

## 7.2 VOUCHER ISSUANCE

24 CFR 982.302

Vouchers will be issued to eligible applicants following the mandatory briefing.

HANO will determine whether it has sufficient funding in accordance with the policies outlined in this Administrative Plan and under HUD regulation. If HANO determines that there is insufficient funding after a voucher has been issued, HANO may rescind the voucher and place the affected family back on the waiting list.

## 7.3 VOUCHER TERM, EXTENSIONS AND SUSPENSIONS

24 CFR 982.303

### 7.3.1 Voucher Term

The initial voucher term will be 120 calendar days. HANO will send a 30-day notice prior to voucher expiration informing the family that the voucher will expire in 30 days. The notice will indicate that an additional 60-day extension for a total of 180 days may be granted due to extenuating circumstances on at HANO's approval. Extensions beyond 180 days may be granted if extenuating circumstances are present.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless HANO grants an extension.

### 7.3.2 Extensions of Voucher Term

24 CFR 982.303(b)

HANO may approve additional search time, if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose requested.

Any request for an additional extension must include the reason(s) an additional extension is necessary and completed housing search log.

All requests for extensions to the voucher term must be made in writing and submitted to HANO prior to the expiration date of the voucher (or extended term of the voucher).

HANO will decide whether to approve or deny an extension request a within timely basis. The family will be notified in writing of HANO's decision to approve or deny an extension [24 CFR 982.554(c)(4)].

HANO may approve additional extensions only in the following circumstances:

- It is necessary as a reasonable accommodation for a person with disabilities.
- It is necessary due to reasons beyond the family's control, as determined by HANO. Following is a list of extenuating circumstances that HANO may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:
  - Serious illness or death in the family
  - Other family emergency including domestic violence or family crisis
  - Obstacles due to employment
  - Whether the family has already submitted requests for tenancy approval that were not approved by HANO
  - Whether family size or other special requirements make finding a unit difficult

### 7.3.3 Suspensions of Voucher Term

24 CFR 982.303(c)

When a Request for Tenancy Approval and proposed lease is received by HANO, the term of the voucher will be suspended while HANO processes the request.

### 7.3.4 Expiration of Voucher Term

HCVP GB p. 8-13

At the expiration of the 120-day voucher term or the 180-day approved extension term, if a family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RFTA), HANO will require the family to reapply for assistance if or when waiting list is open. If an RFTA that was submitted prior to the expiration date of the voucher, is disapproved by HANO, is reissued with any remaining search time, and the family fails to submit the new RFTA prior to the new expiration date, the family will be required to reapply for assistance. If the family submits a RFTA on the expiration date and the RFTA is subsequently disapproved by HANO, there will be no remaining search time, the voucher will have expired, and the family will be required to reapply for assistance. Within 10 business days after the expiration of the voucher term or any extension, HANO will provide a notify notice to the family in writing 30 days prior ~~that~~ the voucher term expiration has expired. The family will have an opportunity to request an informal hearing within these 30 days in accordance with hearing procedures found in Chapter 18 of this policy. In the event the voucher was issued to a participating family to move from a unit that was receiving HCV assistance at the time of the voucher issuance and the family has vacated the unit, the family ~~has also~~ the right to request an informal hearing due to the termination of their participation in the HCV Program. If the family fails to request an informal hearing or the termination of assistance is upheld, the family must reapply in order to be placed on the waiting list.

## CHAPTER 18: INFORMAL REVIEWS AND HEARINGS

### 18.1 DECISIONS SUBJECT TO INFORMAL REVIEW

24 CFR 982.554(a), 24 CFR 982.552(a)(2), 24 CFR 982.554(c):

HANO will give an applicant the opportunity for an informal review of a decision denying assistance. Denial of assistance may include any or all of the following:

- Denying listing on HANO waiting list;
- Refusing to enter into a HAP contract or approve a lease;
- Refusing to process or provide assistance under portability procedures;
- A determination not to approve an extension or suspension of a voucher term;
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence, sexual assault or stalking; or
- Denial of a reasonable accommodation.

Informal reviews are *not* required for the following reasons:

- Discretionary administrative determinations by HANO;
- General policy issues or class grievances;
- A determination of the family unit size in accordance with HANO subsidy standards;
- ~~A determination not to approve an extension or suspension of a voucher term;~~
- A HANO determination not to grant approval of the tenancy;
- A HANO determination that the unit is not in compliance with the HQS; or
- A HANO determination that the unit is not in accordance with the HQS due to family size or composition.

### 18.2 NOTICE TO THE APPLICANT

24 CFR 982.554(a)

HANO staff will send the applicant a 30-day notice of proposed termination by first class mail. HANO will also provide secondary notice by email or phone when available. The notice will contain a brief statement with the reason for the proposed termination. The notice will also explain the applicant's right to request an informal review prior to the termination, if the family disagrees with the basis for termination.

~~HANO will give an applicant prompt notice of a decision denying assistance and will describe how to request an informal review.~~

#### 18.2.1 Scheduling an Informal Review

The applicant has 30 calendar days from the date of the notice to respond in writing with additional information to be reviewed or to request a hearing. Legal counsel is allowed at the review and can be utilized to submit a response in writing. Reviews can be held online. If the participant responds with additional information without requesting a review, HCV staff will treat this written correspondence as either a request for review or as information to automatically

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~~rescind the proposed denial of assistance or termination of voucher.~~

~~A request for an informal review must be made in writing and delivered to HANO either in person or by first-class mail, by the close of the business day, no later than 10 business days from the date of HANO's denial of assistance.~~

HANO will schedule the review within ~~30~~14 days from the date of the request and send the family written notice of the date and time. HANO and/or the participant may request an extension.

### **18.3 INFORMAL REVIEW PROCEDURES**

24 CFR 982.554(b)

In accordance with HANO procedures, the informal review will be conducted by a Hearing ~~Officer-Panel who is consisting of 3 individuals-a person~~ other than the one who made or approved the decision under review, or a subordinate of this person. The hearing panel shall include a representative from HANO's Legal/Procurement Department, a representative from HANO's HCV Department, and a tenant advocate representative who will sign an agreement to maintain tenant confidentiality.

Upon receipt of the written request for a review, the complainant will be notified, in writing, of the date, time and location of the review.

#### **18.4 INFORMAL REVIEW DECISION**

24 CFR 982.554(e)(6)

HANO will promptly notify the applicant of the final decision, including a statement explaining the reason(s) for the decision.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

#### **18.5 INFORMAL HEARINGS FOR PARTICIPANTS**

24 CFR 982.555, Pub. L. 109-162

HANO offers an informal hearing for certain HANO determinations relating to the individual circumstances of a participant family.

