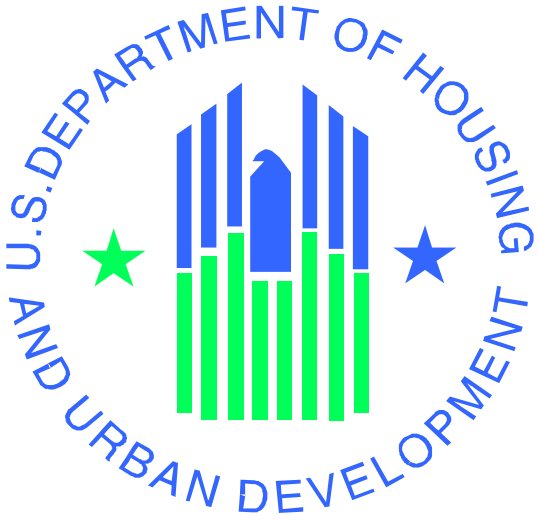

Rental Assistance Demonstration (RAD)

Reference Guide for Public Housing Projects Converting to Project-Based Voucher (PBV) Assistance

Department of Housing and Urban Development (HUD)

JUNE 2020

The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies as spelled out in existing guidance and successors to such guidance.

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1 Introduction

1.1 Purpose of this Guide

This Guide provides information to public housing agencies (PHAs) converting public housing funding to project-based voucher (PBV) assistance, as authorized under the Rental Assistance Demonstration (RAD). A primary purpose of this Guide is to identify where RAD requirements differ from those of the traditional PBV program.

This Guide was first published in 2014. In this version, the Guide is updated to incorporate changes to the RAD statute and Notice, as well as the enactment and implementation of the Housing Opportunity Through Modernization Act of 2016 (HOTMA),[1] which made several changes to the PBV program.

This Guide is intended to offer a reader-friendly compilation of the following RAD and PBV materials, which PHAs are advised to read in order to have a thorough understanding of the requirements specific to conversions of public housing funding to PBV assistance pursuant to the authorities provided by RAD:

- RAD Notice Revision 4 (H 2019–09 PIH 2019–23) ("RAD Notice");
- RAD Fair Housing, Civil Rights, and Relocation Notice (H 2016–17 PIH 2016–17) ("RAD Relocation Notice");
- PBV governing statute (42 U.S.C. 1437f(o)(13));
- PBV regulations (24 C.F.R. Part 983);
- January 18, 2017, HOTMA Implementation Notice (82 Fed. Reg. 5458) and July 14, 2017, technical correction and clarification notice (82 Fed. Reg. 32461) and Notice PIH 2017–21 ("Implementation Guidance: Housing Opportunity Through Modernization Act of 2016 (HOTMA) — Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Provisions").

Lastly, a "RAD PBV Pilot Monitoring Checklist" is included as an Appendix to this Guide, for informational purposes only. The checklist, which is subject to change, is used by local HUD field office staff to identify and correct common issues with the administration of RAD PBV HAP contracts and the operation of RAD PBV–assisted projects. The checklist is not intended to cover all requirements to which a project is subject.

1.2 Background

RAD was authorized by the Consolidated and Further Continuing Appropriations Act of 2012, which provided fiscal year 2012 appropriations for HUD,[2] and has

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[1] Public Law (P.L.) 114–201, enacted July 29, 2016

[2] P.L. 112–55, enacted November 18, 2011

subsequently been amended.[3] RAD provides conversion authority only; no funding is provided. Projects approved for RAD conversion shift from one form of subsidy to another. Specifically, a project funded under the public housing program converts to assistance under a long-term, renewable, project-based Section 8 housing assistance payments (HAP) contract. A PHA has the option of converting to either PBV assistance or project-based rental assistance (PBRA). A PHA that has applied to convert more than one project (or a PHA-defined portfolio of projects) need not convert all projects to the same form of assistance.

This guide applies only to conversions of public housing funding to PBV assistance. A separate guide covers PBRA conversions.[4] HUD has also produced a guide to choosing between PBV and PBRA assistance.[5]

1.3 RAD Focus on Preservation

With respect to public housing, the focus of RAD is housing preservation and, specifically, moving public housing projects to the PBV or PBRA platform in order more readily to leverage capital investment in the projects while minimizing any effects on residents in place at the time of the conversion. Many of the differences between the traditional PBV program and the RAD PBV program grow out of RAD's focus on preservation. For example:

- As part of the RAD application process, HUD considers a project's capital needs and whether project rents will be sufficient to address immediate capital needs, sustain operations over time, and fund a reserve for replacement[6] adequate to address long-term capital needs. Following conversion, owners of RAD PBV–assisted projects are required to make regular deposits to the reserve for replacement. There are no such HUD requirements in the traditional PBV program.
- RAD PBV contracts must be renewed unless otherwise directed or approved by HUD; for example, in the case of a transfer of assistance following

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[3] As of the date of publication of this Quick Reference Guide, RAD had been amended by the following pieces of legislation: Consolidated Appropriations Act of, 2014 (P.L. 113–76, enacted January 17, 2014); Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113–235, enacted December 16, 2014); Consolidated Appropriations Act, 2016 (P.L. 114–113, enacted December 18, 2015); Consolidated Appropriations Act, 2017 (P.L. 115–31, enacted May 5, 2017); and Consolidated Appropriations Act, 2018 (P.L. 115–141, enacted March 23, 2018).

[4] Quick Reference Guide to Multifamily Housing Requirements, October 2015

[5] Rental Assistance Demonstration: Guide to Choosing Between Project-Based Vouchers (PBVs) and Project-Based Rental Assistance (PBRA) for Public Housing Conversions

[6] Section 1.6.D.9 of the RAD Notice

conversion.[7] Under the traditional PBV program, a contract may be terminated[8] or simply not extended upon expiration.

- An owner may remove a unit from a RAD PBV HAP contract following conversion only with prior HUD approval. In the traditional PBV program, HUD approval to remove a unit is not required.

Throughout this Guide, differences between the traditional PBV program and the RAD PBV program are highlighted. In section 8 of this Guide, which focuses on owner requirements, differences between the public housing program and the RAD PBV program are presented.

1.4 Application to Convert to PBV and Related Requirements

In the traditional PBV program, a PHA may project-base assistance without a formal application process to HUD. RAD is different; a PHA must apply to participate in RAD. Application and related requirements are described below.

- Application. RAD application requirements are detailed in Section 1.9 of the RAD Notice. Section 1.10 describes the application process.
- Eligibility. A PHA seeking to convert public housing assistance to RAD PBV assistance must first be eligible to participate in RAD. Eligibility requirements are contained in Section 1.3 of the RAD Notice.
- Conversion planning. Section 1.4 of the RAD Notice describes RAD conversion planning requirements, which range from assessing a project's capital needs to complying with relocation requirements.
- Resident notification. Before applying to participate in RAD, a PHA must comply with the resident notification requirements explained in Section 1.8 of the RAD Notice.

HUD evaluates applications based on the criteria described in Section 1.11 of the RAD Notice. Section 1.12 describes the steps that follow HUD selection of an application. These steps are summarized below:

1. HUD issues a Commitment to enter into a Housing Assistance Payment (CHAP) for the Converting Project,[9] which includes the HUD-approved terms and conditions for conversion of assistance;
2. The PHA assures that civil rights reviews and relocation activities are conducted and requests a "Concept Call" with HUD, during which the PHA

[7] Section 1.4.A.12 of the RAD Notice

[8] For example, 24 C.F.R. §§983.205(d); 983.206

[9] The RAD Notice refers to pre-conversion projects whose assistance is converting from one form of rental assistance to another as "Converting Projects." Post-conversion projects with assistance converted from one form of rental assistance to another are referred to as "Covered Projects." This guide adopts the same terminology as the RAD Notice.

will describe its conversion plan, and HUD will determine whether to invite the PHA to submit a Financing Plan[10];

3. The PHA submits the required Financing Plan within 60 days of having been invited to do so by HUD;
4. If HUD approves the Financing Plan, then HUD issues a RAD Conversion Commitment (RCC), which is a contract between HUD and the PHA (and, as applicable, the post-conversion project owner[11]) that describes the terms and conditions under which HUD will approve the proposed conversion and execute closing documents[12];
5. Within 30 calendar days of the date of issuance of the RCC, the PHA executes the RCC and returns it to HUD;
6. Preparations for closing occur[13]; and
7. At closing, the project is placed under a RAD PBV HAP contract[14] and, from that point forward, is referred to as a "Covered Project."

A PHA must take steps well in advance of the closing to prepare to operate the project as a RAD PBV–assisted project and to assure that tenants are properly reported in HUD systems. See Section 1.13.B of the RAD Notice for a discussion of the required preparations. In addition, if a RAD conversion will result in a PHA leaving the public housing program, then the PHA must undertake the activities outlined in Notice PIH 2019–13, "Public Housing ACC Termination and PHA closeout" (or any successor Notice).[15]

1.5 RAD Waivers and Alternative Requirements

The RAD statute authorizes HUD to waive PBV-related statutory and regulatory provisions, or to specify alternative requirements for such provisions, upon a finding that such waivers or alternative requirements "are necessary for the

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[10] The Financing Plan must demonstrate that the Covered Project can be sustained physically and financially for the term of the RAD PBV HAP contract at the rent levels permitted under RAD, including showing how the project's immediate and long-term capital needs will be addressed.

[11] The RAD Notice uses the term "project owner" to refer to the owner of a Covered Project (i.e., a project that has gone through conversion).

[12] See Section 1.12 and Attachment 1A of the RAD Notice for further details on the RCC.

[13] HUD expects closing to occur within no more than 90 calendar days from the date the RCC is issued to the PHA. See Section 1.13 of the RAD Notice for a discussion of the closing process.

[14] Section 1.4.A.12.a of the RAD Notice describes how a closing will differ if a PHA intends to transfer the RAD PBV assistance to a new property that is being constructed or rehabilitated prior to occupancy by residents of the Converting Project.

[15] This process will vary slightly for RAD/Section 18 blends and RAD/Section 18 "50 and under" conversions. See Section 1.5.B of the RAD Notice.

effective conversion of assistance under the demonstration."[16] Along these same lines, the RAD statute imposes certain requirements that are unique to RAD and authorizes HUD to do the same.

The special RAD requirements can be grouped generally into four categories: project selection (Section 1.6.A of the RAD Notice), contract terms (Section 1.6.B), resident rights and participation (Section 1.6.C), and other miscellaneous provisions (Section 1.6.D). All other statutory and regulatory requirements of the PBV program apply to RAD PBV units.

Moving-to-Work (MTW) agencies that convert projects to PBV under RAD may maintain any MTW waivers or alternative requirements that do not conflict with RAD requirements. An MTW agency may also modify the special RAD requirements (except where explicitly noted in Section 1.6 of the RAD Notice) via an approved MTW Plan or an MTW Supplement to an approved PHA Plan.

1.6 Streamlined RAD Conversion for Small Public Housing Agencies

A PHA that has 50 or fewer public housing units and will close out its public housing program through RAD (or through RAD combined with one of the tools administered by HUD's Special Applications Center (SAC)) may be eligible for a streamlined RAD conversion. Refer to Section 1.15 of the RAD Notice.

