

## Chapter 18

### PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

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## INTRODUCTION

This chapter describes HUD regulations and **LMHA** policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the **LMHA** and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

## **PART I: GENERAL REQUIREMENTS**

### **18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM**

The Rental Assistance Demonstration (RAD) program was authorized in 2012 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 apply 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). This chapter will focus on public housing conversions to the PBV program under RAD. 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.

### **18-I.B. APPLICABLE REGULATIONS**

Overall, regulations for both standard and RAD PBV programs generally follow regulations for 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. These provisions are identified in [Notice PIH 2019-23](#) (issued September 5, 2019). Any 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](#) and in this policy.

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.

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

- 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 2023-19 amends Notice PIH 2019-23 and Notice PIH 2021-07, and was effective immediately.
- 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.
- 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.
- 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.
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- 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.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.

**NOTE:** The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D. RAD FAQs (<http://www.radresource.net/search.cfm>)

In other words, 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.

### **18-I.C. 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 PHA 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.

#### [LMHA Policy](#)

Unless specifically prohibited by PBV program regulations, [LMHA](#) policies for the tenant-based voucher program contained in this 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.

LMHA has attached RAD PBV assistance to the following sites:

- Parqwood Apts.

### **18-I.D. 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 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. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.

#### [LMHA Policy](#)

LMHA 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 is broader than URA relocation assistance and payments.

- 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 LMHA'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. LMHA will 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.

### LMHA Policy

- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept LMHA's or the 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, LMHA will secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development.
- LMHA is prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options.
- LMHA will not terminate a resident's lease if LMHA 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, LMHA may treat multiple converted developments on the same site as one for purposes of right to return.

- Should LMHA seek to have the resident exercise the right to return at a future phase, LMHA will 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 LMHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [PIH Notice 2014-17]:

- 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.
- 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. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. Appendix I of PIH Notice 2014-17 contains recommended contents for a relocation plan.
- In addition, LMHA 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.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. 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. Residents of a development undergoing conversion of assistance may voluntarily accept an LMHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.



**18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; [PIH Notice 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. PHAs 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.

[LMHA Policy](#)

- LMHA will 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.
- LMHA will not turn away persons with disabilities returning to RAD projects or place them on a waiting list due to a lack of accessible units.

## PART II: PBV PROJECT SELECTION

### 18-II.A. OVERVIEW

Unlike in the standard PBV program where LMHA 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 PIH Notice 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

### 18-II.B. OWNERSHIP AND CONTROL [PIH Notice 2019-23]

For projects governed by PIH Notice 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., LMHA cannot execute a contract with itself).

#### LMHA Policy:

LMHA will not execute a contract with itself and may either:

- 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of LMHA (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) 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 LMHA (as the contract administrator) and LMHA’s related entity (as the owner for HAP contract purposes).

\*Note that in the second scenario, both LMHA 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 LMHA or a nonprofit entity preserves an interest in the profit.

The requirement for a public or nonprofit entity, or preservation of an interest by LMHA 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 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 [PIH Notice 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) Hold a fee simple interest in the property.
- 2) Is the lessor under a ground lease with the property owner.
- 3) Has 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.

### [LMHA Policy](#)

If low-income housing tax credits are 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 [LMHA](#) preserves its interest in the property. Preservation of LMHA interest in the property includes but is not limited to the following:

- [LMHA](#) or an affiliate under its sole control, is the general partner or managing member.
- [LMHA](#) retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease.
- [LMHA](#) retains control over leasing the property and determining program eligibility.
- [LMHA](#) enters into a control agreement by which LMHA retains consent rights over certain acts of the project owner and retains certain rights over the project.
- Other means that HUD finds acceptable

For projects that converted assistance prior to the implementation of PIH Notice 2012-32, REV-3, the following language applies:

During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:

- 1) A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
- 2) A private entity, if the property has low-income tax credits. LMHA must maintain control via a ground lease.

### LMHA Policy

LMHA will ensure that for projects that converted assistance prior to the implementation of Notice PIH 2012-32, ownership must be either:

- A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
- A private entity, if the property has low-income tax credits

LMHA will maintain control via a ground lease.

