

### **What is this document?**

The RAD Notice -- PIH 2012-32, Housing 2017-03 Rev 3 -- contains separate sections governing the conversion of different program types (or pairing of similar program types) that are eligible for conversion under RAD. The Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), authorized the conversion of properties assisted by Section 202 Project Rental Assistance Contracts. The RAD Notice will be revised in a fourth revision and this document represents a draft of a new Section 4 to be included. Prior to publication and implementation, this Section is being posted to the Office of Multifamily Housing's Drafting Table for public feedback. Following consideration of public feedback received, HUD will proceed toward incorporation of this section into the RAD Notice and publication of RAD Notice Revision 4. Please note that capitalized terms that are not defined in this Section refer to defined terms applicable to the entire RAD Notice, which appear on pages 10-14 of the RAD Notice.

### **What feedback are we seeking?**

HUD is interested in any general or specific feedback on this Section. We encourage responders to consider and address the following:

- Is this document well organized?
- Is the guidance set forth in this document clear? Are there sections that are unclear?
- Are the proposed terms of the Use Agreement reasonable and adequate?
- Are there unique features of 202 PRACs or the elderly population that the properties serve that HUD has not adequately accounted for in this Notice?
- The draft Section describes an option to convert to Section 8 Project-Based Rental Assistance (PBRA) or to Project Based Vouchers (PBV). What is the degree of interest in PBV conversions? Please note that while HUD has developed a framework to seamlessly fund a conversion from PRAC to PBRA, funding a conversion from PRAC to PBV is likely to be more complex.
- Does HUD provide adequate avenues for stakeholders to provide feedback on the direction of the RAD program and, if not, what additional measures for public feedback should HUD consider?

### **Where can you send feedback?**

Please send written comments via e-mail to [rad2@hud.gov](mailto:rad2@hud.gov)

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1 **SECTION IV: SECTION 202 PROJECT RENTAL ASSISTANCE CONTRACT (PRAC) PROJECTS**

2 **4.1 Purpose**

3 Section 237 of the General Provisions – Department of Housing and Urban Development in the  
4 Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) authorized RAD conversion of  
5 Project Rental Assistance Contracts (PRACs) under Section 202(c)(2) of the Housing Act of  
6 1959. This Section provides RAD program instructions to owners of these Section 202 Housing  
7 for the Elderly Capital Advance properties with PRACs. These properties are referred to as “202  
8 PRAC Projects” unless otherwise noted.

9

10 While the Second Component of RAD does not have the broad statutory waiver authority that  
11 the First Component does, the Second Component does provide that participation is subject to  
12 “requirements established by the Secretary.” HUD has used this authority and standard  
13 regulatory waiver authority to develop alternative requirements, and to waive purely regulatory  
14 provisions where necessary in order to fulfill the purposes of the Demonstration.

15 **4.2 General Program Description**

16 Under the Second Component of RAD, a 202 PRAC Project Owner may convert an eligible  
17 PRAC to one of two forms of long-term Section 8 Housing Assistance Payment (HAP)  
18 Contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). The  
19 selection is the Project Owner’s choice. At the time of conversion, Converting Projects will be  
20 released from any outstanding obligations under the Capital Advance Agreement, the Capital  
21 Advance Mortgage Note, the Capital Advance Program Regulatory Agreement, the Capital  
22 Advance Program Use Agreement, and related or collateral documents associated with the  
23 PRAC and the foregoing documents and will enter into an Housing for the Elderly Declaration of  
24 Restrictive Covenants and Use Agreement (Elderly Housing Use Agreement), which will be  
25 recorded as a restrictive covenant in first position on the Covered Project. The Elderly Housing  
26 Use Agreement, described in more detail in Section 4.4.I, will restate any PRAC obligations that  
27 survive the conversion. The Elderly Housing Use Agreement will have a term of 20 years plus  
28 the balance of the term left on the Capital Advance Program Use Agreement at the time of  
29 conversion. Any PRAC documents still in effect at the time of conversion will be terminated  
30 immediately prior to execution of a new PBV or PBRA HAP Contract and the Elderly Housing  
31 Use Agreement.

32

33 **A. PBV Conversions.** If the Project Owner requests to enter into a Section 8 PBV HAP  
34 Contract, HUD will make a reasonable effort to find an eligible PHA with a Housing Choice  
35 Voucher Program and with operational jurisdiction, that is willing to enter into and  
36 administer the PBV HAP Contract with the Project Owner. After HUD determines that the  
37 requirements of this Notice have been satisfied, the Project Owner and the PHA will execute

1 the HAP Contract to finalize the conversion. The PHA that has agreed to administer the PBV  
2 HAP Contract will have the resulting voucher budget authority added to its Annual  
3 Contributions Contract (ACC). Contract rents will be established and adjusted according to  
4 the terms described in this Notice. The initial contract must be for a term of 20 years (i.e., the  
5 maximum allowable initial term under section 8(o)(13)(F) of the Act). Mandatory contract  
6 extensions of the initial term are governed by section 4.5.B. of this Notice. Unless  
7 specifically identified in this Notice, all regulatory and statutory requirements of the PBV  
8 program in 24 CFR part 983, and applicable standing and subsequent Office of Public and  
9 Indian Housing guidance, including related notices and handbooks, shall apply.

10  
11 **B. PBRA Conversions.** If a Project Owner requests to enter into a Section 8 PBRA HAP  
12 Contract (subject to annual appropriations), the HAP Contract will be executed by HUD's  
13 Office of Housing. After HUD determines that the requirements of this Notice have been  
14 satisfied, the Project Owner and HUD will execute the HAP Contract to finalize the  
15 conversion. Contract rents will be established and adjusted according to the terms described  
16 in this Notice. The initial contract must be for a period of 20 years and will be subject to  
17 annual appropriations. At expiration, the initial contract shall be eligible for renewal under  
18 the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA).  
19 Mandatory contract renewals are governed by section 4.6.B. of this Notice. The Covered  
20 Project shall be governed by 24 CFR part 880, as modified and as published in Appendix I of  
21 this Notice, as well as by applicable standing and subsequent Office of Housing guidance,  
22 including notices and handbooks.

### 23 4.3 Eligibility

24 Owners of 202 PRAC Projects that meet all eligibility requirements described below may request  
25 to convert assistance under the Second Component of RAD.

#### 26 4.3.1 Eligible Owners

27 **A. Compliance with HUD Requirements.** The Project Owner must be in good standing with  
28 HUD. If the current owner is anticipated to remain in the ownership structure, the Project  
29 Owner must have a history of compliance with program and contractual requirements,  
30 including maintaining units in a decent, safe, and sanitary condition. If a proposed  
31 conversion is in the context of an acquisition simultaneous with the conversion, the  
32 purchaser must provide evidence of successful experience owning and operating HUD or  
33 other multifamily housing properties. Any change in Ownership will require Form HUD-  
34 2530 Previous Participation approval as described in Attachment 4A.

35  
36 **B. Fair Housing and Civil Rights Compliance.** A Project Owner must certify it will comply  
37 with all fair housing and civil rights requirements including but not limited to those at 24

1 CFR § 5.105(a). Any outstanding fair housing or civil rights matters arising prior to  
2 conversion must be resolved to HUD’s satisfaction prior to conversion, provided that all  
3 applicable legal processes have been satisfied. If HUD determines a conversion would fail  
4 to meet this standard, HUD will notify the Project Owner of its determination and any  
5 necessary actions. Fair housing or civil rights matters that arise after conversion will be  
6 addressed in accordance with applicable authorities.  
7

#### 8 **4.3.2 Eligible Properties and Units**

- 9 **A. Eligible Properties and Units.** A property is eligible for conversion if the property is  
10 currently receiving assistance through a PRAC that is either in its initial or renewal term.  
11 Properties that were previously assisted under a PRAC contract which has been terminated  
12 due to noncompliance are ineligible to participate under this Notice. A Project Owner may  
13 include under the subsequent Section 8 HAP Contract no more than the number of units  
14 covered under the PRAC.  
15
- 16 **B. Physical Condition.** For PBRA conversions, unless project plans address (or obviate,  
17 through transfer of assistance) all physical deficiencies identified in the most recent REAC  
18 Inspection report, the project must have a REAC score of 60 or above.  
19

20 For PBV conversions, unless provided explicit approval by HUD, the Converting Project  
21 must qualify as “existing housing” in order to be eligible for conversion. This means that  
22 the PHA must ensure that the Converting Project’s units substantially comply with HQS, as  
23 defined in the PHA’s Section 8 administrative plan, prior to submission of the Conversion  
24 Plan (see Section 4.7.4 for more information on the Conversion Plan). Prior to entering into  
25 a PBV HAP Contract, the PHA must inspect the Converting Project proposed for  
26 conversion to ensure that the units fully comply with HQS, unless the PHA is using  
27 HOTMA non-life threatening and alternative inspection provisions.<sup>1</sup>  
28

#### 29 **4.4 General Requirements**

- 30 **A. Applicability of PRAC Requirements.** Until conversion and the effective date of a HAP  
31 Contract, properties continue to be subject to the requirements of the PRAC. Owners of 202  
32 PRAC Projects are required to submit a project budget and any accompanying request for a  
33 Budget Based Rent Increase annually for renewal of the PRAC. HUD requires that Project  
34 Owners analyze project operating and capital needs as well as the efficacy of resident

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<sup>1</sup> See Notice PIH-2017-20

1 services at each renewal and request adjustments to the Operating Expense Amount  
2 accordingly.

3  
4 **B. Capital Needs Assessment (CNA).** Each Converting Project is required to have a CNA and  
5 to demonstrate that both short-term and long-term capital needs can be addressed through a  
6 replacement reserve account and proposed financing, as further described below. The CNA  
7 must be completed by a qualified, independent third-party professional no earlier than 180  
8 days prior to submission of the Conversion Plan, except with HUD approval. The CNA  
9 contains two major components – the narrative (the description of each component and its  
10 condition) and a 20-year replacement schedule and the associated determination of the  
11 Annual Deposit to the Replacement Reserve, or ADRR. The CNA will identify certain  
12 improvements for physical accessibility for persons with disabilities as well as design  
13 considerations that promote housing stability for an aging population.

14  
15 **C. Supportive Services for the Elderly.** A Service Coordinator and/or the availability of  
16 Supportive Services for the elderly plays a critical role supporting the physical and mental  
17 health and wellness of residents and the delivery of cost-effective long-term community-  
18 based housing for this population. Each project will be required to demonstrate that the needs  
19 of residents are adequately met either through a Service Coordinator<sup>2</sup> (full-time or part-time)  
20 funded through the annual project budget or through another service coordination/service  
21 provision arrangement. Applicants must describe how the proposed supportive services  
22 provided by the Project or otherwise available to residents will meet the identified needs of  
23 the anticipated residents as they age. Applicants must further describe how the identified  
24 supportive services will be provided or otherwise made available on a consistent, long-term  
25 basis to support residents. These commitments will be incorporated into contractual  
26 obligations at closing.