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[16] RAD statute and Section 1.5 of the RAD Notice

2 Role of the PHA and Planning Requirements

In the traditional PBV program, a PHA acting in the role of a PBV Housing Assistance Payments (HAP) Contract Administrator enters into a contract with the owner of a project. These same general concepts apply in RAD. RAD establishes unique planning requirements, however, for Contract Administrators and PHAs converting their public housing funding. A PHA that will be the Contract Administrator for a project that it owns must meet both sets of planning requirements. Also, in RAD and consistent with the traditional PBV program, if the Contract Administrator holds a controlling interest in the project, then requirements intended to obviate a conflict of interest will apply.

2.1 PHA Converting Funding: RAD PHA Plan Requirements

A PHA that will convert its public housing funding to RAD PBV assistance must comply with the RAD-specific PHA Plan and/or significant amendment requirements included in Attachment 1D to the RAD Notice.

2.2 PHA Administering Contract

The RAD Notice uses the term "Contract Administrator" to refer to the voucher agency that executes a RAD PBV HAP contract with a project owner and administers the RAD PBV HAP contract. The Contract Administrator will receive an increment of voucher units under its Annual Contributions Contract (ACC) with HUD. The Contract Administrator may be:

- The same PHA as the PHA that is converting its public housing funding to RAD PBV assistance (i.e., a combined agency that, either directly or through an affiliate, administers an HCV program and public housing; see subsection 3.1 for a discussion of RAD PBV HAP contract signatories); or
- A voucher agency other than the PHA that is converting its public housing funding. Typically, this will occur if the PHA that is converting its public housing funding does not administer a voucher program or is unwilling to administer the RAD PBV HAP contract for the Covered Project. In either case, the PHA must identify in its RAD application the Contract Administrator that will administer the RAD PBV HAP contract. If requested, the local HUD Office of Public Housing will provide an applicant PHA with a list of voucher agencies that have jurisdictional authority to administer the contract. If there is no such agency — or if there is such an agency but that agency is unwilling to administer the RAD PBV HAP contract — then the applicant PHA may want to consider converting its public housing to PBRA. If HUD selects the project for conversion, then the applicant PHA must submit a signed letter from the Contract Administrator evidencing that agency's willingness to administer the RAD PBV HAP contract.[17]

[17] Section 1.9.A of the RAD Notice

Under RAD, a Contract Administrator must meet the threshold and planning requirements described below.

2.2.1 THRESHOLD REQUIREMENT

In order to be eligible to administer a RAD PBV HAP contract, a voucher agency must be classified as a Standard or High Performer under the Section Eight Management Assessment Program (SEMAP).[18] If a voucher agency is classified as Troubled, then it must be making substantial progress under the Corrective Action Plan, and HUD must have determined that the factors resulting in the voucher agency's Troubled status will not affect its capacity to carry out a successful conversion under this Demonstration.

2.2.2 PLANNING REQUIREMENTS

A voucher agency that will administer a RAD PBV HAP contract must first establish a PBV program, which involves amending its PHA Plan and Administrative Plan. The program must be in place as soon as possible following issuance of a RAD CHAP contract. The local HUD field office will flag the project on the RAD Resource Desk[19] if the Contract Administrator has not taken these steps to establish a PBV program; that flag must be cleared prior to closing.

Appendix II to Notice PIH 2017–21 addresses the PHA Plan and Administrative Plan requirements specific to a PHA that will administer a traditional PBV HAP contract. These requirements apply to a RAD PBV HAP Contract Administrator, as well; in some instances, the RAD requirements differ from those of the traditional program, as described below.

PHA Plan requirements. In the case of a Contract Administrator that is the same PHA as the PHA that is converting its public housing funding to RAD PBV assistance, the project-specific PHA Plan requirements (location of the units, the number of units that will be project-based at the site, the work that will be done at the project or site) may be met via their inclusion in the PHA's RAD-related amendment to the PHA Plan.[20]

As with the traditional PBV program, any preferences that a Contract Administrator intends to adopt for a RAD PBV project must be consistent with the Contract Administrator's PHA Plan. For example, the Converting Project may be subject to an elderly housing designation under the public housing program. Since there is no such designation in the PBV program, the Contract Administrator may effectuate the same outcome only through the adoption of a site-specific preference, as discussed in paragraph 2.4.1. If the adoption of such

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[18] Section 1.3 of the RAD Notice

[19] Among other things, the RAD Resource Desk (www.radresource.net) serves as the main portal for tracking Demonstration participant progress toward closing.

[20] Attachment 1D to the RAD Notice

preferences constitutes a significant amendment to the PHA's Plan, then the PHA must publish its amended PHA Plan for comment prior to adoption.

Administrative Plan requirements. With respect to the Administrative Plan requirements, not all of the items listed in Appendix II to Notice PIH 2017–21 apply to the RAD PBV program. Specifically, the procedures for owner submission and selection of PBV proposals (subparagraph (1)(a) of Appendix II) do not apply to RAD PBV projects, which are never subject to competitive selection requirements,[21] nor does the requirement apply to describe a PHA's standard for deconcentrating poverty and expanding housing and economic opportunities (subparagraph (1)(b) of Appendix II).[22]

In addition to identifying in its Administrative Plan how it will establish and maintain RAD PBV waiting lists, the Contract Administrator must identify how it will transition families from a Converting Project's public housing waiting list (subparagraph (1)(c) of Appendix II).[23]

Families who were living in the Converting Project prior to conversion are eligible to remain in the unit, and the unit will remain under the RAD PBV HAP contract, even if the family's total tenant payment (TTP) equals or exceeds the gross rent.[24] Going forward, otherwise-qualified families whose TTP exceeds a unit's gross rent will be ineligible for admission to a RAD PBV unit in a Covered Project; the Contract Administrator must state in its Administrative Plan how it will handle such families (see paragraph 5.4.2, below).

Tenants in place at the time of RAD conversion are not subject to rescreening;[25] the Contract Administrator will apply the screening policies contained in its Administrative Plan to future admissions (subparagraph (1)(d) of Appendix II).

Families who were in place at the time of conversion who reside in an under-occupied unit as described in subsection 3.3 may remain in place,[26] and the Contract Administrator may pay HAP for such families, but future admissions will be subject to a PHA's policies regarding wrong-size units (subparagraph (1)(e) of Appendix II).

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[21] Section 1.6.A.3 of the RAD Notice

[22] Section 1.6.A.4 of the RAD Notice

[23] Section 1.6.D.4 of the RAD Notice

[24] Section 1.6.C.9 of the RAD Notice

[25] Section 1.6.C.1 of the RAD Notice

[26] RAD requires (Section 1.6.C.10 of the RAD Notice) that as soon as an appropriately sized unit becomes available, a family in an under-occupied unit must move to the appropriately sized unit, within the timeframe established by the Contract Administrator. HUD does not require the Contract Administrator to define this timeframe in its Administrative Plan but advises the Contract Administrator to do so.

The Contract Administrator's policy on vacancy payments (subparagraph (1)(f) of Appendix II) will apply to RAD PBV units and must be stated in its Administrative Plan.

For families who will be temporarily relocated to unassisted units during any rehabilitation or construction that takes place following execution of the RAD PBV HAP contract, the Administrative Plan must specify the criteria under which such families are eligible for admission to the Contract Administrator's voucher program (see subparagraph 5.1.1.b).[27]

Under paragraph (2) of Appendix II, subparagraph (c), regarding cost-saving measures in the event of insufficient funding, applies to RAD PBV units.

Paragraph (7) of Appendix II, regarding a PHA's definition of a project, applies to RAD PBV units (see subsection 3.2).

The remaining subparagraphs do not apply, for the following reasons:

- Subparagraph (a) regarding the PBV project cap does not apply to RAD PBV units (which are exempt from the project cap)[28];
- The requirement to describe its intent to add units without a competition to an existing RAD PBV HAP contract does not apply (subparagraph (b)), because a Contract Administrator may not add units to a RAD PBV HAP contract (unless the units being added were previously removed from the RAD PBV HAP contract, for example because a family admitted to a Converted Project increased its income such that its TTP equaled or exceeded the gross rent, in which case the Contract Administrator must reinstate the unit after the family has moved from the unit[29]);
- Since the competitive award of RAD PBV units is not a requirement, a Contract Administrator is not required to describe the work it will do at a project in order to be exempt from the requirement to award units through a competitive process (subparagraph (d)); and
- Since RAD PBV units are excepted from the program cap, a Contract Administrator need not define "veteran" in order to except units that are made available to house veterans (subparagraph (e)).

Finally, the Administrative Plan of a PHA that will administer a RAD PBV HAP contract must include the following:

- RAD's resident procedural rights[30];

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[27] 24 C.F.R. §982.201(b)(1)(iii)

[28] Section 1.6.A.2 of the RAD Notice

[29] Section 1.6.C.9 of the RAD Notice

[30] Section 1.6.C.6 of the RAD Notice

- Whether the agency has adopted a voucher inventory turnover cap on Choice-Mobility moves[31];
- A description of preferences, restrictions, or geographic residency preferences that the Contract Administrator will employ in admitting families to a RAD PBV unit[32];
- An HCV selection preference for any families for which the PHA will be using HCVs for relocation[33]; and
- A description of the PHA's policies with respect to the phase-in of tenant rent increases.[34]

2.3 Post-Conversion Ownership Considerations

As described below, the nature of the project owner has implications for the ongoing administration of the RAD PBV HAP contract and must be taken into consideration as part of a PHA's conversion planning.

2.3.1 PHA-Owned Units

Under the PBV program, if the Contract Administrator is also the project owner and the units owned by the Contract Administrator meet the statutory definition of "PHA-owned units,"[35] then certain contract administration duties must be performed either by the unit of general local government or by a HUD-approved independent entity.[36] The same is true for RAD PBV units; however, for RAD PBV units, the functions that are required to be performed by an independent entity are limited to conducting inspections and setting rents, including determining rent amounts as adjusted by an operating cost adjustment factor.[37]

Under RAD, if a Contract Administrator asserts that a project does not meet the PBV definition of "PHA-owned units," then the Contract Administrator must provide to the local HUD field office a certification from counsel stating as much. The local HUD field office will review the certification in conjunction with local HUD counsel and will upload the certification (if accepted) to the RAD Resource Desk. If a certification has not been provided prior to closing and the local HUD field office does not see an independent entity listed in the RAD Resource Desk, then the project will be flagged. The flag must be cleared prior to closing.

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[31] Section 1.6.D.8 of the RAD Notice

[32] Section 5.6.B of the RAD Relocation Notice

[33] Section 7.2 of the RAD Relocation Notice

[34] Section 1.6.C.3 of the RAD Notice

[35] Notice PIH 2017–21, Attachment A

[36] Notice PIH 2017–21, Attachment B

[37] Section 1.6.B.7 of the RAD Notice

2.3.2 Ownership or Control

The RAD statute requires that a Covered Project be owned or controlled by a public or not-for-profit entity. HUD will allow ownership of a Covered Project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits only if HUD determines that the PHA or a not-for-profit entity will preserve its interest in the property.[38] [39]

Note that a Contract Administrator may meet RAD's ownership and control requirement without having an ownership interest that meets the statutory definition of PHA-owned. Direct questions about ownership to your attorney and/or local HUD counsel.

2.4 Other Considerations

A PHA may wish to take the factors described below into consideration during the planning stage.