- A "participant" is defined as a family that has been admitted to HANO's HCV program and is currently assisted in the program.

The purpose of the informal hearing is to consider whether HANO's decisions related to the family's circumstances are in accordance with applicable requirements. For terminations, HANO will have the burden of proof to provide evidence to support the intended action. For tenant initiated hearings, the tenant will have the burden of proof to provide evidence to support their disputed actions.

HANO will not terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease;
- Terminating housing assistance payments under an outstanding HAP contract; or
- Refusing to process or provide assistance under portability procedures.

Circumstances for which HANO will give a family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the HANO utility allowance schedule;
- A determination of the family unit size under HANO's subsidy standards;

- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under HANO's subsidy standards, or HANO determination to deny the family's request for exception from the standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HANO policy and HUD rules;
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account;
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, sexual assault, or stalking; or
- Denial of a reasonable accommodation request;
- Determination of a change to or discontinuation of a reasonable accommodation.

HANO will not grant an informal hearing for the following:

- Discretionary administrative determinations by HANO;
- General policy issues or class grievances;
- Establishment of the HANO schedule of utility allowances for families in the program;
- A HANO determination not to approve an extension or suspension of a Voucher term;
- A HANO determination not to approve a unit or tenancy;
- A HANO determination that a unit selected by the applicant is not in compliance with the HQS;
- A HANO determination that the unit is not in accordance with HQS because of family size or composition;
- A determination by HANO to exercise or not to exercise any right or remedy against an owner under a HAP contract; or
- Restrictions on assistance for non-citizens. Provisions for the denial of assistance on the basis of ineligible immigration status are contained at 24 CFR Part 5, subpart E.

## 18.6 INFORMAL HEARING ~~PANEL OFFICER~~

24 CFR 982.555(e)(4)

Informal hearings will be conducted by a three person or people panel approved by HANO, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision. The hearing panel shall include a representative from HANO's Legal Department, a representative from HANO's HCV Department, and a tenant advocate representative who will sign an agreement to maintain tenant confidentiality.

## 18.7 INFORMAL HEARING PROCEDURES

### 18.7.1 Notice to the Family

24 CFR 982.555(c)

In cases where HANO makes a decision for which informal hearings are offered, a notice will be sent to the family and copied to the owner, and will include, but not be limited to, the following:

- HANO's proposed action or decision;
- A brief statement of the reasons for the decision;
- The date the proposed action will take place;
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision;
- A deadline for the family to request the informal hearing; and
- To whom the hearing request should be addressed.

#### **18.7.2 Scheduling an Informal Hearing**

24 CFR 982.555(d)

A participant must submit a written request for an informal hearing to HANO within ~~10-30~~ business days from the ~~date of HANO's letter of determination, notice of proposed termination of assistance or proposed termination of the voucher.~~

Upon receipt of the written request for a hearing, HANO will promptly notify the complainant of the hearing date. The informal hearing will be held before a Hearing ~~Panel~~ within 14 days of the request unless an extension is requested ~~Officer~~. A copy of the procedures governing the hearing will be included with the written notification.

If the participant does not request a hearing in accordance with HANO's procedures, HANO's determination will become final.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, HANO may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact HANO. HANO will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

#### **18.7.3 Attendance at the Informal Hearing**

Hearings may be attended by a Hearing Officer and the following applicable people:

- A HANO representative(s) and any witnesses for HANO;
- The participant and any witnesses for the participant;
- The participant's counsel or other representative; and
- Any other person approved by HANO as a reasonable accommodation for a disability.

#### **18.7.4 Hearing Officer's Decision**

The hearing report will include a statement of whether HANO's decision is upheld or overturned. If it is overturned, the hearing ~~officer-panel~~ will instruct HANO to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance or a voucher, the hearing ~~officer-panel~~ will instruct HANO to restore the

participant's program status if HANO's decision is overturned.

#### **18.7.5 Reconvening of a Hearing**

The Hearing ~~Officer~~Panel may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the Hearing ~~Officer~~Panel, the action of HANO will take effect and another hearing will not be granted.

#### **18.7.6 Notice of Final Decision**

24 CFR 982.555(f)

HANO will promptly mail a "Notice of Final Decision" including the Hearing Officer's report, to the participant and their representative. This Notice will be sent by first-class mail. The participant will be mailed the original "Notice of Final Decision." A copy of the "Notice of Final Decision" will be maintained in HANO's file.

#### **18.7.7 Appeal of Final Decision**

An additional appeal of the Notice of Final Decision may be granted on a case-by-case basis. This appeal will be a review of evidence presented in previous proceedings and will be completed by the Executive Director. No new arguments will be allowed, only a review of the record. The Executive Director through the HCV Department will send a notice of whether the decision of the Hearing Panel would be upheld or overturned.

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### **18.8 HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS**

24 CFR 5.514

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family will not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family will not be terminated or denied while a HANO hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or HANO informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **18.8.1 Notice of Denial or Termination of Assistance for Non-Citizens**

24 CFR 5.514(d)

The notice of denial or termination of assistance for non-citizens will inform the family of the following:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;
- The family may be eligible for proration of assistance;
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families;
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal; and
- That the family has a right to request an informal hearing with HANO either upon completion of the USCIS appeal or in lieu of the USCIS appeal.

### **18.8.2 USCIS Appeal Process**

24 CFR 5.514(e)

When HANO receives notification that the USCIS secondary verification failed to confirm eligible immigration status, HANO will notify the family of the results of the USCIS verification. The family will have 30 calendar days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide HANO with a copy of the written request for appeal and the proof of mailing.

HANO will promptly notify the family of the results of the USCIS secondary verification.

### **18.8.3 Informal Hearing Procedures for Applicants - Citizenship**

24 CFR 5.514(f)

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that HANO provide a hearing. The request for a hearing must be made either within 30 calendar days of receipt of HANO's notice of denial, or within 30 calendar days of receipt of the USCIS appeal decision.

### **18.8.4 Evidence**

The family will be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

### **18.8.5 Hearing Decision**

HANO will promptly provide the family with a written final decision, which will state the basis for the final decision. The written decision will be sent to all parties via first class mail and/or email within ten (10) business days of the hearing. If the Hearing Panel finds that the HCV department should proceed with the termination, a "notice of termination" will be sent to the Family by first class mail. If the Hearing Panel decides that termination is not warranted, the HCV Department will be directed to rescind the proposed termination.

### **18.8.6 Informal Hearing Procedures for Residents - Citizenship**

24 CFR 5.514(f)

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that HANO provide a hearing. The request for a hearing must be made either within 30 calendar days of receipt of the HANO notice of termination, or within 30 calendar days of receipt of the USCIS appeal decision.

