

Official HUD Response to Public Comments Received on PIH Notice 2012-18, “Rental Assistance Demonstration – Partial Implementation and Request for Comments”

I. Purpose

This document responds to the significant issues and questions raised by commenters on PIH Notice 2012-18.

II. Background

On March 8, 2012, HUD published a notice of web availability (74 FR 14029) for the program notice governing the Rental Assistance Demonstration (RAD, or Demonstration), authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112-55, enacted November 18, 2011). RAD is a demonstration with two components. The first component allows projects funded under the public housing and Section 8 Moderate Rehabilitation (Mod Rehab) programs to convert their assistance to long-term, project-based section 8 rental assistance contracts in the form of either project-based voucher (PBV) or project-based rental assistance (PBRA) contracts. Congress authorized up to 60,000 units under this component and gave HUD substantial authority to waive requirements of the public housing and Section 8 programs. The second component allows owners of projects funded under the Rent Supplement (Rent Supp), Rental Assistance Payment (RAP), or Mod Rehab programs to convert, at contract expiration or termination, tenant protection vouchers to PBVs. Congress provided HUD more limited waiver authority for the second component.

The statute authorized the Secretary to issue rules for RAD through a notice, but required public comment on certain aspects of the program. HUD therefore issued an initial program notice (PIH Notice 2012-18). In this initial notice, the authority to convert Rent Supp and RAP contracts under the second component of RAD was effective immediately, while implementation of the first component and Mod Rehab conversions under the second component was delayed to allow HUD to incorporate public comments. However, HUD solicited comments on all program requirements contained in the notice and reserved the right to make changes to the section on Rent Supp and RAP conversions, as needed.

III. Commenters

The public comment period on the program notice originally closed on April 9, 2012, but was extended to April 23, 2012 (77 FR 20407). HUD received 102 submissions of comments. Commenters included public housing agencies (PHAs), state and local housing and community development agencies, advocacy groups, housing finance agencies, trade associations, developers, property managers and individuals. A complete compendium of all comments can be found at <http://www.regulations.gov/#!docketDetail;dct=PS;rpp=100;so=DESC;sb=docId;po=0;D=HUD-2012-0018>. Many commenters wrote in general support of the program or portions of it. HUD is not addressing these favorable comments because they do not raise issues with the initial notice.

Comments and HUD's responses are grouped by topic, beginning with the two topics on which HUD received the most comments and then proceeding chronologically through the conversion process. Generally, HUD's response to comments notes how such comments were considered in developing the final notice for RAD, which can be found at www.hud.gov/rad. In addition to changes noted in this document, the final notice includes a number of other technical corrections that may not be included in this document.

IV. Responses to Comments

RAD is a limited demonstration attempting primarily to test how the conversion of public housing subsidies to the established Section 8 platform can generate additional private capital to preserve affordable housing assets for low-income residents. Consequently, in considering public comments HUD has attempted to maintain the basic integrities of the PBV and PBRA programs under RAD. Unless specifically required under the RAD statute (e.g., no re-screening), or in order to greatly facilitate conversion or offer tenants a measure of choice over their housing options, HUD has tried to avoid imposing additional new or alternative requirements under RAD. Rather, a principal objective of the demonstration is to assess how the established forms of Section 8 subsidies can work to recapitalize and preserve at-risk affordable housing.

A. Choice-Mobility Component

- Commenters asked that PHAs be given more flexibility in designing their own Choice-Mobility components under RAD, including expanding the 10% good-cause exemption, allowing PHAs to lower caps on the number of Choice-Mobility moves at a project annually, limiting the number of turnover vouchers committed to Choice-Mobility, permitting PHAs to create preferences among eligible households, making choice vouchers of a short duration for non-disabled families for the purpose of helping the family become economically independent, etc.*

HUD response: For the Choice-Mobility component under PBRA, the final notice lowers the annual project cap from 20% to 15%. The 10% good-cause exemption from the Choice-Mobility requirement, and the 33% annual voucher turnover cap, remain the same. Under current program rules, a PHA may not establish preferences among households eligible for Choice or limit the duration of assistance.

- Commenters asked to modify the proposed timing of implementation of the Choice-Mobility component in converted properties. Some commenters requested extending the timing; others requested that, for conversions to PBRA, Choice-Mobility begin after one year, consistent with current PBV rules. Another commenter stated that the phrase "completion of initial repairs identified in the Financing Plan", which was used as a time benchmark for PBRA conversions in connection with the implementation of Choice-Mobility, is a too vague a term and should be better defined.*

HUD response: The final notice removes the phrase "completion of initial repairs identified in the Financing Plan." Instead, under the first component of the demonstration, owners that

convert to PBRA will have the later of two years from date of execution of the HAP or two years after the move-in date before Choice-Mobility is effective, regardless of the status of the rehab, which should also help to incentivize PHAs to make repairs expeditiously. Otherwise, HUD did not modify the timing of Choice-Mobility for either PBRA or PBV conversions. For PBV conversions, consistent with current PBV regulations, Choice-Mobility is effective one year after move-in or one year from date of execution of the HAP in the case of tenants occupying units on that date. For conversions to PBRA, where Choice-Mobility is a new feature, the two-year time limit will both provide the owner reasonable time to adjust to the new requirements under Choice-Mobility and test an alternative approach to implementing resident choice.

3. *Commenters suggested that either more points be given in the selection process for the Choice-Mobility component and/or that HUD find other ways to encourage Choice-Mobility.*

HUD response: The final notice introduces two new incentives for PHAs to donate or sponsor Choice-Mobility vouchers to public housing-only PHAs: (1) a preference in future Family Self-Sufficiency (FSS) competitions that PHAs may routinely apply for; and (2) bonus points under the Section 8 Management Assessment Program (SEMAP) for meeting poverty de-concentration objectives in the assessment system.

4. *Commenters asked how long a PHA would have to commit to providing Choice-Mobility vouchers if it agreed, under RAD, to sponsor vouchers for a public housing-only agency.*

HUD response: The final notice clarifies that the sponsoring agency must honor that commitment for the initial term of the converted project's PBRA contract.

5. *Commenters suggested that PHAs be permitted to claim more than one Choice-Mobility project exemption.*

HUD response: The final notice has been modified to allow PHAs to receive more than one project exemption.

6. *A Commenter asked how HUD will select PHAs for the good-cause 10% exemption for the Choice-Mobility component applicable to PBRA conversions. Some commenters asked that eligibility for the good-cause exemption be expanded to other classes of PHAs, including those who contribute large shares of their turnover to special uses, while another commenter suggested that HUD remove properties in high-poverty neighborhoods from consideration of a good cause exemption or that, rather than granting a blanket exemption from choice requirements, HUD should require, as a condition of conversion, some limited form of mobility or mobility counseling.*

HUD response: The final notice provides that, for the first component of the Demonstration, PHAs will be selected for exemption based on their general ranking by region, with top priority for exemption given to small PHAs without a voucher program, followed next by other public housing-only PHAs and then by combined PHAs who contribute more than one-third of their voucher turnover for homeless or veterans. (Mod Rehab owners will be selected

based purely on their general ranking by region.) For administrative simplicity, and so as not to limit participation in the program, HUD is not modifying which PHAs or projects are eligible for an exemption.

7. *In describing the choice requirements under PBV conversions, HUD should change the term “consistent with program regulations” to “in compliance with program regulations.”*

HUD response: The final notice includes the recommended language.

8. *HUD is providing the following additional clarifications regarding Choice-Mobility based on comments:*

- PHAs can voluntarily exceed the 15% project cap and the 33% program turnover cap.
- The 10% good-cause exemption applies to all units under the Demonstration.
- For non-exempted projects, all tenants have a right to move with tenant based-rental assistance, not merely that they are “eligible.” However, if vouchers are not immediately available, the PHA must give the household priority to receive the next available voucher, subject to the indicated caps and limitations under RAD. (Per 24 CFR § 983.260(c), a PHA may also provide other comparable assistance in lieu of Housing Choice Vouchers.)
- Under current PBV rules, after one year the lease for a tenant exercising its Choice-Mobility option runs month-to-month. Therefore, any household that receives a voucher under the Choice-Mobility option can provide adequate notice to the owner of the PBV project to terminate the lease, once it finds a unit.

B. Project-Based Voucher Conversions

1. *Commenters stated that HUD should remove the 50 percent cap on project-based vouchers in family properties without supportive services (i.e., “income-mixing”); that supportive services are costly and PHAs have limited resources to commit to them; that providing services would increase the administrative burden on PHAs; that the cap would limit the ability of PHAs to obtain financing; that the cap would result in forced relocation of existing households; and that HUD should remove the cap for converting properties because those properties are already fully or substantially occupied by low-income tenants and the cap could force half the residents to move. Additionally, commenters stated that they believed the intent of Congress under the second component of the Demonstration was to allow 100% project-basing to facilitate conversion.*

HUD response: Consistent with HUD’s desire to retain the principle of income-mixing that is central to the PBV program, the final notice retains the 50% cap, with the following clarifications or revisions:

- An owner may, as permitted under current rules, project-base 100% of the units provided at least 50% of the units at the project qualify for the exceptions for elderly, disabled, scattered sites, or households receiving supportive services. (The PHA or owner does not

itself need to provide services, but may partner with local service providers to coordinate the delivery of such services.)

- A PHA may not involuntarily displace existing residents solely as a result of meeting the income-mixing requirement without the residents' consent. If the current household declines supportive services, the unit shall remain under the HAP contract, the resident shall not be terminated from the PBV program, and the decision to decline an offer for supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d).
- HUD believes that the ability to project-base 100% of the eligible units under the exceptions and the protections against involuntary displacement and provisions for supportive services indicated above would satisfactorily address the suggestion as to Congress's intent to allow 100% project-basing of eligible units to facilitate conversion.

