



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of: Public Housing Agencies Public Housing Hub Office Directors Public Housing Program Center Directors Multifamily HUB Directors Multifamily Program Center Directors Regional and Field Office Directors Regional Administrators Performance Based Contract Administrators	Notice PIH-2018-11, H-2018-05 Issued: 7/2/2018 Expires: This Notice remains in effect until amended, superseded, or rescinded. Amends: PIH 2012-32 (HA), H 2017-03 REV-3
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SUBJECT: Rental Assistance Demonstration (RAD) – Supplemental Guidance

Purpose

This Notice provides supplemental program instructions to and amends Notice PIH 2012-32 (HA), H-2017-03, REV-3, Rental Assistance Demonstration – Final Implementation, Revision 3, (RAD Notice) published on January 12, 2017.

- 1. Rent Flexibilities – Expanded Rent-Bundling for Project-Based Vouchers (PBV).** The following supplemental language is added to Section 1.6, Paragraph B.5.ii of the RAD Notice, prior to the phrase “For example, assume that...”:

Further, PHAs are permitted to rent bundle from any non-RAD Project-Based Vouchers to the Project-Based Voucher assistance provided through RAD. The PHA must use its own voucher funding to supplement rents; no additional voucher funding will be provided through RAD. HUD will review the rents proposed for the non-RAD PBV contract to ensure that the PHA does not exceed the aggregate subsidy otherwise available for all of the rent-bundled projects. The execution of the HAP contract for the donor HAP contract must occur prior to or simultaneous with the conversion of the recipient HAP contract and the donor HAP contract must have a remaining contract term at least as long as the recipient HAP contract. The owner of the property with the non-RAD PBV contract must request an initial rent (or redetermined rent if the contract has already been executed) in accordance with 24 CFR §§ 983.301(b)(3) and 983.302 that reflects the amount approved by HUD. To ensure that

aggregate HAP costs do not exceed the costs incurred absent this provision, the owner of the property with the non-RAD PBV contract must agree not to request, in accordance with 24 CFR § 983.301(b)(3), a redetermined rent that exceeds the OCAF-adjusted rent. This OCAF limitation is in addition to the existing PBV rent limitations in 24 CFR § 983.301(b) more generally.

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

- 2. PBV Tenant-Paid Utility Savings and Site-Specific Utility Allowances.** The following is added to PBV Contract Terms found in the RAD Notice Section 1.6, Paragraph B.

New items iv. and v. are added to Paragraph B.5. to read as follows:

iv. PBV Site-Specific Utility Allowances. Except for Converting Projects that will include non-RAD PBV units, PHAs may elect to establish a site-specific Utility Allowance for any Covered Project. HUD is waiving 24 CFR 983.2(c)(6)(iii), which requires the PHA to apply the HCV Utility Allowance schedule for PBV properties, and HUD is establishing an alternative requirement. The Utility Allowance shall be calculated consistent with Housing Notice 2015-04 unless PIH promulgates guidance specific to the PBV program.¹ The Project Owner may carry out all of the responsibilities associated with Housing Notice 2015-04, but the PHA must ensure that the Utility Allowance is calculated correctly.

For Converting Projects that include non-RAD PBV units, a PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule for both the RAD and non-RAD PBV units. To be approved, a PHA must demonstrate good cause that the utility allowance schedule used in its voucher program would either create an undue cost on families because the utility allowance provided under the voucher program is too low, or discourage conservation and efficient use of HAP funds because the utility allowance provided under the voucher program would be excessive if applied to the Covered Project. For HUD to consider such a waiver, the PHA must submit an analysis of utility rates for the community and consumption data of project residents in comparison to community

¹ Housing Notice 2015-04 requires annual adjustments of property utility allowances based on a utility analysis, requires notice to tenants for any utility allowance decrease and a phase-in of certain decreases, and provides instruction for properties undergoing new construction or substantial rehabilitation to establish initial utility allowances based on an energy consumption model to be subsequently updated once 12 months of consumption data is available.

consumption rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis.

v. **Tenant-Paid Utility Savings.** When conversion will result in the reduction of one or more utility components (e.g., gas, water & sewer, electric) used to establish the Utility Allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings. See Attachment 1C for additional detail.

Further, the paragraph in Attachment 1C of the RAD Notice entitled “Tenant-Paid Utility Savings for PBRA Conversions” is amended to add “and PBV” after any reference to PBRA.