2.4.1 Designated Housing

Both the traditional PBV program and the RAD PBV program lack an option akin to what is known in the public housing program as "designated housing." This means that a housing designation will not carry over as the project's funding is converted. A project that is designated for occupancy by elderly families or families that include a person with a disability — or a mix of such families — may nonetheless go through a RAD conversion and maintain its occupancy. The Contract Administrator has options for accomplishing this outcome. For example:

- the Contract Administrator may establish a site-based waiting list[40] for the Covered Project and adopt a selection preference that reflects the desired occupancy; or
- the Contract Administrator may forego establishing a site-based waiting list[41] for the Covered Project and instead establish a PBV-wide waiting list while also establishing a preference for the occupancy of units in the Covered Project.

Any preferences must be adopted in compliance with the requirements of 24 C.F.R. §982.207.

The Contract Administrator may also effectively change or eliminate a project's designation by adopting a preference that differs from the pre-conversion designation or by selecting future occupants without regard to any preference.

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[38] Section 1.4.A.11 of the RAD Notice

[39] The RAD Resource Desk includes a detailed document titled "Guidance & Sample Language for RAD Ownership/Control."

[40] Section 1.6.D.4 of the RAD Notice

[41] Section 1.6.D.4 of the RAD Notice

Note that the Contract Administrator must identify any change in eligibility or preferences in its PHA Plan (or Significant Amendment to the PHA Plan).[42]

2.4.2 Reserve for Replacement

RAD requires[43] a project owner to establish and maintain a reserve for replacement in an interest-bearing account.[44] The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. For FHA transactions, the reserve for replacement must be maintained in accordance with the FHA Regulatory Agreement. For all other transactions, the reserve for replacement must be maintained in a bank account or similar instrument, as approved by HUD, where funds will be held by the project owner or mortgagee and may be used subject to HUD guidelines (see subsection 7.2). RAD requires the Contract Administrator's board of directors to confirm annually that the project owner is making the required deposits to the reserve for replacement account in accordance with the RCC, in addition to assessing the financial health of the Covered Project.[45]

2.4.3 Fair Housing Requirements

PHAs should consult the RAD Relocation Notice early in the planning process so that they are aware of RAD's civil rights–related requirements for project construction and operation, site selection, submission of information to HUD, and HUD approval.

RAD conversions that include one or more of the circumstances described in the RAD Relocation Notice must undergo a Front-End Civil Rights Review. The purpose of the review is to identify, early in the process, any elements of the RAD proposal that may be out of compliance with certain fair housing and civil rights requirements. When such circumstances are present, the PHA must obtain written approval from HUD to proceed.[46]

2.4.4 Transfers of Assistance

Under the traditional PBV program, a PBV HAP contract may not be transferred from one property to another. RAD allows for transfers of assistance[47] under three scenarios: as part of conversion, post-conversion, or if HUD terminates the HAP contract at one project as the result of a default of the RAD use agreement or HAP

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[42] Section 5.6.B of the RAD Relocation Notice

[43] Section 1.6.D.9 of the RAD Notice

[44] The amounts of the Initial Deposit to the Replacement Reserve (IDRR) and the Annual Deposit to the Replacement Reserve (ADRR) are specified in the RCC.

[45] Section 1.6.D.2 of the RAD Notice

[46] Section 1.2.E of the RAD Notice

[47] Section 1.4.A.12 of the RAD Notice

contract. If an owner intends to transfer assistance as part of the RAD conversion, then this information must be included in the PHA's Five-Year, Annual, or MTW Plan and must be consistent with the Consolidated Plan. In addition, the owner must include a brief narrative in its financing plan, describing the plans for the project.

2.4.5 PHA Partnerships

RAD provides an option for two or more PHAs to "coordinate efforts and pool resources or capacity." Significant upfront planning will be required for any PHA interested in taking advantage of this option. See Section 1.5.L of the RAD Notice, which describes the option in detail and provides an example of how such a partnership might work.

3 RAD PBV HAP Contract

The RAD PBV program employs contracts and closing documents that differ from those used in the traditional PBV program. The RAD contracts and closing documents are available on the RAD Resource Desk. The RAD PBV HAP contract is based on the traditional PBV HAP Contract for New Construction or Rehabilitation, with modifications to reflect RAD-specific requirements.

Unlike in the traditional PBV program, HUD reviews and approves the RAD PBV HAP contract prior to its execution.

3.1 Parties to the RAD PBV HAP Contract

As in the traditional PBV program, the RAD PBV HAP contract is signed by the project owner and the Contract Administrator. The Contract Administrator cannot be the same legal entity as the project owner (because a party may not enter into a contract with itself). Options available to the Contract Administrator include establishing a separate legal entity to sign the contract as the project owner. The separate legal entity may be a private person, partnership, or entity (including a cooperative), a non-profit entity, a PHA (other than the Contract Administrator), or other public entity that has the legal right to lease or sublease the dwelling units subject to the HAP contract. Alternatively, the project owner may enter into a contract with a separate legal entity (for example, a management company), providing that entity with the right to lease or sublease the dwelling units, and the Contract Administrator may sign the RAD PBV HAP contract with that separate legal entity.[48]

3.2 Definition of "Project"

Units may be placed under one PBV HAP contract only if the units are in a single building or multiple buildings that meet the PBV definition of a "project."[49] Buildings that do not meet the PBV definition of a project may not be placed under a single PBV HAP contract. Single-family, scattered-site projects are an exception; they may be placed under a single PBV HAP contract.[50]

The RAD Notice employs a broader definition of a project for purposes of RAD transactions. Under RAD, a project is defined as "a structure or group of structures that in HUD's determination are appropriately managed as a single

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[48] 42 U.S.C. 1437f(f)(1)

[49] A "project" is defined at 24 C.F.R. §983.3 as "a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land." HUD considers the term "contiguous" to mean "adjacent to" as well as touching along a boundary or a point. The determination of whether contiguous buildings or parcels that do not touch along a boundary or a point may be considered a single project will be made on a case-by-case basis, by HUD's local counsel, with reference to such documentation as title, plats, and site plans.

[50] 24 C.F.R. §983.202(a)

financial asset." The RAD definition incorporates the following elaboration: "In most cases, this corresponds to a grouping of residential units that are managed and marketed as a single entity and are geographically proximate. In determining whether multiple structures constitute a project, HUD will consider the types of buildings, occupancy, location, market influences, management organization, financing structure, or other factors as appropriate."[51]

For RAD PBV projects, the RAD definition does not replace the traditional PBV program definition. Instead, the traditional PBV definition governs how many RAD PBV HAP contracts must be entered into for a single RAD transaction. For example, a group of buildings that meets the RAD definition of a project, but not the traditional PBV definition, may be submitted for RAD conversion as one "project" but will need to be placed under more than one RAD PBV HAP contract — one contract for each project that meets the traditional PBV definition.[52]

Under both the traditional PBV and the RAD PBV programs, a PHA has the discretion to employ more than one HAP contract for a group of buildings that meet the PBV definition of a single project. For example, if a PHA wishes to place multiple buildings on contiguous parcels of land under separate PBV HAP (or RAD PBV HAP) contracts, then it may do so.[53]

3.3 Eligible Units

The Contract Administrator must assure that only eligible units are placed under a RAD PBV HAP contract. Generally, units that were receiving public housing Operating Fund or Capital Fund subsidy prior to conversion, including vacant units, are eligible for conversion.[54] In the case of a conversion that entails a transfer of assistance, the actual former public housing units may not ultimately be placed under a RAD PBV HAP contract; instead, the assistance associated with such units will be transferred to other units, which will be placed under a RAD PBV HAP contract.

In the traditional PBV program, unassisted units in a project may be added to a PBV HAP contract. Under RAD, the number of units assisted under a RAD PBV HAP contract may never exceed the number put into place at the time of conversion. A Converting Project may include a residential unit occupied by someone other than a program participant (e.g., a manager) that an owner wants to add to the RAD PBV HAP contract at some point following conversion. In this case, the owner may request to include the unit in the initial RAD PBV HAP

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[51] "Definitions" section of RAD Notice

[52] Note: In the case of a RAD/Section 18 blend, separate PBV HAP contracts are required for the RAD units and the traditional PBV units, even at a project that meets the PBV definition of a "project."

[53] Notice PIH 2017–21, Appendix II, paragraph (7)

[54] PHAs are advised to assure that PIC accurately reflects the number of ACC units at a Converting Project.

contract — and then immediately subtract it. The addition and immediate removal of the unit will be memorialized in the RCC, which will also require that the unit be added back to the contract when the non-program participant moves out.

In the traditional PBV program, if a family occupies a unit that is too large for the family, according to the Contract Administrator's subsidy standards (an "under-occupied unit"), that unit may not be added to the PBV HAP contract.[55] Under RAD, if a family is in an under-occupied unit at the time of conversion, 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 unit within a reasonable period of time, as determined by the Contract Administrator. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project are subject to this RAD provision.[56]

3.4 Floating Units

Under the traditional PBV program, assistance cannot float among units within a project. Instead, the location of each contract unit (i.e., unit number) and the area of each contract unit (square footage) must be designated in the HAP contract. RAD has established an alternative to this PBV program requirement. Specifically, under RAD, upon a request from an owner of a project to the Contract Administrator that will administer RAD PBV assistance for the Covered Project, HUD will permit PBV assistance to float among units within the project having the same bedroom size and features.[57] For example, assistance may float from one 2-bedroom unit to another 2-bedroom unit or from one unit that meets Uniform Federal Accessibility Standards to another unit that also meets such standards and has the same bedroom size. The RAD PBV HAP contract must include only the total number and type of units in a project that are covered by the contract; the location and square footage of individual units are not listed in the RAD PBV HAP contract. From the time of the initial execution of the PBV RAD HAP contract, a property must maintain the same number and type of UFAS accessible units.

3.5 Initial Contract Term and Mandatory Contract Renewal

Unlike in the traditional PBV program, which permits an initial contract term of 1 year, a RAD PBV HAP contract must have an initial term of at least 15 years (and may have a term of up to 20 years with Contract Administrator approval).[58]

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[55] 24 C.F.R. §983.253(b)

[56] Section 1.6.C.10 of the RAD Notice

[57] Section 1.6.B.11 of the RAD Notice

[58] Section 1.6.B.1 of the RAD Notice

As required by the RAD statute, the RAD PBV HAP contract states that upon or prior to expiration of the initial term of the HAP contract, and each renewal term of the HAP contract, the Contract Administrator must offer to renew the contract, and the owner must accept each offer to renew the contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of such renewal.[59]

3.6 Initial Contract Rents

The initial RAD PBV rents are based on a project's funding under the public housing program. These "current funding" amounts are calculated by HUD.[60] The Contract Administrator (or independent entity, as applicable) must still assure prior to executing the RAD PBV HAP contract that the initial contract rents do not exceed the traditional PBV program rent caps. Except for certain LIHTC-financed units described at 24 C.F.R. §983.301,[61] the initial RAD PBV contract rents cannot exceed the lower of:

- The current funding amount (as calculated by HUD);
- A PHA-determined amount (not to exceed110 percent of the applicable Fair Market Rent (FMR) (or any applicable exception payment standard[62]), minus any utility allowance;
- The reasonable rent as determined in accordance with 24 C.F.R. §983.303; or
- An amount requested by the owner.