27  
28 **D. Financing and Repairs.** If the CNA identifies repairs as critical, immediate or required  
29 within the first two years following conversion and the total of such repairs exceeds \$5,000  
30 per unit, if HUD determines that immediate repairs are necessary based on REAC scores of  
31 59 or less or referrals to the Department Enforcement Center (DEC) related to physical  
32 conditions, or if there is outstanding noncompliance with accessibility requirements  
33 identified by the CNA, the Project Owner must demonstrate the availability of financing to  
34 address such needs and must agree to address such needs following the conversion as part of  
35 the Work. Following conversion and the completion of any immediate repairs, HUD requires  
36 all Projects to either utilize available capital replacement reserves to fund ongoing capital

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<sup>2</sup> A Service Coordinator is a social service staff person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents to secure the supportive services necessary for the elderly to live independently and age in place.

1 repair and replacement needs or to periodically recapitalize as lifecycle improvements  
2 become necessary.

3  
4 **E. Replacement Reserve.** The Project Owner shall establish and maintain a replacement  
5 reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair  
6 and replacement of capital items in accordance with applicable regulations. The reserve must  
7 be built up to and maintained at a level determined by HUD to be sufficient to meet projected  
8 needs. For FHA transactions, replacement reserves shall be maintained in accordance with  
9 the FHA Regulatory Agreement. For all other transactions, replacement reserves shall be  
10 maintained in a bank account or similar instrument, as approved by HUD, where funds will  
11 be held by the Project Owner or mortgagee and may be drawn from the reserve account and  
12 used subject to HUD guidelines.

13  
14 **F. Operating Reserve.** The Project Owner shall establish and maintain a Project Operating  
15 Reserve account in an interest-bearing account to be used for project purposes. Surplus cash  
16 distributions are prohibited during any period when the balance in the Operating Reserve is  
17 less than \$250 per unit. The Project Operating Reserve is separate and apart from the  
18 replacement reserve. The purpose of the Project Operating Reserve is intended to provide a  
19 measure of financial stability and may be used to meet deficiencies arising from time to time  
20 as a result of delinquent receivables or other contingencies. HUD will monitor proper  
21 funding of the Operating Reserve when reviewing the Project Owner's annual financial  
22 statements. The Project Owner is not required to maintain a distinct Operating Reserve if an  
23 operating reserve is required by a third-party source of financing (e.g., a lender or a LIHTC-  
24 motivated equity investor) as long as the Covered Project maintains the aforementioned  
25 balance.

26  
27 **G. Green Building and Energy Efficiency.** If systems and appliances are being replaced as  
28 part of the Work identified in the approved Conversion Plan, at a minimum the Project  
29 Owner shall complete replacements with Energy Star®, WaterSense® or Federal Energy  
30 Management Program (FEMP)-designated products and appliances.<sup>3</sup> Additionally, the  
31 Project Owner shall utilize the most energy- and water-efficient options that are financially  
32 feasible and that are found to be cost-effective. Project Owners are strongly encouraged, for  
33 all Converting Projects, to scope rehabilitation and ongoing replacements and operations to  
34 utilize the components that the CNA indicates will improve indoor air quality, prepare the  
35 property for known or anticipated natural hazards, generate utility cost savings for residents

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<sup>3</sup> For Energy Star®, see <http://www.energystar.gov/>. For WaterSense®, see <http://www.epa.gov/watersense/>. For FEMP, see <http://www1.eere.energy.gov/femp/>.

1 or common areas, and/or reduce overall environmental impact, where those components are  
2 determined to be cost-effective and consistent with the principles and best practices of the  
3 green building industry.  
4

5 **H. Ownership and Control.** Through the maturity date of the Converting Project's Capital  
6 Advance Mortgage Note, HUD will require ownership or control of the Covered Project by a  
7 non-profit entity. A non-profit entity is an organization that has tax-exempt status under  
8 Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1986 or that is a non-  
9 profit consumer cooperative and includes a non-profit entity that is controlled by a public  
10 agency. Subject to HUD review, non-profit entity ownership or control requirements may be  
11 satisfied if a non-profit entity (or entities), directly or through an entity wholly owned by the  
12 non-profit entity (or entities): (1) holds a fee simple interest in the real property of the  
13 Covered Project; (2) is the lessor under a ground lease with the Project Owner; (3) has the  
14 direct or indirect legal authority (via contract, partnership share, agreement of an equity  
15 partnership, voting rights, or otherwise) to direct the financial and legal interests of the  
16 Project Owner with respect to the RAD units; (4) owns 51 percent or more of the general  
17 partner interests in a limited partnership or 51 percent or more of the managing member  
18 interests in a limited liability company with all powers of a general partner or managing  
19 member, as applicable; (5) owns a lesser percentage of the general partner or managing  
20 member interests and holds certain control rights as approved by HUD; (6) owns 51 percent  
21 or more of all ownership interests in a limited partnership or limited liability company and  
22 holds certain control rights as approved by HUD; or (7) other ownership and control  
23 arrangements approved by HUD. Note however, that prior to conversion, the Converting  
24 Project must continue to meet the ownership requirements set forth in the Housing Act of  
25 1959, as amended.  
26

27 **I. Elderly Housing Use Agreement.** A Covered Project shall have an Elderly Housing Use  
28 Agreement. The Elderly Housing Use Agreement will:

- 29 1) Be recorded in a superior position to all other liens on the property. The Elderly  
30 Housing Use Agreement shall be recorded prior to any mortgage or security  
31 instrument, including an FHA-insured loan or a Risk-Share loan;
- 32 2) Have a term equal to the remaining term of the Capital Advance Use Agreement  
33 plus 20 years;
- 34 3) Remain in effect even in the case of abatement or termination of the HAP  
35 Contract, unless the Secretary approves termination of the Elderly Housing Use  
36 Agreement in the case of a transfer of assistance;
- 37 4) Provide that, if the HAP Contract is terminated due to breach, non-compliance or  
38 insufficiency of Federal appropriations, for all units previously covered under the  
39 HAP Contract, new tenants must be elderly and

- 1 a) Through the period equal to the remaining term of the Capital Advance  
2 Use Agreement, must have incomes at or below fifty percent (50%) of the  
3 area median income (AMI) at the time of admission and rents may not  
4 exceed thirty percent (30%) of fifty percent (50%) of AMI for an  
5 appropriate-size unit for the remainder of the term of the Elderly Housing  
6 Use Agreement; and
- 7 b) Thereafter and through the remainder of the Elderly Housing Use  
8 Agreement, must have incomes at or below eighty percent (80%) of the  
9 area median income (AMI) at the time of admission and rents may not  
10 exceed thirty percent (30%) of eighty percent (80%) of AMI for an  
11 appropriate-size unit for the remainder of the term of the Elderly Housing  
12 Use Agreement;
- 13 5) Require compliance with all applicable fair housing and civil rights requirements,  
14 including the obligation to affirmatively further fair housing; and
- 15 6) Prescribe potential remedies in the event of default, which remedies may include,  
16 without limitation, civil money penalties, injunctive relief, specific performance,  
17 the right to take possession subject to non-disturbance of subordinate lienholders,  
18 the right to appointment of a receiver, the right to require a transfer of the  
19 Covered Project with consent of mortgage lienholders, the right to transfer the  
20 HAP Contract, and any other remedy available at law or in equity.  
21

22 **J. Restriction on Proceeds from Sale or Refinance.** The proceeds from any sale or refinance  
23 of the Covered Project that occurs during the period equal to the remaining term of the  
24 original Capital Advance Use Agreement will be restricted to benefit the property or  
25 residents of the property (such as capital improvements or service delivery), or to other  
26 Affordable Housing Purposes. For purposes of this paragraph, proceeds of a sale include all  
27 cash or other consideration paid to or on behalf of the seller of a Covered Project. Proceeds  
28 of a refinancing include all commercial or subsidized loan proceeds, equity investments and  
29 grants received by or invested in the Project Owner. Seller financing and all uses set forth in  
30 a HUD-approved sources and uses document are Affordable Housing Purposes and are for  
31 the benefit of the property and the residents. Paydown of any Identity of Interest (IOI) loans  
32 or advances will not be an approved use unless the Project Owner can demonstrate to HUD's  
33 satisfaction that the reasonably anticipated needs of the Covered Project, including capital,  
34 service delivery and reserve needs, will be adequately funded notwithstanding such  
35 paydown.  
36

37 **K. Environmental Reviews.** Under Federal environmental review requirements, proposed RAD  
38 Projects are subject to environmental review. Environmental documents are required to be  
39 submitted as part of the applicant's overall Conversion Plan. A Conversion Plan cannot be  
40 approved by HUD if the Project plan does not meet environmental review requirements.  
41 Please see Attachment 4A for a discussion of the environmental review requirements



1 applicable to PRAC conversions, including conversion transactions that will not result in the  
2 alteration of the physical condition of the Project.

3  
4 **L. Relocation and Right to Return.** Any person who is legally on the lease or otherwise in  
5 lawful occupancy at the Converting Project at or after the time of submission of the  
6 Conversion Plan has a right to remain in or, in the event that rehabilitation will result in the  
7 relocation of residents, a right to return to an assisted unit at the Covered Project. Any  
8 relocation as a result of acquisition, demolition, or rehabilitation is subject to requirements of  
9 the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970  
10 (URA) which are found at 49 CFR part 24. Proper notices including the General Information  
11 Notice (GIN), when applicable, should be sent at appropriate times in line with URA  
12 regulations and other guidance. Additionally, relocation and one-for-one replacement  
13 requirements under section 104(d) of the Housing and Community Development Act of 1974  
14 may apply when CDBG or HOME funds are used in connection with a RAD conversion.  
15 Section 104(d) requirements are found at 24 CFR part 42, subpart C. The applicability of  
16 URA or section 104(d) requirements to a RAD conversion is fact-specific and must be  
17 determined in accordance with the applicable URA and section 104(d) regulations.  
18 Permanent involuntary displacement of residents may not occur as a result of a Project's  
19 conversion of assistance. If proposed plans for a Project would preclude a resident from  
20 returning to the Covered Project, the resident must be given an opportunity to comment  
21 and/or object to such plans. If the resident objects to such plans, the Project Owner must alter  
22 the Project plans in order to house the resident in the Covered Project. If a resident agrees to  
23 the plans which would preclude the resident's return, the Project Owner must ensure that the  
24 resident's decision is fully informed, voluntary, and well documented. To be fully informed,  
25 at a minimum the resident must be notified in writing of a) his or her right to return; b) his or  
26 her right to object to plans which would preclude the resident from returning; c) the Project  
27 Owner's obligation to accommodate the resident's right to return; and d) a description of the  
28 short and long-term implications of both the right to return arrangements (e.g., temporary  
29 relocation) and the resident's options if the resident agrees to such plans. The resident must  
30 be provided counseling regarding the resident's rights and options. To be voluntary, a  
31 resident must be informed of their right to return, potential for relocation, and temporary and  
32 permanent housing options 30 days before making a decision and must be provided notice of  
33 relocation 90 days before the relocation. The Project Owner cannot employ any tactics to  
34 pressure the resident into relinquishing his or her right to return or accepting permanent  
35 relocation assistance and payments. To be well documented, evidence of a resident's decision  
36 must be retained by the Project Owner. At a minimum such evidence must include copies of  
37 notices informing the resident of their options, records of any counseling or assistance  
38 provided, and the resident's informed, written consent, including an acknowledgement that  
39 acceptance of such assistance terminates the resident's right to return to the Covered Project.  
40 If the resident agrees to the Project Owner's plans, the permanent relocation is considered

1 voluntary, but must include, at a minimum, any relocation assistance and payments required  
2 under the URA and Section 104(d), as applicable. The Project Owner may not propose or  
3 request that a displaced person waive rights or entitlements to relocation assistance under the  
4 URA or Section 104(d). If a tenant waives their URA rights the Project Owner must retain  
5 detailed documentation showing such.