### **18.8.7 Retention of Documents**

24 CFR 5.514(h)

HANO will retain for a minimum of 5 years documents that may have been submitted to HANO by the family, or provided to HANO as part of the USCIS appeal or the HANO informal hearing process:

- The application for assistance;
- The form completed by the family for income recertification;
- Photocopies of any original documents, including original USCIS documents;
- The signed verification consent form;
- The USCIS verification results;
- The request for a USCIS appeal;

violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.

- (3) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (4) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Based off of this documentation, HANO will propose termination of the perpetrator and ensure that the victim is aware prior to the proposed termination letter being mailed to the perpetrator. The proposed termination will be based off of the violation of the family obligations, specifically 24 CFR 982.551(l), Crime by a household member.

If the perpetrator requests an informal hearing, it must be scheduled expeditiously and the perpetrator must be provided an opportunity to review the documentation related to the hearing, except that the HANO must remove or otherwise withhold any information that may place the victim at risk of further violence. Such information would include a temporary address of the victim. HANO may consult with a local domestic violence expert who is not involved with the case and may request that this expert join the panel. A written hearing decision must be provided to both the perpetrator and the victim. If the perpetrator is terminated and the victim wishes to move, HANO must allow the participant to move with continued tenant-based assistance.

### 19.9 TERMINATION NOTICE

If a family’s assistance is to be terminated, whether voluntarily or involuntarily, HANO will give the family and the owner 30 days written notice of the proposed termination that specifies:

- The reasons for which assistance ~~has been~~ is being terminated;
- The effective date of the termination. This will generally be at least 30 calendars days following the date of the termination notice; however, exceptions may be made when HUD rules, HANO policies, or other circumstances surrounding the termination require; and,
- The family’s right to an informal hearing.
- The family’s right to request an appeal of the decision to the Executive Director of HANO. For more on the appeal process, please review Chapter 18 of this document.

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If a criminal record is the basis of the termination, a copy of the record will accompany the notice to the head of household. A copy of the criminal record also must be provided to the subject of the record.

If immigration status is the basis of a family’s termination, the termination notice will include additional information, as outlined in Chapter 18: Informal Reviews and Hearings.

When termination is initiated by HANO, the notice to terminate will be sent to the family and the owner. However, if a family vacates the unit without informing HANO, advance notice will not be given. In these cases, the notice to terminate will be sent at the time HANO learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing. HANO will then send a confirmation notice to the family and the owner no later than the termination effective date (as requested by the family).

### 19.10 HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

## CHAPTER 23: PBV UNDER THE RAD PROGRAM

### 23.1 OVERVIEW

This chapter describes HUD regulations and HANO policies related to the PBV program under the Rental Assistance Demonstration (RAD) program. RAD was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

A RAD/Section 18 blend is a public housing conversion that combines RAD and Section 18 activities and that includes both converting public housing assistance to RAD PBV and converting tenant protection voucher (TPV) assistance to PBV in the same project. All assistance converting under a RAD/Section 18 blend is placed under a single RAD HAP contract upon conversion, is subject to a single RAD Use Agreement, and is governed by the terms of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C).

This chapter will focus on public housing conversions to the PBV program under RAD as well as RAD/Section 18 blends. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program. The standard PBV program is discussed in Chapter 22 of this plan.

### 23.2 APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. Additionally, the RAD Statute imposes certain unique requirements and authorizes HUD to establish requirements for converted assistance under the Demonstration. Conversions of public housing properties through RAD, including conversions through a RAD/Section 18 Blend, will be subject to the requirements in Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C), and as reflected in the RAD PBV HAP Contract.

Non-RAD PBV units in a project are also subject to the requirements of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C) in the following circumstances:

- Any legacy non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C) and in this policy. Legacy non-RAD PBV units are defined as PBV assistance in a project that prior to December 31, 2024, replaced public housing at the time of conversion and that are subject to a non-RAD PBV HAP contract.

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- When a PHA undertakes a RAD/Section 18 blend, all units are placed under a single RAD HAP contract upon conversion and are governed by the terms of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C).

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Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

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RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the "RAD Statute."

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Requirements specific to the RAD program may be found in the following:

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- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. For all conversion types, HUD reserves the right, in its sole discretion and upon request from the applicant, to apply provisions from previous versions of this notice to program participants that are near conversion.

- Notice PIH 2025-03 (Supplemental Notice 4C) amended Notice PIH 2019-23 (as amended by Notice 2023-19) and was effective January 16, 2025.

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- Notice PIH 2023-19 (Supplemental Notice 4B) amended Notice PIH 2019-23 and Notice PIH 2021-07 and was effective July 27, 2023.

- Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.

- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.

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- Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.

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- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.

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- Notice PIH 2012-32, REV-2 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.

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- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.

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- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (2/22)

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- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)

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- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.

- This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.

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- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.

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- This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.

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- [RAD FAQs \(http://www.radresource.net/search.cfm\)](http://www.radresource.net/search.cfm)

**NOTE: The policies in this chapter follow Notice PIH 2019-23 (REV-4) as amended by RAD Supplemental Notice 4B and 4C.**

the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

### **23.3 TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE**

[24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the HANO policies related to tenant-based assistance also apply to RAD PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HANO policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

### **23.4 RELOCATION REQUIREMENTS**

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016, or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any legacy non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While HANO is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.
- In addition, HANOs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

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- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If HANO's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. HANOs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
  - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
  - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
  - Income limit eligibility requirements associated with the LIHTC program or another program; and
  - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a HANO or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, HANO must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, HANO may not terminate a resident's lease if HANO fails to obtain the resident's consent and the resident seeks to exercise the right to return.
- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, HANO may treat multiple converted developments on the same site as one for purposes of right to return. Should HANO seek to have the resident exercise the right to return at a future phase, HANO must secure the resident's consent in writing.
- Alternative housing options may involve a variety of housing options, including but not limited to:
  - Transfers to public housing
  - Admission to other affordable housing properties subject to the applicable program rules
  - Housing choice voucher (HCV) assistance
  - Homeownership programs subject to the applicable program rules
  - Other options identified by HANO

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**23.5 EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; NOTICE PIH 2016-17]**  
RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. HANO must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the RAD Fair Housing, Civil Rights, and Relocation Notice [Notice PIH 2016-17] for more information.