Further, the following paragraph in Attachment 1C is deleted:

~~**Tenant-Paid Utilities and PBV Conversions.** Unless a waiver is requested and approved as described below, the PHA must maintain a utility allowance schedule for all tenant-paid utilities in accordance with 24 CFR § 983.301(f)(2)(ii) and 24 CFR § 982.517. The utility allowances would become effective for each family at recertification.~~

~~A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule and to apply the same adjustments to contract rents based on Tenant-Paid Utility Savings as described above for PBRA conversions.⁹⁰ To be approved, a PHA must demonstrate good cause that the utility allowance schedule used in its voucher program would either create an undue cost on families because the utility allowance provided under the voucher program is too low, or discourage conservation and efficient use of HAP funds because the utility allowance provided under the voucher program would be excessive if applied to the Covered Project. For HUD to consider such a waiver, the PHA must submit an analysis of utility rates for the community and consumption data of project residents in comparison to community consumption rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis.~~

⁹⁰ ~~MTW agencies would secure approval for site-specific utility allowances via their MTW Plan. If approved, an MTW agency may also apply the same adjustments to contract rents based on Tenant-Paid Utility Savings.~~

3. **Use of Developer Fee to Incentivize Preferences for Households Exiting Homelessness or Permanent Supportive Housing.** The following is added as a new Paragraph C. at the end of Section 1.14 of the RAD Notice. All existing requirements set forth in Section 1.14 remain in effect.

Where the Contract Administrator agrees to adopt an admissions preference for a) homeless applicants referred to the property by the local Continuum of Care (CoC) and/or b) applicants exiting permanent supportive housing, which preference shall apply to at least 25% of the property’s units, HUD will permit a 25% increase in the allowable development

fee limits described above.² The fee will remain subject to the LIHTC allocating agency's limitations, as applicable. The PHA or Project Owner must provide evidence of an agreement to participate in coordinated entry operated by the local Continuum of Care (CoC) and must produce a letter from the CoC affirming, based on current data and local need, that there is expected to be need for affordable housing for these populations for the term of the HAP contract. In such cases, HUD will require a special provision in the HAP contract governing the continued existence of this preference through the term of the HAP contract.

The preference must apply to applicants that fall within the definition of Homeless established by section 103 of the McKinney-Vento Homeless Assistance Act and implemented in the Continuum of Care Program Rule at 24 CFR § 578.3, unless the local CoC provides a letter of support to cover a homeless population not included in that definition.³

- 4. Section 18 Applications and RAD.** The following is added as two new paragraphs at the end of Section 1.5.B

If at a converting project a PHA is using 24 CFR 970.17(b) or 970.17(c) to dispose of other units at the project justified on the grounds that disposition allows more efficient or effective on-site or off-site development (see PIH Notice 2018-04 for more details), HUD may disapprove the conversion if HUD determines that the PHA's use of both RAD Notice REV-3 requirements (or subsequent notices) and disposition under sections 970.17(b) or 970.17(c) undermines the unit replacement requirements of the RAD program.

If a PHA is pursuing Section 18 approval under 24 CFR 970.17(c) for disposing of 25% of the units at the project justified on the grounds that it allows for comprehensive rehabilitation or replacement through RAD so that all units can be operated under project-based assistance (see PIH Notice 2018-04 for more details), the RAD relocation requirements described in PIH/Housing Notice 2016-17 shall apply to residents of the Section 18 units, in lieu of the relocation requirements under 24 CFR part 970. All of the RAD relocation requirements shall apply to residents of the Section 18 units, including, but not limited to, the resident notice and meeting requirements, the right to return, and relocation assistance and payments. The PHA may not provide different relocation rights and benefits to residents of the project on the basis of whether they reside in a RAD unit or a Section 18 unit.

² For guidance on establishing a homeless preference for PBRA, please see H 2013-21. For guidance on establishing a homeless preference for PBV, please see PIH 2013-15.

³ The definition of homeless implemented in the Continuum of Care Program can be found at: https://www.hudexchange.info/resources/documents/CoCProgramInterimRule_FormattedVersion.pdf

5. **Streamlined RAD Conversion for Small Public Housing Agencies (PHAs).** The following is added as a new Section 1.15 of the RAD Notice and the existing Section 1.15 is renumbered as Section 1.16.

1.15 Streamlined RAD Conversion for Small Public Housing Agencies. This Section explains the alternative processing requirements that certain very small PHAs may voluntarily adopt.