RAD provides certain flexibilities to the Contract Administrator in setting PBV rents (rent bundling, future Replacement Housing Factor/Demolition Disposition Transition Funding, PBV site-specific utility allowances, tenant-paid utility savings, MTW fungibility for MTW agencies).[63] Irrespective of whether these flexibilities are employed, the traditional PBV program rent caps apply.

3.7 Initial Housing Quality Standards (HQS) Inspections

Under the traditional PBV program, a unit must be inspected and must meet HQS[64] prior to execution of the PBV HAP contract,[65] unless the Contract

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[59] Section 1.6.B.2 of the RAD Notice

[60] Attachment 1C of the RAD Notice

[61] The PBV program rent caps differ for LIHTC-financed units that are not located in a qualified census tract.

[62] MTW agencies may have a different rent cap approved in their MTW Plan or included in an MTW Supplement to their PHA Plan.

[63] Section 1.6.B.5 of the RAD Notice

[64] For information on HQS, see 24 C.F.R. §982.401.

[65] 24 C.F.R. §983.103(b)

Administrator has adopted the non–life threatening or alternative inspection option, or both.[66] If the units require rehabilitation or construction in order to meet HQS, then the Contract Administrator and owner must enter into an Agreement to enter into a HAP (AHAP) contract, which will govern the conduct of the work. Upon completion of the work, the Contract Administrator (or independent entity, as applicable) will inspect the units to determine whether they meet HQS[67] and, if they do, will execute the HAP contract.

Under RAD, the RAD PBV HAP contract is typically signed once all conversion requirements have been satisfied. If there is no required rehabilitation or construction work identified in the RCC, then the Contract Administrator (or independent entity, as applicable) must inspect the units, and the units must meet HQS prior to execution of the RAD PBV HAP contract. Alternatively, if the project will undergo rehabilitation or construction, then the Contract Administrator and owner will execute the RAD PBV HAP contract at the closing on construction financing.[68] The Contract Administrator is then responsible for monitoring the progress of the work identified in the approved RCC.[69] Upon completion of the work, the Contract Administrator (or independent entity, as applicable) must inspect each contract unit in the Covered Project to ensure compliance with HQS prior to payment of any HAP on behalf of a family.[70]

3.8 Contract Amendments

In the traditional PBV program, the Contract Administrator may add units to a PBV HAP contract, as long as program requirements are met (i.e., the units comply with program requirements and the family is eligible, if there is a family residing in the unit at the time of the unit's addition to the contract). Under RAD, the Contract Administrator may not add units above the number that were placed under contract at the time of conversion.

The traditional PBV program also allows for the removal of units from a PBV HAP contract. Under RAD, the Contract Administrator may not remove units from a RAD PBV HAP contract without HUD approval.[71] In the case of a family that was admitted to a RAD PBV unit following conversion and subsequently increases its income such that the family no longer requires HAP, however, the unit must be removed from the RAD PBV HAP contract 180 days following the

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[66] Notice PIH 2017–20

[67] If the Contract Administrator has adopted the non–life threatening or alternative inspection options, or both, the requirements differ slightly.

[68] RAD does not employ an AHAP.

[69] All construction or repair work that is initiated within 18 months of the effective date of the RAD PBV HAP contract is subject to labor standards as contained in the "Addendum to the HAP Contract — Labor Standards" (Form HUD–5679).

[70] Section 1.6.B.10 of the RAD Notice

[71] The request must be submitted to the local HUD field office.

final HAP on behalf of the family. While HUD approval is not required prior to removing a unit in this instance, under RAD HUD has established an alternative requirement that the Contract Administrator must reinstate the unit after the family has moved from the property.[72]

3.9 Mandatory Contract Renewal

Mandatory contract renewal is not a feature of the traditional PBV program. It is, however, required for RAD PBV–assisted units. Specifically, the RAD statute requires the Contract Administrator to offer, and the project owner to accept, renewal of a RAD PBV HAP contract. The requirement applies at or prior to the expiration of the initial contract and each renewal contract.[73]

If a Contract Administrator lacks sufficient funding to offer such a renewal, then it may decline to make such an offer, but only after implementing cost-saving measures required by HUD.[74]

3.10 RAD PBV and Traditional PBV HAP Contract at a Single Project

An owner and Contract Administrator may execute both a RAD PBV HAP contract and a traditional PBV HAP contract (for "non–RAD PBV" units) at a single project. In this scenario, so as to facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the Covered Project shall be subject to the RAD waivers and alternative requirements listed below:

- Site selection — compliance with PBV goals[75];
- Site-specific utility allowances[76];
- No rescreening of tenants upon conversion for a current public housing resident of a Converting Project who will reside in a RAD PBV or a non–RAD PBV unit[77];
- Right to return[78];
- Phase-in of tenant rent increases[79];

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[72] Section 1.6.C.9 of the RAD Notice

[73] Section 1.6.B.2 of the RAD Notice

[74] Notice PIH 2017–21, Attachment H

[75] Section 1.6.A.4 of the RAD Notice

[76] Section 1.6.B.5.d of the RAD Notice

[77] Section 1.6.C.1 of the RAD Notice

[78] Section 1.6.C.2 of the RAD Notice

[79] Section 1.6.C.3 of the RAD Notice

- Family Self-Sufficiency and Resident Opportunities and Self Sufficiency Service Coordinator programs[80];
- Resident participation and funding[81];
- Resident procedural rights, termination notification and grievance process[82];
- Earned income disregard[83];
- Jobs Plus[84];
- When total tenant payment exceeds gross rent for residents living in a Converting Project prior to conversion who will reside in the Covered Project after conversion[85];
- Under-occupied unit[86];
- Establishment of waiting list[87];
- Initial certifications and tenant rent calculations.[88]

In addition, initial contract rents at such a project may be established using "rent bundling," under which the contract rents for the RAD PBV units may receive a net upward adjustment equal to a net downward adjustment of the contract rents at the non–RAD PBV units.[89]

Note that the RAD PBV flexibility with respect to floating units does not apply to non-RAD PBV units in this scenario. In other words, the location and area of the non-RAD PBV units must be identified in the traditional PBV HAP contract that covers such units.

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[80] Section 1.6.C. 4 of the RAD Notice

[81] Section 1.6.C.5 of the RAD Notice

[82] Sections 1.6.C.6.a and 1.6.C.6.b of the RAD Notice, respectively

[83] Section 1.6.C.7 of the RAD Notice

[84] Section 1.6.C.8 of the RAD Notice

[85] Section 1.6.C.9 of the RAD Notice

[86] Section 1.6.C.10 of the RAD Notice

[87] Section 1.6.D.4 of the RAD Notice

[88] Section 1.6.D.10 of the RAD Notice

[89] Section 1.6.B.5.b of the RAD Notice

4 RAD Use Agreement

A project funded under the public housing program is subject to a restrictive covenant known as a Declaration of Trust (DOT).[90] The DOT obligates the PHA to operate the project in accordance with the PHA's public housing Annual Contributions Contract (ACC) with HUD, the U.S. Housing Act of 1937 ("the Act"), and HUD regulations and other requirements. Projects converting under RAD are released from the DOT at closing. From that point forward, a RAD PBV project becomes subject to a RAD Use Agreement.

Under the traditional PBV program, an owner is not required by HUD to enter into a use agreement. The RAD statute however specifies that properties assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions. HUD requires the recordation of a use agreement for projects assisted under the RAD PBV program in order to meet this statutory mandate.[91] HUD's Office of Recapitalization, which processes RAD conversion transactions, makes sure that the RAD Use Agreement is recorded. The RAD Use Agreement runs for the same length of time as the RAD PBV HAP Contract and must be recorded in a superior position to any new or existing financing or other encumbrances on the Covered Project.

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[90] The restrictive covenant covering a public housing mixed-finance project or a project with a HOPE VI grant or a Choice Neighborhoods Implementation grant is known as a Declaration of Restrictive Covenants (DORC). The RAD Notice uses the term "Declaration of Trust" to refer to a DOT or a DORC, as applicable.

[91] Section 1.4.A.13 of the RAD Notice

5 Contract Administration Duties

All PBV program requirements at 24 C.F.R. Part 983 not specifically waived by the RAD Notice apply to RAD PBV units. The Contract Administrator is responsible for assuring compliance with such requirements, directly or through an independent entity, as applicable. Unless stated otherwise, this section describes requirements that are different for RAD PBV units than for traditional PBV units.

5.1 Admission and Initial Tenant Rents

The RAD statute makes clear that conversion "shall not be the basis for rescreening or termination of assistance or eviction of any family in a property participating in [RAD]." For practical purposes, this means that the Contract Administrator must admit families who are in place at the time of conversion to the RAD PBV program and establish their initial tenant rents without regard to their income. Neither are families in place at the time of conversion considered to be new admissions for income-targeting purposes. This RAD requirement means that zero HAP families who were in place at the time of conversion are treated differently than such families are treated under the traditional PBV program.

5.1.1 Admission to the RAD PBV Program

The Contract Administrator must admit families who are in place at the time of conversion to the RAD PBV program, following the steps below:

a. Submit a Form HUD–50058 ("50058"). On the 50058:

   i. Enter a "1" on line 2a, signifying the family's "admission";

   ii. On line 2n, enter code "RADPH" (Rental Assistance Demonstration/Public Housing), which makes clear that the family is being admitted to the RAD PBV program;

   iii. On line 2h, enter the effective date of the RAD PBV HAP contract, which will be the family's date of admission to the RAD PBV program;

   iv. Complete Section 11 (Line 11b through Line 11an); and

   v. From the "end participation" submission (which will have been submitted by the PHA that is converting its funding), retain the date of the family's next annual reexamination (Line 2i).[92]

[92] The Contract Administrator may perform a full recertification at this time only if a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract. Again, a family may not be rescreened or subjected to eligibility determinations based on income.

b. Provide an oral briefing that meets the requirements of 24 C.F.R. §983.252. The description of how the program works[93] must include an explanation of the Choice-Mobility option, including whether the Contract Administrator has established a voucher inventory turnover cap (Section 1.6.D.8 of the RAD Notice). Also, each family is required to sign the Section 8 Project-Based Voucher Program Statement of Family Responsibility,[94] which the Contract Administrator signs as well.

In the event a family needs to be temporarily relocated during rehabilitation or construction following execution of the RAD PBV HAP contract, some variations on the above-described procedures will be necessary, as described below.

- Temporary relocation to another public housing unit. For any family that has been temporarily relocated to another public housing unit, the PHA that is converting its funding will have submitted a 50058 documenting a change in unit (code "7" on line 2a of the 50058), and leaving the family in the public housing program for the time being. When the RAD PBV unit is ready for occupancy, the PHA that is converting its assistance will submit a 50058, entering a "6" on line 2a to signify the family's end of participation in the public housing program. The Contract Administrator will then follow the above-described steps to admit the family to the RAD PBV unit/program. In this scenario, however, the Contract Administrator will enter on line 2h the date on which the family moves into the RAD PBV unit. If the date of the family's next annual reexamination (described in step (a)(v)) falls during the temporary relocation period, then the PHA that is converting its funding must perform the recertification (and the Contract Administrator may not deny the family admission to the RAD PBV unit based on the family's income).
- Temporary relocation to an unassisted unit. For any family that has been temporarily relocated to an unassisted unit, the PHA that is converting its funding will have submitted a 50058 signifying the family's end of participation in the public housing program (code "6" on line 2a). The family will be unassisted during the temporary relocation period and therefore not subject to program requirements such as the annual reexamination. In this case, in order to admit the family to the RAD PBV program when the RAD PBV unit is ready for occupancy, the Contract Administrator must have revised its Administrative Plan to establish additional eligibility criteria[95] under which the family will be admitted (see the discussion of Administrative Plan requirements under paragraph 2.2.2). When the RAD PBV unit is ready for occupancy, the Contract Administrator will follow the above-described steps, entering on line 2h (step (a)(iii)) the date on which the family moves into the RAD PBV unit. If the end of participation submission (step (a)(v))

[93] 24 C.F.R. §983.252(a)(1)

[94] Form HUD–52578–B

[95] 24 C.F.R. §982.201(b)(1)(iii)

shows that the date of the family's next annual reexamination fell during the temporary relocation period, then the Contract Administrator must perform an income determination as it would when admitting any family to the voucher program; however, the family may not be denied admission to the RAD PBV unit based on the family's income.