### 23.6 RAD PBV PROJECT SELECTION

Unlike in the standard PBV program where HANO typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

#### 23.6.1 OWNERSHIP AND CONTROL [Notice PIH 2019-23]

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., HANO cannot execute a contract with itself). To avoid this situation, HANO may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of HANO (including to a "single-purpose entity" that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) HANO can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the HANO (as the contract administrator) and HANO's related entity (as the owner for HAP contract purposes). Note that in the second scenario, both HANO and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].
- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the HANO or a nonprofit entity preserves an interest in the profit. The requirement for a public or nonprofit entity, or preservation of an interest by a HANO or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.
- Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.
- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the HANO preserves its interest in the property. Preservation of HANO interest in the property includes but is not limited to the following:
  - The HANO, or an affiliate under its sole control, is the general partner or managing member;
  - The HANO retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;

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- o The HANO retains control over leasing the property and determining program eligibility;
- o The HANO enters into a control agreement by which the HANO retains consent rights over certain acts of the project owner and retains certain rights over the project;
- o Other means that HUD finds acceptable

**23.6.2 HANO-OWNED UNITS [24 CFR 983.57, FR Notice 1/18/17, and Notice PIH 2017-21]**

If the project is HANO-owned, rent-setting (including redetermination of rent and determination of rent reasonableness) and inspection functions described in 24 CFR 983.57 must be conducted by an independent entity approved by HUD.

The definition of ownership or control provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a HANO retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of PHA-owned under 24 CFR 982.4 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of ownership or control but may not be considered PHA-owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government in HANO's jurisdiction or another HUD-approved public or private independent entity.

HANO may compensate the independent entity from its ongoing administrative fee income (including amounts credited to the administrative fee reserve). HANO may not use other program receipts to compensate the independent entity for its services. HANO and the independent entity may not charge the family any fee for the services provided by the independent entity.

**23.6.3 SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]**

For projects governed by Notice PIH 2019-23, REV-4, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing.
- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the HANO may:

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o Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific HANO closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or

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o Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

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• In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

• In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

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• In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

#### 23.6.4 PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH 2025-03, Supplemental Notice 4C]

RAD PBV units in covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program (program cap), which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program with the ability to project-base an additional 10 percent of units that meet certain requirements. The number of PBV units excluded from the PHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a covered project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a PHA. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

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#### Cap on the Number of PBV Units in Each Project [Notice PIH 2025-03, Supplemental Notice 4C]

There is no cap on the number of units that may receive RAD PBV assistance in each project. Under 24 CFR 983.54(c)(3), units excluded under 24 CFR 983.59 that were previously subject to federally required rent restrictions or received one of the listed forms of HUD assistance do not count toward the project cap. For any RAD PBV and legacy Non-RAD PBV units in projects not already excluded under 24 CFR 983.59, including transfers of assistance to a new location, HUD waived section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR 983.54. Accordingly, units under a RAD PBV HAP contract may not be "excepted" for a specified purpose.

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**23.6.5 SITE SELECTION STANDARDS [Notice PIH 2019-23; Notice PIH 2016-17]**

Site selection requirements set forth in 24 CFR 983.55 apply to RAD PBV, with the exception of the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites. To facilitate the uniform treatment of residents and units, any legacy non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

**23.6.6 ENVIRONMENTAL REVIEW [Notice PIH 2019-23; Environmental Review Requirements for RAD Conversions, March 2019]**

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

**23.7 DWELLING UNITS**

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for NSPIRE inspections.

**23.7.1 HOUSING QUALITY STANDARDS [24 CFR 983.101 and 24 CFR 5.703]**

Housing quality standards for the tenant-based program generally apply to the PBV program.

**Lead-based Paint [24 CFR 983.101(c); Notice PIH 2019-23]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

**23.7.2. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [Notice PIH 2016-17]**

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

**23.7.3 INSPECTING UNITS [24 CFR 983.103]**

**Initial Inspection [RAD Quick Reference Guide, Notice PIH 2019-23, and Notice PIH 2023-19]**

Under standard PBV regulations at 24 CFR 983.103(c), the PHA must inspect and determine that all of the proposed PBV units fully comply with housing quality standards before entering the HAP contract, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions (NLT option), or if the unit passed an alternative inspection, or both. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet housing quality standards by the date indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units to

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be added to the HAP contract instead of conducting an initial inspection. During the period of the work, housing quality standards requirements apply. The PHA must enforce the project owner's obligations and conduct inspections when needed, (for example in response to tenant complaints or other information coming to its attention), and the owner must correct any deficiencies in accordance with NSPIRE requirements (i.e., no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA-approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

**Turnover Inspections [24 CFR 983.103(d), FR Notice 1/18/17, and Notice PIH 2017-20]**

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

**Periodic Inspections [24 CFR 983.103(e); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, HANO must inspect a random sample consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with housing quality standards. Turnover inspections are not counted toward meeting this inspection requirement.

HANO will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with applicable housing quality standards.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

**Alternative Inspections [24 CFR 983.103(i); Notice PIH 2016-05]**

In the case of a PBV project financed under a federal, state, or local housing program that is subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

**Interim Inspections [24 CFR 983.103(f)]**

If a participant or government official notifies HANO of a potential deficiency, the following applies:

- If the reported deficiency is life-threatening, HANO must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.
- If the reported deficiency is non-life-threatening, HANO must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from HANO or within any HANO approved extension.

During an interim inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the periodic inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HANO may elect to conduct a full inspection.

**Follow Up Inspections [24 CFR 983.103(f)(2)]**

HANO must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected a housing quality standards violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of housing quality standards.

**Supervisory Quality Control Inspections [24 CFR 983.103(f)(3)]**

In conducting PHA supervisory quality control inspections, HANO should include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-Owned Units [24 CFR 983.103(g); Notice PIH 2017-21]**

In the case of PHA-owned units, all required inspections must be performed by an independent entity designated by the HANO and approved by HUD. The independent entity must furnish a copy of each inspection report to HANO.

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HANO must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

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**23.8 HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT***[RAD PBV QUICK REFERENCE GUIDE 6/20]*

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Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Except for transfers of assistance, the RAD PBV HAP contract takes effect before any work begins. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

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**23.8.1 HAP CONTRACT REQUIREMENTS**

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**Contract Information** *[RAD PBV Quick Reference Guide 6/20; Notice PIH 2019-23]*

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The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract.

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The distinction between "existing housing" and "rehabilitated and newly constructed housing" is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

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**Execution and Effective date of the HAP Contract** *[RADblast 7/11/16]*

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RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

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**Term of HAP Contract** *[Notice PIH 2019-23]*

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The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer and further subject to the availability of appropriations for each year of each renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

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After the expiration of a 20-year initial term of the HAP contract, the HAP contract must be renewed on a form approved by HUD, which must include language that requires rents to be re-determined in accordance with 24 CFR 983.301 and 983.302. If the RAD PBV HAP contract was renewed or extended prior to the 20th year after conversion, then starting with the 20th year after execution of the original RAD PBV HAP contract, contract rents shall be re-determined in accordance with 24 CFR 983.302 or successor regulation *[Notice PIH 2025-03]*.

