

**11. Floating Units.** Upon the request of the owner to the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among units within the project having the same bedroom size. A unit to which assistance is floated must be comparable in condition to the unit it is replacing (i.e., the unit must be of the same quality and amenities as the unit it is replacing). Assistance may float from a required UFAS accessible unit only to another UFAS accessible unit that has the same bedroom size and accessibility features. If assistance floats to a UFAS accessible unit as a reasonable accommodation for a household that had not previously been in a UFAS unit, the assistance may float back to a non-UFAS unit when there is no longer need for the reasonable accommodation provided the required number of UFAS units is maintained. Units that float are not specifically designated under the HAP Contract. Therefore, the requirements in 24 CFR § 983.203(c) that the HAP Contract provide “the location of each contract unit” and “the area of each contract unit” are waived. Instead, the HAP Contract must specify the number and type of units in the property that are designated as RAD units, including any excepted units. From the time of the initial execution of the PBV RAD HAP Contract, the property must maintain the same number and type of UFAS accessible units. Floating units are subject to all of the requirements in this Notice and the PBV regulations, including physical inspections, rent adjustments, and income-mixing requirements. The alternative requirements with respect to floating units do not apply to non-RAD PBV units.

### **C. PBV Resident Rights and Participation.**

**1. No Rescreening of Tenants upon Conversion.** Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion.<sup>36</sup> Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified in this Notice (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, Section 8(o)(4) of the 1937 Act and 24 CFR § 982.201, concerning eligibility and targeting of

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<sup>36</sup> These protections (as well as all protections in this Notice for current households) also apply when a household is relocated to facilitate new construction or repairs following conversion and subsequently returns to the Covered Project.

tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement. Further, so as to facilitate the right to return to the assisted property, HUD waives Section 8(o)(4) and 24 CFR § 982.201 to the extent necessary for this provision to apply to current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR Part 983 for non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units.

2. **Right to Return.** See Section 1.4.A.5.b. and the RAD Fair Housing, Civil Rights, and Relocation Notice regarding a resident’s right to return. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.
3. **Phase-in of Tenant Rent Increases.** If, purely as a result of conversion, the amount a tenant would pay for rent and utilities under the PBV program (the tenant’s TTP) would increase the tenant’s TTP by more than the greater of 10 percent or \$25, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of “total tenant payment” (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase-in period at three years, five years or a combination depending on circumstances and must communicate such policy in writing to affected residents. For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

The method described below explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section “Calculated PBV TTP” refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the “most recently paid TTP” refers to the TTP recorded on line 9j of the family’s most recent HUD Form 50058. If a family in a project converting from Public Housing to PBV was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1 (the first recertification following conversion), as illustrated below.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the Calculated PBV TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full Calculated PBV TTP<sup>37</sup>

Five Year Phase in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP or flat rent and the Calculated PBV TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 25% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 33% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 5 AR and all subsequent recertifications – Full Calculated PBV TTP

*Please Note:* In either the three year phase-in or the five-year phase-in, once the Calculated PBV TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward. MTW agencies must also implement a three or five-year phase-in for impacted residents, but may alter the terms above as long as it establishes a written policy setting forth the alternative terms. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

**4. Family Self Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are currently FSS participants will continue to participate in the PHA's FSS program.

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<sup>37</sup> For example, where a resident's most recently paid TTP is \$100, but the Calculated PBV TTP is \$200 and remains \$200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of \$100 to \$133. At the second AR, the resident's contribution would increase by 50% of the \$66 differential to the standard TTP, increasing to \$166. At the third AR, the resident's contribution would increase to \$200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

The PHA may continue to use any FSS funds already awarded to serve those FSS participants who live in units converted by RAD. At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding. Due to the program merger between PH FSS and HCV FSS that took place pursuant to the FY14 Appropriations Act (and was continued in the subsequent Appropriation Acts), no special provisions are required to continue serving FSS participants that live in public housing units converting to PBV under RAD.