6  
7 **M. Accessibility Requirements.** Federal accessibility requirements apply to all conversions.

8 The laws that most typically apply to HUD-assisted housing undergoing rehabilitation  
9 include Section 504 of the Rehabilitation Act of 1973 (Section 504), the Fair Housing Act,  
10 and, in some cases, the Americans with Disabilities Act (ADA). Although the requirements  
11 of each of these laws are somewhat different, Project Owners must comply with each law  
12 that applies. Section 504 and the ADA apply to new construction and additions as defined in  
13 24 CFR § 8.22, substantial alterations and other alterations as defined in 24 CFR § 8.23 and  
14 to existing, unaltered facilities (24 CFR § 8.24), as well as any combination thereof. See also  
15 28 CFR § 35.151(b) and 28 CFR § 36.402. Section 504 and the ADA also require structural  
16 modifications as reasonable accommodations. The Fair Housing Act applies to the design  
17 and construction of multifamily dwellings built for first occupancy after March 13, 1991. It  
18 also requires that Project Owners allow for structural alterations in housing generally as  
19 reasonable modifications when necessary for an individual with a disability to use and enjoy  
20 a dwelling, and under these authorities, Project Owners must ensure that reasonable  
21 modifications follow the person post construction or alteration.

22  
23 When a Project’s rehabilitation meets the definition of a “substantial alteration” under 24  
24 CFR § 8.23, the PHA or Project Owner, as applicable, must comply with all applicable  
25 accessibility requirements for new construction at 24 CFR § 8.22 under HUD’s Section 504  
26 regulations as well as the ADA. For some Projects, “other alterations” are made over time. If  
27 other alterations, considered together, amount to an alteration of an entire dwelling unit, the  
28 entire dwelling unit shall be made accessible.

29  
30 Project Owners are encouraged to use universal design principles, visitability principles, and  
31 active design guidelines in planning any construction. However, adherence to any of these  
32 principles or guidelines does not replace compliance with the accessibility requirements of  
33 Section 504, the ADA, and the Fair Housing Act.

34  
35 **N. Design Considerations for Elderly Housing.** Quality housing is a platform for health and  
36 wellness. Health can be promoted through both supportive services (as described above) and  
37 through a physical living environment suitable for the needs of the anticipated residents. In  
38 the context of housing for the elderly, enhanced livability of the physical environment  
39 promotes housing stability and may prevent premature institutionalization in assisted living  
40 or nursing homes. A well-situated, well-designed physical space at the unit and building level

1 can help seniors maintain independence and age in place longer. In addition to any applicable  
2 required accessibility features under Section 504 of the Rehabilitation Act of 1973, the  
3 design and construction requirements of the Fair Housing Act, or Title II of the Americans  
4 with Disabilities Act, the Department strongly encourages Project Owners to incorporate  
5 design standards that address fall prevention, visitability, universal design, and electronic  
6 communication mechanisms when developing or rehabilitating housing and community  
7 facilities. Owners are expected to consider access to transportation and walkability to the  
8 surrounding community and neighborhood services when selecting sites for a transfer of  
9 assistance. These design elements and siting decisions all can serve to enhance the livability  
10 of housing for older adults and promote housing stability.

11  
12 **O. Site Selection and Neighborhood Standards.** Where a Project Owner is planning to convert  
13 assistance under RAD, the Project Owner must comply with all applicable site selection  
14 requirements, including those of 24 CFR § 983.57 for PBV (except as waived in Section  
15 4.5.E) and Appendix III of this Notice for PBRA, and of the Fair Housing Act and Title VI of  
16 the Civil Rights Act of 1964, including implementing regulations at 24 CFR § 1.4(b)(3), and  
17 of Section 504 of the Rehabilitation Act of 1973, including implementing regulations at 24  
18 CFR § 8.4(b)(5).

19  
20 **P. Change in Unit Configuration.** Project Owners may change the unit configuration in  
21 conjunction with conversion (e.g., converting efficiency units to one-bedroom units).  
22 However, the Project Owner must ensure that the change in bedroom distribution will not  
23 result in the involuntary permanent displacement of any resident (see Section 4.4.M on  
24 Relocation and Right to Return), will not result in a reduction in accessible units below the  
25 minimum percentage, and will not, except with HUD approval, result in a reduction in the  
26 number of assisted units by the greater of 5% or five units. The Project Owner must also  
27 ensure that a change in unit configuration not result in discrimination based on race, color,  
28 national origin, religion, sex, disability, or familial status.

29  
30 **Q. Transfer of Assistance (TOA).** In order to facilitate the financing, development, and  
31 preservation of decent, safe, and sanitary affordable housing, there are three scenarios under  
32 which assistance converted pursuant to RAD may be transferred from the existing Project  
33 (for the purposes of this paragraph, transfer of assistance does not include transfers to an  
34 adjacent site): (1) the Project Owner requests assistance to be transferred as part of the  
35 conversion from a Converting Project to another Project; (2) post-conversion, the Project  
36 Owner requests a partial or full transfer of assistance to another Project; or (3) as a result of a  
37 default of the HAP Contract, HUD terminates the HAP Contract but seeks to preserve the  
38 assistance.

1 HUD will ascertain that assistance does not transfer to neighborhoods with highly  
2 concentrated poverty based on the criteria formulated for transfers under section 8(bb) of the  
3 Act.<sup>4</sup> Further, HUD will consider whether conversion on-site is economically non-viable;  
4 whether the Converting Project is physically obsolete or severely distressed; how the transfer  
5 would affect the Converting Project's residents; and all applicable fair housing and civil  
6 rights requirements.<sup>5</sup> Project Owners are strongly encouraged to request HUD approval of  
7 the proposed site prior to submission of the Conversion Plan.

8  
9 For PBV transfers of assistance to a new site, the PRAC contract will remain in effect at the  
10 original site and will not be terminated until the units at the new site are ready for occupancy  
11 and the HAP Contract is executed. For PBRA transfers of assistance, the HAP Contract can  
12 be executed at the closing of the construction financing and the Project Owner may use the  
13 Section 8 Pass-Through to provide for the continued flow of subsidy during the construction  
14 period.<sup>6</sup>

15  
16 After initial conversion, except with HUD approval, the Project Owner may only request a  
17 transfer of assistance to another Project after 10 years from the effective date of the initial  
18 HAP Contract (unless a transfer is needed sooner as a result of unforeseen events such as a  
19 natural disaster). If applicable, any lender and/or investor of the Covered Project must  
20 consent to the transfer of the assistance. For Projects assisted pursuant to a PBV HAP  
21 Contract, the PHA must consent to the transfer of assistance.

22  
23 **R. Davis-Bacon.** Conversion of PRAC assistance to PBRA assistance under this Notice, and  
24 execution of a PBRA contract as a result of the conversion, does not trigger Davis-Bacon  
25 prevailing wage requirements. For PBV Projects with 9 or more assisted units where  
26 rehabilitation or construction will occur, Davis-Bacon will apply. For information addressing  
27 Davis-Bacon and RAD Second Component existing housing transactions, please see the

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<sup>4</sup> The analysis can be found in Section VIII B.1 of Notice H-2015-03, "Transferring Budget Authority of Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act." A copy of the criteria is available at [www.hud.gov/rad](http://www.hud.gov/rad). At a minimum, projects that are located in neighborhoods that meet the 8(bb) criteria satisfy the requirement under this Notice that transfers not occur to neighborhoods of concentrated poverty. HUD may modify these criteria as appropriate to fit the purposes of RAD and will post the applicable criteria at [www.hud.gov/rad](http://www.hud.gov/rad).

<sup>5</sup> For example, any transfers of assistance must comply with requirements detailed in this Notice on Site and Neighborhood Standards (see Section 2.4G), Changes in Unit Configuration (see Section 2.4H), and Accessibility Requirements (see Section 2.4F). For PBV conversions, PHAs will be responsible for this determination.

<sup>6</sup> As fully described in Handbook 4350.1, under Section 8 Pass Through, Owners with residents under a project-based Section 8 HAP Contract whose unit was rendered uninhabitable may temporarily lease a unit in another building, which is habitable, under UPCS. The Owner can sign a temporary lease on behalf of the displaced Section 8 resident (i.e., a master lease) and begin to voucher for the contract rent for that temporary unit.

1 Federal Register Notice entitled ‘Applicability of Davis-Bacon Labor Requirements to  
2 Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program –  
3 Guidance,’ 80 FR 12511, March 9, 2015.

4  
5 **S. Provision of Services.** For properties that have submitted an Initial Submission of Interest to  
6 HUD, HUD may approve service costs to be paid from project rental assistance up to \$27 per  
7 unit per month if it is necessary to provide effective supportive services for the elderly.  
8 Accordingly, HUD is waiving and providing an alternative requirement to 24 § CFR  
9 891.225, which limits the eligible service costs that can be paid from project rental assistance  
10 to \$15 per unit per month. Any approval would only become effective following Conversion  
11 Plan Approval and would be rescinded if the conversion does not occur.

12  
13 **T. Existing Residual Receipts Balance.** Project Owners may apply any balance in the  
14 Converting Project’s residual receipts as a source in the development budget to support  
15 conversion. Eligible conversion-related uses for these funds include pre-development,  
16 development, or rehabilitation costs of the Covered Project, or establishment of the  
17 replacement reserve or operating reserve.