### **18-II.C. LMHA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and PIH Notice 2017-21]**

If the project is LMHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 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 LMHA 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 Notice PIH 2017-21 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 LMHA -owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for LMHA's jurisdiction (unless LMHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

### ***Inspections and Rent Reasonableness***

#### LMHA Policy

LMHA ~~will no longer~~ will require a third party to conduct inspections or rent reasonableness at PBV properties that LMHA has an interest in. LMHA will follow the inspection process utilizing the current HUD inspection and rent determination method that is used for all other properties.

## **18-II.D. SUBSIDY LAYERING REQUIREMENTS [PIH Notice 2019-23; PIH Notice 2012-32, REV-3; PIH Notice 2012-32, REV-2]**

~~For projects governed by PIH Notice 2019-23, the following language applies~~ LMHA will adhere to the following for projects governed by PIH Notice 2019-23:

### LMHA Policy

- In the case LMHA 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 through the conversion. However, LMHA must estimate and plan for outstanding liabilities and costs and must follow PIH Notice 2016-23, or successor notice regarding the administrative activities required to terminate the ACC if LMHA has no plans to develop additional public housing.
- In the case where LMHA 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.
- Following execution of the HAP contract, LMHA is 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, LMHA will 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.

~~LMHA will adhere to the following for projects governed by PIH Notice 2012-32, REV-3:~~

### *Conversion of All ACC Units Under Termination of Contract*

LMHA will adhere to the following for projects governed by PIH Notice 2012-32, REV-3:

### LMHA Policy

In the case of LMHA 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; LMHA 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, LMHA may:

- 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 LMHA

closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may 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

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

### *Continuance of Maintaining Units in Inventory Under ACC*

#### LMHA Policy

In the case where the LMHA 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.

In addition, following execution of the HAP contract, LMHA is 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, LMHA will 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.

### *Conversion of ACC Units*

LMHA will adhere to the following for projects governed by PIH Notice 2012-32, REV-2:

#### LMHA Policy

In the case of LMHA ~~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; LMHA may convey all program funds to the covered project. HUD will recapture any public housing funds that LMHA has not expended once it no longer has units under ACC.

### *Continuance of Maintaining Units in Inventory Under ACC*

#### LMHA Policy

In the case where LMHA 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.

## **18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [PIH Notice 2019-23 and PIH Notice 2023-19]**

### **PBV Percentage Limitation**

Covered projects do not count against the maximum amount of assistance LMHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to LMHA under the HCV program. The number of PBV units excluded from LMHA'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 LMHA.

To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

### **Unit Cap Limitation**

When HUD published REV-3 of PIH Notice 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by PIH Notice 2019-23 and PIH Notice 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of PIH Notice 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, LMHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of PIH Notice 2012-32, REV-2 only, the following ~~language~~ applies:

#### LMHA Policy

In general, LMHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, LMHA may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as “*excepted units*” and do not count toward the project cap.

For projects governed by the requirements of PIH Notice 2012-32, REV-2 choosing to include excepted units, LMHA will not provide RAD PBV assistance for any excepted units.

## **18-II.F. SITE SELECTION STANDARDS [PIH Notice 2019-23; PIH Notice 2016-17]**

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives 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 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 LMHA'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.

LMHA 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.

## **18-II.G. ENVIRONMENTAL REVIEW [PIH Notice 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 PIH Notice 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.

## **PART III: DWELLING UNITS**

### **18-III.A. OVERVIEW**

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 conducting housing quality standards inspections.

### **18-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not 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.

### **18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [PIH Notice 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 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)

#### **18-III.D. INSPECTING UNITS**

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

###### LMHA Policy

Under standard PBV regulations at 24 CFR 983.103(b), LMHA will not enter into a HAP contract until LMHA has determined all units comply with HQS. It is the responsibility of the contract administrator to perform this initial inspection (unless units are LMHA -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 HQS by the date indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, LMHA 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 be added to the HAP contract instead of conducting an initial inspection. During the period of the work, HQS requirements apply.