However, PHAs should note that until provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act are implemented, there are certain FSS requirements (e.g., escrow calculation and escrow forfeitures) that apply differently depending on whether the FSS participant is a participant under the HCV program or a public housing resident, and PHAs must follow such requirements accordingly. All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR part 984 (current, or as amended), the participants' contracts of participation, and the alternative requirements established in the "Waivers and Alternative Requirements for the FSS Program" Federal Register notice, published on December 29, 2014, at 79 FR 78100.<sup>38</sup> Further, upon conversion to PBV, if the PHA no longer has a public housing program, funds already escrowed for FSS participants shall be transferred into the HCV escrow account and be considered TBRA funds, thus reverting to the HAP account if forfeited by the FSS participant.<sup>39</sup>

For information on FSS PIC reporting requirements for RAD conversions, see Notice PIH 2016-08 at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2016-08.pdf>.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future ROSS-SC grants, nor will its residents be eligible to be served by future ROSS-SC grants,

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<sup>38</sup> The funding streams for the PH FSS Program and the HCV FSS Program were first merged pursuant to the FY 2014 appropriations act. As a result, PHAs can serve both PH residents and HCV participants, including PBV participants, with FSS funding awarded under the FY 2014 FSS Notice of Funding Availability (FSS NOFA) and any other NOFA under which the combination of funds remains in the applicable appropriations act. For PHAs that had managed both programs separately and now have a merged program, a conversion to PBV should not impact their FSS participants.

<sup>39</sup> Where the PHA maintains a public housing program, any forfeited funds that had been escrowed prior to conversion would revert to the PHA's Operating Reserves.

which, by statute, can only serve public housing residents. At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local Resident Association and this consequence of a RAD conversion may impact those entities. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

5. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of Covered Projects with assistance converted to PBV 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. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.
  
6. **Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the Project Owner's lease, which includes the required tenancy addendum (HUD Form 52530-c), as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.
  - a. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD and to non-RAD PBV units located at the Covered Project. In addition to the regulations at 24 CFR § 983.257 related to Project Owner termination of tenancy and eviction (which MTW agencies may not alter), the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall be :
    - i. A reasonable period of time, but not to exceed 30 days:
      1. If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
      2. In the event of any drug-related or violent criminal activity or any felony conviction;
    - ii. Not less than 14 days in the case of nonpayment of rent; and
    - iii. Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

- b. **Grievance Process.** Pursuant to requirements in the RAD Statute, HUD is establishing additional resident procedural rights to comply with section 6 of the Act.

For the termination of assistance and several other PHA determinations, PBV program rules require the PHA to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will specify alternative requirements for 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, to require that:

- i. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(v),<sup>40</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a Project 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.
  1. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(v), the contract administrator will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR § 982.555(e)(4)(i).
  2. For any additional hearings required under RAD, the Project Owner will perform the hearing.
- ii. There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or Contract Administrator.
- iii. The Project Owner gives 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)-(vi).
- iv. The Project Owner provides opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the PHA's Section 8 Administrative Plan.

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<sup>40</sup> § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate program has been repealed.

To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

- 7. Earned Income Disregard (EID).** 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 shall not be subject to rent phase-in, as described in Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited only to 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 24 CFR § 5.617(b) limiting EID to disabled persons is waived. The waiver, and resulting alternative requirement, apply only to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants that move into the property following conversion or tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion due to loss of employment) is covered by this waiver. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

- 8. Jobs Plus.** Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance unless significant relocation and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project. If the program is continued, the Project Owner must agree to continue to implement the program according to HUD's program requirements. Jobs Plus target public housing projects must enroll public housing residents into the Jobs Plus rent incentive, JPEID, prior to conversion. Any resident of the Covered Project that had not enrolled prior to conversion is not eligible to enroll in JPEID but may utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the Covered Project may voluntarily utilize Jobs Plus services that predominantly benefit the former public housing residents who resided at the target project at the time of RAD conversion.

**9. When Total Tenant Payment Exceeds Gross Rent.** Under normal PBV rules, the PHA may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments (24 CFR § 983.53(c)). Also, a PHA must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the contract rent, plus any utility allowance, for the unit (i.e., the Gross Rent) (24 CFR § 983.258). Since the rent limitation under this Section of the Notice may result in a family's TTP equaling or exceeding the gross rent for the unit, for residents living in the Converting Project prior to conversion and who will return to the Covered Project after conversion, HUD is waiving both of these provisions and requiring that the unit for such families be placed on and/or remain under the HAP Contract when TTP equals or exceeds the Gross Rent. Further, HUD is establishing the alternative requirement that until such time that the family's TTP falls below the gross rent, the rent to the owner for the unit will equal the lesser of (a) the family's TTP, less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. During any period when the family's TTP falls below the gross rent, normal PBV rules shall apply. As necessary to implement this alternative provision, HUD is waiving the provisions of Section 8(o)(13)(H) of the Act and the implementing regulations at 24 CFR § 983.301 as modified by Section 1.6.B.5 of this Notice.<sup>41</sup> In such cases, the resident is considered a participant under the program and all of the family obligations and protections under RAD and 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. The PHA is required to process these individuals through the Form 50058 submodule in PIC. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