- Temporary relocation using voucher assistance. For any family that has been temporarily relocated using voucher assistance, including temporary relocation to a PBV-assisted unit, the PHA that is converting its funding will have submitted a 50058 indicating the family's end of participation in the public housing program and another admitting the family to the voucher program, carrying forward the date of the family's next annual reexamination from the end of participation submission (step (a)(v)).[96] In this case, when the RAD PBV unit is ready for occupancy, the Contract Administrator will follow the above-described steps, with a few changes. Specifically, on line 2a (step (a)(i)), the Contract Administrator will enter a "7" ("other change of unit").[97] On line 2h, the Contract Administrator will enter the date on which the family moves into the RAD PBV unit. If the end of participation submission (step (a)(v)) shows that the date of the family's next annual reexamination fell during the temporary relocation period, then the Contract Administrator must perform an income determination as it would when admitting any family to the voucher program; however, the family may not be denied admission to the RAD PBV unit based on the family's income.

5.1.2 Initial Tenant Rents

For families in place at the time of conversion, the RAD Notice provides that the tenant rent will be the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of the conversion.[98] To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same property as the Covered Project are subject to the terms of this provision.[99]

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[96] If the PHA that is converting its funding operates a voucher program, then the family may be admitted to that PHA's voucher program. Alternatively, the family may be admitted to the voucher program of the Contract Administrator. During the temporary relocation period, the family will be subject to the voucher policies of the respective agency. For more information on the use of vouchers for relocation in a RAD conversion, please see https://www.radresource.net/output.cfm?id=hcvreloguide.

[97] Since the family will already have been admitted to the voucher program, entering a "1" on line 2a will generate an error message.

[98] HUD calculates the initial contract rents for each Covered Project according to the methodology described in Attachment 1C to the RAD Notice.

[99] Section 1.6.D.10 of the RAD Notice

5.1.3 ZERO HAP FAMILIES

In the traditional PBV program, if a family's income is high enough that it would require zero HAP[100] upon moving into a PBV-assisted unit, then the family may not be admitted to that unit. In the RAD PBV program, by contrast, the prohibition against rescreening means that the Contract Administrator must not deny admission to any family in place at the time of conversion due to the family's income, even if the family requires zero HAP. For such a family, the tenant rent will equal the lesser of (a) the family's TTP, less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. (Should the family's TTP subsequently fall below the gross rent, normal PBV rules will apply.[101])

When the Contract Administrator enters a TTP amount in the 50058 that exceeds the RAD PBV contract rent, a fatal error message will be generated. Until this error message has been corrected, the Contract Administrator must not attempt to make any edits to the TTP in the form. Instead, the Contract Administrator must allow the TTP calculation to be carried out by the system and then record the actual TTP charged in the "PHA Use Only" line 2u, with the statement "Actual TTP is $xxx."

Note that a Contract Administrator may not admit a zero HAP family to a RAD PBV–assisted unit following conversion, unless the Contract Administrator has obtained a waiver.[102] In other words, in the absence of such a waiver, the prohibition against admitting a zero-HAP family applies to Covered Projects, as does the requirement to remove a unit from the HAP contract 180 days following the last housing assistance payment on behalf of a family.[103]

5.2 First Regular or Interim Recertification

As in the traditional PBV program, the Contract Administrator must conduct a reexamination of family income and composition at least annually.[104] At the earlier of the family's first regular or interim recertification following conversion, the Contract Administrator will calculate the family's TTP and apply the applicable utility allowance (which may be a site-specific utility allowance[105]), to determine the tenant rent.

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[100] Meaning that the family's TTP is equal to or greater than the contract rent, plus any utility allowance, for the unit.

[101] Tenant rent equals family TTP minus the utility allowance (24 C.F.R. §983.353(b)(1))

[102] Section 1.6.C.9 of the RAD Notice

[103] 24 C.F.R. §983.211(a)

[104] 24 C.F.R. §982.516

[105] Section 1.6.B.5.d of RAD Notice

Some families may be subject to RAD's rent phase-in, which would take effect at this first regular or interim recertification. As with the initial admission, RAD treats zero HAP families who were in place at the time of conversion differently from how such families are treated under the traditional PBV program.

5.2.1 RENT PHASE-IN

If at the first recertification following conversion, the amount a tenant will pay for rent and utilities (the tenant's TTP) will increase (purely as a result of conversion) over the public housing tenant rent by more than the greater of 10 percent or $25, then the rent increase must be phased in over 3 or 5 years. The Contract Administrator has the discretion to determine how to implement the phase-in policy. As stated in paragraph 2.2.2, this policy must be described in the Contract Administrator's Administrative Plan.

The RAD Notice describes the procedures to be followed by the Contract Administrator for recertifications following conversion for families who are eligible for the phase-in of tenant rent increases.[106] To facilitate the uniform treatment of residents and units at a Covered Project, residents of any non-RAD PBV units located in the Covered Project shall be covered under the Contract Administrator's phase-in policy.

Note: Under the voucher program, the earned income disregard (EID) is limited only to persons with disabilities. RAD provides that all public housing tenants who were employed and receiving the EID at the time of conversion will continue to receive the EID after conversion.[107] Such families are eligible to receive a rent phase-in. Upon the expiration of the EID, however, the rent will rise to the appropriate rent level based upon the tenant's income. In other words, when the income that was disregarded under the EID is no longer disregarded, the resulting increase in the tenant's rent is ineligible for the phase-in.

5.2.2 ZERO HAP FAMILIES

In the traditional PBV program, a PHA must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the gross rent.[108] In the RAD PBV program, a unit occupied by a family that was in place at the time of conversion must remain under contract (in other words, the 180-day requirement does not apply). This is true for families who were in place at the time of conversion, even if they were not zero HAP at the time of admission but subsequently increased their income to a level that is equal to or greater than the gross rent. As described above, when the Contract Administrator enters a TTP amount in the 50058 that exceeds the RAD PBV contract rent, the Contract Administrator will allow the

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[106] Section 1.6.C.3 of the RAD Notice

[107] Section 1.6.C.7 of the RAD Notice

[108] See 24 C.F.R. §983.211.

TTP calculation to be carried out by the system and then record the actual TTP charged in the "PHA Use Only" line 2u, with the statement "Actual TTP is $xxx."

5.3 Contract Rent Adjustments

In addition to establishing initial contract rents as described in subsection 3.6, the Contract Administrator (or independent entity, as applicable) must perform annual contract rent adjustments.

5.3.1 Contract Rent Increases

RAD PBV contract rents are adjusted differently from traditional PBV contract rents. Under RAD, contract rents are adjusted only by an operating cost adjustment factor (OCAF)[109] established by HUD that is applied to the current contract rent, less the portion of the rent paid for debt service.[110]

An OCAF adjustment may not result in a contract rent that exceeds the reasonable rent charged for comparable unassisted units in the private market, as determined by the Contract Administrator (or independent entity, as applicable).[111]

HUD has made the following tools available to assist in performing contract rent adjustments:

- RAD PBV OCAF Rent Adjustment Tool
- Video walkthrough of RAD PBV OCAF Adjustment Tool

The use of these tools is optional.

The OCAF is applied at each anniversary of the RAD PBV HAP contract, subject to the availability of appropriations, and is effectuated via written notice from the Contract Administrator to the owner of the Covered Project, which constitutes an amendment of the rents specified in Exhibit A to the RAD PBV HAP contract.

In projects with both RAD PBV and traditional PBV units, rent adjustments on the traditional PBV units follow traditional PBV program rules.[112] Specifically, an owner may request a rent redetermination (i.e., a rent increase) at the anniversary of the PBV HAP contract. If rents are bundled,[113] however, then the owner must

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[109] Section 1.6.B.6 of the RAD Notice

[110] OCAFs are calculated and published each year by HUD in the *Federal Register*. OCAFs are different from the Annual Adjustment Factor (AAF) established by HUD that is used annually to adjust a Contract Administrator's voucher funding. On a per-unit basis, the AAF may be more or less than the OCAF.

[111] 24 C.F.R. §983.303

[112] 24 C.F.R. §983.302(b)(2)

[113] Rent-bundling is a RAD feature that is permitted when a project includes both traditional PBV and RAD PBV units. It involves shifting subsidy from the traditional PBV units to the RAD PBV units, as described in Section 1.6.B.5.b of the RAD Notice.

agree, for the units under the traditional PBV HAP contract, not to request a redetermined rent that exceeds the OCAF-adjusted rent.

HUD does not approve OCAF rent adjustments but may periodically review them to ensure accuracy. A Contract Administrator (directly or via an independent entity, as applicable) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated.

5.3.2 Rent Decreases

In the traditional PBV program, the Contract Administrator must redetermine the rent to owner whenever there is a 10 percent decrease in the published FMR.[114] If this redetermination results in a decrease in the rent to owner, then the rent to owner must be decreased.[115] Under RAD, the rent to owner may be reduced below the initial rent to owner only in the limited circumstances described in the RAD Notice (e.g., to correct errors, to account for a change in the allocation of responsibility for utilities between an owner and a tenant).[116]

5.3 Assurance of Tenant Protections and Rights

Tenant protections and rights are important features of RAD. They are enumerated in both the RAD Notice and the RAD Relocation Notice. For example, the RAD Notice addresses the Contract Administrator's obligation to protect tenants from displacement; to enable them to continue their participation in programs that were provided to them in their capacity as public housing tenants, such as the Family Self-Sufficiency (FSS) program; and to provide procedural protections beyond those required in the traditional PBV program.[117] Among other things, the RAD Relocation Notice makes clear that tenants who need to be relocated from units that will undergo rehabilitation or construction.

5.4 Waiting List Administration

Applicants on the current public housing waiting list must be transitioned to a new waiting list. As stated in paragraph 2.2.2, the Contract Administrator must state in its Administrative Plan how it will handle applicants on the public housing waiting list who are ineligible for admission to a RAD PBV unit. Going

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[114] Generally HUD will set the FMRs at a level that is not lower than 90 percent of the previous year's FMR for the FMR area (24 C.F.R. 888.113(b)), so there should not be a decrease that exceeds 10 percent.

[115] A PHA may elect in the PBV HAP contract not to reduce rents below the initial rent to owner. If this is the case, then rents may be reduced below the initial rent to owner only in the circumstances described in 24 C.F.R. §983.302(c)(2).