2. *Commenters stated that owners of properties assisted by the Mod Rehab program should be able to partner with any PHA willing to participate as the PBV contract administrator and that limiting the allowable PBV administrator only to the PHA currently administering the Mod Rehab contract precludes conversion to PBV if that PHA is unwilling to participate. Further, commenters have asked how HUD would treat Mod Rehab projects that are currently administered by agencies without a voucher program.*

HUD response: For Mod Rehab projects under the second component, the RAD statute requires the consent of the "administering PHA." For a retroactive conversion request, if the actively administering PHA does not consent to the long-term conversion of the contract to PBV assistance, HUD would have no legal basis to transfer the voucher assistance provided on behalf of the residents of the Mod Rehab project to another PHA. For a prospective conversion, as well as for conversions under the first component of RAD, if the PHA currently administering the Mod Rehab contract does not consent to administer the PBV contract (or if that PHA does not have a voucher program), HUD will make a reasonable effort to identify a PHA with legal jurisdiction willing to enter into a PBV contract with the owner for eligible units at the project. At the same time, HUD will seriously consider the reasons why the agency administering the Mod Rehab contract on a year-to-year basis declined to administer a long-term PBV contract. If no PHA consents to enter into the PBV contract, the owner's conversion request will not be approved. HUD Headquarters will verify the PHA consent as part of the review of the Mod Rehab owner's request.

3. *Commenters suggested that PHAs should not have to contract for an independent entity for determinations of rent reasonableness and HQS inspections for a PHA-owned PBV unit.*

HUD response: HUD believes that it is essential that these program tasks, which are required under current program rules, be conducted by a true third-party when the PHA also has an ownership interest in the PBV project. Accordingly, HUD has not adopted this recommendation.

4. *A commenter stated that HUD should not, as under current rules, require both Uniform Physical Condition Standards (UPCS) and Housing Quality Standards (HQS) inspections for properties converted to PBVs when the PHA is both the owner and contract administrator.*

HUD response: The final notice removes the proposed additional requirement that public housing conversions to PBVs be subject to UPCS inspections.

5. *Commenters stated that HUD should not reserve the right to waive the de-concentration requirements under 24 CFR §§ 983.57(b)(1) and (c). Instead, the final notice should provide a blanket waiver.*

HUD response: The final notice adds a blanket waiver of the de-concentration requirement for all conversions to PBVs under the first component of RAD. However, under the second component of RAD, concerning the project-basing of tenant protection vouchers for the Rent Supp, RAP and Mod Rehab programs, HUD reserves the right to assess the impact of the proposed RAD conversion on de-concentration of poverty when a RAD conversion would result in an increase in the number of units receiving project-based rental assistance.

6. *A commenter suggested HUD provide a blackline for 24 CFR parts 982 and 983 like it provided for Part 880.*

HUD response: HUD will post a blackline of 24 CFR parts 982 and 983 on the RAD website.

7. *HUD is providing the following additional clarifications regarding PBV conversions based on comments:*

- In the case of combined agencies, unless it chooses otherwise, the PHA will serve as the contract administrator for any public housing that it converts to PBVs.
- All projects converting to PBV under the second component must, by statute, meet HQS in order to receive PBV assistance. HUD cannot waive this requirement.
- Under the second component of the demonstration, enhanced voucher rents are not permitted when converting to PBVs. Rents will be established according to normal PBV program rules, i.e., rents may not exceed 110% of the fair market rent (FMR) (or applicable Exception Rent Payment Standard), minus any utility allowance.
- Current residents are exempted from the PBV requirement that new admissions have incomes below 50% of area median income.

C. Statutory Authority

1. *Commenters wanted to know the statutory authority for various aspects of RAD, including Choice-Mobility.*

HUD response: HUD has broad authority under the RAD statute to “waive or specify alternative requirements for . . . any provision of section 8(o)(13) or any provision that governs the use of assistance from which a property is converted under the demonstration or

funds made available under the headings of ‘Public Housing Capital Fund’, ‘Public Housing Operating Fund’, and ‘Project-Based Rental Assistance’.”

As this comment relates to Choice-Mobility, the RAD statute is silent on the subject of a Choice-Mobility option for properties converting assistance to PBRA; however, it does authorize HUD to “establish the requirements for converted assistance under the demonstration through contracts, use agreements, regulations, or other means.” In this case “other means” is the final notice, which requires owners and PHAs seeking to convert their properties to PBRA to provide, or arrange for, the provision of a Choice-Mobility option. The rules governing PBRA are not affected by the Choice-Mobility option, which does not require any changes to, and does not affect the administration of PBRA, because residents move in and out of PBRA properties in the normal course of events without affecting the PBRA contract. The RAD Choice-Mobility requirement only provides eligible residents with the opportunity to move out of a PBRA property with voucher assistance. HUD is not giving a priority to tenants on waiting lists but, as a condition of conversion of assistance, a PHA with vouchers has to agree to exercise its authority under section 8(o)(6)(A) of the Act to provide preferences for residents of converted properties. This agreement does not require any waivers of existing requirements and is not an additional requirement, but is within a voucher PHA’s existing authority.

Although a waiver is not involved in implementing this provision, requiring Choice-Mobility places properties converted to PBRA on a comparable mobility footing with project-based vouchers that already provide the option for mobility that is favored by tenants, increasing the support of tenants for such conversions, thereby making the conversion process more effective, and making the conversion itself more effective for tenants. The requirement for a PHA to use its vouchers for tenant mobility in its properties that convert to PBRA, or for a non-voucher PHA to find a voucher PHA that will agree to make mobility vouchers available for PBRA properties, is a condition of converting assistance.

D. Eligibility

Public Housing

1. *Commenters asked that HUD not require PHAs, given the associated time and expense, to complete a formal request to change a project’s configuration prior to the submission of a RAD application if they plan to convert assistance for a portion of a project.*

HUD response: The final notice adds language indicating that, while PHAs are required to indicate in their RAD application their intended change in project configuration (e.g., a PHA desires to convert only the high rise portion of a project that includes scattered sites), they are not required to change that configuration in the Public and Indian Housing Information Center (PIC) prior to submission of an application. If a project is selected for award, the affected units will be converted and the balance of the project would remain as public housing at conversion. Any proposed project configuration of a converted project must be consistent with sound real estate practices.

2. *A commenter asked HUD to consider PHAs with a fair housing or civil rights charge, cause determination, or lawsuit as eligible applicants, as long as they are pursuing a resolution.*

HUD response: For PHAs with identified civil rights issues, HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter, making the PHA eligible to participate in RAD.

3. *Commenters opposed limiting the number of mixed-finance projects that may convert assistance under RAD and/or requested that HUD specify the cap on awards to mixed-finance projects.*

HUD response: The final notice retains the DOFA cut-off date of October 1, 2002, but only applies it to projects that received HOPE VI funds. All other mixed-finance projects will now be eligible to apply. However, the final notice adds a cap of 1,200 units on the number of awards to mixed-finance projects (representing the approximate share of the universe of mixed-finance projects that would be over 10 years old at the time of conversion). Mixed-finance projects will be selected in accordance with the normal selection criteria, i.e., those who receive a higher score will be selected before those who receive a lower score, subject to the cap. Notwithstanding the above, current and future Choice Neighborhood Initiative Implementation grantees that are otherwise eligible for RAD are not prohibited from applying for conversion of assistance under RAD and are not subject to the indicated Mixed Finance cap.

4. *Commenters stated that a PHA should be allowed to exceed the 1,000-unit cap if there is room under the overall program cap and the extra units would allow the PHA to convert its entire inventory.*

HUD response: The final notice adds new language giving HUD the discretion to remove any PHA or mixed-finance cap if, after 180 days from the start of the Initial Application Period, there is room under the overall program cap.

Mod Rehab, Rent Supp, and RAP

5. *Commenters stated that HUD should not exclude Section 8 single-room occupancy (SRO) units from RAD.*

HUD response: The RAD statute prohibits HUD from including Mod Rehab SROs as authorized by title IV of the McKinney-Vento Homeless Assistance Act in RAD.

6. *A commenter stated that HUD should remove the strict requirements on conditions of properties converting Mod Rehab assistance or for properties with REAC scores below 60 when the property will undergo rehabilitation that will address the physical deficiencies.*

HUD response: The final notice has been modified to allow a project that currently fails to meet physical standards to be eligible as long as the financing plan addresses the project's immediate capital needs and assures the project's ongoing physical and financial viability.

7. *Commenters stated that making eligibility for participation in RAD contingent upon termination of a Rent Supp or RAP contract due to prepayment excludes properties that may prepay without termination, narrowing the language of the statute.*

HUD response: The RAD statute authorizes conversion of tenant protection vouchers that have been provided (on or after October 1, 2006) or will be provided (prior to October 1, 2013) as the result of an event that will trigger or has triggered vouchers to residents under section 8(o) of the Act. With respect to properties assisted under Rent Supp or RAP, the statute states that a property is eligible for RAD if it has experienced or will experience a triggering event, defined as either: a) the termination of a Rent Supplement or RAP rental assistance contract; or b) expiration of affordability restrictions on properties assisted by Rent Supplement or RAP. If a mortgage on a project has been prepaid and the Owner voluntarily requested to leave the Rent Supplement or RAP contract in place (for example, if a project has completed an IRP Decoupling transaction), the project is ineligible for RAD because there has been no triggering event as defined in the RAD statute.

8. *Commenters asked HUD to permit conversion of assistance for Rent Supp and RAP units that were included in the assistance contract prior to conversion, whether or not they were occupied at the time of application. Another commenter stated that there are various legitimate reasons a unit may be vacant at any point in time, so excluding the unit from the new HAP would unnecessarily restrict the available units with assistance.*

HUD Response: Consistent with Housing Notice 2012-03, the final notice has been modified to allow all units that have been occupied within 24 months of contract termination to be eligible for conversion to PBVs, not just those occupied at the time of conversion. Housing Notice 2012-03 specifies that pursuant to the 2012 Appropriations Act, HUD may provide tenant protection vouchers (TPVs) to eligible households when a Rent Supplement or RAP contract terminates due to expiration, prepayment of the underlying mortgage, or enforcement action; and therefore, the Rent Supplement or RAP contract units at the property cease to be assisted housing. In these cases, HUD provides TPVs to the administering PHA for all units on the original Rent Supp or RAP contract that were occupied within 24 months of contract expiration. HUD will follow the same policy for expiring and terminating contracts eligible for RAD.