- A. **Eligibility for Streamlined Project Conversion.** *In addition to the eligibility requirements outlined in Section 1.3, of the RAD Notice, a PHA must meet the following criteria to participate in a streamlined RAD conversion as verified by HUD in its existing systems and records. Unless otherwise approved by HUD, a PHA must:*
- i. *Have 50 or fewer units remaining in its public housing inventory and demonstrate that through RAD or other means (e.g., Section 18 Demolition or Disposition) it will remove all of the public housing units under its ACC;*
 - ii. *Have an overall PHAS (Public Housing Assessment System) score of 75 or higher; have a PASS (Physical Assessment Sub-System) score of 30 or higher; and not have a PHAS substandard designation or a PHAS Capital Fund troubled designation;*
 - iii. *Not propose as part of the conversion to perform any construction or rehabilitation on the property, to undertake relocation, or to transfer the assistance.*
 - iv. *For PBV conversions, select a Contract Administrator that has at least 100 units under its HCV ACC.*
- B. **Streamlined Project Conversion Requirements.** *The following describes the requirements of the RAD Notice that are modified or do not apply to streamlined RAD conversion.*
- i. **Application Requirements.** *Requirements set forth in Section 1.9 of the RAD Notice are modified for Streamlined RAD conversions (and other classes of conversions as HUD determines) eliminating the need for information on financing, a financing letter of interest, and, for public housing-only PHAs, identification of a partnering voucher agency. To ensure appropriate processing, the subject line of the email submission to RADapplications@hud.gov should include “Small PHA”.*
 - ii. **Capital Needs Assessment (CNA).** *Requirements set forth in the RAD Notice, Section 1.4.A.1 shall not apply. In lieu of a CNA, see below the required*

certification that must be included with the “Financing Plan.” The requirements set forth in Notice H 2016-17, PIH 2016-17 (HA), Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public continue to apply. Notwithstanding this exemption from the requirement to conduct a CNA, the PHA should have certified in its PHA Plan, Significant Amendment to the PHA Plan, or MTW Plan that it conducted a site review/inspection of the project with respect to accessibility for persons with disabilities and that the site is consistent with applicable accessibility standards under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, as required by Section 5.2 of Notice H 2016-17, PIH 2016-17 (HA), Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component.

- iii. **Environmental Review.** For Environmental Reviews conducted under 24 CFR Part 50 for Streamlined RAD conversions without any repair, rehabilitation, construction, or demolition, HUD will conduct a tiered review, in which HUD will make program-wide compliance determinations for most of the applicable environmental laws and authorities and complete only a site-specific compliance review of the remaining laws and authorities for the streamlined conversion. PHAs will be required to submit documentation to facilitate HUD’s site-specific review. Forthcoming guidance on the tiered environmental review will be provided by HUD. For Environmental Reviews under 24 CFR Part 58, PHA/Owners should reach out to the responsible entity. HUD encourages responsible entities to consider a tiered approach.
- iv. **Financing Plan Requirements for Streamlined RAD Conversion.** The following table describes the applicability of the Financing Plan submission requirements set forth in Attachment 1A of the RAD Notice for Streamlined Conversion for small PHAs.⁴

<u>Financing Plan Requirements for Streamlined RAD Conversion for Small PHAs</u>	<u>Applies</u>	<u>Does Not Apply</u>	<u>Modified</u>

⁴ Please note that while some Financing Plan requirements are not modified under Streamlined Conversion, HUD anticipates that they will very rarely, if ever, be applicable due to the eligibility criteria for Streamlined Conversion. This includes: **E.** RAD Fair Housing, Accessibility & Relocation Checklist; **L.** Pre-Approval of Specific Activities; **N.** Approved Amendment to Attachment A of the MTW Agreement; and **Q.** Transfer of Assistance.

