

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

**Rental Assistance Demonstration (RAD); Rider to the Section 8 Project-based
Voucher (PBV) Housing Assistance Payments (HAP) Contract for New
Construction or Rehabilitated Housing (Public Housing Conversions; First
Component)**

1. Purpose

This purpose of this Rider is to effectuate the conversion of Public Housing to section 8 PBV projects under section 8(o)(13) of the United States Housing Act of 1937 (1937 Act). This Rider must be attached to the PBV HAP Contract for New Construction or Rehabilitation (HAP Contract).¹

2. Authority

The Consolidated and Further Continuing Appropriations Act, 2012, (Pub. L. 112–55, signed November 18, 2011, as amended), authorizes the conversion of properties with Public Housing assistance under section 9 of the 1937 Act to properties with PBV assistance under section 8(o)(13) of the 1937 Act.

3. Amendments to the HAP Contract

- (a) Section 1.a. and all other relevant sections of the HAP Contract are revised to replace the term “Public Housing Agency” with “Contract Administrator” (CA).²
- (b) Section 1.c. of the HAP Contract is amended to eliminate the reference to a multi-stage project in Exhibit A.
- (c) Section 1.d. of the HAP Contract is amended by eliminating the multi-stage project option in section 1.d.2. In addition, the corresponding signature pages for multi-stage projects at the end of Part I of the HAP Contract are deleted.
- (d) Section 1.e.1. of the HAP Contract is revised to read as follows: “The Contract begins on _____, and shall run for an initial term of ___ years.”

¹ This Rider covers all Public Housing conversions. The traditional PBV distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by the special RAD requirements contained in Notice PIH 2012-32 (HA); Rental Assistance Demonstration—Final Implementation, Revision 2, as amended from time to time.

² In Public Housing to PBV conversions, the Contract Administrator will be the Public Housing Agency that executes the HAP Contract with the Owner and administers the voucher funding under the Consolidated Annual Contributions Contract with HUD.

- (e) Section 1.e.2.b. of the HAP Contract is revised to read as follows: “The initial term of the HAP Contract may not be for less than 15 years, and may be for a term of up to 20 years upon request of the Owner and with the approval of the CA.”
- (f) Section 1.e.3. of the HAP Contract is revised to read as follows: “**Contract Administrator’s Obligation to Offer to Renew and Owner Obligation to Accept Offers to Renew.** The Contract Administrator and the Owner acknowledge and agree that upon expiration of the initial term of the HAP Contract, and upon each renewal term of the HAP Contract, the Contract Administrator shall offer to renew the HAP Contract and the Owner shall accept each offer to renew the HAP Contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal.”
- (g) Section 1.e.4 of the HAP Contract is revised to read as follows (please also see the amendments to Section 2, Definitions, for definitions of new defined terms):

4. Funding of PBV HAP Contract

- a. **Funding for the Year of Conversion.** In the Year of Conversion, the HAP Contract shall be funded only from public housing amounts obligated prior to the effective date of the HAP Contract, and from any additional public housing amounts that HUD obligates in full or in part, subject to the availability of sufficient appropriated funding, for the remainder of the calendar year in which the HAP Contract becomes effective. Owner acknowledges that this amount for the first year may be less than the contract rent for subsequent years.
- b. **Funding for remainder of the initial term and any renewal term.** Starting in the First Full Year and in each subsequent year in which the HAP Contract is effective, for the remainder of the initial term and any renewal term, subject to the availability of sufficient appropriated funding (budget authority), as provided in appropriations acts and in the CA’s Consolidated Annual Contributions Contract with HUD, the CA will make full payments of housing assistance payments due to an Owner for any contract year in accordance with the HAP Contract. The availability of sufficient funding must be determined by HUD or the CA in accordance with HUD requirements. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP Contract, the CA has the right to terminate the HAP Contract by notice to the Owner for all or any of the Contract units. Such action by the CA shall be implemented in accordance with HUD requirements.