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**Agreement to Enter into a HAP (AHAP) Contract** *[Notice PIH 2019-23]*

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For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

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**Mandatory Contract Renewal** *[Notice PIH 2019-23]*

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By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to HANO and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and

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the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract, will not apply.

▲ In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

**23.8.2 Remedies for Housing Quality Standards Deficiencies [24 CFR 983.208]**  
**The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.**

**Enforcement of Housing Quality Standards [24 CFR 983.208(b)]**  
The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with housing quality standards. If the owner fails to maintain the dwelling unit in accordance with housing quality standards, the PHA must take enforcement action. The unit is in noncompliance with housing quality standards if:

- The PHA or other inspector authorized by the state or local government determines the unit has housing quality standards deficiencies based upon an inspection;
- The agency or inspector notifies the owner in writing of the unit housing quality standards deficiencies; and
- The deficiencies are not remedied within the following timeframes:
  - For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification;
  - For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable PHA-approved extension).

In the case of an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, HANO may terminate assistance to a family because of a housing quality standards breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

HANO will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

▲ In the case of a housing quality standards deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, HANO may permit the owner to undertake substantial improvement in accordance with 24 CFR 983.212. However, so long as the contract unit with deficiencies is occupied, HANO must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

▲ In the case of a project that is undergoing development activity after HAP contract execution, the remedies of 24 CFR 983.208(d) do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

**Family Obligation [24 CFR 983.208(c)]**  
The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and

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- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

If the PHA has waived the owner's responsibility to remedy the violation, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 24 CFR 982.552.

**PHA Remedies [24 CFR 983.208(d)]**

The remedies listed below apply when housing quality standards deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection.

- The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies housing quality standards failures, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.
- HANO will not withhold assistance payments upon notification to the owner of the deficiencies.
- When life-threatening conditions are identified, HANO will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the HANO's notice.
- When failures that are not life-threatening are identified, HANO will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.
- If the owner is responsible for correcting the deficiency, the notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated.
- If the family is responsible for correcting the deficiency, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

**HAP Withholding [24 CFR 983.208(d)(1)]**

HANO may withhold assistance payments for units that have housing quality standards deficiencies that have remained for 60 days or more. In this case, if the unit is brought into compliance during the applicable cure period, the PHA resumes assistance payments and provide assistance payments to cover the time period for which the payments were withheld.

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**HAP Abatement [24 CFR 983.208(d)(2)]**

The PHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. In this case, HANO must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days (or a reasonable longer period established by the PHA), the PHA will either terminate the HAP contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with housing quality standards will have to move if the family wishes to receive continued assistance.

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The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

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HANO will make all HAP abatements effective the first of the month following the expiration of the PHA-specified correction period (including any extension) and will abate payments only for those contract units that do not meet housing quality standards. Abated units will be inspect within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection. During any abatement period, the family continues to be responsible for its share of the rent.

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**Failure to Make Repairs**

If an owner fails to make required repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety. The PHA must issue the family whose unit will be removed or all families residing in contract units, if the PHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain. The PHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated due to a failure to correct housing quality standards deficiencies at least 90 days or a longer period as the PHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

HANO will issue a family whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days. No briefing is required for these families.

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In order to receive tenant-based assistance under the HCV program, the family must submit a Request for Tenancy Approval and proposed lease within the 120-day period, unless HANO grants an extension. HANO will follow the policies set forth in Chapter 7 on voucher extension and expiration.

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**Offer of Public Housing [24 CFR 983.208(d)(6)(ii)]**

If the family is unable to lease a new unit within the term of the voucher, and the PHA owns or operates public housing, HANO shall offer, and, if accepted, provide the family a selection preference for an appropriate-sized public housing unit that first becomes available for occupancy after the time period expires.

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HANO does operate a public housing program and will provide a preference for PBV families whose units is being removed from the HAP contract or whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame, and who were unable to lease a new unit within the term of the voucher.

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Thirty days prior to the expiration date of the voucher, the HANO will provide written notice to the family stating that HANO does provide such a preference and providing an estimation of availability for the appropriately sized public housing unit.

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**Relocation Assistance [24 CFR 983.208(d)(6)(iii)]**

PHAs may assist families relocating due to the HAP contract being terminated as a result of the owner failing to make required repairs within the required time frame in finding a new unit, including using up to two months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the PHA based on their locality.

▲ If the PHA uses withheld and abated payments to assist with relocation costs, the PHA must provide security deposit assistance to the family as necessary. The PHA must assist families with disabilities with locating available accessible units in accordance with 24 CFR 8.28(a)(3). If the family receives security deposit assistance from the PHA for the new unit, the PHA may require the family to remit the security deposit returned by the owner of the new unit at such time that the lease is terminated, up to the amount of security deposit provided by the PHA for that unit.

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**23.8.3 AMENDMENTS TO THE HAP CONTRACT**

**Floating Units [Notice PIH 2019-23]**

Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

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If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

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HANO will float assistance among unoccupied units within the project. Tracking of the number and type of units at the property, as well as identification of comparable units when assistance is floated, will be maintained by each property.

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**Reduction in HAP Contract Units [Notice PIH 2019-23]**

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

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▲ The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

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▲ If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

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**23.8.4 HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 983.207(b)(2) and (g), and 24 CFR 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

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▲ The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

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**23.8.5 OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

When the owner executes the HAP contract, they certify that at such execution and at all times during the term of the HAP contract:

- The owner is maintaining the premises and contract units in accordance with housing quality standards;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;

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- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA or selected from the owner-maintained waiting list, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner’s knowledge, the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family’s only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit (unless needed as a reasonable accommodation);
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (this does not apply to the family’s membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

**23.9 SELECTION OF PBV PROGRAM PARTICIPANTS**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the RAD PBV program.

**23.9.1. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2019-23]**

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households 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. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in legacy non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for legacy non-RAD PBV. Any legacy non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

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**23.9.2 ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program using information received and verified by the PHA within a period of 60 days before commencement of PBV assistance. For all families, the PHA must determine if the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

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HANO will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 4.

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**23.9.3 ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2019-23]**

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

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Applicants who will occupy units with PBV assistance must be selected from the waiting list for the PBV program. The PHA or owner (as applicable) may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

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The PHA must establish in the administrative plan the options it will use to structure the PBV waiting list. The PHA may:

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- Use a separate, central, waiting list comprised of more than one or all PBV projects;
- Use the same waiting list for both tenant-based and some or all PBV projects;
- Use a separate waiting list for PBV units in individual projects or buildings (or for sets of such units) (which may be used in combination with either of the above options and may be maintained by the owner); or
- Merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance. The PHA must specify the name of the PBV projects in its administrative plan.