9. *Commenters stated that the initial notice did not include information on eligibility of state-financed, non-insured Rent Supp and RAP projects to participate in RAD, and the inclusion of unassisted units in the conversion.*

HUD response: The final notice has been modified to include detailed instructions on the eligibility of certain state-financed, non-insured Rent Supp and RAP projects for RAD conversions. The final notice specifies when Enhanced Vouchers typically provided to unassisted project residents at the time of a mortgage prepayment may be included in a RAD conversion request and included in a PBV contract.

10. *HUD is providing the following additional clarifications regarding eligibility based on comments:*

- HUD will only accept applications for a public housing conversion for individual projects. If a PHA wants to treat multiple projects as one application, the PHA should obtain approval to consolidate those projects in PIC prior to submission of a RAD application.
- Under retroactive conversions in the second component, RAD conversion authority cannot be extended to vouchers that have already been issued by HUD but are no longer being used at the expired or terminated project.
- Under the second component of the Demonstration, at the time of application, the owner of record must initiate the application (i.e., the current owner is the eligible applicant). If there is a purchase subsequent to submission of the application, the purchaser would become the owner of record and can execute closing documents and enter into the HAP agreement with HUD at closing.
- The RAD statute does not give HUD the authority to increase the number of units being assisted under the Mod Rehab contract.

E. Conversion of All or Substantially All Units of Assistance

1. *Commenters opposed the requirement for one-for-one hard-unit replacement at the time of conversion or subsequent to conversion.*

HUD response: Under the RAD statute, a project is exempt from the requirements under Section 18 of the 1937 Act governing demolition and disposition (and codified at 24 CFR 970), provided that assistance for substantially all units is converted. To implement this provision, HUD established what it considers a reasonable de minimis exception. Projects that exceed this exception must first comply with Section 18 Demo/Dispo requirements.

In the PBV and PBRA programs, an owner is generally required to maintain the number of units under contract, with exceptions for extraordinary circumstances, e.g., losses due to natural disasters. These same provisions will apply under RAD.

2. *Commenters requested that replacement housing vouchers be allowed in lieu of hard-unit replacements.*

HUD response: As stated previously, one of the main goals of the Demonstration is the preservation of hard units. Consequently, HUD will not allow vouchers to be treated as replacement units under RAD.

3. *While some commenters suggested that the de minimis reduction be expanded, others were concerned that the de minimis standard was too broad. These commenters stated that HUD should limit the number of units repurposed for social service delivery or reconfigured by including those repurposed and reconfigured units in the five percent de minimis limit or to eliminate the exception for units vacant for more than two years or beyond reasonable repair.*

HUD response: The final notice eliminates the category of units that are “beyond reasonable repair” from the de minimis exception. All other areas remain unchanged.

4. *Commenters stated that an application from a PHA requesting demolition or disposition of units under Section 18 requires months of work and therefore asked that HUD not require that such applications be withdrawn by PHAs seeking conversion of assistance under RAD, but rather that the Demo/Dispo application be suspended pending RAD conversion.*

HUD response: The final notice is modified to allow a PHA to suspend its Section 18 Demo/Dispo application pending RAD conversion.

5. *A commenter suggested that any units that are not part of a project's conversion due to the de minimis exceptions should not be subtracted from the PHA's Faircloth limit.*

HUD response: All units converted reduce a PHA's Faircloth limit. The final notice adds language that permits units lost as a result of the de minimis standard to continue to be counted as part of the PHA's Faircloth Limit.

6. *HUD is providing the following additional clarifications regarding substantial conversion of assistance based on comments:*

- Under RAD, a PHA may demolish and replace a project on-site without needing to go through the normal Section 18 Demo/Dispo processes so long as it meets the one-for-one hard unit replacement of housing prescribed under RAD. A PHA may also replace such housing on or off-site, subject to fair housing site and neighborhood and other standards and the ownership and control provisions outlined in the final notice.
- The de minimis exemption applies on a project-by-project basis under the first component.
- While there is no requirement under RAD to maintain the precise distribution of units by bedroom size, any change in bedroom distribution must be approved by the PHA Board (as part of the approval of the PHA's application) and noted in the significant amendment to the Annual Plan.

F. The Application and Selection Criteria

1. *Commenters posited that the RAD competitive ranking points placed too much emphasis on addressing capital needs, making projects with low capital needs less competitive and requiring PHAs to pursue competitive 9% Low Income Housing Tax Credits (LIHTCs).*

HUD response: One of the primary purposes of RAD is to preserve a portion of the public housing stock by accessing new financing sources to address the large capital needs backlog. Therefore, HUD believes it is appropriate to provide greater weight to applications that propose to address larger levels of backlog needs. However, the highest score for capital needs represents approximately the level of moderate rehabilitation indicated in the recent capital needs assessment and that might be attained through the use of 4% LIHTCs. By targeting the points allotted to this level of rehabilitation, HUD is not unduly encouraging PHAs and owners to undertake rehabilitation more commonly associated with substantial rehabilitation or demolition and replacement of housing, which often requires securing an

award of very-limited 9% LIHTCs and a much longer development period to execute. While HUD has not lowered the proposed scoring for high needs projects, the final notice adjusts the point scale so that lower capital need projects also receive points relative to the level of proposed rehabilitation.

2. *Commenters stated that, should a PHA undertake fewer repairs than it proposed in its application, the PHA should not be penalized provided there was good cause (e.g., change in rehab plans or access to LIHTC financing).*

HUD response: The final notice clarifies that a PHA will not have its CHAP cancelled or developer fee reduced if the altered plans would not have affected the selection of the project under RAD and the feasibility of its Financing Plan

3. *Commenters recommended additional selection or bonus points for: PHA capacity and management performance; the ability of the owner to leverage additional public funds; properties that will provide supportive services; applicants that demonstrate strong local partnerships for social services; PHAs that demonstrate special efforts surrounding implementation of Choice-Mobility, including those PHAs who go beyond the minimum requirements, provide additional mobility services; applicants that include legitimate resident councils as partners in the RAD process, properties owned by PHAs with good resident relations and support; properties where vouchers are not a good replacement option; PHA experience in administering the program to which it is converting assistance and whether or not the conversion will result in a PHA's internal streamlining of rental assistance programs; and more.*

HUD response: In order to minimize administrative complexity of RAD for both participants and HUD, especially given its limited timeline, the final notice does not adopt additional selection criteria. However, HUD has added additional incentives for PHAs supporting the Choice-Mobility component as described in the response to question 3 of section A above (Choice-Mobility Component).

4. *A commenter requested that HUD Mod Rehab owners to designate a project as a priority project in the competition, as permitted for PHAs.*

HUD response: The final notice allows a Mod Rehab owner to designate a priority project.

5. *Commenters encouraged HUD to consider extending the time period to submit applications.*

HUD response: HUD believes that 90 days provides adequate time to submit applications under the initial application period.

6. *Commenters requested that the Physical Conditions Assessment (PCA) be completed prior to the application for conversion under RAD, as much of the information generated by the PCA is needed for the application, causing applicants to have to guess without full data.*

HUD response: At the time of application, a PHA's best estimate of capital needs is sufficient. While a PHA may choose to complete a PCA prior to application, it is not required until 90 days after the issuance of the CHAP. A copy of the completed PCA must be delivered to HUD no later than this date.

7. *Commenters stated that HUD should clarify the requirements for a project applying to convert assistance under RAD in combination with LIHTCs.*

HUD response: HUD has added language to section 1.9 in the final notice describing the submission requirements and treatment of RAD applications involving LIHTCs.

The final notice clarifies that a PHA proposing to utilize 9% LIHTCs that does not already have a reservation must secure a letter from the tax credit issuing agency addressing eligibility, experience, and timing. If the PHA is unable to secure such a letter, it must provide documentation evidencing its efforts and provide a self-scored LIHTC application against the most recent QAP.

If the PHA receives an award under RAD it will have one complete funding round to secure an allocation of the indicated tax credits. Since LIHTCs are extremely competitive and HUD cannot afford scarce awards to be tied up for long periods of time while PHAs attempt to secure LIHTC commitments, HUD can only commit to make awards to the number of units that could receive tax credits in one funding round of LIHTCs (i.e. conversion authority will not be committed to multi-phase development plans requiring award of tax credits in future allocation rounds). HUD will consider future phase development if HUD has authority under the cap imposed by statute to convert additional units.

8. *HUD is providing the following additional clarifications regarding the application and selection criteria based on comments:*

- There is no requirement for successful applications to incur debt (i.e., some projects may only need to adequately capitalize a replacement reserve account relative to an indicated rehabilitation plan and, therefore, do not need to raise first mortgage proceeds).
- The cap of 1,000 units (4,000 in the case of New York City) applies to an entire PHA and is not a project cap.
- There is no restriction on the age of the property proposed for conversion of assistance, including units added to the inventory through the American Recovery and Reinvestment Act, except HOPE VI projects with DOFA dates on or after October 1, 2002.
- Mod Rehab projects may only apply under one component of RAD for the same property. However, if an application under one method is denied, the owner may apply under the other method subject to availability of authority and statutorily prescribed timelines.
- There is no minimum number of points that must be achieved to be selected for conversion of assistance.
- A PHA that is currently carrying out a HUD-approved reduction of units can apply for the PHA size category that would be applicable once the reduction is completed.

- HUD will review and rank all complete, eligible applications that are submitted during the initial application period.
- The final notice allows either a lender letter of interest, or letter of intent, to be submitted at the time of application.

G. Contract Rents

1. *Commenters expressed concern that under the first component current subsidy levels may not be enough to operate the property and service new debt, lessening the possibility of being able to leverage new money. Commenters proposed various alternative approaches to setting initial contract rents, including using market rents, Fair Market Rents, or budget-based rents.*

HUD response: HUD is constrained by the requirement of the RAD statute limiting conversions to current funding. Automatically increasing project rents to FMRs, or to market rents, without regard to current funding, would be in violation of the RAD statute.