- (h) Section 1.g. of the HAP Contract is revised to read as follows: “There is no cap on the number of units that may receive PBV assistance in a project.”
Or
- (i) [Reserved]
- (j) Section 2 of the HAP Contract is revised by:
- (1) deleting the definitions of “Agreement,” “Newly constructed housing,” “Proposal selection date,” and “Rehabilitated housing”;
- (2) adding the following defined terms and definitions:
- “**Year of Conversion** shall mean the time from the effective date of the HAP Contract through the end of that calendar year;”
- “**First Full Year** shall mean the first full calendar year of the HAP Contract beginning the year after the calendar year of the effective date.³”
- (3) adding a third sentence to the definition of “**HUD requirements**” as follows: “HUD requirements include Notice PIH 2012-32 (HA), “Rental Assistance Demonstration—Final Implementation, Revision 2,” as revised or amended from time to time (or any successor document) (RAD Notice).” Any references in this Rider to specific sections of the RAD Notice include any successor provisions whether explicitly stated or not.
- (k) Section 4.c. of the HAP Contract is revised to add the following provision 8:
8. Notwithstanding anything else in this HAP Contract, in the Year of Conversion, any housing assistance payments shall equal amounts funded in accordance with Section 1.e.4.a (Funding for the Year of Conversion) of this HAP Contract.
- (l) Section 5.a.1. of the HAP Contract is revised to read as follows: “Subject to section 5.b. of the HAP Contract, at each anniversary date during the term of the HAP Contract, the CA will adjust the rent to Owner by applying HUD’s operating cost adjustment factor (OCAF), subject to the availability of appropriations for each year of the HAP Contract term. ”
- (m) Section 5.b. of the HAP Contract is revised to read as follows: “The rent to Owner for each Contract unit may at no time exceed the reasonable rent charged for comparable units in the private unassisted market, as determined by the CA in accordance with 24 C.F.R. § 983.303. However, the rent to

³ To clarify, in cases in which a project converts in December and the effective date of the HAP Contract is January 1, the Year of Conversion is the calendar year starting on the effective date and the First Full Year begins the year following.

Owner shall not be reduced below the initial rent to Owner for dwelling units under the HAP Contract except in the following cases: (1) to correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after the execution of the HAP Contract and a rent decrease is required pursuant to 24 C.F.R. § 983.55; or (3) if a decrease in rent to Owner is required based on changes in the allocation of responsibility for utilities between the Owner and the tenant.”

- (n) Section 7.a. of the HAP Contract is revised to read as follows: “The Owner certifies that during the term of the HAP Contract: a. All Contract units meet HQS, or successor standard, or will meet HQS no later than the date of completion of the “Work” (including any environmental mitigation measures) as indicated in the RAD Conversion Commitment (RCC) which will be no later than _____.”
- (o) Section 8.b.1. of the HAP Contract is revised to read as follows: “The CA must inspect each Contract unit after rehabilitation is completed in accordance with the RCC.”
- (p) Section 9.a.1. of the HAP Contract is revised to read as follows: “During the term of the HAP Contract, the Owner must lease all Contract units to eligible families selected and referred by the CA from the CA’s waiting list. The waiting list shall be established and maintained in accordance with HUD requirements, including the special PBV waiting list provisions in the RAD Notice (including Section 1.6.D.4 or successor provision).”
- (q) A new Section 10.b.3. of the HAP Contract is added to read as follows : “The Owner shall provide adequate written notice of termination of the lease, which shall be (A) a reasonable period of time, but not to exceed 30 days if the health or safety of other tenants, Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or in the event of any drug-related or violent criminal activity or any felony conviction; (B) Not less than 14 days in the case of nonpayment of rent; and (C) Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.”
- (r) A new Section 10.b.4. of the HAP Contract is added to read as follows: “The Owner must renew all tenant leases upon expiration, unless good cause under 24 C.F.R. § 983.257(a) exists for non-renewal of a lease.”
- (s) Section 18 of the HAP Contract is revised to read as follows: “Notwithstanding Section 17 of the HAP Contract, a CA may own units assisted under the PBV program, subject to the special requirements in 24 C.F.R. 983.59 regarding PHA-owned units and all other HUD requirements governing PHA ownership of PBV units.”

- (t) Section 21 of the HAP Contract is revised throughout by requiring HUD consent in addition to CA consent for actions covered under section 21 of the HAP Contract.
- (u) Section 21.a.1. of the HAP Contract is revised to read as follows: “The Owner and the CA agree that neither the HAP Contract nor the premises may be transferred without the written consent of CA and HUD.”
- (v) Section 21.a.2. of the HAP Contract is revised by adding the following at the end of the definition of “transfer”: “F. Any refinancing or restructuring of permanent debt imposing liens on the property by the Owner of the project, except to such extent permitted pursuant to that certain Rental Assistance Demonstration Use Agreement entered into in connection with the premises.”
- (w) Section 21.a.3 of the HAP Contract is revised to read as follows:
 - Owner, CA and HUD hereby agree that:
 - A. CA and HUD hereby consent to any transfer of a passive or non-controlling interest in the Owner entity, including (by way of illustration and not of limitation, such transfers include transfers of the interests of limited partners in a limited partnership, transfers of the interests of members other than managing members or managers in a limited liability company, and transfers of interests in a corporation that cumulatively represent less than half the beneficial interest in the HAP contract or the premises).
 - B. The Owner must obtain advance consent of CA and HUD for transfer of any interest of a general partner of a limited partnership or for the transfer, elimination or addition of a manager or managing member of a limited liability company. If such assignment is made in connection with any HUD-approved financing for the premises, including without limitation low-income housing tax credits, subject to the provisions of Section 37 of this HAP Contract, HUD and CA hereby consent to: an assignment by a general partner of a limited partnership Owner to a limited partner; and an assignment by the managing member of a limited liability company Owner to another member of Owner.
 - C. Limited CA and HUD consent to collateral assignments of the HAP Contract to lenders is provided in Section 36 of this HAP Contract.
- (x) Section 24 of the HAP Contract is deleted and replaced with the phrase “Intentionally Omitted.”
- (y) Sections 27.a. and 27.b. of the HAP Contract are amended by replacing the phrase “The Agreement and the HAP Contract” and with the phrase “The HAP Contract”.