[116] Section 1.6.B.6 of the RAD Notice

[117] Sections 1.6.C.1 through 1.6.C.10 of the RAD Notice

forward, the Contract Administrator must administer the waiting list in accordance with traditional PBV program requirements.[118]

5.4.1 Transitioning Applicants

The RAD Notice addresses considerations specific to transitioning applicants from the current public housing waiting list to a voucher-wide, PBV program-wide, or site-based waiting list from which applicants will be admitted to RAD PBV units.[119]

5.4.2 Waiting List Families Ineligible for Admission

Certain wait-listed families who would have been eligible for admission to the project had it remained public housing may be ineligible for admission following the project's conversion to a RAD PBV–assisted project. For example, some families who were paying a flat rent in the public housing program may have incomes that exceed the income limit for admission to the voucher program.[120] Other families may be income-eligible for admission to the voucher program but may have incomes high enough that their TTP would equal or exceed the RAD rent, resulting in the family requiring zero-HAP[121]; the Contract Administrator may admit a zero-HAP family to a PBV-assisted unit only if the Contract Administrator receives a waiver from HUD.[122] The Contract Administrator must determine and state in its Administrative Plan how it will handle such families. For example, it may transfer such families to the waiting list for another public housing project, to the Contract Administrator's public housing waiting list, or to a voucher waiting list, in addition to transferring such families to the waiting list for the Covered Project.

A PHA that is converting its entire public housing portfolio to projects assisted under RAD PBV HAP contracts will need to be mindful of the housing options available to zero-HAP families. If housing that is suitable for such families is unavailable in the local private marketplace (i.e., if the families require large units that are generally unavailable or if local vacancy rates are particularly low), then the PHA may wish to consider converting some housing that is suitable for such families to projects assisted under RAD PBRA HAP contracts, since, for public

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[118] 24 C.F.R. §983.251(c)

[119] Section 1.6.D.4 of the RAD Notice

[120] 24 C.F.R. §982.201(b)

[121] Note: Families who were living in the Converting Project prior to conversion are eligible to remain in the unit, and the unit will remain under the RAD PBV HAP contract, even if the family's TTP equals or exceeds the gross rent. New admissions to the Covered Project are ineligible for admission if their TTP equals or exceeds the gross rent.

[122] The waiver, if granted, will also permit the family to remain in the RAD PBV unit after 180 days of no HAP. Under the traditional PBV program, a unit must be removed from the PBV HAP contract 180 days following the last housing assistance payment on behalf of a family that continues to reside in the unit (24 C.F.R. §983.211(a)).

housing conversions to PBRA, the RAD Notice waives the regulations that would otherwise prohibit the admission of zero-HAP families.[123] Alternatively, the PHA may wish to adopt rent bundling[124] in order to increase the RAD contract rent on units suitable for such families.

5.5 Performance of Ongoing Housing Quality Inspections

In addition to conducting initial HQS inspections as described in subsection 3.7, the Contract Administrator (or independent entity, as applicable[125]) must conduct inspections at unit turnover and periodic inspections of a random sample of at least 20 percent of all assisted units under a RAD PBV HAP contract, no less frequently than biennially.[126] This requirement is the same for traditional PBV and RAD PBV HAP contracts.

5.6 Administration of Choice-Mobility Vouchers

In the traditional PBV program, a family may elect to terminate its assisted lease at any time after its first year of occupancy in a PBV-assisted unit and request tenant-based assistance. The Contract Administrator is then required to offer such assistance,[127] if available, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance. This same general policy applies to the RAD PBV program, except that RAD authorizes a Contract Administrator to establish a voucher inventory turnover cap (described below), which must be included in the Contract Administrator's Administrative Plan.

The voucher inventory turnover cap is available to Contract Administrators that, as a result of RAD, have project-based more than 20 percent of their authorized ACC units. If a Contract Administrator adopts such a cap, then it is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of Covered Projects. In this case, the Contract Administrator must create and maintain a waiting list to track requests from eligible households for Choice-Mobility vouchers in the order in which the requests were received.[128]

A Contract Administrator may not apply a voucher inventory turnover cap to families residing in traditional PBV units, even if those units are in the same project with RAD PBV units.

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[123] For PBV, HUD has chosen not to waive the parallel requirements.

[124] Section 1.6.B.5.b of the RAD Notice

[125] 24 C.F.R. §983.103(f)

[126] Mixed-finance properties (e.g., properties with LIHTC financing) that are assisted with PBVs may be inspected triennially if specific conditions are met (24 C.F.R. §983.103(g)).

[127] Families wishing to exercise their statutory right to move from a PBV unit with tenant-based rental assistance have an absolute priority over all other families moving with tenant-based vouchers or being newly admitted to the regular tenant-based voucher program.

[128] Section 1.6.D.8 of the RAD Notice

Lastly, because tenants in place at the time of RAD conversion are not subject to rescreening, it is possible that some families seeking to exercise Choice-Mobility may have incomes that exceed 80 percent of the area median income. The Contract Administrator may not provide voucher assistance to such families. Low-income families are eligible for voucher assistance under the "continuously assisted" provision of the voucher program.[129]

5.7 Approval of Project's Annual Operating Budget

Under the traditional PBV program, the Contract Administrator is not required to review an assisted project's annual operating budget. Under RAD, such a review is mandated due to the requirement that the project owner establish an interest-bearing reserve for replacement and make monthly deposits to it.[130] The Contract Administrator's board of directors must annually review and approve the project's operating budget to confirm that the project owner is making such deposits; Contract Administrators are encouraged to increase the amount of the required deposit if justified based on property needs and local construction costs.[131] If the project owner is either not making such deposits or is making deposits of amounts less than required, then the Contract Administrator is advised to contact the local HUD field office to discuss options, which will be case-specific.

5.8 Monitoring Owner Compliance with Program Requirements

As in the traditional PBV program, the Contract Administrator must enforce the RAD PBV HAP contract. If the Contract Administrator determines that an owner has failed to comply with the RAD PBV HAP contract, then the Contract Administrator must notify the owner in writing and require the owner to take corrective action. If the owner fails to rectify the breach, then the Contract Administrator may exercise any of the remedies available under the RAD PBV HAP contract, including recovery of overpayments, termination or reduction of housing assistance payments, or termination of the contract.[132] [133]

If HUD determines that the Contract Administrator has failed to comply with the RAD PBV HAP contract, or has failed to take appropriate action to HUD's satisfaction or as directed by HUD for enforcement of the Contract Administrator's rights under the RAD PBV HAP contract, then HUD may assume

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[129] 24 C.F.R. §982.201(b)(1)(ii)

[130] Section 1.6.D.9 of the RAD Notice and Part 2 of the RAD PBV HAP contract, at paragraph 34

[131] The Contract Administrator must also approve owner requests to withdraw funds from the replacement reserve account under certain circumstances (subsection 7.2).

[132] Prior HUD approval of such a termination is not required; HUD requests, however, that a Contract Administrator work with the local HUD field office to review available remedies short of contract termination and keep the local HUD field office informed.

[133] Owner default and Contract Administrator remedies are discussed in Part 2 of the RAD PBV HAP contract, at paragraph 15.

the Contract Administrator's rights and obligations under the RAD PBV HAP contract and may perform the obligations and enforce the rights of the Contract Administrator under the RAD PBV HAP contract.[134]

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[134] Contract Administrator default and HUD remedies are discussed in Part 2 of the RAD PBV HAP contract, at paragraph 14.

6 Subsidy Administration

The funding and reporting requirements under the RAD PBV program differ in some ways from the funding and reporting requirements under the traditional PBV program. In other ways, the two programs are identical. The basic concept is the same: A Contract Administrator and owner enter into a HAP contract, through which the owner receives subsidy for eligible units and the Contract Administrator receives an Administrative Fee based on the number of units under HAP. The Contract Administrator reports its HAP expenditures to HUD, which uses this information to calculate renewal funding amounts.

6.1 Units Eligible for HAP

Units eligible for HAP under the traditional and RAD PBV programs are similar in some regards and different in others, as described below.

6.1.1 Vacant Units

Under both the traditional PBV and RAD PBV programs, a Contract Administrator may pay HAP[135] for a unit that is under lease to and occupied by an eligible family. A Contract Administrator may also pay HAP for a vacant unit, but only if the Contract Administrator has established a vacancy payment policy in its Administrative Plan and included vacancy payments in its PBV HAP contract.[136]

6.1.2 Under-Occupied Units

Under the RAD program only, the Contract Administrator may pay HAP <u>for a family that was in place at the time of conversion</u> that is an under-occupied unit as described in subsection 3.3.

6.1.3 Units Vacant During Rehabilitation

Also under the RAD program only, the Contract Administrator may make Rehabilitation Assistance Payments (RAP) for units that are vacant during the period of work described in the RCC.[137] Such payments are sized by HUD based on the Operating Fund and Capital Fund subsidy that formed the basis of a property's RAD contract rent. Rehab Assistance Payments are typically made when a conversion involves a transfer of assistance to units that are being newly constructed or rehabilitated. Refer to Section 1.4.A.12 of the RAD Notice for more information. The Contract Administrator may pay RAP only during the period of work pursuant to the RCC. Where there is no work required by the RCC

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[135] In the interest of readability, HUD uses the term "HAP" in this section on Subsidy Administration to mean either initial-year funding (which is technically not "HAP") or funding during the first full year following conversion and all subsequent years (which <u>is</u> HAP).

[136] Part 1, paragraph e.2, of the RAD PBV HAP contract and 24 C.F.R. §983.352(b)

[137] Part 2, paragraph 28, of the RAD PBV HAP contract and Section 1.6.B.9 of the RAD Notice

or where the project owner makes improvements not required by the RCC that extend the period of work, the Contract Administrator may not pay RAP.

6.2 Project Funding During the Initial Year

The PBV program is a component of a voucher agency's HCV program. For units under a HAP contract (HCV or PBV), HUD's Financial Management Center (FMC)[138] disburses HAP funding to the agency. On a monthly basis, the PHA reports unit months leased (UML) and associated expenses in HUD's Voucher Management System (VMS), indicating the number of PBV units and the HAP expenses associated with such units.

From the effective date of a RAD PBV HAP contract through the balance of the calendar year of conversion (i.e., the "Initial Year"), units under a RAD PBV HAP contract are funded differently. Specifically, at the point of conversion,[139] the units are added to the Contract Administrator's Consolidated ACC, and the FMC obligates $1 to the Contract Administrator.[140] From that point through the end of the Initial Year, the units continue to receive public housing Operating Fund and Capital Fund subsidy at the levels available to the project in the fiscal year of conversion, via the public housing module of HUD's Line of Credit Control System (LOCCS). The FMC does not disburse HAP for RAD PBV units to the Contract Administrator, and the Contract Administrator does not report UMLs or associated expenses for such units in VMS. For additional information please see the Year of Conversion Funding Instructions for Public Housing Projects Converting Under RAD.

HUD has created an "Initial Year Funding Tool" that is available on the RAD Resource Desk and enables owners and Contract Administrators to calculate the

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[138] The FMC resides within the Office of Public and Indian Housing and administers funding to voucher agencies.

[139] For most projects, the point of conversion is the date of RAD PBV HAP contract execution. In the case of a delayed conversion, however, this is not the case. A delayed conversion can occur when conversion entails a transfer of assistance to a project that will be newly constructed. In this scenario, conversion occurs at closing, but then the owner and Contract Administrator enter into a "Delayed Conversion Agreement" under which the project will remain public housing during construction, and the RAD PBV HAP contract will be executed and effective once the units are ready for occupancy. In a delayed conversion scenario, the RAD PBV units are not added to the Contract Administrator's CACC until the RAD PBV HAP contract has been executed. See Section 1.4.A.12.a of the RAD Notice.