2. *Commenters expressed concern that appropriation levels can vary significantly from year to year, impacting the rents for which a project would be eligible at the time of conversion. Commenters suggested giving PHAs the option to decide at which point during the conversion to determine the rents; that HUD should use the funding available at the time of application, instead of at the time of conversion, and apply any future funding shortfalls to the properties not converting assistance.*

HUD Response: HUD is aware that the year-to-year changes to appropriations levels may make it difficult for PHAs to predict rents at conversion. However, in order to maintain budget neutrality, a project's rents will be determined in accordance with the appropriation in the Fiscal Year in which it converts. HUD will post presumptive contract rent calculations for every public housing project at www.hud.gov/rad based on the FY 2012 Appropriation. If a project applies in FY 12, but does not finalize conversion until a future fiscal year, the contract rent will be determined by the appropriation in effect in that future fiscal year.

3. *Some commenters opposed the PBV and PBRA rent caps since they could result in reduced funding for some projects, limiting the amount of financing that a project can sustain. Others questioned why the PBV and PBRA conversions would have different caps. A commenter stated that PBRA rents should not exceed comparable market rents unless a PHA can justify the higher rent by the preservation value of the property.*

HUD response: In attempting to maintain a general level of consistency with the existing rent policies of PBV and PBRA programs, HUD has retained the rent caps from the initial notice, which essentially reflect contract rent policies associated with each program.

4. *Commenters stated that the Operating Cost Adjustment Factor (OCAF) methodology for adjusting rents may not be enough to keep up with inflation; that HUD should adopt a budget- or needs-based rent adjustment mechanism rather than OCAF; that HUD should refine the OCAF levels for individual properties to reflect uncontrollable expenses; that*

HUD should retain the authority to create adjustment factors on a project-by-project basis; that HUD should provide a market-based adjustment option, and that HUD have mandatory reset events to review the amount of funding going to a project to keep funding in line with the actual needs

HUD response: The RAD statute requires rents be adjusted by a factor determined by the Secretary. The OCAF methodology is used in various Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) options. The Department believes the OCAF adjustment is effective for long-term preservation.

5. *Commenters suggested that PHAs be permitted to reduce the number of units and use the funding for those units to subsidize converted units.*

HUD response: As HUD believes one of the central purposes of RAD is to preserve housing, for applications where the PHA proposes a de minimis reduction of units, projects will not be permitted to retain the subsidy of any units that are not included in the conversion application. An exception is made when certain units will be designated for non-dwelling special uses, e.g., units used for resident services, resident organization offices, and related activities such as self-sufficiency and anti-crime initiatives. These special use units will not receive contract rents; instead, the contract rents for the dwelling units will increase by a share of the foregone subsidy. In such cases, the RAD Conversion Commitment letter will reflect that those non-dwelling units continue to be used for the indicated special purposes.

6. *A commenter asked that MTW agencies be able to use their MTW flexibility to provide an on-going subsidy if contract rent granted under RAD is below the fair market rent for the property.*

HUD response: Allowing MTW agencies to augment the federal subsidies to these projects might result in the MTW agency serving fewer households and would violate the RAD statute governing the requirement that projects convert with current funding.

7. *A commenter asked whether there were any circumstances in which a Mod Rehab project converting under the first component of the Demonstration would experience a reduction in contract rents.*

HUD response: For PBRA conversions, because of current Multifamily Assisted Housing Reform and Affordability Act (MAHRAA) restrictions on Mod Rehab rent levels, PBRA initial rent caps should never reduce the rent levels Mod Rehab projects currently receive, assuming existing rents have been calculated correctly. For PBV conversions, rents at conversion would be capped at 110% of the FMR (or the applicable Exception Rent Payment Standard), minus any utility allowance. Therefore, it is possible in certain markets that Mod Rehab rent levels could be reduced when converting to PBVs.

8. *HUD is providing the following additional clarifications regarding contract rents based on comments:*

- Calculations of current funding do not include administrative fees paid to voucher agencies and Performance Based Contract Administrators.
- For administrative simplicity, HUD will use the metropolitan FMRs when calculating rent caps (and not the small area FMRs currently used in limited market areas).
- Upon conversion to PBVs or PBRA, covered projects will be funded through the TBRA or PBRA accounts, respectively.
- For conversions to PBRA:
 - A rent comparability study is required at conversion only for projects whose current funding exceeds 120% of the FMR and the PHA-owner believes the current funding amount is less than market rent.
 - No rent comparability study is required following conversion and through the initial contract term as rents are adjusted by the OCAF.
- For conversions to PBV:
 - While OCAF adjustments are never negative, in the PBV program the contract rent can never exceed the “reasonable” rent, so a rent may decrease based on market conditions. However, the rent will not be allowed to decrease below the initial rent established in the RAD conversion.
 - PBV units converted under RAD will be added to the PHAs authorized baseline level. These units will be included in the PHA’s eligible voucher renewal funding calculations, and funded subject to appropriations.

H. Resident and Public Participation

Public Housing

1. *Commenters stated that HUD should require the PHA Plan to be amended (1) prior to the RAD application because if the amendment process happens as late as the current notice requires, the RAD process is too far along to incorporate any comments from the residents or the public and (2) if assistance is transferred, if ownership changes, if there is a change in the number of assisted units, or if there are changes to the finance plan.*

HUD response: The final notice includes language requiring that the Plan amendment be completed within 60 days of provision of the Commitment to Enter into a Housing Assistance Payment (CHAP) contract. The final notice also requires that an additional resident meeting be conducted if there are significant changes to the RAD conversion or financing plans, including:

- Transfer of assistance or ownership;
- Change in the number of assisted units; or
- Substantial changes in scope of work.

2. *A commenter stated that tenants should have full access to the property documents and an advisory role in the operation of properties with assistance converted under RAD.*

HUD response: Following conversion, projects will be subject to the rules in the PBV and PBRA programs. (The final notice adds language encouraging PHAs and owners to meaningfully engage residents on issues related to their tenancy.)

3. *Commenters stated that properties with assistance converted to PBRA should remain subject to the PHA Plan process.*

HUD response: Upon a conversion of assistance under RAD, properties will no longer be subject to the rules applicable to the prior form of assistance, namely public housing, Mod Rehab and Rent Supp and RAP. Instead, they will be subject to the regulations and rules of the form of assistance to which the property was converted—either PBV or PBRA—with any exceptions outlined in the RAD final notice. Properties assisted under the PBRA program are not subject to PHA Plan requirements and RAD does not change this provision.

4. *A commenter stated that residents in public housing properties that are converting assistance under RAD should have the ability to be heard by HUD if more than half oppose a proposal by the PHA in the same manner that is afforded residents in Mod Rehab, Rent Supp, and RAP properties under the second component of the Demonstration.*

HUD response: HUD sought to offer residents of Mod Rehab, Rent Supp, and RAP properties under the second component this additional recourse because these residents will be giving up access to a tenant-based voucher in order for the voucher to be project-based under RAD. Public housing residents will be switching from one project-based form of rental assistance (public housing) to another (Section 8), and will have other opportunities for engagement through other requirements imposed on the PHA (for example, the significant amendment to a PHA Plan process, etc.).

5. *A commenter stated that the general public and public housing residents must have adequate notice and no-cost, easy access to all pertinent materials regarding the conversion of assistance and be encouraged to participate in public meetings. They also stated that HUD should require tenant meetings to be scheduled at times convenient for the tenants; allow for residents to ask questions with notes taken at the meeting; require the meetings to be accessible for residents with disabilities and compliant with limited English proficiency (LEP) guidelines; and require the owner hold additional meetings if necessary to hear all concerns.*

HUD response: The final notice adds a requirement that PHAs and owners make documents used in meetings or briefings available to residents of properties proposed for conversion either online or as hard copies. The final notice also includes additional language requiring compliance with 24 CFR § 8.6 on accessible communications and Executive Order 13166 on limited-English proficiency.

6. *Commenters stated that residents in properties with assistance converted to PBRA should be able to serve on the PHA Board of Commissioners or on the Resident Advisory Board (RAB).*

HUD response: When a project converts assistance to PBRA, the residents are no longer participants in the public housing program. As a result, they would not be eligible to serve as the resident representative on the PHA Board. Similarly, they would not qualify to serve on the RAB. However, a PHA could voluntarily include a resident of a converted project on the PHA Board or RAB.

7. *Commenters stated that the membership of a resident organization in a property with converted assistance in a jurisdiction-wide organization should not interfere with the jurisdiction-wide organization's right to be recognized by the owner of the development.*

HUD response: The final notice clarifies that a PHA's recognition of jurisdiction-wide resident organization should not be affected by a RAD conversion. PHAs must still continue to recognize jurisdiction-wide organizations according to program rules.

8. *Commenters stated that HUD should direct that the \$25 per unit per annum add-on under the Operating Fund program for resident participation, upon conversion, should be controlled by a property's resident organization. Other commenters opposed the funding of resident organizations, stating that HUD should provide additional funds for that purpose.*

HUD response: The indicated policy in the initial notice, and that HUD is retaining in the final notice, is consistent with existing public housing regulations. The funding for resident participation is now a component of a PHA's current funding, and as such, is effectively conveyed in the current subsidy under a RAD conversion. Consequently, HUD is only requiring PHAs to maintain a similar approach to making funding available to *legitimate* resident organizations.

9. *Commenters stated that PHAs should encourage the development of resident organizations where they do not currently exist; that HUD should specify what happens when there is no tenant organization, both in terms of tenants' interaction with the owners and with the per-unit allowance for the organization; that HUD provide additional guidance on the definition of "legitimate tenant organization;" and that the notice be explicit that residents in all converted properties have the right to organize under 24 CFR Part 245.*

HUD response: The final notice strongly encourages the development of resident organizations and includes a definition of a legitimate resident organization for public housing conversions of assistance to the PBV program. Projects converting assistance to PBRA will be governed by 24 CFR Part 245, which includes requirements for recognizing legitimate tenant organizations. The final notice also outlines the use of resident participation funds and resident interactions with PHAs and owner in the absence of a legitimate resident organization.

10. *Commenters stated that the notice should be clearer about the interaction between the owner of the property and any tenant organization, particularly by defining "recognition" of the tenant organization as having a meaningful give and take with the owner.*

HUD response: The final notice adds new language expanding the expectations of public housing projects converting assistance to PBVs to recognize and engage with legitimate resident organizations.