HANO will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance.

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For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, HANO will consider transferring such household, consistent with program requirements for administration of waiting lists, to HANO's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

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

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HANO will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). The PHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and

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may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

HANO will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 23.10.4.

#### **23.9.4 SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

##### **Income Targeting [24 CFR 983.251(c)(9); Notice PIH 2019-23]**

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

##### **Units with Accessibility Features [24 CFR 983.251(c)(9)]**

Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features. The PHA must have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment.

##### **Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2019-23]**

The PHA may establish in its administrative plan any preferences for occupancy of particular units, including the name of the projects and the specific preferences that are to be used by projects. Criteria for occupancy of units (e.g., elderly families) may also be established, however, selection of families must be done through admission preference. The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

HANO will not offer any preferences for the RAD PBV program. However, HANO will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 23.10.4.

#### **23.9.5 OFFER OF PBV ASSISTANCE**

##### **Refusal of Offer [24 CFR 983.251(e)]**

If a family refuses the PHA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the PHA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by the PHA. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

- If a central PBV waiting list is used, the PHA's administrative plan must address the number of offers a family may reject without good cause before the family is removed from the PBV waiting list and whether the owner's rejection will impact the family's place on the PBV waiting list.
- If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.
- The PHA must define *good cause* in its administrative plan. The PHA's definition of *good cause* must include, at minimum, that:
  - The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
  - The unit has housing quality standards deficiencies;
  - The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and

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- o The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- o PHA Policy

The PHA will define *good cause* for rejection of a unit offer as any of the factors listed above.

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
  - o However, the PHA is not required to open a closed waiting list to place the family on that waiting list.
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

**Acceptance of Offer [24 CFR 983.252(a) and (b)]**

**Family Briefing**

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works, the responsibilities of the family and owner, and the family's right to move.

In addition to the oral briefing, the PHA must provide a briefing packet that contains the following information:

- How the PHA determines the total tenant payment for a family;
- The family obligations under the program;
- Information on federal, state, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;
- PHA subsidy standards, including when the PHA will consider granting exceptions to the standards, and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and
- The family's right to move.

The PHA and family must sign the statement of family responsibility.

**Persons with Disabilities**

The PHA must take appropriate steps to ensure effective communication, in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

**Persons with Limited English Proficiency [24 CFR 983.252(d)]**

The PHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964, HUD's implementing regulation at 24 CFR Part 1, Executive Order 13166 (see Chapter 2), and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority.

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**23.9.6 LEASING OF CONTRACT UNITS [24 CFR 983.252]**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)]. The owner must provide a copy of the rejection notice to the PHA. During the term of the HAP contract, the owner must lease contract units to eligible families that are selected from the waiting list for the PBV program. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

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**Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

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**Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify HANO of any vacancy or expected vacancy in a contract unit. After receiving such notice, HANO must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days. HANO and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

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**23.9.7 TENANT SCREENING [24 CFR 983.255]**

**PHA Option**

HANO is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

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HANO will not conduct screening to determine a PBV applicant family's suitability for tenancy for an owner; however, HANO will screen for suitability for HANO-managed units.

HANO must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HANO shall provide applicant families and owners a description of HANO's policies on providing information to owners.

The protections for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking in 24 CFR part 5, subpart L, apply to tenant screening. HANO shall not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(c)].

HANO will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover inspection or before. HANO can opt to provide any additional information to the owner, such as tenancy history, criminal history, etc.

**Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy

### 23.10 OCCUPANCY

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After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

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#### 23.10.1. LEASE [24 CFR 983.256]

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The tenant must have legal capacity to enter into a lease under state and local law. Legal capacity means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

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The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

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#### Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23; Notice PIH 2025-03, Supplemental Notice 4C]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner;
- The amount of any charges for food, furniture, or supportive services; and
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease. The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.
- The lease terms and provisions, including all addenda and referenced documents such as House Rules, must:
  - Be reasonable, use plain language, and must not contain provisions that conflict with resident rights described in Notice PIH 2025-03 or requirements of the PBV program.
  - Be available in multiple languages as needed and written in a manner accessible to people with disabilities.
  - For any residences that qualify as "target housing" under 42 U.S.C. 4851b, comply with the Lead Disclosure Rule, as codified in 24 CFR part 35, subpart A.

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The lease must not:

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- Require a new security deposit for residents in-place at the time of conversion,
- Prohibit residents' pets in-place at the time of conversion.
- Be onerous or difficult for residents to understand and should not impose overly restrictive rules about what residents may or may not do in their homes.

#### Tenancy Addendum [24 CFR 983.256(d)]

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The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

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**Initial Term and Lease Renewal [24 CFR 983.256(f); RAD PBV Quick Reference Guide 6/20]**

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

▲ The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

**Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

**Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2019-23]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose. The regulations at 24 CFR 5.858 through 5.861, on eviction for drug and alcohol abuse and 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

▲ Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner’s lease as well as the PHA’s administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
- If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 30 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

These provisions apply to legacy non-RAD PBV units located in the project as well.

**Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]**

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if

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the family is absent for longer than the maximum period permitted.

**Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2019-23; Notice PIH 2023-19; RAD Supplemental Notice 4B; RAD PBV Quick Reference Guide 6/20]**

**Pre-Conversion Residents**

The unit for a family with a TTP that equals or exceeds the gross rent (which is defined as the contract rent plus any utility allowance for the unit) must be placed on the PBV HAP contract and the family must be admitted to the PBV program. In this case, and until such time as the family's TTP falls below the gross rent, the family will pay the owner the alternate rent which is defined as the lesser of:

- The family's TTP minus the utility allowance (subject to any required phase-in); or
- The Zero HAP Rent Cap, which is the lower of:
  - 110 percent for the applicable FMR minus the utility allowance; or
  - In the event the units are subject to more restrictive rent setting requirement under the LIHTC or HOME programs (or other programs approved by HUD on a project-specific basis, the rent to owner set to comply with such requirements.

The family will continue to pay this amount until/if circumstances change, and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance in which case normal PBV rent requirements will apply to the family. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the NSPIRE standards, apply as long as the unit is under HAP contract or added back to the HAP Contract. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

After a family has paid the Zero HAP Rent Cap for a period of 180 days, the PHA must remove the unit from the HAP Contract and the family's participating in the PBV program ends. If the Covered Project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit back onto the HAP contract and admit an eligible family. If the Covered Project is partially assisted and the family subsequently leaves the property, the unit must be reinstated back onto the HAP contract unless the PHA previously substituted a different unit on the HAP contract in accordance with 24 CFR § 983.207 or, where "floating units" have been permitted.