###### LMHA Policy

LMHA will 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). The owner must correct any deficiencies in accordance with HQS requirements (i.e., no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any LMHA -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(c), FR Notice 1/18/17, and PIH Notice 2017-20]**

###### LMHA Policy

Before providing assistance to a new family in a contract unit, LMHA will inspect the unit. LMHA will not provide assistance on behalf of the family until the unit fully complies with HQS.

##### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

###### LMHA Policy

At a minimum, LMHA will inspect on a bi-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 HQS.

If more than 20 percent of the sample of inspected contract units in a building fail the

initial inspection, **LMHA** will reinspect 100 percent of the contract units in the building.

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

**LMHA Policy**

**LMHA** will not rely on alternative inspection standards.

**Other Inspections [24 CFR 983.103(e)]**

**LMHA Policy**

- **LMHA** will inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract.
- **LMHA** will consider complaints and any other information coming to its attention in scheduling inspections.
- **LMHA** will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.
- In conducting **LMHA** supervisory quality control HQS inspections, **LMHA** will include a representative sample of both tenant-based and project-based units.

## **PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

### **18-IV.A. OVERVIEW [*PBV Quick Reference Guide 10/14*]**

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. 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.

### **18-IV.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [*PBV Quick Reference Guide 10/14*; *PIH Notice 2019-23*]**

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. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

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 Low Income Housing Tax Credits LIHTC are also required to include an LIHTC rider.

#### **Execution and Effective date of the HAP Contract [*RAD Blast! 7/11/16*]**

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.

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

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/LMH 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 such 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.

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

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.

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

By statute, upon contract expiration, the agency administering the vouchers will offer, and LMHA 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 LMHA 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 the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing LMHA 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.

#### **Remedies for HQS Violations [24 CFR 983.208(b)]**

##### LMHA Policy

LMHA will abate and terminate PBV HAP contracts for noncompliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

#### **18-IV.C. AMENDMENTS TO THE HAP CONTRACT**

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

##### LMHA Policy

LMHA will not float assistance among unoccupied units within the project.

**Note:** The term “*Floating Units*” refers to undesignated Public Housing units (those units under the ACC), in mixed-finance Public Housing developments, which also include non-public housing units. The term “*Floating Units*” applies to those units in those developments in which no specific apartments are permanently designated as the Public Housing units, but instead, only a set percentage or number of units in the development must always be designated as Public Housing (PIH Information Center Building & Unit Job Aid, 2003.)

##### **Reduction in HAP Contract Units [PIH Notice 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.

##### LMHA Policy

LMHA will not reduce the number of assisted units without written HUD approval.

Any HUD approval of **LMHA'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.

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, **LMHA** will reinstate the unit after the family has vacated the property. If the project is partially assisted, **LMHA** 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.

#### **18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [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.

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.

#### **18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

When the owner executes the HAP contract, he or she certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS.
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases.
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by **LMHA**, 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;
- The amount of 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.

#### **18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(b)]**

##### LMHA Policy

LMHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

### **PART V: SELECTION OF PBV PROGRAM PARTICIPANTS**

#### **18-V.A. OVERVIEW**

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 PBV program.

#### **18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [PIH Notice 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 [PIH Notice 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 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 non-RAD PBV. Any 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.

### **18-V.C. 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. Applicants must qualify as a family as defined by HUD and LMHA, 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)], and meet asset limitation requirements. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to LMHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230].

#### LMHA Policy

LMHA may 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.

### **18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); PIH Notice 2019-23]**

#### LMHA Policy

LMHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. LMHA currently has waiting lists for the following RAD PBV projects:

- Parqwood Apts.

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, the PHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA'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.

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.

#### LMHA Policy

- LMHA 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).
- LMHA will provide applicants with 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 may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.



- **LMHA** will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

#### **18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

##### **LMHA Policy**

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the **LMHA**'s waiting list.