11. *A commenter stated that the tenant organization should be consulted about changes in policies and practices affecting tenants, including the development of new leases, grievance procedures, admissions policies, and continued occupancy policies.*

HUD response: PHAs and owners will follow applicable PBV or PBRA program rules on these types of notification and consultation after conversion. HUD encourages PHAs and owners to consult residents whenever there is a change in policies and practices affecting tenants.

12. *Commenters requested additional clarifications, for public housing conversions to PBVs or PBRA, regarding the applicability of the Family Self Sufficiency (FSS) program upon conversion, including continued eligibility and treatment of escrow deposits.*

HUD response: Residents already participating in a public housing FSS program will be able to continue participation after their housing is converted under RAD. HUD clarifies in the final notice that if the project is converting to PBV and the PHA has a Housing Choice Voucher (HCV) FSS program, the participant will be transferred to that program. If there is no HCV FSS program or the project converts to PBRA, the public housing FSS coordinator will continue to work with affected residents. PHAs will be allowed to use any funds already granted for PH FSS coordinator salaries until such funds are expended, at which point they are no longer required to include the families in the FSS program.

In either conversion type, the escrow account will be split into two accounts: one for public housing (which includes all escrow prior to the conversion) and one for PBV or PBRA (which will include all escrow accumulated after the conversion). Upon graduation from the FSS program, the participant will receive two checks, one from each of these escrow accounts.

13. *Commenters stated that all PHAs, resident organizations and non-profit organizations supporting either PHAs or resident organizations should be eligible to apply for ROSS grants.*

HUD response: Similar to FSS provisions, the final notice adds clarifying language allowing residents in projects converting assistance currently participating in ROSS to continue their participation in ROSS, provided the PHA continues to be funded under the applicable program. However, public housing properties that convert assistance will no longer be eligible to apply for or receive assistance under new ROSS grants as a PBV or PBRA converted property.

14. *Commenters requested information on the procedures that PHAs would be required to follow to establish site-based waiting lists at the converted projects, including any requirements regarding notification of households on the project- or community-wide waiting list.*

HUD response: The final notice provides instructions regarding the establishment of site-based waiting lists. Generally, where a site-based waiting list is already in place, the PHA must honor existing applicants. Where there was not a site-based waiting list, the PHA must

conduct outreach to applicants on the community-wide list and provide them first priority in being admitted to the site-based waiting list.

Mod Rehab, Rent Supp, RAP

15. A commenter stated that for all properties converting assistance under the second component of RAD, even if less than half the residents oppose a proposal, the concerned minority should have recourse to discuss their concerns with the PHA.

HUD response: The notice requires that the owner, PHA and residents meet if more than 50% of Rent Supp and RAP residents oppose the conversion. This does not preclude additional meetings if fewer than 50% oppose the conversion. Furthermore, the tenant briefings, which the PHA and owner must both attend, are an appropriate opportunity for residents to discuss concerns with the PHA. HUD chose to include this additional recourse for residents to be heard when a majority oppose the conversion.

16. Commenters provided a wide range of feedback on the tenant notification, and some stated that the sample tenant notice under the second component may be confusing and provides insufficient information on the conversion and its requirements in regards to communication with residents, and they recommended HUD consult with advocate groups to develop a clearer sample notice.

HUD response: HUD is providing the sample tenant notification to give owners only as a potential template for them to use. This template is not meant to be an exhaustive notification letter and will be altered by the owner upon receipt of the more in-depth trainings HUD will provide. HUD encourages advocate groups to work with PHAs and residents to foster effective communication consistent with the requirements under the Notice.

17. Commenters stated that HUD should invite resident and resident organization comment for both prospective and retroactive conversions of assistance for properties assisted under Rent Supp or RAP. Other commenters asked that HUD require notice from an owner applying for conversion of assistance under RAD to any resident organizations meeting the requirements in 24 CFR Part 245.

HUD response: The final notice clarifies that resident comments, including comments offered by existing resident organizations, be considered for both prospective and retroactive conversions of assistance. Comments from duly recognized resident organizations under 24 CFR Part 245 are invited.

18. A commenter asked why retroactive conversions of Rent Supp, RAP and Mod Rehab require individual consent from residents while prospective conversions only require notice to the residents and an opportunity for the residents to comment.

HUD response: Retroactive conversions require individual consent from residents because such residents have already been, or will soon be, issued tenant protection vouchers, and HUD believes they should not be required to relinquish their vouchers without their informed consent. Prospective conversions do not require consent, but require notice, a briefing, an

opportunity to comment, and a requirement that owners submit to HUD the comments and their responses to comments.

19. *A commenter requested an alternative for obtaining an individual tenant's consent if the owner can provide a reasonable explanation for why the consent cannot be obtained (e.g., mental incapacity, unwillingness to participate in the process).*

HUD response: If the owner cannot obtain written consent from the tenant for retroactive conversions, the unit will not be eligible for conversion. There will be no alternative to this requirement.

20. *Commenters stated that it is not necessary to require a one-year notification of an opt-out or expiration of a Mod Rehab contract if the owner is converting the assistance under RAD, as there would be no termination of assistance to the residents.*

HUD response: The current Mod Rehab statutory requirement is that one-year notification be provided to tenants at expiration or termination of the Mod Rehab Housing Assistance Payments (HAP) contract. Since the Mod Rehab HAP contract will be terminated in order to effectuate the conversion, and there is no guarantee that project successfully completes the conversion, statutory notification to tenants is required. The owner must provide tenants with the one-year statutory notification prior to submitting its application for conversion. The conversion may be processed during the one-year notification period; however, the statutory protections accorded to tenants pursuant to section 8(c)(8)(A) of the Act are applicable until such time as the one-year notification period has been satisfied. If the RAD conversion is not approved or completed, the Mod Rehab contract will remain in place and will be eligible for one-year renewal as under the current program.

21. *Commenters stated that HUD should use its general rulemaking authority to require a one-year notice to all tenants assisted under an expiring Rent Supp or RAP contract.*

HUD response: HUD acknowledges the importance of this issue, and will be reviewing potential changes to regulations for the broader Rent Supp and RAP programs. However, this issue will be explored outside of RAD. Imposing a new one-year notification requirement for owners that are otherwise eligible is infeasible given the date of contract expirations relative to RAD authority. For the purposes of RAD, the policy will be consistent with 24 CFR Part 245 and its requirement for 30-day tenant notification for comparable housing actions.

General

22. *Commenters stated that RAD should provide technical assistance for residents and resident organizations to allow for full participation in a complex process.*

HUD response: HUD is exploring the potential use of existing funding sources to provide residents with technical assistance to help them understand the meaning of conversion, the process, and the impact on the project and households. The intent of the technical assistance would be to focus on providing residents with the information and tools to be active participants in their properties' RAD conversions. HUD intends to provide general information on RAD conversions for public housing residents after the publication of the

final notice. Additionally, HUD also intends to provide more detailed information to residents for properties that are actively seeking or undergoing a RAD conversion.

23. *A commenter stated that HUD should allow for teleconferencing for meetings with tenants to discuss the plans for converting assistance at a property.*

HUD response: While PHAs and owners may utilize teleconferencing for helping to generally communicate with residents on proposed RAD conversions, a teleconference will not be sufficient to comply with the meeting or briefing requirements outlined in the final notice; these meetings or briefing must be held in person.

24. *HUD is providing the following additional clarification regarding resident and public participation based on comments:*

- A subsequent change in project ownership under RAD will not affect changes in tenant rights as conveyed in the initial conversion of assistance to a PBV or PBRA contract.

I. CHAP Milestones

1. *A commenter suggested an open-ended time frame in meeting CHAP milestones as long as the project is moving forward.*

HUD response: Because of the need to make sure that projects are moving expeditiously towards securing financing and commencing rehabilitation, HUD believes that it is important to provide clearly-defined and monitored milestones.

2. *A commenter stated that complex procurement rules for public housing make meeting the project milestones impossible.*

HUD response: Generally, all procurements needed to prepare a RAD application, Financing Plan and other materials prior to the conversion of assistance can be procured through small purchase procedures applicable to PHAs. Following execution of the RAD Conversion Commitment, all properties will be subject to established procurement procedures for PBV or PBRA contracts, as applicable.

3. *A commenter noted that the closing process for Moderate Rehab properties converting assistance is not as detailed in the initial notice as the process required for public housing and suggested that the public housing process be followed.*

HUD response: The final notice clarifies that Mod Rehab projects are subject to the same CHAP requirements and related milestones as public housing project conversions.

4. *A commenter stated that, if a property is selected for award but later unsuccessful in its LIHTC application, the property should have an opportunity to restructure their financing plan before the CHAP is revoked.*

HUD response: A PHA that was awarded a CHAP contingent on receiving a LIHTC award that is ultimately unsuccessful in its bid for 9% or 4% LIHTCs will have the option once its tax credit application is rejected to submit an alternative financing plan that does not require the respective 9% or 4% tax credit award. The PHA has 30 days (from the date it receives notice that it did not receive the applied-for credit reservation) to submit the revised financing plan. The revised financing plan must be sufficient to assure the preservation of the project and must involve sufficient rehab such that the project would have still been selected in the competition. If the PHA is unable or uninterested in completing a revised financing plan, then the CHAP will be rescinded and awarded to the next project on the RAD waiting list.

J. Financing Plan and Feasibility Benchmarks

1. *Commenters suggested various changes to the underwriting benchmarks used in either the application or the review of Financing Plans.*

HUD response: The final notice reflects a number of modest changes in the underwriting standards for both the application and the Feasibility Benchmarks intended to facilitate conversions by making requirements more consistent with standard financing practices.

2. *A commenter asked to understand the purpose of HUD's review of the Financing Plan.*

HUD response: The main purpose is to provide additional assurance that the underwriting performed by the lender and/or investor will ensure that the project will be viable for the life of the contract. HUD will review the Financing Plan to ensure that the lender and/or equity investor has reasonably addressed the needs identified in the physical condition assessment (PCA).