Additionally, if the family continues to reside in the project after the family's unit was removed from the HAP contract, the family may request to return to the PBV program if the family's income subsequently decreases to the extent that the family's TTP is less than the Zero-HAP Rent Cap, and the family is otherwise eligible for PBV assistance. The PHA must, at the earliest opportunity, reinstate the family's unit back onto the HAP contract to provide rental assistance to the family. If the project was partially assisted and the PHA previously substituted a different unit on the HAP contract, the PHA must substitute the family's unit for a vacant unit on the HAP contract if there is a vacant unit at the time of the request, or by doing so as soon as a unit on the HAP contract becomes vacant if there are no vacant units on the HAP contract at the time of the family request.

**New Admission Families**

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new admission referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. This means a family's TTP may not equal or exceed the gross rent for the unit at admission. .

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. If the project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit after the family has vacated the property and admit an eligible family. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207 or where floating units have been permitted.

In circumstances where low RAD PBV rents may prohibit a significant number of otherwise eligible families on the waiting list from being admitted to the project because they do not require subsidy, and which could consequently

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create an undue concentration of poverty at the project compared to legacy non-RAD PBV projects, a PHA may request a waiver from HUD for the covered project in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days. The waiver will apply the alternative requirements applicable to the pre-conversion residents to new admission families.

HANO may request waivers from HUD to apply the alternative requirements applicable to pre-conversion residents to new admission families.

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

#### Security Deposits [24 CFR 983.259; RAD PBV Quick Reference Guide 6/20]

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. If a tenant residing in a converting project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

HANO will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

#### 23.10.2 PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2019-23 and Notice PIH 2025-03, Supplemental Notice 4C]

Current public housing FSS participants must be allowed to continue to participate in the PHA's FSS program for the duration of the grant's period of performance, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding opportunity (NOFO) to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program.

A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. No special provisions are required to continue serving FSS participants that live in public housing units converting to PBV through RAD.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement and any applicable 24 CFR part 200 requirements. If the PHA continues to run an FSS program that serves public housing and/or HCV (including PBV) participants, the PHA will continue to be eligible (subject to NOFO requirements) to apply for FSS funding.

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Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD and the PHAs or the new Project Owners may apply for their ROSS-SC grant to be renewed, subject to requirements of the ROSS-SC NOFO. In addition, projects where the project previously received a ROSS-SC grant prior to conversion but was ineligible to renew the grant after conversion are eligible to apply for a ROSS-SC grant, subject to requirements of the ROSS-SC NOFO.

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At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. To facilitate the uniform treatment of residents and units at a project previously served by a ROSS-SC grant, any legacy non-RAD PBV units in a project that replace former public housing at the time of conversion are also subject to the terms of this provision.

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### **23.10.3 RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2019-23]**

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

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### **23.10.4 MOVES**

#### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2019-23]**

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All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any legacy non-RAD PBV units located in the same project are also subject to these requirements. Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and within 60 days of the determination, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

HANOQ will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 60 days of the PHA's determination. HANOQ will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

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- PBV assistance in an appropriately sized unit in the same building or project
- PBV assistance an appropriately sized unit in in another project
- Tenant-based voucher assistance

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If no continued housing assistance is available, the PHA must remove the wrong-sized or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher.

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If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the PHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

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If the PHA offers the family another form of assistance that is not a tenant-based voucher, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

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- The PHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days); or
- The PHA has offered other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days).
- In either of the above situations, the family may request, and the PHA may grant, one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

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- The PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when the PHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days). No extensions may be granted in this case. The PHA may reinstate a unit removed unit to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

When HANO offers a family another form of assistance that is not a tenant-based voucher, the family will be given 90 days from the date of the offer to accept the offer and move out of the PBV unit. HANO will provide a 30-day notice prior to the expiration of this 90-day period notifying the family that they may request an informal hearing related to the proposed termination of assistance. If the family does not move out within this 90-day time frame, HANO will terminate the housing assistance payments at the expiration of this 90-day period.

Except in the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out, the PHA may make exceptions to this 90-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member, or to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing. The family must make such a request in writing prior to the end of the 90-day period. The PHA will only grant one extension, which will not exceed an additional 90 days.

**Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after one year of PBV assistance. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. The right to request a move with tenant-based assistance does not expire, and the family may request a move at any time after the one-year period has expired.

**Choice Mobility [Notice PIH 2019-23; PRRAC Choice Mobility Implementation Guidance, 8/20]**

**Family's Right to Choice Mobility**

Under RAD PBV, the choice mobility option provides families with the opportunity to move with continued assistance any time after 12 months of occupancy. All residents in converted properties should be aware of their housing mobility rights and of their options in a range of neighborhoods.

**Moving with Continued Assistance under Choice Mobility**

If the family wishes to move with continued tenant-based assistance under choice mobility, the family must contact HANO to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, HANO is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance.

If voucher assistance is offered to the family and the search term expires, HANO must issue the voucher to the next eligible family before issuing another voucher to the family that requested to move. If a voucher or other comparable tenant-based assistance is not immediately available at the time of the family's request, HANO must give the family priority to receive the next available opportunity for continued tenant-based assistance.

Families are eligible to move with continued assistance under choice mobility after 12 months of occupancy. If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance.

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**Turnover Cap**

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

HANO has not established a turnover cap.

**Emergency Transfers under VAWA [24 CFR 983.261(f) and (g)]**

In the case of a move due to domestic violence, dating violence, sexual assault, stalking, or human trafficking, PHAs must describe policies for facilitating emergency transfers for families with PBV assistance in their Emergency Transfer Plan, including when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

When the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member, the family is not required to give the owner advance written notice or contact the PHA before moving from the unit. Additionally, when any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move, the family is not required to give the owner advance written notice or contact the PHA before moving from the unit. A PHA may not terminate the assistance of a family due to a move occurring under these circumstances and must offer the family the opportunity for continued tenant-based assistance if the family had received at least one year of PBV assistance prior to moving.

If a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains assistance.

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in the "Eligibility Appendix/ Violence Against Women Act Protections" of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers found in the appendix.

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the PHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may request an external emergency transfer to the HANO's public housing program for which they are required to apply. HANO has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to

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expedite this process.

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**23.10.5 REEXAMINATIONS [RAD PBV Quick Reference Guide 6/20]**

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A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

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**23.10.6 RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2019-23]**

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HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to legacy non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter), the termination procedure for RAD conversions to PBV requires that PHAs provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction.

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• Not less than 30 days in the case of nonpayment of rent

• Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply.