#### **Income Targeting [24 CFR 983.251(c)(6); 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.

##### **LMHA Policy**

- **LMHA** will ensure that at least 75 percent of households admitted during each fiscal year in the public housing, Housing Choice Voucher (HCV), and local, non-traditional programs— will be very low-income (50%).
- Families in place at the time of the conversion are exempt from income targeting requirements.
- New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

#### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

##### **LMHA Policy**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, **LMHA** will first refer families who require such features to the owner.

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

##### **LMHA Policy**

**LMHA** will not offer any preferences for the RAD PBV program. However, **LMHA** will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

#### **18-V.F. OFFER OF PBV ASSISTANCE Refusal of Offer [24 CFR 983.251(e)(3)]**

##### **LMHA Policy**

**LMHA** 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
- 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 **LMHA's** selection policy
- Removing the applicant from the tenant-based voucher waiting list

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

##### **LMHA Policy**

When a family accepts an offer for PBV assistance, **LMHA** will give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, **LMHA** will provide a briefing packet that explains how **LMHA** determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

##### **LMHA Policy**

If an applicant family's head or spouse is disabled, **LMHA** will assure effective communication, in accordance with 24 CFR 8.6, 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 **LMHA** will 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***

##### **LMHA Policy**

**LMHA** will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).18-V.G. OWNER SELECTION OF TENANTS [24 CFR 983.253]

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.

#### **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 PHA's 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.

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

##### LMHA Policy

The owner must notify LMHA in writing (mail, fax, or email) within seven (7) calendar days of learning about any vacancy or expected vacancy.

LMHA will make every reasonable effort to refer families to the owner within 15 calendar days of receiving such notice from the owner.

#### **18-V.H. TENANT SCREENING [24 CFR 983.255]**

##### LMHA Policy

##### **LMHA Responsibility:**

- LMHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. LMHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.
- LMHA 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 HQS inspection or before. LMHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.
- LMHA will provide the owner with an applicant family's current and prior address (as shown in LMHA records) and the name and address (if known by LMHA) of the family's current landlord and any prior landlords.
- LMHA will provide applicant families with a description of the LMHA Policy on providing information to owners, and LMHA will give the same types of information to all owners.
- LMHA will 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)].

#### **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

## PART VI: OCCUPANCY

### 18-VI.A. OVERVIEW

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

### 18-VI.B. LEASE [24 CFR 983.256]

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.

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.

#### Lease Requirements [24 CFR 983.256(c); [PIH Notice 2019-23](#)]

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; and
- The amount of any charges for food, furniture, or supportive services.

#### [LMHA Policy](#)

[LMHA](#) will 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.

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

#### [LMHA Policy](#)

The tenancy addendum in the lease must state:

- The program tenancy requirements\
- The composition of the household as approved by [LMHA](#) (the names of family members and any [LMHA](#) -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.

### **Initial Term and Lease Renewal [24 CFR 983.256(f); *PBV Quick Reference Guide* 10/14]**

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
- **LMHA** terminates the HAP contract
- **LMHA** terminates assistance for the family

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

#### **LMHA Policy**

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

- The owner must notify **LMHA** 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 **LMHA** and in accordance with the terms of the lease relating to its amendment.
- **LMHA** will 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; **PIH Notice 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.

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 **LMHA’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 ~~the LMHA~~ provide adequate written notice of termination of the lease. ~~which may not be less than:~~

### LMHA Policy

LMHA will provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable **time period**, but not to exceed 30 days:
  - If the health or safety of other tenants, **LMHA** 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 14 calendar days in the case of nonpayment of rent
- Not less than 30 calendar days in any other case, except that if a state or local law provides for a shorter **time period**, such shorter period will apply

These provisions apply to 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 **LMHA** 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.

### LMHA Policy

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

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

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, 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);
- 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 HQS requirements, apply as long as the unit is under HAP contract or added back to the HAP Contract. Any 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 participation 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. The PHA may request a waiver from HUD 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.

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180-day window.

### LMHA Policy

- If a family's assistance is terminated as a result of their zero HAP status, **LMHA** will remove the unit from the HAP contract.
- If the project is fully assisted and the family subsequently leaves the property, **LMHA** will reinstate the unit after the family has vacated the property and admit an eligible family.
- If the project is partially assisted, **LMHA** may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207.