Unless a waiver is requested and approved as described below, any new admission to the Covered Project must meet the eligibility requirements at 982.201 and require a subsidy payment at admission to the program, which means their TTP may not equal or exceed the gross rent for the unit at that time. Further, a PHA must remove a unit from the contract when no assistance has been paid for 180 days. 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, HUD is imposing an

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<sup>41</sup> For example, a public housing family residing in a property converting under RAD has a TTP of \$600. The property has an initial Contract Rent of \$500, with a \$50 Utility Allowance. Following conversion, the residents is still responsible for paying \$600 in tenant rent and utilities.



alternative requirement that the PHA must reinstate the unit after the family has left the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR §983.207 or, where “floating units have been permitted, Section 1.6.B.10 of the Notice.

A PHA may request a waiver from HUD for the Covered Project in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not made a housing assistance payment for a family in 180 days.

For a Covered Project that consists of 100 percent RAD PBV units, the PHA must demonstrate that a waiver is necessary in order to avoid an undue concentration of poverty at the Covered Project. A PHA may evidence this by providing data showing, for example:

- how eligible income-certified applicants on the waiting list must be passed over because their incomes result in zero HAP at admission causing a higher concentration of poverty at the covered project; or
- how the income of newly admitted families is causing a markedly higher concentration of poverty than the PHA’s non-RAD PBV projects.

The resulting impact on the property must be compared with the concentration of poverty at non-RAD PBV projects in the PHA’s jurisdiction. If there are no non-RAD PBV projects in the PHA’s jurisdiction, the PHA may alternatively demonstrate that the median income of families that could be admitted to the Covered Project is significantly lower than the median income of new admissions from the waiting list to the PHA’s HCV program since the time of the RAD conversion.

For any other Covered Project, the PHA must demonstrate that the property contains specific units (e.g., units suitable for large families or accessible units) for which there are insufficient alternative housing opportunities.

If the waiver is approved, the new admission[s] families covered under the waiver are participants under the program and all of the family obligations and protections under RAD and PBV apply to the family, and the unit is subject to all program requirements. Such waiver requests should be submitted to the PIH Field Office in accordance with Notice PIH 2018-16.

**10. Under-Occupied Unit.** If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in this unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate

sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized unit within a reasonable period of time, as determined by the administering Voucher Agency. In order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project, 24 CFR § 983.260 is waived for current residents remaining or returning to the Covered Project. MTW agencies may not modify this requirement. To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

#### **D. PBV: Other Miscellaneous Provisions**

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs and the Project Owner must cooperate with any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
- 2. Ongoing PHA Board Review of Operating Budget.** The Owner must submit to the administering PHA's Board the operating budget for the Covered Project annually. The PHA's Board must confirm that the Project Owner is making deposits into the Reserve for Replacement account in accordance with the RCC as well as assess the financial health of the Covered Project.<sup>42</sup>
- 3. Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** These sections have been moved to [1.4.A.13](#) and [1.4.A.14](#).
- 4. Establishment of Waiting List.** 24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions shall apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
  - a. Transferring an existing site-based waiting list to a new site-based waiting list.

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<sup>42</sup> For PBV conversions that are not FHA-insured, a future HUD notice will describe project financial data that may be required to be submitted by a PBV owner for purposes of monitoring and evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

- b. Transferring an existing site-based waiting list to a PBV program-wide or HCV program-wide waiting list.
- c. Transferring an existing community-wide public housing waiting list to a PBV program-wide or HCV program-wide waiting list, an option particularly relevant for PHAs converting their entire portfolio under RAD.
- d. Informing applicants on a community-wide public housing waiting list how to transfer their application to one or more newly created site-based waiting lists.

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 shall consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA's remaining public housing waiting list(s) 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 list(s) to which their application was transferred in accordance with the date and time of their application to the original waiting list.

If the PHA is transferring assistance to another neighborhood and, as a result of the transfer of the waiting list, the applicant would only be eligible for a unit in a location which is materially different from the location to which the applicant applied, the PHA must notify applicants on the waiting list of the transfer of assistance, and on how they can apply for residency at other sites.