3. *Commenters asked if HUD would permit alternative PCAs, including those that are generally accepted by lenders or other HUD programs, or those covering less than 20 years.*

HUD response: The time periods for the PCA are both consistent with industry standards and necessary for effective, long-term program administration. HUD will release an updated version of the prescribed PCA in time for PHAs to use in conjunction with RAD. PHAs may use the updated PCA or a substantial equivalent as approved by HUD. At the time of submission of the Financing Plan, a PHA may use any PCA that has been completed in the past 12 months and has been approved by HUD (see the prescribed PCA and its statement of work for further detail on HUD's requirements).

4. *A commenter stated that HUD should allow PHAs and lenders to work out their own lending arrangements, including debt coverage ratios, operating costs, trending of rents, reserve requirements, etc.*

HUD response: All RAD conversion projects seeking FHA insurance will be subject to the applicable FHA program requirements. For projects not seeking FHA insurance, HUD still has an obligation to ensure, based on significant experience in administering other HUD

programs, that the project's financing terms are reasonable. However, to the extent reasonable, HUD will rely on lender and investor lending arrangements that are commercially reasonable for similar multifamily assisted housing, and not impose redundant requirements.

5. *A commenter stated that allowing financing plans to be submitted up to 180 days after the CHAP while requiring other financial commitments prior to that time will create confusion and difficulties if the Financing Plan is not approved.*

HUD response: Intermediary review of financing commitments enables HUD to better monitor conversions and plan for reallocation of CHAP awards to projects on the waiting list, if needed. Attachment 1A to the final notice outlines approvable underwriting feasibility benchmarks to guide the PHA toward an approvable Financing Plan.

6. *Commenters suggested that HUD use its authority under RAD to "set alternative requirements" to require that PILOTs be allowed for properties with converted assistance unless a PHA specifically decides to pay taxes for certain units due to mixed-finance plans. Another commenter stated that HUD should evaluate the potential of linking commercial PACE to PILOT for HUD-assisted multifamily properties.*

HUD response: Payments in lieu of taxes, or PILOT, by PHAs to state and local governments, although a condition of receiving assistance under an annual contributions contract with a PHA, is a matter that is otherwise governed by state and local law. Accordingly, the eligibility of a property to pay PILOT instead of state and local property taxes will be determined by the applicable jurisdiction on a property-by-property basis, particularly for determining what the applicable value of a property would be following conversion. Although HUD believes that in most cases PILOT provisions will continue to apply, the PHA is responsible for demonstrating if this is the case or not in its RAD Financing Plan.

Similarly, Property Assessed Clean Energy (PACE) financing programs may apply to converted properties in accordance with the existing requirements that govern PACE eligibility, agreements, and benefits. HUD does not require or prohibit participation of converted properties in PACE programs.

7. *Commenters stated that getting a legal opinion from the lender's counsel that the transaction is compliant with RAD regulations is too expensive and the requirement should be removed.*

HUD response: HUD views the required legal opinion as a necessary protection consistent with commercial practice for similar transactions. The opinion is not required if there is no lender.

8. *A commenter asked for clarification on the requirement that the owner's legal counsel opine that the owner is "authorized to enter into the RAD conversion transaction."*

HUD response: The Owner's counsel opinion is required to ensure that the signatory has the authority to enter into the agreement, and bind the PHA or owner entity. For example, if the charter of a PHA requires a board resolution or other action in order to enter into an agreement such as a RAD conversion and financing, and assuming the charter designates who has delegated authority to sign legally binding commitments on behalf of the PHA, the owner's counsel letter would confirm that all necessary actions and delegations have been fulfilled.

9. *A commenter asked what forms will be required for gap financing.*

HUD response: If a Financing Plan includes gap financing, the same demonstrated level of commitment required for primary financing, on the same timeline, will also be required from the source(s) of the gap financing.

10. *Commenters asked whether a PHA converting assistance for multiple developments under the same PIC Development would have to do all the rehabilitation at once, or whether the PHA can phase its rehabilitation efforts.*

HUD response: The final notice clarifies that a Financing Plan can include phased rehabilitation so long as such phasing meets the indicated Financing Plan timelines and milestones.

11. *Commenters stated that HUD should encourage or even require at least some level of sustainable rehabilitation as long as it is financial feasible.*

HUD response: The final notice requires use of EnergyStar, WaterSense, and other sustainable systems and appliances when those systems and appliances are being replaced. Also, the prescribed PCA form, or a comparable equivalent, will inform the owner of the financial feasibility of utilizing more efficient and sustainable components in its rehabilitation and ongoing replacements. Any new construction that takes place under RAD must meet the specified energy efficiency design standards contained within the Notice. Finally, any application that commits to meet a green standard specified in the notice will receive ranking factor points.

12. *A commenter stated that HUD should encourage PHAs to address indoor air quality and other healthy building measures as part of their rehabilitation.*

HUD response: The final notice strongly encourages PHAs to utilize components that contribute to indoor air quality. The prescribed PCA form, or comparable equivalent, will provide PHAs with information on such alternatives. Any applicant awarded points for committing to meet a specified green standard will have to meet the indoor air quality and healthy buildings requirements of that green certification program.

13. *HUD is providing the following additional clarifications based on comments regarding Financing Plans and feasibility benchmarks:*

- In the context of comparing the final lender terms with the terms presented with the Financing Plan, the final notice adds a new definition for the phrase “substantially the same.”
- The final notice modifies the language on developer fees to be consistent with the general standards for fees in various HUD programs and LIHTC practices.
- The final notice modifies the Financing Plan feasibility benchmarks to consider any initial deposits made to the replacement reserve account in determining the annual deposit levels.
- The final notice indicates that all covered projects must maintain adequate coverage for losses due to casualty and liability claims.
- The final notice removes the requirement for “non-luxury” housing, so as not to handicap a development’s competitiveness for various forms of financing and leasing in the marketplace more generally.
- The final notice removes the limitation on financing loans to the amount required for feasibility.

K. Financing Sources

1. *Commenters stated that, for RAD projects intending to secure FHA financing, HUD may need to modify various FHA processing requirements, particularly with regard to the treatment of above-market rents, real estate tax abatement, expenses that are different from historical, seller take-backs, developer fees, etc.*

HUD response: Special instructions related to processing of FHA loans for RAD projects, including areas of streamlining, will be forthcoming subsequent to the issuance of the final notice.

2. *Commenters have asked that HUD conduct outreach to the broader lending community and also publish the names of lenders interested and willing to work with PHAs that are converting assistance under RAD.*

HUD Response: The notice indicates that state and local housing finance agencies, LIHTC investors, GSE lenders/investors, and FHA lenders (approved FHA lenders are posted on the HUD website) are potential sources of financing for RAD and has offered briefings on RAD financing opportunities to all of these sources and more. HUD will continue to encourage various financing sources to consider RAD financing opportunities. However, similar to other affordable housing transactions, it will be the responsibility of each applicant to enlist the interest and secure required commitments from potential financing sources.

Although HUD has undertaken outreach to lenders, as it has to other stakeholder groups and parties with an interest in RAD, it would not be appropriate for HUD to publish a list of interested and willing lenders. It would be difficult, if not impossible, to compile a complete list of interested and willing lenders, which would result in a disadvantage to interested lenders who are not listed. Further, issuing such a list could create a perception of HUD endorsement of the listed lenders regardless of any disclaimers to the contrary.

3. *A commenter stated that HUD should permit transfer of energy performance contract debt from a property converting assistance under RAD to other properties in its portfolio if allowed by the third party and there is still a savings to debt service ratio across the portfolio.*

HUD response: HUD will not permit EPC debt that is assigned to one public housing project to be reassigned to another public housing project as it would be inconsistent with project-level financial reporting standards.

4. *Commenters asked what steps short of transfer of assistance will be available to HUD to prevent defaults on loan debt.*

HUD response: Although HUD does not consider that a default on loan debt will be a likely occurrence given prudent underwriting and ongoing oversight by lenders and HUD's review and approval or rejection of a property's Financing Plan, in the event that extraordinary circumstances threaten the financial viability of a property, HUD will undertake corrective enforcement and remediation actions consistent with its other multifamily programs prior to transferring assistance as authorized under RAD.

5. *A commenter stated that requiring a first priority lien for the RAD use agreement will likely mean that private lenders will require transition reserves to satisfy the use agreement in the absence of an assistance contract, lowering the amount of financing available for capital improvements.*

HUD response: The scenario described is not consistent with HUD's experience in other similar transactions where a senior, surviving use agreement is required. It should also be noted that under RAD assistance contracts will be available for 15 to 20 year terms and must be renewed, and use agreements will be of the same duration as the contract terms.

6. *A commenter stated that HUD should leave approval of the escrow agent to the lenders if there is no FHA financing involved.*

HUD response: The notice has been revised, eliminating the need for HUD approval of the escrow agent in the case of non-FHA financing.

7. *Commenters suggest raising the limit on public housing funds that could be used for pre-development expenses. Also, commenters asked whether the subsidy layering review thresholds described in the notice would apply if a PHA contributes operating reserves or other public housing funds as a predevelopment loan that would be paid back at the close of construction or permanent financing.*

HUD response: The final notice raises the amount of public housing program funds that can be used to pay for pre-development costs prior to approval of the Financing Plan to \$100,000 and also permits these expenses pre-CHAP issuance. This amount is not a cap on total pre-development or soft costs. Rather it is just a limit on the funds that can be expended from the

public housing program prior to approval of the Financing Plan. The final notice also clarifies the associated eligible pre-development activities.

Contributions of public housing funds through a predevelopment loan would not trigger a subsidy layering review if the public housing funds loaned by the PHA were repaid at the close of construction or permanent financing. However, the total pre-development expenses paid with public housing funds (including those contributed through a predevelopment loan) may still not exceed \$100,000.