<p><u>A. Type of Conversion.</u> <i>The PHA must identify whether the project will convert to PBV or PBRA as described in Attachment 1A of the RAD Notice.</i></p>	✓		
<p><u>B. Capital Needs Assessment (CNA).</u> <i>Section 1.4.A.1 of the RAD Notice is waived for Streamlined Conversions. However, the PHA must provide a certification from its Board that:</i></p> <p><i>i. The PHA has assessed the property for any exigent health and safety hazards and, if applicable, has completed any necessary repairs.</i></p> <p><i>ii. The property can be sustained for 20 years as decent, safe, and sanitary housing at the published RAD contract rents.⁵</i></p> <p><i>iii. If the PHA is transferring the property to a new owner (including an wholly controlled single asset entity) and the property has pre-1978 “target” housing, PHA has provided the Owner the records of lead disclosures, lead-based paint inspections, risk assessments, ongoing lead-based paint maintenance, periodic re-evaluations, and the Owner has agreed to evaluate and control lead-based paint hazards.</i></p>			✓
<p><u>C. Scope of Work.</u> <i>Does not apply.</i></p>		✓	
<p><u>D. Environmental Review.</u> <i>Section 1.4.A.3. and Attachment 1A of the RAD Notice are modified for Environmental Reviews required under 24 CFR Part 50 to allow for a tiered Environmental Review. See Section 1.15.B.iii. above.</i></p>			✓
<p><u>E. RAD Fair Housing, Accessibility & Relocation Checklist.</u> <i>As applicable to the proposed conversion plans, the PHA must complete and submit the checklist as described in Attachment 1A of the RAD Notice.</i></p>	✓		

⁵ While the capital needs assessment is no longer required, HUD recommends that the Board complete due diligence appropriate to the property prior to making this certification. Capital needs assessors, architects, consultants, general contractors, building inspectors or, in some cases, PHA staff, may provide relevant analysis using the HUD e-CNA tool as a template, using another CNA template, using the provider’s proprietary tool and/or based on the provider’s professional judgment. Under this streamlined processing, HUD will rely on the Board’s certification that it has satisfied itself regarding the sustainability of the property at the published RAD contract rents.

<p><u>F. Sources & Uses.</u> Requirements set forth in Attachment 1A of the RAD Notice do not apply except that all of the PHA's remaining public housing funds must be reflected in a Sources and Uses statement (e.g. used to cover any conversion-related cost or placed into an initial deposit to the replacement reserve), with the exception of any funds needed to address the public housing closeout in accordance with PIH 2016-23. Any public housing funds that are retained under public housing and not used to cover the cost of administrative activities required to terminate the ACC as described in PIH 2016-23 will be remitted to HUD.</p>			✓
<p><u>G. Development Team.</u> Does not apply.</p>		✓	
<p><u>H. Proposed Financing.</u> Does not apply.</p>		✓	
<p><u>I. Operating Pro-Forma.</u> The PHA must submit an operating pro-forma that meets all existing requirements except that annual replacement reserve deposits must equal or exceed \$500 per unit, unless otherwise approved by HUD and justified by a third-party assessment report.</p>			✓
<p><u>J. Market Study.</u> Does not apply.</p>		✓	
<p><u>K. Approval of Significant Amendment to PHA Plan.</u> All Requirements for RAD Specific PHA Plan and/or Significant Amendment Submission set forth in Attachment 1D of the RAD Notice shall apply.</p>	✓		
<p><u>L. Pre-Approval of Specific Activities.</u> Requirements set forth in Attachment 1A of the RAD Notice shall apply.</p>	✓		
<p><u>M. Approval of Non-Dwelling Real Property.</u> Does not apply. In order to facilitate the complete conversion of the PHA, all non-dwelling property and land possessed by the PHA will be removed from the DOT or DORC and from the ACC and shall be encumbered by the RAD Use Agreement or released under 2 CFR 200.311(c).</p>		✓	
<p><u>N. Approved Amendment to Attachment A of the MTW Agreement.</u> See Footnote in Section 1.15.B.iv</p>	✓		
<p><u>O. Affirmative Fair Housing Marketing Plan (AFHMP).</u> Applies only for PBRA conversions, as set forth in Attachment 1A of the RAD Notice.</p>	✓		

<u>P.</u> <i>Estimated public housing funds available for HAP subsidy. Submission requirements set forth in Attachment 1A of the RAD Notice shall apply.</i>	✓		
<u>Q.</u> <i>Transfer of Assistance. See Footnote 2.</i>	✓		
<u>R.</u> <i>Resident Comments. Submission requirements set forth in Attachment 1A of the RAD Notice shall apply. Furthermore, All Resident Participation and Funding requirements set forth in Attachment 1B of the RAD Notice shall apply.</i>	✓		
<u>S.</u> <i>Title Report. Submission requirements set forth in Attachment 1A of the RAD Notice shall apply.</i>	✓		

_____/s/
 Dominique G. Blom, General Deputy
 Assistant Secretary for Public and Indian
 Housing

_____/s/
 Brian D. Montgomery
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