18  
19 **U. Lead Based Paint Hazards.** For properties built before 1978 and in the infrequent case that  
20 a child under age 6 resides in one or more units:

- 21 • The Lead Disclosure Rule and the Lead Safe Housing Rule (specifically, 24 CFR  
22 part 35, subparts A, B, H, and R) apply to each such unit, any common areas  
23 servicing such units, and exterior painted surfaces associated with such units or  
24 common areas. (These covered areas must have a risk assessment conducted and  
25 any lead-based paint hazards identified controlled and cleared, with affected tenants  
26 getting disclosure and/or notification of these activities, as applicable; see also the  
27 MAP Guide section 9.5.A, Lead-Based Paint.)
- 28 • If occupancy rule exceptions are made to allow children under age 6 to reside (such  
29 as in accordance with the Living Equitably: Grandparents Aiding Children and  
30 Youth Act of 2003, P.L. 108-186), the general exemption of the property from the  
31 lead safety rules is not available and they apply to the entire property.

#### 32 33 34 35 **4.5 Special Provisions Affecting Conversions to PBVs**

36  
37 Certain PBV statutory provisions have been waived or altered consistent with the authority  
38 Congress has provided for Second Component conversions. In these cases, HUD also notes the  
39 corresponding regulatory provisions that are waived or altered. Additionally, HUD has waived

1 certain regulatory provisions (that are not statutorily based) and established alternative  
2 requirements in order to prevent displacement of certain residents and otherwise serve the  
3 purposes of this Demonstration. All other regulatory and statutory requirements of the PBV  
4 program in 24 CFR part 983 and section 8(o)(13) of the Act and applicable standing and  
5 subsequent Office of Public and Indian Housing guidance, including related notices and  
6 handbooks shall apply, including resident choice, environmental review, and non-discrimination  
7 and equal opportunity requirements.

8  
9 The modified or alternative requirements that pertain solely to 202 PRAC Projects converting  
10 assistance to PBV under the Demonstration are described below.

11  
12 **A. Length of Contract.** Section 8(o)(13)(F) of the Act provides, in part, that the HAP Contract  
13 may have an initial term of up to 20 years. In addition, 24 CFR § 983.205(a) provides the  
14 PHA with discretion to set the contract term, for a minimum period of one year and a  
15 maximum period of twenty years. By choosing to participate in RAD, the PHA and the  
16 Project Owner agree to an initial HAP Contract term of 20 years. A PHA may enter into an  
17 extension of the initial HAP Contract term with the Project Owner at any time during the  
18 initial term. The PBV HAP Contract during the initial and any extended term is subject to the  
19 requirement for sufficient annual appropriated funding.

20  
21 **B. Mandatory Contract Extension.** Section 8(o)(13)(G) of the Act provides, in part, that the  
22 extension of any PBV HAP Contract is at the discretion of the PHA. The regulatory  
23 provisions governing PBV HAP Contract extensions are contained in 24 CFR § 983.205(b).  
24 By choosing to participate in RAD, the PHA agrees to offer, and the Project Owner agrees to  
25 accept, each extension of the initial HAP Contract term during the term of the Elderly  
26 Housing Use Agreement so that the contract could expire no earlier than the expiration date  
27 of the Elderly Housing Use Agreement.<sup>7</sup> As indicated in Section 4.5.A, the PBV HAP  
28 Contract during the initial and any extended term is subject to the requirement for sufficient  
29 annual appropriated funding. The contract extension(s) shall be for the prescribed number  
30 and mix of units but may, upon request of the Project Owner and subject to HUD approval,  
31 be on one or more transfer of assistance sites in lieu of the project site subject to the expiring  
32 contract.

33  
34 **C. PBV Percentage Limitation.** Covered Projects do not count against the percentage  
35 limitation applicable to the PBV program. Pursuant to the RAD statute, section 8(o)(13)(B)

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<sup>7</sup> For example, if the Elderly Housing Use Agreement required a minimum affordability period of 39 years, the PHA and owner would enter into an initial 20-year HAP contract and, because the Elderly Housing Use Agreement would still be in effect at the end of the 20 year term, must subsequently agree to extend the contract for at least 19 additional years.

1 of the Act as well as 24 CFR § 983.6 do not apply. As a result, a PHA that is administering  
2 RAD PBV assistance does not take the RAD PBV into consideration when calculating the  
3 percent limitation for any non-RAD PBV actions that are subject to the percent limitation. In  
4 other words, RAD PBV is excluded from both the numerator and the denominator when  
5 calculating the percent that may be project-based for non-RAD PBV.  
6

7 **D. Cap on the Number of PBV Units in Each Project.** There is no cap on the number of units  
8 that may receive PBV assistance in each project. Per the HOTMA Implementation Notice, 82  
9 FR 5458, the cap on the number of units that may receive PBV assistance in each project  
10 does not apply to projects exclusively serving elderly families (as such term is defined in 24  
11 CFR § 5.403).  
12

13 **E. Site Selection –Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24**  
14 **CFR § 983.57(b)(1) and (c)(2).** HUD waives these provisions having to do with  
15 deconcentration of poverty and expanding housing and economic opportunity, for the  
16 existing site.  
17

18 **F. Owner Proposal Selection Procedures, 24 CFR § 983.51.** Projects are selected in  
19 accordance with program requirements detailed in this Notice. HUD is waiving 24 CFR §  
20 983.51. For purposes of RAD, the date of PBV proposal selection shall be the date on which  
21 the Project Owner submits a Conversion Plan. With respect to site selection standards, HUD  
22 requires compliance with the site selection standards as set forth in this Notice.  
23

24 **G. Initial Contract Rent Setting.** Consistent with the requirements of section 8(o)(13)(H) of the  
25 1937 Act and 24 CFR part 983, Subpart G, the initial contract rents will be the lower of: (a)  
26 the approved PRAC rents;<sup>8</sup> (b) the reasonable rent (as defined under 24 CFR § 983.303); (c)  
27 an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or  
28 applicable exception payment standard, or rent cap approved in an MTW Plan), minus any  
29 utility allowance; or (d) the rent requested by the Project Owner.  
30

31 A Project Owner may request that HUD use the small area Fair Market Rent (SAFMR) in  
32 place of the applicable metropolitan area FMR in the computation of rents. To implement this  
33 provision, HUD is implementing an alternative requirement to 24 CFR § 888.113(h) to permit  
34 the use of a SAFMR by project for initial contract rent setting. This provision does not apply  
35 in cases where the administering PHA is using SAFMRs in its HCV program, and has chosen  
36 to apply the SAFMRs to its PBV projects (consistent with HUD regulations on the subject).

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<sup>8</sup> PRAC rents are the “Operating Expense Amounts” listed in Part I of the PRAC, Exhibit 1, as adjusted pursuant to rent “bundling” described in this subsection G.

1  
2 With HUD approval, Project Owners and the PHA administering the contract may adjust  
3 subsidy amounts across multiple Projects in order to modify initial contract rents that would  
4 be established in the HAP Contract, as long as the subsidy adjustments do not exceed the  
5 aggregate subsidy for all of the Projects that the Project Owner has submitted for conversion  
6 under RAD and as long as the rents do not exceed applicable rent limits described in 24 CFR  
7 part 983 subpart G. This use, which HUD refers to as “bundled” rents, is permissible when a  
8 Project Owner submits applications for two or more Projects. There is no limit to the number  
9 of Projects that a Project Owner may bundle. The conversion of the donor Project must close  
10 prior to or simultaneous with the conversion of the recipient Project. For example, assume that  
11 a Project Owner is considering bundling two identical Projects, both consisting of 100 units.  
12 In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The Project  
13 Owner could bundle the two projects such that the initial contract rents for both projects will  
14 be \$550.

15  
16 **H. Re-Determined Rents.** The Project Owner may request an increase in rent at the anniversary  
17 date of the HAP contract by written notice to the PHA in accordance with 24 CFR  
18 § 983.301(b)(2). Under the PBV regulations, a Project Owner may request an adjusted rent  
19 level below the PBV rent caps. As a condition of converting to PBV under RAD, the Project  
20 Owner agrees to never request a rent increase in excess of the OCAF-adjusted rent. This  
21 OCAF limitation is in addition to the existing PBV rent limitation in 24 CFR § 983.301(b)  
22 more generally. All other PBV provisions governing the redetermination of rent to the  
23 Project Owner apply.

24  
25 **I. Distributions.** As an alternative requirement, distribution of surplus cash is prohibited unless  
26 the Project Operating Reserve is funded at no less than \$250 per unit and the replacement  
27 reserve is funded at a level prescribed by any conversion agreements.

28  
29 **J. No Rescreening of Tenants upon Conversion.** Pursuant to the RAD Statute, at conversion,  
30 current households cannot be excluded from occupancy at the Covered Project based on any  
31 rescreening, income eligibility, or income targeting. With respect to occupancy in the  
32 Covered Project, current households in the Converting Project will be grandfathered for  
33 application of any eligibility criteria to conditions that occurred prior to conversion but will  
34 be subject to any ongoing eligibility requirements for actions that occur after conversion.<sup>9</sup>  
35 Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to  
36 PBV requirements regarding continued occupancy. For example, a unit with a household that

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<sup>9</sup> These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.



1 was over-income at time of conversion would continue to be treated as an assisted unit. Thus,  
2 24 CFR § 982.201, concerning income eligibility and income targeting of tenants at initial  
3 occupancy, will not apply for current households. Once the grandfathered household moves  
4 out, the unit must be leased to an eligible family. Income eligibility requirements associated  
5 with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede  
6 this prohibition on rescreening, and the Project Owner may be required to exclude Section 8  
7 units occupied by ineligible households from being covered by the new financing's  
8 restrictions.