8. *HUD is providing the following additional clarifications on financing sources based on comments :*

- The final notice removes the requirement that lenders must accept post-closing changes to lender documents as this could discourage participation by lenders.
- The final notice explicitly waives 24 CFR § 905.10(i) in order to permit the use of replacement housing factor fees for modernization/development purposes under RAD.
- A project is permitted to assume the maximum level of supportable debt to allow the PHA to support other properties in its portfolio or other affordable housing purposes (subject only to the requirements of the lender).
- HUD does not view conversion as a voluntary action by a PHA to reduce future Capital Fund Financing Program (CFFP) debt commitments; therefore, PHAs must continue to comply with any third-party lender or investor requirements regarding the CFFP.
- RAD does not affect the payment of Asset Repositioning Fee (ARF) or Replacement Housing Factor (RHF) fees for actions prior to RAD.
- The language in the proposed application form regarding developer fees is amended to reflect the language in the final notice.
- Earned developer fees are not considered federal program funds.
- The final notice clarifies the phase-in of allowable developer fees.
- RAD projects using LIHTCs are eligible to participate in the FHA-expedited approval pilot (“LIHTC Pilot”) as outlined in Housing Notice 12-028.
- For projects using LIHTC investments, HUD recommends that tax counsel review the financing structure to ensure that any other federal funds used do not negatively impact the credit basis calculation.
- Amounts spent on pre-development expenses for public housing projects converting assistance will not be deducted from the public housing subsidy used to calculate assistance to the property after conversion.
- PHAs are able to utilize additional federal funds such as HOME and CDBG to supplement properties with assistance converted under RAD consistent with other affordable housing transactions, subject to a subsidy-layering review.
- For non-FHA loans, HUD approval of requests for withdrawals from the replacement reserve is required.
- A PHA can only access “seller take-back financing” proceeds through principal and/or interest payments made from available cash flow as permitted by superior lending sources and/or investor requirements.
- The purpose of the mixed-finance affidavit is to ensure that affected parties agree in principle to the RAD conversion requirements and terms.

- HUD encourages utilizing available debt financing and equity investments to fund “green” rehabilitation measures.
- The requirements for permanent debt financing do not apply to construction financing, which usually has shorter terms and different interest rates, including variable interest rates, which are permitted for construction financing, or subordinated debt, which often allows principal and/or debt service to be paid from remaining net operating income once the superior debt service is satisfied, or deferred altogether until refinancing.
- A PHA may use any available public housing funding to facilitate conversion and not just “prior year” funding.

L. Housing Assistance Payments Contracts

1. *Commenters asked for more flexibility with respect to the length of the contract or loan term, especially to facilitate debt and equity financing. A commenter also asked that HUD allow balloon payments that would come due during the contract term.*

HUD response: To ensure the continued viability of the covered project, the final notice establishes that, for primary permanent financing, a balloon loan cannot have a term of less than 18 years except in the case of PBV conversions when the contract is less than 18 years (but cannot be less than 15 years), in which case the maturity date or balloon cannot be less than the term of the contract. However, as indicated above, this requirement does not apply to subordinated permanent financing.

2. *Commenters requested that the requirements for PHAs to accept offers of renewal be conditioned upon the absence of significant modifications adversely affecting the contract terms. Commenters indicated that lack of knowledge about the nature of the future terms would greatly inhibit program participation.*

HUD response: The RAD statutory provision on renewal is equally binding on PHAs and HUD, requiring HUD to offer, and the PHA/owner to accept, a renewal contract “subject to the terms and conditions applicable at the time of renewal.” Such terms and conditions would be governed by whatever statutory authorities are in place at the time of renewal. Further, such statutory authorities typically set the levels at which rental assistance is provided under the contract, as they do, for example, under section 8(o)(13)(H) of the 1937 Act or section 524 of MAHRAA, rather than leaving such terms and conditions to HUD’s discretion. Although the RAD statute limits the setting of rental assistance levels in the initial contracts by the amount of available capital and operating funds, this provision places the RAD renewal contracts on an equal footing with other PBV and PBRA renewal contracts with respect to terms and conditions such as the rental assistance levels applicable at the time of renewal. As indicated in the initial notice, the contract terms upon renewal are eligible to be, by statute, under MAHRAA for any PBRA contract. Similarly, the contract terms for PBV renewals will be subject to the applicable statutes at the time of renewal.

3. *Commenters requested HUD to allow properties not funded at a level sufficient to keep the property viable to opt out of renewals.*

HUD Response: The RAD statute requires that, for former public housing properties, the Secretary shall offer and the owner shall accept renewal of the contract. While the Secretary may permit transfer of assistance, there is no provision for the Secretary to permit owners of properties formerly assisted under section 9 to not renew the assistance contract. The mandatory renewal provision does not apply to other assisted-housing owners that are converting under RAD. HUD is committed to protecting the financial viability of these properties to preserve the affordable housing stock and, as noted above, will follow practices consistent with its other multifamily programs in support of this objective.

4. *A commenter asked why, under the first component, a PHA or Mod Rehab owner cannot convert immediately to a MAHRAA contract (rather than wait 20 years). Another commenter requested HUD allow for renewals prior to 20 years if necessary to correct a problematic financing structure.*

HUD Response: The RAD statute states that properties shall be eligible to convert assistance from their current assistance programs to section 8 project-based subsidy contracts which are then renewable under MAHRAA (or PBV, as applicable). The statute also requires the initial contract to be “long-term,” resulting in a 15- to 20-year initial contract that is then renewed under MAHRAA. Therefore, by statute, an owner may not convert initially and directly into a MAHRAA contract. With respect to a request from an owner, HUD, in its sole discretion, may terminate and renew a contract, if essential for the long-term preservation of the asset.

5. *HUD is providing the following additional clarifications based on comments on HAP contracts:*
 - For the second component of RAD, HUD does not have the authority to waive the current statute limiting initial PBV contracts to up to 15 years. However, PHAs have the option under current PBV rules to immediately extend a contract (for up to an additional 15 years) at the time of initial execution.
 - For conversions to PBRA under the first component of RAD, all renewals will occur in accordance with MAHRAA.
 - The final notice clarifies that in the case of PBV contracts, the offer of renewal will be made by the voucher agency administering the contract, with both the requirement and request to renew to be the responsibility of the owner.

M. Legal Documents

1. *Commenters requested that the housing assistance payments contract, use agreement, and RAD Conversion Commitment, and other related legal documents be made publicly available and open for comment before requiring owners to sign them.*

HUD response: Shortly following the publication of the final notice, HUD will publish the above legal documents for review and comment by interested parties prior to implementation.

2. *Commenters requested additional clarification on how the Use Agreement might function after a foreclosure.*

HUD response: The Use Agreement will be recorded senior to any other liens, including mortgages, so a foreclosure by one of those liens or mortgages will not affect the Use Agreement, which will remain in force for its entire term.

3. *A commenter stated that the Use Agreement should be removed if the HAP contract is terminated. Another commenter stated that the Use Agreement's priority over financing should expire if sufficient appropriations are not made.*

HUD response: The final notice clarifies the purpose of the Use Agreement, which is to establish the long-term affordability and use restrictions in the event that the HAP contract is transferred or terminated. In such instances, the owner must continue to serve low-income households (below 80% of area median income, or AMI) for all units that were previously assisted under the HAP, with rents not more than 30% of AMI. The revised Use Agreement incorporates by reference the HAP. The HAP (and thus by reference the Use Agreement) does not terminate in the event of insufficient appropriations, which is the case in MAHRAA contracts.

4. *A commenter stated that the Use Agreement, which the notice indicates will contain procedural rights, should also contain substantive rights such as rent limits, a requirement of just cause for evictions, etc.*

HUD response: As indicated in the above response, the RAD Use Agreement has been modified in the final notice to incorporate by reference the HAP. The Use Agreement's provisions only become effective when the HAP has been terminated or transferred. In those circumstances, the project must continue to serve low-income households for what would have been the remaining term of the HAP. However, the project is no longer assisted.

N. Rehabilitation Process

1. *A commenter stated that the PHA should only have control over the rehabilitation for which it provides funds. Another commenter stated that the developer or borrower should have some oversight of work done by another party, especially for LIHTC developers and FHA borrowers, as they are ultimately responsible to ensure the money is spent as promised.*

HUD response: The final notice clarifies that the PHA will control rehabilitation only when there is no lender or investor involved in the RAD-related rehabilitation activities, and the PHA uses its own funds for the rehab. For LIHTC, FHA, and non-FHA financed transactions, the lender and/or investor will have responsibility for rehabilitation oversight.

2. *A commenter stated that HUD should use the normal rehabilitation controls set by lenders rather than imposing HUD oversight, as non-FHA lenders will be discouraged by HUD control.*

HUD response: The final notice balances the need for lender and/or investor control of rehabilitation funds, with the need for a reasonable measure of HUD oversight to ensure timely and appropriate completion of the scope of rehabilitation. Escrowed funds will be managed by the lender or investor if applicable, with inspection and draw requirements that are consistent with commercially-reasonable standards.

3. *Commenters sought clarity on when paying Davis-Bacon wages would be required for public housing conversions.*

HUD response: Under RAD, Davis-Bacon wages are required for public housing conversions to PBV or PBRA for the initial repairs identified in the Financing Plan as construction or rehabilitation when there are nine or more units at the project, regardless of financing source. Davis-Bacon is not required for subsequent repairs, unless as a condition of future sources of funding or financing.

4. *Commenters stated that HUD should continue to apply requirements from Section 3 of the Housing & Urban Development Act of 1968 for all subsequent construction and rehabilitation performed on projects that convert under RAD, not just initial repairs.*

HUD response: Following the initial rehabilitation or construction, HUD will apply current program rules for PBV or PBRA, neither of which have Section 3 requirements.

5. *HUD is providing the following additional clarifications based on comments related to the rehabilitation process:*

- The final notice clarifies that HUD will allow the party responsible for the rehabilitation funding to submit an action plan for corrective actions and the completion of rehabilitation within 30 days of sending notice of an owner's default; HUD will then only step in if the responsible party fails to take the agreed-upon action within a specified period of time.
- The final notice clarifies that the 10% construction contingency may be held by a tax credit investor.