Per the RAD Use Agreement, the owner may charge the family a rent that does not exceed 30 percent of 80 percent of the area median income. If a unit is removed from the RAD PBV HAP contract, then the lease terminates automatically, as stated in the tenancy addendum, as though the RAD PBV HAP contract had been terminated. The tenant must be offered a new lease, which must reflect the new tenant rent. A tenant in this circumstance is no longer a program participant and therefore no longer benefits from any of the rights or protections specific to RAD, or to the PBV program. Should the family subsequently lose employment, the owner may choose to reduce the family's rent, but if the family wishes to be admitted to the HCV/PBV program, then it must be admitted through the waiting list like any other applicant.

### **Security Deposits [24 CFR 983.259; *PBV Quick Reference Guide 10/14*]**

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. Otherwise the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant.

### LMHA Policy

**LMHA** will prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

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.

### LMHA Policy

**LMHA** has no liability or responsibility for payment of any amount owed by the family to the owner.



## **18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [PIH Notice 2019-23]**

### LMHA Policy

Current PH FSS participants will continue to participate in the LMHA's FSS program, and LMHA will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA) 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. LMHA will convert the PH FSS program participants at the covered project to their HCV FSS program.

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.

## **18-VI.D. RESIDENT PARTICIPATION AND FUNDING [PIH Notice 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.

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

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 non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply.

### LMHA Policy

If LMHA determines that a family is occupying a wrong-size unit, based on LMHA'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, LMHA will promptly notify the family and the owner of this determination, and LMHA will offer the family the opportunity to receive continued housing assistance in another unit.

LMHA 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 10 business days of LMHA's determination.

LMHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

1. PBV assistance in the same building or project
2. PBV assistance in another project

### 3. Tenant-based voucher assistance

If **LMHA** offers the family a tenant-based voucher, **LMHA** 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 **LMHA**, 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, **LMHA** must remove the unit from the HAP contract.

If **LMHA** offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within 30 calendar days, **LMHA** will terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by **LMHA** and remove the unit from the HAP contract.

**LMHA** may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

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

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to **LMHA**.

### **Choice Mobility [PIH Notice 2019-23]**

#### **LMHA Policy**

- If the family wishes to move with continued tenant-based assistance, the family must contact the **LMHA** to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, **LMHA** 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 a voucher or other comparable tenant-based assistance is not immediately available, **LMHA** will give the family priority to receive the next available opportunity for continued tenant-based assistance.
- If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.
- Prior to providing notice to the owner to terminate the lease, the family may submit a written request to **LMHA** for a choice mobility voucher at any time after completing the 12-month occupancy requirement.
- The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project.
- If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before

they may request another choice mobility voucher.

- If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.
- **LMHA** will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy.
  - This list will be maintained separately from the tenant-based HCV list.
  - Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list.
  - The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility.
  - The list will also identify whether families live in standard or RAD PBV units.

### **Turnover Cap (PIH Notice 2019-23)**

As a result of RAD, if the total number of PBV units (including RAD PBV units) administered by a PHA exceeds 20 percent of ~~the~~ its authorized units under its HCV ACC with HUD, ~~Therefore~~ the PHA may establish a choice mobility 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.

#### LMHA Policy

As a result of RAD, if the total number of PBV units (including RAD PBV units) administered by LMHA exceeds 20 percent of ~~the~~ LMHA's authorized units under its HCV ACC with HUD, ~~Therefore~~ LMHA may establish a choice mobility cap.

- LMHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects.
- If LMHA chooses to establish a turnover cap and the cap is implemented, LMHA must create and maintain a waiting list in the order requests from eligible households were received.
- Families who request a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

#### LMHA Policy

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

- **LMHA** will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where **LMHA** has PBV units.

LMHA 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, LMHA 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 LMHA's public housing program. Such a decision will be made by the LMHA 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.
- LMHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking under HUD's definition of Category 4 Homelessness (PIH Notice 2023-13) 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, LMHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where LMHA has PBV units. LMHA 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 receive continued assistance through an external transfer to LMHA public housing program.
- LMHA has adopted awaiting 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 expedite this process.