9  
10 **K. Under-Occupied Units.** If a family is in an under-occupied unit under 24 CFR § 983.260 at  
11 the time of conversion, the family may remain in the unit until an appropriate-sized unit  
12 becomes available in the Covered Project.<sup>10</sup> When an appropriate sized unit becomes  
13 available in the Covered Project, the family living in the under-occupied unit must move to  
14 the appropriate-sized unit within a reasonable period of time, as determined by the PHA. In  
15 order to allow the family to remain in the under-occupied unit until an appropriate-sized unit  
16 becomes available in the Covered Project, 24 CFR § 983.260 is waived.<sup>11</sup>

17  
18 **L. Occupancy Requirements.** In accordance with the RAD statute, as amended by the  
19 Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) , Section 202 PRAC projects  
20 converting assistance under RAD must continue to serve elderly persons as defined in  
21 Section 202(k) of the Housing Act of 1959.<sup>12</sup> New admissions must meet the income  
22 requirements in 24 CFR § 982.201(b). Existing residents will be grandfathered in and are not  
23 subject to re-screening for income and occupancy eligibility.  
24

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<sup>10</sup> A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

<sup>11</sup> As the later enacted statute, the RAD Statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

<sup>12</sup> The term “elderly person” means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy

1                   4.6 **Special Provisions Affecting Conversions to PBRA**

2  
3 For 202 PRAC Projects converting assistance to PBRA, 24 CFR part 880 (“Section 8 Housing  
4 Assistance Payments Program for New Construction”), as modified and as published in  
5 Appendix I of this Notice, and applicable standing and subsequent Office of Housing guidance<sup>13</sup>  
6 will apply, except for the provisions listed below. Where applicable, reference is made to the  
7 affected statute and/or regulation.  
8

9 **A. Length of Contract.** Pursuant to the RAD statute, Covered Projects shall have an initial  
10 HAP Contract term of 20 years. Accordingly, section 8(d)(2)(A) of the Act, which  
11 establishes a maximum term of 15 years for “an existing structure,” does not apply.  
12 Additionally, 24 CFR § 880.502, which imposes maximum contract terms for New  
13 Construction Projects consistent with statutory authority that was repealed in 1983, does not  
14 apply.  
15

16 **B. Mandatory Contract Renewal.** Pursuant to the RAD Statute, after the initial term of the  
17 HAP Contract, the Project Owner is eligible for renewal of the contract under section 524 of  
18 MAHRAA, subject to the terms and conditions applicable at the time of renewal and the  
19 availability of appropriations for each year of such renewal. By choosing to participate in  
20 RAD, the Project Owner agrees to accept each offer to renew the HAP contract during the  
21 term of the Elderly Housing Use Agreement so that any renewal of the HAP contract could  
22 expire no earlier than the expiration of the Elderly Housing Use Agreement, but not to  
23 exceed a term of 20 years for any given renewal.<sup>14</sup> The renewal contract(s) shall be for the  
24 prescribed number and mix of units but may, upon request of the Project Owner and subject  
25 to HUD approval, be on one or more transfer of assistance sites in lieu of the project site  
26 associated with the expiring contract.  
27

28 **C. Initial Contract Rent Setting.** Consistent with the requirements of Section 8(c)(1) of the  
29 Act, the initial contract rents will be the lower of (a) the approved PRAC rents<sup>15</sup> or (b) 120%  
30 of the applicable fair market rent (FMR), less any utility allowances.

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<sup>13</sup> Examples of Office of Housing guidance include handbooks such as “Occupancy Requirements of Subsidized Multifamily Housing Programs” (4350.3) and “Multifamily Asset Management and Project Servicing” (4350.1).

<sup>14</sup> For example, if the Elderly Housing Use Agreement required a minimum affordability period of 39 years, the HUD and Project Owner would enter into an initial 20 year HAP contract and, because the Elderly Housing Use Agreement would still be in effect at the end of the 20 year term, at the end of the term, HUD would offer and an owner must request a contract renewal covering at least 19 additional years.

<sup>15</sup> PRAC rents are the “Operating Expense Amounts” listed in Part I of the PRAC, Exhibit 1, as adjusted pursuant to rent “bundling” described in this subsection C.

1 A Project Owner may request that HUD use the small area Fair Market Rent (SAFMR) in  
2 place of the FMR in the computation of rents. To implement this provision, HUD is  
3 implementing an alternative requirement to 24 CFR §888.113(h) to permit the use of a  
4 SAFMR by project for initial contract rent setting.

5 With HUD approval, Project Owners may adjust subsidy across multiple Projects in order to  
6 modify the initial contract rents that would be established in the HAP Contract, as long as the  
7 Project Owner does not exceed the aggregate subsidy for all of the Projects the Project  
8 Owner has submitted for conversion under RAD and the rents do not exceed 120% of FMR  
9 (or Small Area FMR, as applicable). This use, which HUD refers to as “bundled” rents, is  
10 permissible when a Project Owner submits applications for two or more Projects. There is no  
11 limit to the number of Projects that a Project Owner may bundle. The conversion of the  
12 “donor” Project must close prior to or simultaneously with the conversion of the “recipient”  
13 Project. For example, assume that a Project Owner is considering bundling two identical  
14 Projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project  
15 B, the contract rent is \$600. The Project Owner could bundle the two projects such that the  
16 initial contract rents for both Projects will be \$550.

17  
18 **D. Method of Adjusting Contract Rents.** Contract rents will be adjusted by an OCAF at each  
19 anniversary of the HAP Contract, subject to (a) the availability of appropriations for each  
20 year of the initial term of the HAP Contract, and (b) the Maximum Rent, as defined below.

21  
22 The Maximum Rent is the higher of 120% of FMR or Small Area FMR (less utility  
23 allowances) or the market rents, as demonstrated by an RCS procured and paid for by the  
24 Project Owner. Where an RCS has been used to justify an OCAF adjusted rent that exceeds  
25 120% of the FMR, the RCS will remain valid for five years, the Maximum Rent will not  
26 apply for the next four annual rent adjustments, and rents will be adjusted only by the OCAF.  
27 The applicable FMR used for SRO units shall be the zero-bedroom (efficiency) FMR.  
28 Further, where HUD has approved the use of Small Area FMR by project, the Small Area  
29 FMR will continue to serve as the applicable FMR when determining the rent cap.

30  
31 **E. Distributions.** Covered Projects will not be subject to any limitation on distributions,  
32 contingent on the availability of surplus cash as determined by year-end audited or certified  
33 financial statements. To implement this provision, HUD will not apply 24 CFR § 880.205,  
34 which, among other provisions, establishes certain limitations on distributions for profit-  
35 motivated owners and authorizes HUD to require not-for-profit and certain for-profit owners  
36 to establish a residual receipts account. As an alternative requirement, in addition to standard  
37 PBRA requirements that must be satisfied prior to calculating surplus cash, distribution of  
38 surplus cash is prohibited unless HUD is able to verify on the annual financial statement that  
39 the Project Operating Reserve is funded at no less than \$250 per unit.

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**F. No Rescreening of Tenants upon Conversion.** Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.<sup>16</sup> Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBRA requirements regarding continued occupancy. For example, a household that would not be income eligible for initial occupancy of a Section 8 unit at the time of conversion would still be placed on a Section 8 lease and eligible for assistance under the provisions governing continued occupancy. Thus, the first clause of section 8(c)(4) of the Act and 24 CFR § 880.603(b), concerning determination of eligibility and selection of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. Income eligibility requirements associated with new sources of financing, such as Low-Income Housing Tax Credits, do not supersede this prohibition on rescreening, and the Project Owner may be required to exclude Section 8 units occupied by ineligible households from being covered by the new financing’s restrictions.

21 **G. Under-Occupied Units.** If at the time of conversion, an eligible family assisted under the  
22 PRAC is occupying a unit that is larger than appropriate because of the family’s composition,  
23 the family may remain in the unit until an appropriate-sized unit becomes available in the  
24 Covered Project.<sup>17</sup> When an appropriate sized unit becomes available in the Covered Project,  
25 the family living in the under-occupied unit must move to the appropriate-sized within a  
26 reasonable period of time. In order to allow the family to remain in the under-occupied unit  
27 until an appropriate-sized unit becomes available in the Covered Project, HUD is waiving the  
28 portion of 24 CFR § 880.605 that assumes the unit has become under-occupied as the result  
29 of a change in family size.<sup>18</sup>

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<sup>16</sup> These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

<sup>17</sup> A household is considered to be remaining in the unit during any period of temporary relocation to permit rehabilitation of the Covered Project.

<sup>18</sup> As the later enacted statute, the RAD Statute, as amended by the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) to prohibit conversion under the Second Component from being the basis for re-screening, termination of assistance, or eviction of a family in the Converting Project, overrides the last sentence of section 3(b)(3)(A) of the Act. Absent this override, the latter provision would prohibit occupancy of an assisted unit of two or more

1  
2 **H. Occupancy Requirements.** In accordance with the RAD statute, as amended by the  
3 Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), Section 202 PRAC  
4 projects converting assistance under RAD must continue to serve elderly persons as  
5 defined in Section 202(k) of the Housing Act of 1959.<sup>19</sup> New admissions must meet the  
6 income requirements in 24 CFR 5.653(d)(2). Existing residents will be grandfathered in  
7 and are not subject to re-screening for income and occupancy eligibility.  
8

9 **I. UPCS (REAC) Inspections.** Under current regulations at 24 CFR part 5, subpart G, a unit  
10 covered under a PBRA HAP Contract must meet the UPCS before assistance can be paid on  
11 behalf of a household. Under RAD, only after the PBRA HAP Contract is executed and any  
12 proposed Work is completed, HUD will order a REAC inspection of the Project to ensure  
13 conditions meet the UPCS. HUD is waiving and establishing this alternative requirement to  
14 24 CFR part 5 subpart G.  
15  
16

#### 17 **4.7 Conversion and Processing Requirements**

18  
19 As discussed in further detail below, the conversion of a PRAC Project will generally entail:

- 20 1. An Initial Submission of Interest to HUD
- 21 2. Resident Notification and Consultation
- 22 3. Selection of PHA (PBV conversions only)
- 23 4. Conversion Plan Submission, RAD Approval, and Closing  
24

##### 25 **4.7.1 Initial Submission of Interest to HUD**

26  
27 Prior to submitting a Conversion Plan, a Project Owner must make an initial submission to HUD  
28 indicating the Project Owner's interest in conversion under this Notice. The submission must  
29 include:

- 30 • Project name;
- 31 • Project address;
- 32 • Project Owner's name;
- 33 • Project Owner's contact information;

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bedrooms by a single person who is not elderly, disabled, a displaced person, or the remaining member of a tenant family, and any such unit occupied by such a person could not be included in the HAP Contract. Accordingly, 24 CFR § 5.655(b)(5) shall not apply.

<sup>19</sup> The term "elderly person" means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

- 1 • The PRAC Contract number(s);
- 2 • PRAC Contract expiration date(s);
- 3 • Total number of units covered under the PRAC Contract(s), by bedroom size; and
- 4 • Conversion Type (PBV or PBRA).

5  
6 HUD has developed an electronic form submission for Project Owners to make the initial  
7 submission. To access the electronic submission template, Project Owners must request access to  
8 the RAD Resource Desk at [www.radresource.net](http://www.radresource.net) where users will be prompted to provide the  
9 information listed above.

10  
11 HUD will provide the Project Owner a confirmation of successful submission. HUD will use the  
12 initial submission in order to:

- 13 • Assign a Transaction Manager, who will make contact to discuss the conversion process  
14 and the Project Owner's goals for the Project; and
- 15 • For PBV conversion, initiate the process to identify a PHA willing to administer the new  
16 PBV contract.

17  
18 There is no fee associated with the initial submission, and there is no cap on the number of 202  
19 PRAC Projects for which a Project Owner may make a submission. HUD will take no adverse  
20 action against a Project Owner who makes an initial submission but does not later submit a  
21 Conversion Plan.