0. Resident Procedural Rights, Rescreening, and the Right to Return

1. *Some commenters stated that residents of converted public housing properties should have essentially the same procedural rights governing actions by the owner as they share under the public housing program, while other commenters stated that residents of converted projects should follow the same requirements of the programs into which they are converting.*

HUD response: The RAD statute requires HUD to provide residents of converted public housing projects the same procedural rights for actions of the PHA as contained in Section 6 of the Housing Act of 1937. Section I of the final notice clarifies these requirements and their application to public housing projects that convert assistance under RAD. The final notice

also includes additional requirements regarding termination notification as contained in Section 6 that were erroneously omitted from the instructions in the initial notice.

2. *Commenters indicated that various aspects of RAD, especially with regard to no rescreening of tenants, might be in conflict with LIHTC policies.*

HUD response: PHAs and owners are advised to carefully consider the requirements under RAD, including tenant rights, in applying for tax credits, which must be observed under any sources of financing that may be utilized.

3. *Commenters raised concerns about situations in which residents of converted public housing projects might be rescreened.*

HUD response: The RAD statute expressly prohibits residents of converted public housing projects from being rescreened, regardless of the situation or ownership vehicle or the impact on possible third-party funding, including LIHTCs. Under RAD conversions, to the extent that a tenant is in a court proceeding, owes money to the PHA or is otherwise not lease-compliant, the tenant at the time of conversion of assistance cannot be rescreened and denied continued tenancy.

4. *A commenter asked if an owner's non-renewal of a lease due to good cause constitutes termination from the PBV program, making the tenant ineligible for a tenant-based voucher.*

HUD response: An owner may terminate the tenancy of a household for good cause, but depending on the grounds for termination of the tenancy a household may also be terminated from the voucher program. The PHA administering the PBV contract will determine whether the termination of tenancy by the owner is based on a violation of a tenant obligation contained within the Statement of Family Responsibility which each household participating in the PBV program is required to sign. If the termination is based on a violation, the PHA may terminate the lease of the household after providing it with an opportunity for an informal hearing. If the termination of tenancy is not based on a violation of a tenant obligation stated in the Statement of Family Responsibility, the PHA will issue the household a Housing Choice Voucher to move.

P. Tenant Recertification and Rents

1. *Commenters asked the conditions under which tenants of projects converting under Mod Rehab or public housing to PBRA or PBV would need to be recertified.*

HUD response: Tenants will be recertified at their next scheduled annual anniversary date, not at time of conversion under RAD.

2. *Commenters asked if HUD could identify additional situations under which a tenant's rent might increase as a result of conversion and requested that the notice be amended accordingly.*

HUD response: The following are examples of situations in which a tenant's rent may increase as a result of conversion from public housing to PBRA or PBV: the tenant no longer benefits from an income disregard provision; additional deductions used by the PHA cannot be used outside of public housing; different utility allowances; difference in the minimum rent policies; prorating policies for mixed households (households with mixed residency statuses) are different in different programs; or changed policies on the interim reporting of increased income. Any of these conditions could make the tenant subject to the rent phase-in policy.

3. *A commenter asked what effect conversion of assistance would have on a tenant currently paying a minimum rent or with zero income.*

HUD response: The effect of conversion would be the same as for any resident: if a resident's rent increases by more than 10%, that increase will be phased in over a three- to five-year period.

Q. Post-Conversion

HUD is providing the following additional clarifications related to the period after the conversion of assistance under RAD based on comments:

- With HUD approval, PHAs are permitted to refinance or restructure permanent debt during the HAP contract term.
- For PBRA conversions, projects will be subject to submission of Annual Financial Statements (AFS) to HUD's Real Estate Assessment Center (REAC). For PBV conversions, submission of annual financial statements to HUD is not required.
- For PBRA, distributions may be taken only after audited (or certified) financial statements indicate the availability of surplus cash.
- Distributions are not considered federal program funds.

R. Transfers of Ownership and Assistance

1. *Commenters asked for more clarification as to the proper methods of maintaining "control" in the instance of conversion to private owners, including in the case of LIHTC projects.*

HUD response: The final notice provides additional clarifications surrounding PHA or nonprofit "control" measures required under the RAD statute. In the context of LIHTC projects, definitions of control are generally consistent with such measures as applied in HUD's Mixed-Finance, HOPE VI and Choice Neighborhoods programs.

2. *Commenters stated that HUD should clearly specify in the notice that private ownership of public housing goes first to nonprofits and then to for-profits. Another commenter stated that HUD should have an open process for selecting any subsequent owner, guided by finding the best owner capable of high-quality maintenance and permanent continued affordability.*

HUD response: HUD has not changed the notice in response to this comment. The RAD statute requires priority for ownership or control shall be provided first to a capable public entity, then to a capable entity, as determined by the Secretary.

3. *A commenter stated that HUD should allow PHAs, particularly small PHAs with small portfolios and limited capacity, to transfer ownership of public housing properties to qualified nonprofits. Another commenter stated that HUD should allow private developers to serve as the general partner or managing member of former public housing, even becoming the outright owner with a land-use restriction.*

HUD response: PHAs are permitted under RAD to convey ownership to public entities or non-profits to facilitate a RAD conversion. For-profit entities may participate in the ownership structure as long as a public or non-profit entity maintains acceptable forms of control.

4. *A commenter stated that the continuous use agreement prohibits the PHA from changing the property at any time in the future, regardless of need.*

HUD response: By including specific statutory language authorizing transfers of assistance, HUD believes that Congress intended for such transfers to be undertaken when warranted. Accordingly, if the needs of a property or surrounding area meet the indicated requirements, a PHA may transfer the HAP assistance, as well as the Use Agreement, to a new site.

5. *A commenter stated that use restrictions on any receiving property should not be of a shorter duration than the use restriction on the donating property; residents should not experience any lapse in housing assistance and should not be required to move until the receiving property is ready; residents that choose not to move should be provided mobility vouchers and counseling;*

HUD response: Upon an approved transfer of assistance, the term of the Use Agreement will continue, tenants will not be subject to any lapse of assistance, and the owner is subject to all applicable relocation requirements.

6. *A commenter stated that, in the case of transfer of assistance, HUD should allow a reduction in the number of units in the receiving property to reconfigure units to better meet the demand of any applicable waiting list.*

HUD response: Although, as part of a transfer of assistance, HUD will permit a change in the distribution of units, the PHA (as owner) must continue to provide an equal number of hard units.

7. *HUD is providing the following additional clarifications based on comments related to the transfer of ownership or assistance:*

- The final notice adds new instructions regarding the conditions governing transfer of assistance.

- Except in the event of foreclosure, bankruptcy or termination of a contract for cause, transfer of ownership to for profit entities is only authorized to facilitate LIHTCs or where a public or non-profit entity maintains control of the property.
- As with public housing properties, RAD would allow owners of Mod Rehab projects, with HUD approval, to transfer assistance to a new site at conversion to PBRA.

S. Enforcement

1. *A commenter asked for clarity on what steps short of termination of the assistance contract HUD will be able to take for enforcement purposes.*

HUD response: HUD is committed to protecting the long-term use of these properties to preserve the affordable housing stock and, as noted above, will follow practices consistent with its other multifamily programs in support of this objective.

2. *Commenters stated that residents should have enforcement rights in the HAP contract and the use agreement; that owners should be subject to civil money penalties for violations of the HAP contract and use agreement, including failure to provide notice to tenants of properties formerly assisted under Rent Supp or RAP; that tenants should be granted an administrative enforcement (e.g., an informal hearing or grievance) mechanism for the choice program component to obtain relief from HUD or the PHA; and that, before HUD pursues any enforcement action, the tenants should be consulted for their information and input.*

HUD response: HUD is committed to protecting the long-term use of these properties to preserve the affordable housing stock and, as noted above, will follow practices consistent with its other multifamily programs in support of this objective.

T. Evaluation

1. *Commenters asked that HUD provide greater detail on the parameters of the evaluation and what data will be required.*

HUD response: The final notice states that the program evaluation may require request for data, including project financial statements, operating data, choice-mobility utilization, financing sources, and rehabilitation work.

2. *A commenter asked that HUD include a commitment to provide interim reports on RAD, including information on the characteristics of participating properties.*

HUD response: HUD intends to provide interim reports on participating properties based on available data.

U. Other Comments

1. *A commenter stated that, outside of RAD, HUD should allow for long-term renewal of Moderate Rehabilitation HAP contracts or to consolidate Mod Rehab contracts currently assisting at scattered sites into a single contract.*

HUD response: HUD believes that Congress intended for RAD to be the appropriate means for testing the conversion of Mod Rehab contracts to long-term contracts. HUD is not otherwise allowing long-term renewals of Mod Rehab contracts.

2. *Commenters asked for a specific list of what public housing requirements will no longer apply after the property converts its assistance.*

HUD response: Unless otherwise delineated in the final notice, all public housing requirements no longer apply following conversions. Interested parties are best-directed to carefully review these delineations in the final notice.

3. *Commenters requested that HUD allow MTW agencies that convert the assistance of properties under RAD to be able to apply the same flexibilities they currently have in the MTW program.*

HUD response: Consistent with current examples where MTW agencies own projects outside of the public housing or Housing Choice Voucher programs, such as Section 202 housing for the elderly or LIHTCs, under PBRA assistance those projects must comply with all associated statutory and regulatory requirements. For public housing conversions to PBV, MTW agencies may implement any aspect of their MTW program as long as it is not inconsistent with RAD.

4. *A commenter asked whether a project would be able to continue to renew a Mod Rehab contract annually if the project is not selected for conversion of assistance under RAD.*

HUD response: Yes.

5. *A commenter stated that short-term renewals of Mod Rehab contracts should be permitted whenever they serve the overall purposes of RAD, rather than just when the contracts are going to expire within 120 days of the notice.*

HUD response: A short-term renewal is only necessary to avoid, during the period of time needed to pursue a RAD conversion, a lapse in housing assistance payments after the Mod Rehab renewal contract would naturally expire. There would be no other period of time in which a short-term renewal would be necessary for purposes of RAD. Mod Rehab renewal procedures permit a short-term renewal to satisfy the one-year statutory notification period when an owner chooses not to renew the HAP contract.

6. *A commenter asked if HUD could clarify whether the public housing community service requirement would apply following conversion.*

HUD response: The community service requirement would not apply following conversion.