If using a site-based waiting list, PHAs shall establish a waiting list in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the Covered Project's initial waiting list. In all cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other

outreach as appropriate. Any activities to contact applicants on the public housing waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and with the obligation to provide meaningful access for persons with limited English proficiency (LEP).<sup>43</sup>

When using a site-based waiting list, PHAs should consider waiting list and transfer policies that expand opportunities for tenants seeking an emergency transfer under, or consistent with, the PHA's Emergency Transfer Plan. This includes allowing for easier moves between assisted properties.

To implement this provision, HUD is specifying alternative requirements for 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the PHA shall administer its waiting list for the Covered Project in accordance with 24 CFR § 983.251(c). To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision.

A PHA must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations.

5. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed project property.
6. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of secured debt during the HAP Contract term to ensure the financing is consistent with long-term preservation of the Covered Project. With respect to any financing contemplated at the time of conversion (including any permanent financing which is a conversion or take-out of construction financing), such consent may be evidenced through the RCC but HUD review of liens must be performed prior to execution.
7. **Administrative Fees for Public Housing Conversions During the Year of Conversion.** For the remainder of the Calendar Year in which the HAP Contract becomes effective (i.e., the "year of conversion"), RAD PBV projects will be funded

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<sup>43</sup> For more information on serving persons with LEP, please see HUD's Final guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732), published on January 22, 2007.

with public housing funds. For example, if the project's assistance converts effective July 1, 2015, the public housing ACC between the PHA and HUD will be amended to reflect the number of units under HAP Contract, but will be for zero dollars, and the RAD PBV HAP Contract will be funded with public housing money for July through December 2015. Since TBRA is not the source of funds, PHAs should not report leasing and expenses into VMS during this period, and PHAs will not receive section 8 administrative fee funding for converted units during this time.

PHAs operating an HCV program typically receive administrative fees for units under a HAP Contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Work Responsibility Act of 1998" and 24 CFR § 982.152(b). During the year of conversion mentioned in the preceding paragraph, these provisions are waived. PHAs will not receive Section 8 administrative fees for PBV RAD units during the year of conversion.

After the year of conversion, the Section 8 ACC will be amended to include Section 8 funding that corresponds to the units covered by the Section 8 ACC. At that time, the regular Section 8 administrative fee funding provisions will apply.

- 8. Choice-Mobility.** One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

If as a result of participation in RAD a significant percentage of the PHA's HCV program becomes PBV assistance, it is possible for most or all of a PHA's turnover vouchers to be used to assist those RAD PBV families who wish to exercise mobility. While HUD is committed to ensuring mobility remains a cornerstone of RAD policy, HUD recognizes that it remains important for the PHA to still be able to use tenant-based vouchers to address the specific housing needs and priorities of the community. Therefore, HUD is establishing the following alternative requirement for PHAs where, as a result of RAD, the total number of PBV units (including RAD PBV units) under HAP Contract administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD: The alternative mobility policy provides that an eligible voucher agency would not be required to provide more than three-quarters of its turnover vouchers in any single year to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory

turnover cap, if such a cap is implemented, the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received. In order to adopt this provision, this alternative mobility policy must be included in an eligible PHA's administrative plan.

To effectuate this provision, HUD is providing an alternative requirement to Section 8(o)(13)(E) of the Act and 24 CFR § 983.261(c). Please note that this alternative requirement does not apply to PBVs entered into outside of the context of RAD. MTW agencies may not alter this requirement.

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

**10. Initial Certifications and Tenant Rent Calculations.** The Contract Administrator uses the family's public housing tenant rent (reflected on line 10f of the family's most recent HUD Form 50058) at the date of the conversion to calculate the PBV HAP and tenant rent until the effective date of the earlier of the family's first regular or interim recertification following the date of conversion. At the earlier of the family's first regular or interim recertification, the Contract Administrator will use the family's TTP based on the recertification and the HCV utility allowance (or the PBV site-specific utility allowance, if applicable) to determine the PBV HAP and tenant rent. This means that the family pays the same tenant rent as the family was paying under the public housing program until the earlier of first regular or interim reexamination following conversion, at which point the normally applicable PBV calculation for the tenant rent becomes effective. (Under the PBV program, the monthly HAP is the rent to owner minus the tenant rent, and the tenant rent is the family TTP minus the utility allowance.) To facilitate the uniform treatment of residents and units at a Covered Project, any non-RAD PBV units located in the same property as the Covered Project shall be subject to the terms of this provision. To effectuate this provision, HUD is waiving 24 CFR 5.601 and 983.3(c)(6)(iii).