#### 22 23 4.7.2 **PHA Administration of the PBV Contract**

24  
25 **A. Selection of a PHA.** For PBV conversions only, HUD will need to identify a PHA able and  
26 willing to administer the PBV contract, and the PHA will need to accept the responsibility.  
27 Within 30 days of the initial submission, HUD will identify an eligible PHA and request that  
28 the PHA provide written consent to administer the PBV contract or decline the request within  
29 30 days of HUD's request. HUD will communicate the PHA's response to the Project  
30 Owner. Applicants must wait until a PBV HAP Contract administrator has been identified  
31 before submitting their Conversion Plan, as the PHA who will act in this capacity must be  
32 identified in that plan. If no PHA consents to enter into the PBV contract, the Project cannot  
33 convert to PBV, and the Project Owner may consider conversion to PBRA instead.

34  
35 **B. Role of Administering PHA.** The PHA that agrees to administer the PBV contract is  
36 responsible for administrative duties described in 24 CFR part 983 and this Notice. Prior to  
37 conversion, the PHA's key roles include:

- 38 1. **Pre-Selection Inspection.** The PHA must ensure that the units substantially comply with  
39 HQS, as defined in the PHA's Section 8 administrative plan, prior to submission of the  
40 Conversion Plan.

- 1       2. **Initial Contract Rent Setting.** The PHA will determine the initial contract rents  
2       pursuant to Section 4.5.G.
- 3       3. **Housing Quality Standards (HQS) Inspections.** Prior to entering into a PBV HAP  
4       Contract, the PHA must inspect the Converting Project proposed for conversion to ensure  
5       that the units fully comply with HQS,<sup>20</sup> unless the PHA is using HOTMA non-life  
6       threatening and alternative inspection provisions.<sup>21</sup>

#### 8                               4.7.3   **Resident Notification and Consultation**

- 9
- 10   **A. Resident Notification.** For all conversions, a Project Owner is required to notify residents in  
11   writing of its intent to participate in RAD and is required to hold at least two meetings with  
12   residents.<sup>22</sup> The Notification letter must:
- 13       1. Be delivered to all Converting Project residents, including each PRAC–assisted  
14       household, as well as posted in the Converting Project office or other common area, and  
15       at no fewer than three prominent locations on the Converting Project site;
  - 16       2. Include the date and time of the resident briefings;
  - 17       3. Include an estimated date of conversion to either a PBV or PBRA HAP Contract;
  - 18       4. Include a description of any proposed change in ownership, rehabilitation, construction,  
19       or transfer of assistance associated with the conversion;
  - 20       5. Include a description of any change in ownership or transfer of assistance;
  - 21       6. State the Project Owner’s plan for relocation, if applicable, as a result of rehabilitation or  
22       construction, including the expected length of the relocation, the temporary nature of the  
23       relocation, the household’s right to return, and the Project Owner’s responsibility for  
24       covering relocation costs; and
  - 25       7. Supply information on the method to submit comments to the Project Owner and provide  
26       for a 30-day comment period.

27

28   The Project Owner must conduct two resident meetings with all affected residents and provide  
29   the residents with an opportunity to comment on the conversion. The purpose of the resident  
30   meeting is to provide residents with greater detail related to the conversion, including  
31   rehabilitation plans (if applicable), relocation (if applicable), and PBV or PBRA program rules

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<sup>20</sup> Please note that under PBV, the standard HQS requirements related to lead-based paint under 24 CFR 982.401 do not apply. Instead, if the property was constructed before 1978 and one or more units has a child under age 6 residing, the PHA must ensure that the HQS requirements for lead safety at 24 CFR 983.101(c)(2) are met in those units, common areas servicing those units, and exterior painted surfaces associated with such units or common areas (or the whole property if there are children under age 6 residing in numerous units).

<sup>21</sup> See Notice PIH-2017-20 for guidance on HOTMA non-life threatening and alternative inspection provisions.

<sup>22</sup> Sample resident notification letters are available at [www.hud.gov/rad](http://www.hud.gov/rad).

1 that may differ from PRAC rules. The Project Owner must hold an additional meeting when  
2 there has been a material change that was not already discussed in a previous meeting.

3  
4 When providing resident notifications and conducting resident meetings, the Project Owner must  
5 use effective communication for persons with hearing, visual, and other communication-related  
6 disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and, as applicable, the  
7 Americans with Disabilities Act of 1990. Effective communication includes, but is not limited to,  
8 providing written materials in appropriate alternative formats (e.g., Braille, large type), as  
9 needed, and providing sign language interpreters and assistive listening devices at resident  
10 meetings, as needed (24 CFR § 8.6). Additionally, resident meetings must be held in facilities  
11 that are physically accessible to persons with disabilities. Where physical accessibility is not  
12 achievable, a Project Owner must use alternative methods to meet with qualified individuals with  
13 disabilities, such as holding meetings at an alternate accessible site or offering in-home meetings.  
14 Such meetings must be provided in the most integrated setting appropriate to the needs of  
15 qualified individuals with disabilities in a setting that enables individuals with disabilities to  
16 interact with nondisabled persons to the fullest extent possible (28 CFR part 35, Appendix B).

17  
18 Additionally, the Project Owner must provide meaningful access to its programs and activities  
19 for persons who have a limited ability to read, speak, or understand English. For Projects  
20 undergoing RAD conversion, the Project Owner must provide language assistance to residents of  
21 the Project who are Limited English Proficient (LEP) to ensure that they have meaningful access  
22 to RAD resident notifications and meetings. Such language assistance may include, but is not  
23 limited to, providing written translation of notices regarding the plans for the Project and  
24 relocation and oral interpretation at resident meetings. For guidance on providing language  
25 assistance to persons with LEP, please see Final Guidance to Federal Financial Assistance  
26 Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting  
27 Limited English Proficient Persons (72 FR 2732).

28  
29 The Project Owner must submit a copy of all comments received with their Conversion Plan,  
30 along with a description of how the residents' comments will be addressed in the conversion.  
31 HUD will consider all resident comments and the Project Owner's plan to address the comments  
32 before approving the Conversion Plan. If more than 50 percent of written resident comments  
33 disapprove of the conversion of assistance, HUD will contact the Project Owner to discuss  
34 options for proceeding with the conversion request or may decline the request.

35  
36 Upon Conversion Plan approval, the Project Owner must notify each affected family that the  
37 Project has been approved.





1                   4.8 **Additional Information**

2

3 For additional information on this section of the Notice, please check [www.hud.gov/rad](http://www.hud.gov/rad) or email  
4 questions to [RAD2@hud.gov](mailto:RAD2@hud.gov).

5

1 **Attachment 4A: Conversion Plan Requirements and Feasibility Benchmarks for**  
2 **PRAC Conversions**

3 A Conversion Plan will not be reviewed until all required documentation is submitted  
4 electronically to the RAD Resource Desk at [www.radresource.net](http://www.radresource.net). HUD will complete an initial  
5 review for document completeness within five business days of submission and will notify the  
6 Project Owner of deficiencies. Once HUD has determined that all required documents appear to  
7 have been received, HUD will review the submission.

8  
9 HUD's purpose in reviewing the Conversion Plan is to ensure the long-term physical and  
10 financial viability of the Covered Project in providing quality, supportive housing to elderly  
11 residents. HUD reserves the right to reject any Conversion Plan if the information provided is not  
12 complete, accurate, or in compliance with the submission requirements listed below. If a  
13 Conversion Plan fails one or more feasibility benchmarks, HUD may, in its sole discretion, still  
14 accept the Conversion Plan if HUD determines that the Conversion Plan is consistent with the  
15 long-term physical and financial viability of the Covered Project, and/or the Project Owner has  
16 demonstrated through historical data or other means that the Project Owner can satisfactorily  
17 maintain and manage the Covered Project as presented in the Conversion Plan. HUD will not  
18 accept the Conversion Plan if the Covered Project does not meet environmental review  
19 requirements, as described below.

20  
21 Below are all the required components of a complete Conversion Plan and the requirements of  
22 each component. Additional guidance in preparing the Conversion Plan is available in the PRAC  
23 Processing Guide located at [http://www.radresource.net/2c\\_library.cfm](http://www.radresource.net/2c_library.cfm).

24  
25 **A. Conversion Overview.** A narrative summary of the Covered Project and the Project Owner's  
26 conversion goals. Include details such as a description of the physical Project, Project history,  
27 identification of immediate capital needs of the Project, identification of other properties to  
28 be held within the same ownership entity, anticipated financing that will be obtained to meet  
29 the capital needs, anticipated relocation, and circumstances such as new construction,  
30 Transfer of Assistance, scattered site, and reconfiguration of units.

31  
32 **B. Proposed Units.** The Project Owner must provide the number of units by bedroom size  
33 proposed to be covered by the HAP Contract. If a reconfiguration of units is proposed, the  
34 Project Owner must submit a narrative explanation of the proposal, including a description of  
35 the units to be removed and an explanation of why the Project can better serve assisted  
36 residents at the reduced number. Discussion of the proposed units can be included in the  
37 Conversion Overview.

38

- 1 **C. PRAC Contract.** Submit a copy of the fully executed current PRAC Contract including all  
2 exhibits.  
3
- 4 **D. Statement of Compliance with Fair Housing and Civil Rights.** The Project Owner must  
5 submit a written statement certifying that it will comply with the requirements identified in  
6 section 4.3.1.B. of this Notice.  
7
- 8 **E. Resident Notification.** The Project Owner must provide proof of written notification  
9 informing residents of the intent to participate in RAD. Include a PDF attachment of all  
10 **comments received from residents** as described in Section 4.7.3. Project Owners must  
11 provide a certification that they have held the required meetings with residents and have  
12 provided residents with a reasonable time period to submit comments on the conversion. The  
13 Project Owner must also provide a description of how the residents' comments will be  
14 addressed in their plan for conversion.  
15
- 16 **F. Capital Needs Assessment.** A CNA is required in order to identify the short-term and long-  
17 term capital needs of the property, which will factor into the Scope of Work and both the  
18 Initial and Annual Deposits to the Replacement Reserve. See Paragraph 4.4.A. for additional  
19 information on CNA requirements.  
20
- 21 **G. Initial Contract Rent Setting.**
- 22 1. For PBV conversions, submit evidence that the Project Owner's proposed rents are in  
23 accordance with the PHA's rent setting. See Section 4.5.G for additional information on  
24 Initial Contract Rent Setting for PBV.
  - 25 2. For PBRA conversions, the rents cannot exceed the limits set forth in Section 4.6.C  
26
- 27 **H. Scope of Work.** The Conversion Plan must include a Scope of Work that accompanies the  
28 CNA. The Scope of Work must:
- 29 1. Identify and address all repairs identified in the CNA as critical, immediate or required  
30 within the first two years following conversion when the total of such repairs exceeds  
31 \$5,000 per unit (including all items identified in the CNA as not functioning at the time  
32 of the CNA site visit) or exceeds the balance in the replacement reserve account. Briefly  
33 discuss any differences between the proposed Work and the conclusions and  
34 recommendations of the CNA provider; any additional scope items not identified in the  
35 CNA; and the Project Owner's choices for replacement components.
  - 36 2. Identify replacement quantities and costs. Rehabilitation cost estimates must be based on  
37 compliance with HUD requirements.
  - 38 3. Include a summary of environmental issues and corresponding remediation activities  
39 known at that time, and a summary of accessibility features that are required pursuant to  
40 applicable accessibility standards and other accessibility requirements. Other accessibility

1 requirements include, but are not limited to, physical features that need to be provided as  
 2 reasonable accommodations for qualified persons with disabilities. The scope of work  
 3 should also include design features necessary for elderly housing (see Section 4.4.N) and  
 4 a description of how those features will promote housing stability for an aging  
 5 population.