#### **18-VI.F. REEXAMINATIONS [PBV Quick Reference Guide 10/14]**

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, LMHA 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 LMHA 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.

#### **18-VI.G. EARNED INCOME DISALLOWANCE [Notice PIH 2019-23]**

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Any non-RAD PBV units located in the same project are also subject to these requirements.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

## **18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2019-23]**

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to 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 **LMHA** provide adequate written notice of termination of the lease. ~~which is:~~

### **LMHA Policy**

**LMHA** will provide adequate written notice of termination of the lease which is:

- A reasonable period of time, but not to exceed 30 calendar 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.
- Not less than 14 calendar days in the case of nonpayment of rent or less than 30 calendar 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

## **18-VI.I. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2019-23]**

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.

- 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.
- For any additional hearings required under RAD, **LMHA** (as owner) will perform the hearing.

### **LMHA Policy**

- An informal hearing will not be required for class grievances or for disputes between residents not involving **LMHA** (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 LMHA (as owner) or contract administrator.

- 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 16)
- The owner must provide an opportunity for an informal hearing before an eviction.

## PART VII: DETERMINING CONTRACT RENT

### 18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2019-23]

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 LMHA'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 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.

#### LMHA Policy

LMHA may adjust subsidy (and contract rents) across multiple projects as long as LMHA does not exceed the aggregate subsidy for all of the projects LMHA 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 LMHA, not to exceed 110 percent of the fair market rent (FMR) or LMHA's exception payment standard approved by HUD, or the alternate rent cap in any future LMHA MTW agreement minus any utility allowance
- The reasonable rent
- The rent requested by the owner

### 18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2019-23; *PBV Quick Reference Guide 10/14*]

Contract rents will be adjusted annually only by HUD's operating cost adjustment factor (OCAF) at each anniversary of the HAP contract, 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, 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

#### LMHA Policy

LMHA is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF.

- At least 120 days before the contract anniversary date, HUD recommends that the owner submit the OCAF rent adjustment worksheet (Form HUD-9625) to LMHA.
- LMHA 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 can only be increased up to the reasonable rent.
- The approved rent adjustment will go into effect and 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.

#### **18-VII.C. UTILITY ALLOWANCES [Notice PIH 2019-23; *PBV Quick Reference Guide 10/14*]**

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.

#### LMHA Policy

At its discretion, LMHA 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, LMHA may 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. LMHA will use the HCV utility allowance schedule for the RAD PBV developments.

#### **18-VII.D. REASONABLE RENT [24 CFR 983.303]**

#### LMHA Policy

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 LMHA, 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**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units.

### LMHA Policy

When making this determination, LMHA will 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.

### ***Comparability Analysis***

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 LMHA.

### LMHA Policy

The comparability analysis may be performed by LMHA 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 analyses may not have any direct or indirect interest in the property.

## **PART VIII: PAYMENTS TO OWNER**

### **18-VIII.A. HOUSING ASSISTANCE PAYMENTS**

#### LMHA Policy

During the term of the HAP contract, **LMHA** 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 HQS 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 **LMHA** agree on a later date.

Except for discretionary vacancy payments, **LMHA** 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).

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

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.

### **18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]**

#### LMHA Policy

If **LMHA** determines that the owner is responsible for a vacancy and as a result is not entitled to the keep the housing assistance payment, **LMHA** will notify the landlord of the amount of housing assistance payment that the owner must repay. **LMHA** will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified **LMHA** of the vacancy in accordance with the policy in Section 18-V.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made 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 that the vacancy is not due to their actions and **LMHA** may require the owner to provide documentation to support the request. If the owner does not provide the information requested by **LMHA** within 10 business days of ~~the~~ **LMHA**'s request, no vacancy payments will be made.

### **18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353; Notice PIH 2019-23]**

#### LMHA Policy

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

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 **LMHA** 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 **LMHA**. The owner must immediately return any excess payment to the tenant.

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

### **LMHA Policy**

For the initial certification, **LMHA** 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. **LMHA** 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, **LMHA** 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 non-RAD PBV units located in the same project are subject to the same requirements.