[140] Obligating $1 creates an increment in the HUD Central Accounting Program System (HUDCAPS), enabling HUD to track the units. (HUDCAPS combines programmatic and financial data in one system.)

maximum amount of public housing subsidy that will be available to a Covered Project during the Initial Year.[141]

The Contract Administrator should be aware that during the Initial Year:

- Section 8 funds may not be expended on the project;
- Payments to the project that are disbursed to the project owner from the LOCCS module[142] must not be reported in VMS; and
- The Contract Administrator will not receive an Administrative Fee. In lieu of receiving an Administrative Fee, the Contract Administrator may enter into a compensation arrangement with the owner, under which a fee for administrative services delivered during the Initial Year may be paid. The project owner must identify these amounts in its development budget (sources and uses). Such a compensation arrangement is permitted even if the project owner is also the Contract Administrator. Another option for the Contract Administrator during the Initial Year is to draw down Administrative Fee reserves to compensate for expenses. The amount drawn down may not exceed the Administrative Fee rate for the calendar year, as determined by HUD.[143]

6.3 Project Funding During the First Full Year

The FMC will begin to disburse HAP to the Contract Administrator for RAD PBV units starting on January 1 of the calendar year following conversion (the "First Full Year"). For example, if a project converts on June 30, 2021, then the FMC will begin to disburse HAP starting on January 1, 2022. From this point forward, the Contract Administrator will be responsible for paying HAP to the owner from Section 8 funds, including monthly Rehab Assistance Payments (which the Contract Administrator will report as HAP expenses), as applicable. The Contract Administrator will also be responsible for reporting UMLs and associated HAP expenses in VMS.

During this First Full Year, HUD will first assign and obligate funds for an initial period of the calendar year, determining the expiration date of this initial period

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[141] The Initial Year Funding Tool must be submitted twice: first, as part of the Financing Plan, as applicable, to ensure that all parties understand the funding available in the Initial Year and can take steps, if needed, to manage to this funding level; and then again prior to closing (when the HAP contract effective date is known) so that HUD can make the funds available to the Contract Administrator.

[142] If the Contract Administrator is a third-party voucher agency (i.e., not the project owner), then, during the Initial Year, the owner does not need to send funds to the third-party voucher agency only to have that third-party voucher agency send the funds back to the owner. Instead, the agreement between the two parties may specify how funds will be handled, for audit-trail purposes.

[143] Administrative Fee rates are typically posted to the FMC's Web site. Questions may be directed to the Contract Administrator's local HUD financial analyst.

based on the amount of funding received and the expected HAP expenses. For example, HUD may make an initial assignment from January through June to cover the first six months of estimated HAP expenses. Subsequently, HUD will assign and obligate funds, making a second assignment.[144]

Consider the example below, which shows how HUD will calculate expected HAP expenses during the first full year for a RAD PBV HAP contract with a July 1 effective date that covers a 100-unit property with initial weighted contract rents of $600 per unit monthly (PUM).

	January-June (Initial Contract Rent)	July-December (OCAF-adjusted Contract Rent)
Weighted Contract Rent (PUM)	$600	$610
Tenant Rents (PUM)	-$200	-$200
Potential Subsidy (PUM)	$400	$410
x 3% Vacancy	*x 97%*	*x 97%*
Adjusted Subsidy	$388	$398
x Months	*x 6*	*x 6*
x Units	*x 100*	*x 100*
Subtotal	$232,800	$238,800
Average monthly estimate of HAP needed in First Full Year	$39,300	

HUD will follow the steps below to calculate the project's estimated funding for the First Full Year:

1. Begin with the PUM contract rents for each month of the First Full Year.[145] In the example above, the initial contract rents of $600 PUM will remain in effect through the end of June 30. Beginning on July 1, these initial contract rents are adjusted by HUD's OCAF. For the purposes of this example, an OCAF of 1.7 percent was used, to result in an increase of $10 PUM.
2. Subtract the estimated PUM tenant portion of rent to calculate the potential HAP subsidy. HUD will use the tenant rents reported for the Converting Project on the Operating Fund Calculation of Subsidy[146] for the year of conversion, inflated by the factor used in the Operating Fund to project

[144] As noted in subsection 6.3, the FMC will survey PHAs during the first full year to assess whether the obligated funds are adequate to meet actual and projected expenses through the balance of the year. Where funds are deemed to be inadequate based on the PHA's response to the survey, HUD will provide additional funding.

[145] For MTW agencies that have used their own voucher funding to "augment" their RAD rents, HUD calculates what the rents would have been had the MTW agency not augmented its rents. For certain "alternative-subsidy" MTW agencies that use a RAD Adjustment Factor in their Operating Fund calculation, HUD uses the "as-closed" RAD rent (instead of the un-augmented RAD rent) and adjusts the PHAs' Operating Fund subsidy based on the higher RAD rent.

[146] Form HUD–52723, Section 3, Part B, Line 03 (PUM adjusted formula income)

changes in tenant rents. Where tenant rent data is unavailable from the Operating Subsidy form, HUD will base tenant rents on those used for the RAD rents.[147] In the example above, tenant portion of rent is $200 PUM, and the potential subsidy is $400 PUM for January through June and then $410 for July through December.

3. Apply a vacancy loss factor to the potential subsidy to calculate the adjusted subsidy PUM. Based on an analysis of the payment rates on high-performing Multifamily-assisted projects, HUD assumes a 3 percent vacancy loss factor in the First Full Year. In the example above, initial adjusted subsidy is $388; this amount increases to $398 on July 1.
4. Multiply each adjusted subsidy amount by the number of months at that subsidy level and the number of units to estimate the Per Unit Per Year (PUPY) subtotal for that subsidy amount. In the example above, the amount of subsidy needed from January through June totals $232,800, and the amount of subsidy needed for the balance of the calendar year is $238,800.
5. Add the subtotals to arrive at a total estimate of HAP need for the First Full Year and then divide by 12 to arrive at a monthly rate. In the example above, total estimated HAP is $39,300.

Reconciliation of Funds Provided in the First Full Year. As described above, the assignments are based on estimates of HAP expenses in the first full year following conversion. Accordingly, PHAs will receive a survey from the FMC in the summer of the first full year to assess whether the obligated funds are adequate to meet actual and projected expenses. Where funds are deemed to be inadequate, HUD will provide additional funding. Due to the unique voucher funding formula for MTW agencies, such agencies must complete the survey in order for HUD to calculate their renewal funding.[148] If prior to receipt of the funding survey a PHA has not received sufficient funds to cover HAP expenses in the First Full Year, it should contact its assigned Financial Analyst.

6.3.1 Administrative Fee Amount

During the First Full Year, HUD will pay an Administrative Fee to the Contract Administrator based on the number of units under a RAD PBV HAP contract.[149] As the Contract Administrator completes its reporting in VMS, Administrative

[147] For alternative-subsidy MTWs, HUD will use the average tenant rents over a 12-month period from an extract of 50058 tenant certifications in PIC.

[148] MTW PHAs have a Standard Agreement with HUD that describes the general terms of participation and contains four attachments, one of which is the calculation of subsidies (Attachment A). Due to the project-level subsidy calculation requirements for Attachment A, HUD must ensure that the initial increments of funding provided in the First Full Year are appropriate given that it will form the basis for the renewal funding provided to MTW agencies.

[149] The Administrative Fee is calculated in the same manner for units under RAD PBV HAP contracts as it for units under traditional PBV HAP contracts. Fees are funded out of HUD's tenant-based rental assistance account; they are not included in the RAD PBV contract rents.

Fees will begin to be paid. PHAs receive an Administrative Fee in accordance with 24 C.F.R. §982.152, unless Congress establishes an alternative formula in the annual HUD appropriations act (which it has consistently done in recent years). Administrative fees are generally paid based on historical VMS data. During the First Full Year, however, since there will be no historical VMS data, HUD will advance and reconcile fees due to the Contract Administrator over the course of the year.

6.3.2 Subsidy Administrator Duties During the First Full Year

During the First Full Year, the Contract Administrator must:

- Make monthly HAP. These payments must cover all units that are either occupied, subject to vacancy payments,[150] or vacant and eligible for Rehab Assistance Payments.[151]
- Report their actual UML and associated HAP expenses in VMS. Contract Administrators must report RAD-related UML and HAP expenses (including Rehab Assistance Payments) in their monthly submission of Form HUD–52681–B into VMS, using line "Rental Assistance Component 1 (RAD1)." Rehab Assistance Payments must be reported in the RAD 1 HAP expense field along with all regular RAD 1 HAP expenses. Units that are receiving a Rehab Assistance Payment must not be reported in the RAD 1 Leased units field. Refer to the VMS User Manual for additional information.
- Report all RAD units in the appropriate VMS PBV fields. Refer to the VMS User Manual for specific instructions related to PBV reporting. Rehab Assistance Payments must not be reported in the PBV Vacancy Payment field; these payments should be reported in the RAD 1 HAP expense field.

In the voucher program, VMS reporting is used to reconcile disbursements to Contract Administrators. In accordance with HUD's cash management requirements for the HCV program[152], HUD will compare a Contract Administrator's HAP expenses as reported in VMS with funds disbursed to the Contract Administrator to determine if an over- or underpayment occurred. Administrative Fee disbursements will be reconciled based on Contract Administrators' UMLs, as reported in VMS, compared with Administrative Fee disbursements for the same time period.

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[150] 24 C.F.R. §983.352

[151] Section 1.6.B.9 of the RAD Notice

[152] Implementation of New Cash Management Requirements for the Housing Choice Voucher Program (Notice PIH 2011–67)

6.4 Ongoing Subsidy Administration

Going forward, Contract Administrators will receive funding pursuant to HUD's normal voucher renewal calculations.[153] Renewal determinations for any year are based on language that Congress includes in HUD's annual appropriations act. The requirements governing renewal funding (and other voucher funding issues) are detailed in HUD's annual HCV appropriations act implementation notice. In general terms, absent congressional change, renewal amounts are based on the Contract Administrator's overall reported expenses in VMS (including RAD and non-RAD expenses), adjusted by a HUD-determined amount known as the annual adjustment factor (AAF).

A PHA's renewal funding is not directly related to the actual expenses associated with any specific HAP contract. In other words, the AAF does not directly track the OCAF applied to a RAD PBV HAP contract. A RAD PBV–assisted project may see a 2 percent OCAF adjustment, but the Contract Administrator's renewal funding may see only a 1.5 percent increase based on the AAF.

6.5 Utility Allowances

As a part of subsidy administration, the Contract Administrator must maintain a utility allowance schedule for all tenant-paid utilities.[154]

6.5.1 Initial Utility Allowances

The initial utility allowances at a Covered Project must be the public housing utility allowances. Each family transitions to the utility allowance particular to the Contract Administrator's voucher program at its first recertification following conversion.

6.5.2 Site-Specific Utility Allowances

In lieu of using a utility allowance applicable to its general HCV program,[155] the Contract Administrator may establish a site-specific utility allowance for any Covered Project, including a project in which both traditional PBV and RAD PBV units are located. The RAD Notice specifies that such a utility allowance must be calculated consistent with Notice H–2015–04, "Methodology for Completing a Multifamily Housing Utility Analysis."[156]

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[153] MTW agencies receive renewal funding based on project-level funding increments, as determined by HUD, per their MTW Agreements.