- 6 4. Include a construction contingency of 10 percent (HUD may require a higher contingency  
 7 on a case-by-case basis) if the Project Owner plans to obtain new financing simultaneous  
 8 with the Conversion.
- 9 5. Include a reasonable timeline for completion of all rehabilitation items acceptable to  
 10 HUD, from the date of Conversion Closing and any financing, depending on the scope of  
 11 rehabilitation needed.

12  
 13 For Conversions using FHA financing, conventional debt, or equity sources of financing,  
 14 submit a copy of the Scope of Work included with the FHA Application for Firm  
 15 Commitment, or submitted to the lender, equity provider (including LIHTC, historic tax  
 16 credit or Opportunity Zone equity providers), LIHTC allocating agency or comparable  
 17 funding source.

18  
 19 **I. Environmental Review.** HUD cannot approve an applicant’s Conversion Plan unless and  
 20 until the required environmental review has been completed for the applicant’s proposed  
 21 conversion Project and found to meet environmental review requirements. The following  
 22 describes the submission and approval steps for securing a completed environmental review.  
 23 RAD transactions will either be reviewed under 24 CFR part 50 or 24 CFR part 58, i.e., “Part  
 24 50 Reviews” or “Part 58 Reviews.”<sup>23</sup> All PBRA and FHA (excluding Housing Finance  
 25 Agency Risk-Sharing under Section 542) transactions require Part 50 Reviews, which are  
 26 conducted by HUD staff. Non-FHA PBV and Section 542 Risk-Sharing transactions require  
 27 Part 58 Reviews, which are conducted by a Responsible Entity (RE), except in accordance  
 28 with 24 CFR § 58.11, when HUD may determine to conduct the review under Part 50.  
 29

| Transaction Type                                 | Required Environmental Review |
|--|-------------------------------|
| Non-FHA with PBRA                                | Part 50                       |
| FHA insured (excluding Section 542 Risk-Sharing) | Part 50                       |
| Non-FHA with PBV                                 | Part 58                       |

30 \*For purposes of this table, Section 542 Risk-Sharing is considered a “non-FHA” transaction type  
 31

32 For multi-phase developments, the environmental documents submitted with the Conversion  
 33 Plan during the first phase must be submitted for the entire site, i.e. all of the phases of the

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<sup>23</sup> Please see the Environmental Review for RAD Transactions guidance document, available at  
<https://www.hudexchange.info/resource/4216/environmental-review-requirements-for-rad-transactions/>.

1 multi-phase development, and the environmental review conducted during the first phase will  
2 cover the entire site. Further, requests to transfer assistance from the Converting Project to a  
3 new location are subject to environmental review.

4  
5 For transactions receiving funding from other HUD programs (i.e., HOME, CDBG, non-  
6 RAD PBV), HUD encourages all parties to attempt to complete one review for all programs,  
7 even if these programs' environmental reviews are conducted under a different review  
8 protocol (Part 50, Part 58).

9  
10 In cases where two Part 58 programs are combined, HUD encourages applicants to work  
11 with the RE to see if environmental reviews can be combined. However, this is solely the  
12 RE's determination.

13  
14 In cases where a Part 50 program and a Part 58 program are combined, HUD may determine  
15 that it will perform one Part 50 environmental review for both programs if performing an  
16 additional Part 58 environmental review is not feasible in the time allotted, under 24 CFR §  
17 58.11. HUD must ensure that the Part 50 review considers the full scope of all activities and  
18 funding associated with all programs. When one review is used for both programs, the  
19 Approving Officials for both programs must certify the review.

20  
21 **For all Part 50 reviews, the applicant must submit reports and documentation to HUD**  
22 **in accordance with 24 CFR part 50, as discussed in Chapter 9 of the MAP guide, except**  
23 **as follows:**<sup>24, 25</sup>

- 24 1. For PBRA conversions (or for PBV conversions where HUD has determined to  
25 conduct the environmental review under Part 50) without FHA insurance and without  
26 any rehabilitation, construction, or demolition,<sup>26</sup> HUD conducted a tiered review of  
27 program-wide and site-specific compliance. HUD has made program-wide  
28 compliance determinations for most of the applicable environmental laws and  
29 authorities, and will complete a site-specific compliance review of the following:

- 30 A. Coastal protection pursuant to the Coastal Barrier Resources Act, as amended  
31 by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501);

---

<sup>24</sup> Additional guidance on environmental review requirements is available on the HUD Environmental Review website, at <https://www.hudexchange.info/environmental-review/>.

<sup>25</sup> The MAP Guide is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430).

<sup>26</sup> This is further defined as those transactions that do not anticipate any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD 2016-02.

1           **B.** Flood insurance and floodplain management pursuant to the Flood Disaster  
2           Protection Act of 1973, the National Flood Insurance Reform Act of 1994 (42  
3           U.S.C. 4001-4128 and 42 U.S.C. 5154a), Executive Order 11988, particularly  
4           section 2(a), and 24 CFR part 55;

5           **C.** Contamination pursuant to 24 CFR § 50.3(i) (HUD Standard).

6           Project Owners will be required to submit documentation to facilitate HUD’s site-  
7           specific review.

8           For Environmental Reviews under 24 CFR part 58, Project Owners should reach  
9           out to the RE. HUD encourages REs to consider a tiered approach.

10          2. For all PBRA conversions (or for PBV conversions where HUD has determined to  
11          conduct the environmental review under Part 50) with FHA insurance and/or any  
12          rehabilitation, construction, or demolition, Project Owners shall provide HUD with  
13          one of the following:<sup>27,28</sup>

- 14           ▪ A transaction screen in accordance with ASTM E 1528-14 (or the most recent  
15           edition)<sup>29</sup> for those conversions that do not include substantial rehabilitation  
16           or new construction activities. A transaction screen will identify potential  
17           environmental concerns based on questionnaires, owner/occupant inquiry, site  
18           visit, government records inquiry and historical sources inquiry. The  
19           transaction screen must be prepared by a qualified professional, in accordance  
20           with 24 CFR § 50.3(i)(4). As the definition of preparer in ASTM E 1528-14  
21           does not meet this requirement, the professional must have either (a) a science  
22           degree and at least one year of practical environmental assessment experience  
23           in the field, or (b) three years of practical environmental assessment  
24           experience in the field performing site assessments for site contamination. If  
25           any potential environmental concerns are identified or the Transaction Screen  
26           is older than 5 years upon submission, an ASTM Phase I Environmental Site  
27           Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent  
28           edition) must be provided; OR
- 29           ▪ A Phase I ESA in accordance with ASTM E 1527-13 (or the most recent  
30           edition) that is no older than 1 year upon submission. (Note that a Phase I  
31           ESA is required for all conversions applying for FHA insurance and all  
32           conversions that require an Environmental Assessment level review. For these  
33           types of conversions, a transaction screen is not an available alternative.)

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<sup>27</sup> Substantial rehabilitation is any rehabilitation that does not meet the conditions in 24 CFR § 50.20(a)(2) for exclusion from review under the National Environmental Policy Act.

<sup>28</sup> Applications to RAD for conversion assistance involving substantial rehabilitation or new construction will always require a Phase I ESA in accordance with ASTM E 1527-13.

<sup>29</sup> The Transaction Screen does not meet the standard for “All Appropriate Inquiries” for CERCLA liability protection, as noted in ASTM E 1528-14 Section 4.2.1.

1 The Project Owner shall also provide any additional environmental reports and/or  
2 environmental testing required as a result of the foregoing reviews, such as, but not  
3 limited to, Phase II environmental reports, Lead Based Paint Surveys, Asbestos  
4 Containing Materials Surveys, and Operating and Maintenance Plans.

- 5 3. For all PBRA conversions (or where HUD has determined to conduct the PBV  
6 conversion review under Part 50), PHAs are not required to follow the radon testing  
7 requirements of HN 2013-03. However, HUD strongly recommends radon testing for  
8 all projects and mitigation of any structures with elevated levels of radon (4 pCi/L or  
9 above).

10  
11 When HUD conducts the environmental review under Part 50, PHAs (or their vendors) must  
12 submit environmental reports and documentation<sup>30</sup> for HUD review into the HUD  
13 Environmental Review Online System (HEROS), where HUD will complete its review.

14  
15 HUD staff will review the submissions and may require additional information in order to  
16 complete their review. HUD's review will result in a determination, which may stipulate the  
17 rejection of the site for this demonstration or may require the completion of mitigation  
18 measures. The approval letter will include any conditions required to carry out any and all  
19 mitigation measures as may result from the environmental review. Any conditions or  
20 mitigation that cannot be satisfied before Closing will survive Closing.

21  
22 **When a Responsible Entity (RE) completes an environmental review under Part 58, the**  
23 **Conversion Plan must include either Form HUD-7015.16 or a letter with the (RE's)**  
24 **finding of exempt activity in order to consider the environmental review to be complete.**

25 The RE should use HUD recommended formats to document the environmental review  
26 record.<sup>31</sup> The PHA should submit an environmental report to the RE, in such form as  
27 prescribed by the RE, to enable the RE to complete their analysis. Once the review is  
28 completed, the PHA must submit *either*:

---

<sup>30</sup> PHAs and providers should take care to respond to all applicable laws and authorities when providing documentation for environmental review. For all maps, please clearly indicate where the project site is located. HUD encourages use of the Partner Worksheets available at <https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/> to assist in satisfying these requirements.

<sup>31</sup> HUD recommended formats are available at <https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/> and <https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/>.