## **Tenant and PHA Responsibilities**

### **LMHA Policy**

- 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 **LMHA**.
- Likewise, **LMHA** is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract.
- **LMHA** is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit.
- **LMHA** will 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**

### **LMHA Policy**

If the amount of the utility allowance exceeds the total tenant payment, **LMHA** will 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. **LMHA** will make utility reimbursements directly to the family.

## **18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2019-23]**

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.

### LMHA Policy

LMHA 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.

LMHA 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 calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, LMHA will use the flat rent amount to calculate the phase-in for Year 1.)
- Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP
- Year 3: Year 3 AR 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. LMHA will communicate LMHA's phase-in policy in writing to the family at the time LMHA first determines that the family qualifies for a rent phase-in. Any non-RAD PBV units located in the same project are also subject to rent phase- in requirements.

## **18.VIII.E. 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.

## EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION

(Fill out one for each development)

**Date:** [Enter the date on which this form was completed]

### DEVELOPMENT INFORMATION

**Development Name:** [Insert name of PBV development]

**Address:** [Insert full address of PBV development]

**Owner Information:** [Insert PBV development owner name and contact information. If development is PHA-owned, enter "PHA-owned."]

**Property Management Company:** [Insert property management company name and contact information, or enter "None"]

**PHA-Owned:** [Enter "Yes" or "No." If yes, enter name of independent entity.]

**Mixed-Finance Development:** [Enter "Yes" or "No." If yes, list other types of funding and units to which other funding applies.]

### HAP CONTRACT

**Closing Date:** [Enter closing date of RAD conversion]

**List Which RAD Notice Applies to the Project:** [Enter "PIH 2012-32, REV-2," "PIH 2012-32, REV-3," or "PIH 2019-23"]

**Effective Date of Contract:** [Enter start date of HAP contract]

**HOTMA Requirements:** [If HAP contract was signed prior to April 18, 2017, enter "Pre-HOTMA." If HAP contract was signed on or after April 18, 2017, enter "Post-HOTMA."]

**Term of HAP Contract:** [Enter term from HAP contract]

**Expiration Date of Contract:** [Enter expiration date from HAP contract]

### PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units							
Initial Contract Rent	\$	\$	\$	\$	\$	\$	

**Unit Designation:** [Enter "Fixed" or "Floating"]

**Accessible Units and Features:** [Identify which units are accessible and describe accessibility features or enter "None"]

**Target Population:** [Describe targeted population in accordance with HAP contract or enter “None”]

**Excepted Units (Notice PIH 2012-32, REV-2 Developments Only):** [Identify excepted unit types below or enter “None”]

**Supportive Services:** [Enter “Yes, see Exhibit D of HAP contract” or enter “No”]

**Elderly Units:** [Enter “Yes” or “No.” If yes, identify which units are elderly units.]

**Disabled Units** [Enter “Yes” or “No.” If yes, identify which units are for persons with disabilities.]

### **WAITING LIST AND SELECTION**

**Waiting List Type:** [Enter “Site-based waiting list,” “Combined with HCV,” “Waiting list for entire PBV program,” or “Merged with another assisted housing program”]

**Preferences:** [Enter “Same as HCV; see Chapter 4” or describe preferences offered. If different from HCV, note in Section 18.1.C. of this policy.]

**Preference Verification:** [Enter “Same as HCV; see Chapter 7” or describe for each preference listed above. If different from HCV, note in Section 18.1.C. of this policy.]

**For the PBV program, is the income limit the same as the HCV program?** (Note: In mixed-finance developments, other income limits may also apply.) [Enter “Same as HCV; see Chapter 3” or clearly describe]

### **OCCUPANCY**

**Subsidy Standards:** [Enter “Same as HCV; see Chapter 5” or describe. If different from HCV, note in Section 18.1.C. of this policy.]

**Utilities:** [Enter in accordance with HAP contract Exhibit C]

**Vacancy Payments:** [Enter in accordance with HAP contract Part 1, e, 2 and Section 18-IV.F. within this chapter]