[154] 24 C.F.R. §§982.517 and 983.301(f)(2)(ii)

[155] 24 C.F.R. §982.517

[156] Section 1.6.B.5.d of the RAD Notice

6.6 Reporting on SEMAP Lease-Up Indicator

Under the Section 8 Management Assessment Program (SEMAP), a Contract Administrator's score for the lease-up indicator is calculated based on either (1) the number of units leased as a percentage of the Contract Administrator's authorized voucher units (under its Consolidated ACC with HUD) or (2) the percent of allocated budget authority expended. RAD PBV units may be treated differently from traditional PBV units with respect to the lease-up indicator in that, under RAD, some vacant (i.e., unleased) units may be receiving Rehab Assistance Payments, which the Contract Administrator will report in VMS as a HAP expense. These payments will count as allocated budget authority expended, but the vacant units will not count toward units leased.

If the Contract Administrator will score higher under the lease-up indicator if the vacant units receiving Rehab Assistance Payments are taken into account, then it may appeal its score. Consider the following example:

Lease-Up Indicator	**Percentage**	**Rating**
Units Leased:		
• excluding vacant units	96	15 points
• including vacant units	98	20 points
Allocated Budget Authority Expended	96	15 points

In this example, the Contract Administrator could appeal its score under the lease-up indicator, asking that the vacant units be taken into account, following the instructions in Notice PIH 2012–44, paragraph (9).

7 Owner Responsibilities

This section addresses RAD PBV owner responsibilities.

7.1 RAD-Specific Requirements

Unlike owners of projects assisted under the traditional PBV program, owners of units assisted under a RAD PBV HAP contract must:

- Maintain commercially available property and liability insurance at all times.[157]
- Receive HUD approval[158] prior to refinancing or restructuring permanent debt.
- Establish an interest-bearing reserve for replacement account and make initial and annual deposits to it.[159]
- Annually prepare and submit to the Contract Administrator's board of directors for approval an operating budget for the Covered Project.[160]

Additional project management functions are described below.

7.2 Withdrawals from the Reserve for Replacement

Unlike the owner of a traditional PBV project, the owner of a RAD PBV project must maintain a reserve for replacement account. If the RAD PBV project has financing insured by the Federal Housing Administration (FHA), then the replacement reserves must be maintained in accordance with the FHA Regulatory Agreement. For all other transactions, replacement reserves must be maintained in a bank account or similar instrument, as approved by HUD, where funds will be held by the project owner or mortgagee and may be drawn from the reserve account and used subject to HUD guidelines.

An owner that wishes to withdraw funds from the reserve for replacement account to address extraordinary maintenance and repair or replacement of capital items need not obtain the Contract Administrator's approval if the need for such maintenance, repair, or replacement is anticipated and identified in the project's capital needs assessment. A withdrawal for any other purpose requires prior approval by the Contract Administrator. HUD Handbook 4350.1 REV-1 (Section

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[157] The requirements for insurance can be found in the Section 1.6.D.5 of the RAD Notice. If the Covered Project has a first mortgage loan or other non-RAD funding, then the other funding provider(s) may have their own insurance requirements.

[158] The request must be submitted to the local HUD field office.

[159] Section 1.6.D.9 of the RAD Notice

[160] Section 1.6.D.2 of the RAD Notice

4-9) provides guidance on expenses that may be paid from the reserve for replacement. The local HUD field office can provide additional guidance.

An owner must maintain records detailing the purpose and amount of each withdrawal from the reserve for replacement account for the prior five-year period. HUD reserves the right to review this record, and may restrict withdrawals from the reserve for replacement account and take other enforcement actions if an owner is found to have used funds for ineligible expenses.

An owner must secure annual confirmation from the Contract Administrator's board of directors that the project has made the required reserve for replacement deposits in accordance with the RCC.[161]

7.3 Access to Surplus Cash

As in the traditional PBV program, the uses of surplus cash from a RAD PBV project are not restricted. In other words, HUD places no restrictions on surplus cash that is shown to be available in a project's year-end financial statements. Such surplus cash is considered to be non-federal. It may be, however, that the use of such cash is limited to certain purposes under state or local law, for example if the owner is a not-for-profit corporation required to use such cash for mission-related purposes.

7.4 Lease Requirements

As in the traditional PBV program, the lease used for participants in the RAD PBV program must meet the requirements spelled out in 24 C.F.R. §983.256 and in the HUD-required Tenancy Addendum.[162] In addition:

- The lease between an owner and a tenant residing in a RAD PBV–assisted unit must include RAD's resident procedural rights.[163]
- Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that is the same date as the effective date of the RAD PBV HAP contract (the lease may be executed before the effective date of the RAD PBV HAP contract, but it must have the same effective date as that contract.)
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP.[164] Specifically, the lease must make clear how

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[161] Section 1.6.D.8 of the RAD Notice

[162] Form HUD–52530–C. The tenancy addendum is available in languages other than English at HUD's Limited English Proficiency Web page.

[163] Section 1.6.C.6 of the RAD Notice

[164] Section 1.6.C.9 of the RAD Notice

the tenant rent will be calculated, and it must address the transition to a new lease.

- Tenant rent. Per the RAD Use Agreement, the owner may charge a rent that does not exceed 30 percent of 80 percent of the area median income.
- Transition to a new lease. If a unit is removed from the RAD PBV HAP contract, then the lease terminates automatically, as stated in the tenancy addendum, as though the RAD PBV HAP contract had been terminated. The tenant must be offered a new lease, which must reflect the new tenant rent.

A tenant in this circumstance is no longer a program participant and therefore no longer benefits from any of the rights or protections specific to RAD, or to the PBV program. For example, that the family no longer has a right to move with a tenant-based voucher.[165] Should the family subsequently lose employment, the owner may choose to reduce the family's rent, but if the family wishes to be admitted to the HCV/PBV program, then it must be admitted through the waiting list like any other applicant.

7.5 Security Deposits

In both the traditional PBV and the RAD PBV program, an owner is permitted to collect a security deposit. The owner may recognize any security deposit amount previously provided by a tenant who is in place at the time of conversion. If a tenant residing in a Converting Project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. The security deposit must be determined in accordance with the provisions of 24 C.F.R. §983.259.

7.6 Resident Participation Funding

Tenants of RAD PBV–assisted projects have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment. The project owner must recognize legitimate resident organizations and give reasonable consideration to concerns raised by such organizations. In addition, project owners must provide $25 per occupied unit annually for resident participation, of which at least $15 per occupied unit must be provided to the legitimate resident organization at the Covered Property.[166] Attachment 1B to the RAD Notice, paragraph 2.b, describes the type of organization that is eligible for such funding, lists the authorized activities, describes owner requirements with respect to providing meeting space, defines "resident organizers" and "canvassing," and describes an owner's requirement with respect to the funding of resident participation activities.

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[165] 24 C.F.R. §983.261

[166] Section 1.6.C.5 of the RAD Notice

8 Post-Conversion Status of Public Housing Program Features

This section addresses discontinued public housing program requirements, the applicability of the Lead-Safe Housing Rule to RAD PBV–assisted housing, Covered Project ineligibility for certain grant programs, and public housing ACC closeout requirements.

8.1 Discontinued Public Housing Program Requirements

The following requirements particular to public housing will discontinue for Covered Projects[167]:

- The process for PHA planning[168];
- Capital fund planning and reporting[169]; and
- Special conditions for admissions and continued occupancy,[170] including the community service requirement.[171]

Covered Projects are not subject to the requirement to maintain a property as smoke-free. HUD strongly encourages owners to continue smoke-free policies for the continued health of the residents and to prevent fires and other unit impacts.[172]

8.2 Lead-Safe Housing

With respect to the Lead-Safe Housing Rule,[173] Covered Projects are covered by Subpart H, which requires a lead-based paint risk assessment,[174] hazard reduction,[175] and reevaluation.[176]

8.3 Ineligibility for Certain Grant Programs

Covered Projects are ineligible for funding from competitive grant programs such as Jobs Plus, Resident Opportunity and Self Sufficiency Program (ROSS), and Lead-Based Paint Capital Fund Grants. If conversion to RAD PBV occurs before

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[167] PHAs that continue to operate public housing for other properties will continue these activities, excluding Covered Projects.

[168] 24 C.F.R. Part 903

[169] 24 C.F. R. Part 905

[170] 24. C.F.R. Part 960

[171] 24 C.F.R. Part 960, Subpart F

[172] 24 C.F.R. Part 965, Subpart G

[173] 24 C.F.R. Part 35

[174] 24 C.F.R. §35.1320

[175] 24 C.F.R. §35.1330

[176] 24 C.F.R. §35.1355(b)

the end of a grant period of performance, the PHA may be allowed to complete activities. PHAs that have active public housing competitive grants should work with their designated grant representatives in advance of conversion to determine next steps.

For new grants, PHAs should take care to review the eligibility section of each HUD Notice of Funding Availability to see if properties funded under Section 8 of the Housing Act of 1937 are eligible.

8.4 Public Housing ACC Termination and Closeout

A PHA may remove all of its public housing units from the public housing program via several means: (1) RAD, (2) RAD combined with one of the tools administered by the SAC, or (3) exclusively via a SAC-administered tool. Any PHA that removes its remaining public housing units from its public housing ACC with HUD must follow the requirements established in Notice HUD 2019–13, "Public Housing ACC Termination and PHA closeout."

9 Appendix

The RAD PBV Monitoring Checklist is intended to help HUD staff identify and correct common problems in RAD PBV program administration. This is not intended to cover all PBV program requirements, or other HUD requirements that the project might be subject to. The monitoring checklist is designed to be completed at the individual RAD PBV project-level and should only be applied after the project is in regular operation (i.e., All RAD-related project improvements and tenant relocation activities have been completed). Please note this checklist is for RAD PBV Pilot Monitoring and is subject to change.

RAD PBV Monitoring Checklist

This checklist requires the following items:

1. Current operating budget for the RAD PBV Project.
2. Minutes of the PHA board meeting showing when Item #1 above was approved.
3. Final RCC from the RAD PBV Project (available on the RAD Resource Desk).
4. Bank Statements showing required monthly deposits into the Replacement Reserve Account.
5. Description and documentation of work items prompting draws from the Replacement Reserve Account.
6. If an Independent Entity is required, documentation showing HUD's approval of the Independent Entity selected for the RAD PBV Project. If an Independent Entity is not required, reference to legal opinion or MTW providing that work plan that specifies this requirement is waived.
7. HQS Inspection Reports for units in the RAD PBV Project.
8. HAP register for the RAD PBV Project for the most recently completed and reported month.
9. Rent Calculation documentation for the RAD PBV Project showing rent reasonableness and OCAF adjustments.
10. Documentation showing the PHA supports resident organizations, such as evidencing $25 per unit per year in the project operating budget or narrative description of PHA's efforts.
11. Contact information for representatives of the RAD PBV Project resident organization (if available).
12. Description of how tenants are advised of their right to priority waitlist status in the Housing Choice Voucher program after a year of occupancy, and documentation of the notification process.
13. Access to HUD Systems (RAD Resource Desk, VMS, and PIC) to verify PHA reporting.