**23.10.7 INFORMAL REVIEWS AND HEARINGS [Notice PIH 2019-23]**

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In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)-(v) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

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• For any hearing required under 24 CFR 982.555(a)(1)(i)-(v), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.

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• For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

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The owner must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)-(v). (See Chapter 18)

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The owner must provide an opportunity for an informal hearing before an eviction.

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**23.11 DETERMINING CONTRACT RENT**

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**23.11.1 INITIAL CONTRACT RENTS [Notice PIH 2019-23]**

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RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A

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detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2019-23. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located. For RAD/Section 18 blends, HUD produces a single, blended rent schedule for all units.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD.

Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications made to the initial contract rent, the initial rents are set at the lower of:

- An amount determined by the PHA in accordance with the administrative plan, not to exceed 110 percent of the fair market rent (FMR) (or amount of any applicable exception payment standard), or the alternate rent cap in a PHA's MTW agreement minus any utility allowance
- The reasonable rent
- The rent requested by the owner

**23.11.2 ADJUSTING CONTRACT RENTS [Notice PIH 2019-23; RAD PBV Quick Reference Guide 6/20; PHA Asset Repositioning "How to Apply OCAF for RAD PBV" Webinar]**

RAD PBV contract rents are adjusted differently than contract rents in the standard PBV program. At each annual anniversary of the HAP contract, contract rents will be adjusted only by HUD's operating cost adjustment factor (OCAF) that is applied to the current contract rent, less the portion of the rent paid for debt service, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent (as determined by the PHA that administers the contract or the independent entity, as applicable), with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the Federal Register; or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments at each contract anniversary date in accordance with the prevailing OCAF. The PHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years' OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAFs have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps. In extraordinary circumstances, a project owner may request a waiver of the rental adjustment by OCAF and receive a rental adjustment by an alternative operating cost factor. The waiver request with documentation demonstrating the

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need for an alternative operating cost factor rental adjustment must be submission to the Office of Recapitalization in accordance with Supplemental Notice 4C.

The owner will request a contract rent adjustment from HANO within 120 days, but no less than 60 days, prior to the HAP contract anniversary date by submitting a completed OCAF rent adjustment worksheet (Form HUD-9624). The independent entity will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent will only be increased up to the reasonable rent. The independent entity will notify HANO in writing of the results of its review of the rent adjustment request. HANO will retain a copy of the worksheet and any other records necessary to demonstrate how the OCAF was used to make rent adjustments for audit purposes. The approved rent adjustment will go into effect via written notice to the owner. This notice will constitute an amendment to the rents specified on Exhibit A of the RAD PBV HAP contract. The new rents to owner will take effect on the date of the contract anniversary.

**Rent Decrease**

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

**23.11.3. UTILITY ALLOWANCES [Notice PIH 2019-23; RAD PBV Quick Reference Guide 6/20]**

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, the PHA that administers the contract must maintain the utility allowance schedule. The PHA may either maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517, respectively, or the PHA may instead apply site-specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to legacy non-RAD PBV units in the project and is calculated consistent with Notice H 2015-04.

Each family transitions to the new utility allowance at their first recertification following conversion.

HANO will use the HCV utility allowance schedule for the RAD PBV developments.

**23.11.4 REASONABLE RENT [983.301(d) and 24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

**How to Determine Reasonable Rent [24 CFR 983.303(c)]**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services, maintenance, and utilities to be provided by the owner. The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

**Comparability Analysis [24 CFR 983.303(d)]**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analysis may not have any direct or indirect interest in the property.

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**PHA-Owned Units [24 CFR 983.303(f)]**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent entity approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA.

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**23.12 PAYMENTS TO OWNER**

**23.12.1. HOUSING ASSISTANCE PAYMENTS**

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with NSPIRE and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

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Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

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The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

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In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

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**23.12.2. VACANCY PAYMENTS [24 CFR 983.352]**

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**Payment at Move-Out Month [24 CFR 983.352(a)]**

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If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

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If the HANO determines that the owner is responsible for a vacancy and as a result is not entitled to the keep the housing assistance payment, HANO will notify the owner of the amount of housing assistance payment that the owner must repay. HANO will require the owner to repay the amount owed.

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**Vacancy Payments**

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At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

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HANO will decide on a case-by-case basis if IT will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

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HANO may only make vacancy payments if:

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- The owner gives written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge and belief);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

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The owner must submit a request for vacancy payments in the form and manner required by HANO, and must provide any information or substantiation required to determine the amount of any vacancy payment.

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The vacancy payment to the owner for each month of the maximum two-month period is determined by the HANO and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

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If the HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified HANO of the vacancy in accordance with the policy in Section 23.9.6 regarding filling vacancies.

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In order for a vacancy payment request to be considered, it must be made in writing (including via email) within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by HANO within 10 business days of the HANO's request, no vacancy payments will be made.

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If vacancy payments are made, HANO will make vacancy payments for the period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will not exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment will cover only the period the unit remains vacant.

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### 23.12.3. TENANT RENT TO OWNER [24 CFR 983.353; Notice PIH 2019-23]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

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The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

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### Initial Certifications [Notice PIH 2019-23]

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For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any legacy non-RAD PBV units located in the same project are subject to the same requirements.

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### Tenant and PHA Responsibilities

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The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

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Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### Utility Reimbursements [24 CFR 983.353(d)]

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If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero. The PHA must describe in its administrative plan its policies on paying the utility reimbursement directly to the family.

or directly to the utility supplier. The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

HANO will make utility reimbursements directly to the family.

**23.12.4 PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2019-23; PHA Asset Repositioning “Phase-in of Tenant Rents” Webinar]**

For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) would increase by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of total tenant payment (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents. Any legacy non-RAD PBV units located in the same covered project are subject to the terms of the phase-in provisions.

HANO will use the family’s public housing tenant rent (reflected on line 10f of the family’s most recent 50058) at the date of conversion to calculate the family’s tenant rent in PBV. The PHA will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or \$25 purely as a result of the conversion as follows:

▲ Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)

▲ Year 2: Year 2 annual recertification and any interim recertification: 50 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP.

▲ Year 3: Year 3 annual recertification and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends, and tenants will pay full TTP from that point forward.

If the family’s income falls during the phase-in period such that the currently calculated PBV TTP falls below the amount that would otherwise be the phased-in rent, the family pays the currently calculated PBV TTP and the phase-in ends.

HANO will communicate the phase-in policy in writing to the family at the time the PHA first determines that the family qualifies for a rent phase-in.

Any legacy non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

**23.12.5 OTHER FEES AND CHARGES [24 CFR 983.354]**

**Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

**Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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