- 1 • Form HUD-7015.15, Request for Release of Funds (RROF), to their local PIH field  
2 staff.<sup>32</sup> After the PIH Field Director approves the RROF, the Director sends a  
3 completed Form HUD 7015.16 to the PHA, approving the release of funds; or
- 4 • If Form HUD-7015.15 is not required because the project converts to Exempt under  
5 24 CFR § 58.34(a)(12), the PHA must submit the RE's finding of exempt activity  
6 with their Conversion Plan. A finding of exempt activity is a statement of the result of  
7 the RE's environmental review and is required even when Form HUD-7015.15 is not  
8 required. A letter from the RE indicating that the project converts to Exempt under 24  
9 CFR § 58.34(a)(12) is sufficient.

10  
11 For conversions subject to Part 58 without any rehabilitation, construction, or demolition,<sup>33</sup>  
12 HUD encourages REs to consider a tiered approach wherein they make program-wide  
13 compliance determinations for most of the applicable environmental laws and authorities and  
14 complete a site-specific compliance review only of the remaining laws and authorities.  
15

16 **J. Accessibility and Relocation Plan Checklist.** All Project Owners shall complete and submit  
17 the Accessibility and Relocation Plan Checklist provided by HUD on the RAD Resource  
18 Desk. The checklist shall include a certification that the relocation plan complies with all  
19 applicable HUD requirements, including the Uniform Relocation Assistance and Real  
20 Property Acquisition Policies Act of 1970 (URA) and its implementing regulations (49 CFR  
21 part 24) as well as applicable accessibility standards, including but not limited to those under  
22 Section 504 of the Rehabilitation Act of 1973 and its implementing regulations (24 CFR §  
23 8.23). The cost of accessibility improvements and relocation must be fully funded in the  
24 Development Budget. Project Owners are encouraged to use HUD's guidance on relocation  
25 planning for persons with disabilities in HUD Handbook 1378.0, Exhibit 3-1 and the RAD  
26 Fair Housing and Civil Rights Notice.  
27

28 **K. Development Budget (Sources and Uses of Funds).**

- 29 1. This paragraph only applies to projects conducting Work simultaneous with the  
30 Conversion. The Development Budget must:
  - 31 a. Include a reasonable, balanced and comprehensive presentation of both  
32 construction period and permanent sources and uses of funds.
  - 33 b. Identify existing loans or debt that will be paid off at the closing, if applicable.
  - 34 c. Demonstrate that any Identity of Interest (IOI) loans or advances will be  
35 converted to unsecured Surplus Cash Notes (Project's cash remaining, after debt

---

<sup>32</sup> Form HUD-7015.15 is available at <https://www.hudexchange.info/resource/2338/hud-form-701515-request-release-funds-certification/>.

<sup>33</sup> Defined as any reasonably foreseeable repairs or other physical activities beyond maintenance, as defined in HUD Notice CPD-16-02.

- 1 service, project operational costs and other permitted payments) unless otherwise  
2 approved by HUD.
- 3 d. If applicable, identify the initial operating deficit during the construction period  
4 and how that deficit will be funded, such as an operating deficit escrow or similar  
5 fund.
- 6 e. Include a Subsidy Layering Review (SLR) if one has been performed by another  
7 agency. If no SLR is provided, HUD will complete a SLR whenever multiple  
8 federal sources are proposed.
- 9 f. Provide a brief discussion of conditions/milestones to be satisfied prior to closing  
10 including any known impediments to closing within the timeframe required under  
11 the Notice;
- 12 g. Estimated closing date(s) for all proposed financing;
- 13
- 14 2. For Conversions using FHA financing, conventional debt, or equity sources of  
15 financing, submit a copy of the Development Budget included with the FHA  
16 Application for Firm Commitment, or submitted to the lender, equity provider  
17 (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC  
18 allocating agency or comparable funding source.
- 19
- 20 3. **For all FHA transactions or Conversions using equity sources of financing:**
- 21 a. For each proposed loan, equity contribution, or grant, the Conversion Plan must  
22 include a recent lender, investor or grant commitment letter, dated no more than  
23 60 days prior to Conversion Plan submission, with key terms identified (including  
24 amount, repayment terms, interest rate, amortization, maturity, prepayment  
25 restrictions, and pay-in schedule) from all financing provider(s).
- 26 b. The Project Owner must submit the FHA Application for Firm Commitment  
27 review **before** the RAD conversion is submitted to the Office of Recapitalization.
- 28 4. **For all other Conversions with new financing:**
- 29 a. For each proposed loan, equity contribution, or grant, the Conversion Plan must  
30 include a recent lender, investor or grant commitment letter, dated no more than  
31 60 days prior to Conversion Plan submission, with key terms identified (including  
32 amount, repayment terms, interest rate, amortization, maturity, prepayment  
33 restrictions, and pay-in schedule) from all financing provider(s);
- 34 b. All subordinate (or secondary) financing must be disclosed and then approved by  
35 the first-mortgage lender;
- 36 c. The terms for all seller take-back financing must also be disclosed;
- 37 d. If project revenue or existing reserves will be a source of funding, submit  
38 evidence of the current account balances.

1 **L. Proposed Development Team.** The Project Owner must identify the proposed legal entity  
2 that will own the Covered Project following conversion, the proposed management agent  
3 following conversion, and the “principals” of both entities. In addition, the Project Owner  
4 shall provide the following:

- 5
- 6 1. For all conversions with a proposed change in ownership entity, the new Project Owner  
7 must provide evidence of successful experience owning and operating HUD or other  
8 multifamily housing properties. New Owners may be required to demonstrate that the  
9 criteria specified in [HUD Handbook 4350.1, Chapter 13, Change in Ownership: Transfer  
10 of Physical Assets](#) have been met in part or in whole.
- 11 2. For PBRA conversions with a proposed change in ownership entity or a material  
12 proposed change in ownership of the existing ownership entity, the new Project Owner  
13 must submit evidence that all new principals have a Previous Participation Certification  
14 in the Active Partners Performance System (APPS) (formerly referred to as Form HUD-  
15 2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.
- 16 3. For all conversions with a proposed change in management agent the new agent must  
17 provide evidence of successful experience managing and operating HUD or other  
18 multifamily housing properties.
- 19 4. For all conversions in which Work is proposed, the Project Owner must submit the  
20 identity of the general contractor or construction manager or a statement that the Project  
21 Owner will be managing construction directly, together with evidence of the general  
22 contractor’s, construction manager’s or Project Owner’s recent and successful experience  
23 with similar rehabilitation or construction projects.
- 24

25 **M. Operating Pro Forma.** This paragraph only applies to projects taking out new financing  
26 simultaneous with the Conversion. The Operating Pro-Forma must:

- 27 1. **For all FHA transactions or Conversions using equity sources of financing:**  
28 a. Provide a copy of the Operating Pro Forma that was submitted with the FHA  
29 Application for Firm Commitment or submitted to the lender, equity provider  
30 (including LIHTC, historic tax credit or Opportunity Zone equity providers), LIHTC  
31 allocating agency or comparable funding source.
- 32 2. **For all other Conversions with new financing:**  
33 a. Provide a 20-year Operating Pro Forma in an owner-provided template,  
34 b. Include columns capturing the average amount for the past three years for all line  
35 items listed in the Pro Forma. Provide explanations and/or supporting documentation  
36 for any major deviations of the historical average from the year 1 data entered on the  
37 Pro Forma.  
38 c. Ensure the Pro Forma complies with at least the following feasibility benchmarks  
39 unless otherwise approved by HUD:

40 **Revenue:**

- i. Rents shall not exceed the amounts permitted under program rules;
- ii. All other sources of income must not exceed the average for the last three years (do not include interest income on the replacement reserve account);
- iii. Vacancy loss shall be no less than the greater of the average over the past three years or 3 percent;
- iv. Allowance for bad debt should be not less than the greater of the average over the past three years or 2 percent;

**Expenses:**

- i. All other operating expenses shall be no less than 85 percent of the average for the last three years;
- ii. The ADRR should be equal to that amount which, if deposited annually, will be sufficient to fund all capital needs, as identified in the CNA, arising during the first 20 years and otherwise not addressed upfront in either the rehabilitation or an initial deposit to the replacement reserve account. The PHA should use reasonable estimates for inflation but in doing so the rate for escalating the increase in repair costs should not exceed the rate of interest on reserve deposits by more than 1%. HUD may consider alternative arrangements with respect to the Initial Deposit to the Replacement Reserve (IDRR) if risks to the Covered Project can be adequately mitigated. The ADRR must be sufficient to maintain a minimum balance at the end of each year during the initial 20-year HAP Contract term in accordance with the HUD MAP Guide Appendix 5g, Section VII.C.3D, Minimum Balances; and
- iii. For non-leveraged transactions, the stabilized cash flow should not be less than \$12 per unit monthly. For leveraged transactions, the debt-coverage ratio should not be less than 1.11 over a ten-year period using 2% growth in revenue and 3% growth in expenses.

**N. Supportive Services and Design.** Applicants must describe how the proposed supportive services meet the identified needs of the anticipated residents, both initially and as they age, and how the identified supportive services will be provided on a consistent, long-term basis to support residents. The conversion plan also must discuss how current property design features and/or modifications planned in conjunction with the conversion provide a physical living environment suitable for meeting the needs of elderly residents and facilitating prolonged independent living. Relevant building design features may include, but are not limited to, those focused on fall prevention and visitability, universal design, and electronic communication mechanisms.

**O. Market Study.** A market study or net demand analysis may be required if the project is currently experiencing a high vacancy rate or if the Project Owner is requesting a

1 reconfiguration of units. The Project Owner should consult with the Transaction Manager to  
2 determine if a market study is necessary before procuring one.

3  
4 **P. Certification of Compliance with Site and Neighborhood Standards.** The Project Owner  
5 (for PBRA) or the PHA (for PBV) shall evaluate and include a certification that the site  
6 complies with applicable Site and Neighborhood Standards (see Section 4.4.O.).

7  
8 **Q. Affirmative Fair Housing Marketing Plan.** For PBRA conversions, evidence that a  
9 completed AFHMP (Form HUD-935.2A) has been submitted for approval to the local  
10 Multifamily Regional Center. Typically, the management agent or the entity responsible for  
11 marketing (if different) is responsible for completing and submitting the AFHMP. If a Project  
12 Owner plans to adopt any local or residency preferences, the Project Owner must submit its  
13 Tenant Selection Plan along with the AFHMP (see HUD Handbook 4350.3, page 4-4) for  
14 review. The AFHMP may not conflict with any special condition arising from the RAD  
15 conversion or provision in a remedial order or agreement. Each Covered Project must have a  
16 HUD-approved AFHMP prior to closing.

17  
18 The purpose of affirmative marketing is to ensure that individuals of similar income levels in  
19 the same housing market area have a like range of housing choices available to them  
20 regardless of their race, color, national origin, religion, sex, disability, or familial status.