4. Additional Terms

(a) A new section 28 is added to the HAP Contract to read as follows:

28. RAD Rehab Assistance Payments

For any unit (1) that is vacant during the period of Work pursuant to the RCC; and (2) for which the Owner is not otherwise receiving housing assistance payments in accordance with section 4(c) of this HAP contract; the Owner is entitled to receive a monthly RAD Rehab Assistance Payment calculated in accordance with the provision of the RAD notice governing RAD Rehab Assistance Payments (i.e., Notice PIH 2012-32 (HA), REV-2, section 1.7.A.9. or successor provision), in the amount of \$__ per unit, as determined by HUD; shall apply to no more than _____ units in any given month; and shall commence upon the effective date of this HAP Contract, so long as the Owner is in compliance with the approved repair schedule as provided in the RCC. All RAD Rehab Assistance Payments shall end, and the Owner will cease to be entitled to any such payments, (1) on_____,____ ; or (2) upon actual completion of the Work, if sooner. Provided, however, during the Year of Conversion (as defined in Section 2), any RAD Rehab Assistance Payments shall not exceed amounts funded pursuant to Section 1.e.4(a).

(b) A new Section 29 of the HAP Contract is added to read as follows:

29. CA Board Approval

The CA’s Board must approve the operating budget for the covered project annually in accordance with HUD requirements.

(c) A new section 30 of the HAP Contract is added to read as follows:

30. Property and Liability Insurance

The Owner agrees that the project shall be covered at all times by commercially available property and liability insurance to protect the project from financial loss. To the extent insurance proceeds permit, or as determined feasible by the first mortgage lender, the Owner agrees to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval of HUD to the contrary.

(d) A new section 31 of the HAP Contract is added to read as follows:

31. Resident Procedural Rights; Grievance Process

The Owner and the CA must comply with the grievance process requirements in the RAD Notice (including section 1.6.C.7.ii. or successor provision) for projects converting to PBV assistance.

(e) A new section 32 is added to the HAP Contract to read as follows:

32. Resident Participation and Funding

(f) In accordance with Attachment 1B.2.B. of the RAD Notice, captioned “PBV Resident Participation and Funding,” families in projects that convert to PBV assistance have the right to establish and operate resident organizations for the purpose of addressing issues related to their living environment. The Attachment details all of the requirements governing Resident Participation and Funding, which the Owner must comply with.

(g) A new section 33 is added to the HAP Contract to read as follows:

33. Flood Insurance

If the project is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Program, the Owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing requirement to maintain such flood insurance during the life of the property.

(h) A new section 34 is added to the HAP Contract to read as follows:

34. Replacement Reserve Requirement

The Owner shall establish and maintain a replacement reserve in accordance with the RCC.

(h) A new section 35 is added to the HAP Contract to read as follows:

35. Labor Standards

By execution of this HAP Contract, the Owner warrants that construction or repair Work on the project that is initiated within eighteen (18) months of the effective date of the HAP Contract shall be in compliance with applicable labor standards, including Davis-Bacon wage requirements, as stated in the “Addendum to the HAP Contract—Labor Standards.” The “Addendum to the HAP Contract—Labor Standards” shall be included as an “Additional Exhibit” under Section 1.4.c. of the HAP Contract.

(i) A new section 36 is added to the HAP Contract to read as follows:

36. Lender Provisions. Notwithstanding anything else in this HAP Contract:

(a) The holder of any HUD-approved mortgage against the project may take action against the Owner and the project that results in the holder of the mortgage or its designee (either referred to herein as “Lender Temporary Custodian”) coming into ownership of the project or assuming the role of “Owner” under this HAP Contract. Transfer of the project or the HAP Contract from the Owner is grounds for termination of the HAP Contract assistance unless otherwise approved by HUD. HUD and CA hereby consent to a collateral assignment of this contract to any Lender

Temporary Custodian and pre-approve any Lender Temporary Custodian as a temporary custodian of the project and as a new “Owner” pursuant to this HAP Contract, and continued assistance to the project pursuant to this HAP Contract, subject to the following conditions:

- (1) HUD and CA must receive thirty (30) days prior written notice of the transfer of the project to the Lender Temporary Custodian and the form of the documents necessary to effect such transfer.
- (2) In connection with the transfer, Lender Temporary Custodian must execute and deliver to HUD and CA an assumption on the HAP Contract, in such form as acceptable to HUD.
- (3) Such approval and consent to continue assistance pursuant to this HAP Contract is expressly limited to a period of only 90 days that commences the date of such transfer of the project, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary for Lender to find a permanent replacement Owner. Consistent with Public Law 112-55, in the event that the Lender Temporary Custodian comes into ownership of the project, the Lender Temporary Custodian shall use such interim period to identify a proposed permanent Owner determined by HUD to be capable of abiding by the HAP Contract, Use Agreement, and any and all applicable RAD program requirements. The provision of housing assistance payments to any proposed permanent replacement Owner is subject to HUD’s consent.
- (4) Prior to a transfer of the project to a Lender Temporary Custodian, HUD may at any time by written notice to a Lender Temporary Custodian revoke the approvals given herein if HUD becomes aware of any conditions or circumstances (by way of illustration and not limitation, such conditions or circumstances may include debarment, suspension or limited denial of participation) that would disqualify or compromise the ability of Lender Temporary Custodian from acting as an interim custodian of the project pursuant to the HAP Contract.

(j) A new section 37 is added to the HAP Contract to read as follows:

37. Low-Income Housing Tax Credit Provisions. Notwithstanding anything else in this HAP Contract:

- (a) **Notice.** As long as the equity investor identified below (“Equity Investor”) is a partner or member of Owner, HUD shall endeavor as a courtesy to Equity Investor to deliver to Equity Investor a copy of any notice of default that is delivered to Owner under the terms of the HAP

Contract, Use Agreement or RAD Conversion Commitment (RCC).
Equity Investor’s address for such notice purposes is:

- (b) **Right to Cure.** Any cure of any default by Owner under the HAP Contract, Use Agreement or RCC offered by Equity Investor shall be treated the same as if offered by Owner.
- (c) **Transfer of Investor Members/Partners.** Equity Investor, and each successor member or partner in Owner, may transfer its interest in the Owner without prior written consent of HUD if:
 - (1) HUD receives prior written notice of such transfer; and
 - (2) HUD receives executed copies of any and all documents necessary to effect such transfer, including any and all amendments to Owner’s organizational documents.

(d) **Removal of General Partner/Managing Member.**

- (1) HUD and CA have pre-approved the replacement of the Owner’s general partner or managing member with an affiliate of Equity Investor, or any successor equity investor (“Interim Replacement GP/MM”) as a temporary replacement general partner/managing member of Owner, in the event Owner’s general partner or managing member is removed for cause in accordance with Owner’s organizational documents.
- (2) Interim Replacement GP/MM may remove Owner’s general partner or managing member in accordance with the Owner’s organizational documents without further written consent from HUD or CA and HUD and CA shall continue assistance to the project in accordance with the HAP Contract, provided that Interim Replacement GP/MM provide HUD and CA with prior written notice of such replacement and HUD and CA receive executed copies of any and all documents necessary to effect such replacement.
- (3) Such approval of such Interim Replacement GP/MM is expressly limited to a period of only 90 days that commences the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an

additional 30 days, or for so long as HUD deems reasonably necessary to provide for a permanent replacement of the general partner or managing member. After such interim period, any proposed permanent replacement for the Owner's general partner or managing member is subject to HUD's consent.

- (4) HUD may at any time by written notice to Equity Investor or any successor revoke the approvals given herein if HUD becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to this HAP Contract.

(k) A new section 38 is added to the HAP Contract to read as follows:

38. Continuation of HAP Contract

Except where otherwise approved by HUD, this HAP Contract shall continue in effect and housing assistance payments will continue in accordance with the terms of the HAP Contract in the event: (1) Of assignment, sale, or other disposition of this HAP Contract; (2) Of foreclosure, including foreclosure by HUD; (3) Of assignment of the mortgage or deed in lieu of foreclosure; (4) HUD or the CA takes over possession, operation or ownership; or (5) The owner prepays the mortgage.

5. Alternative Requirements

- (a) **Owner Proposal Selection Procedures.** Projects will be selected for assistance in accordance with the provisions in the RAD Notice. Therefore, 24 C.F.R. § 983.51 does not apply.
- (b) **Percentage Limitation.** Section 8(o)(13)(B) of the 193 Act and 24 C.F.R. § 983.6 do not apply to assistance provided under RAD.
- (c) **Consistency With PHA Plan and Other Goals.** Section 8(o)(13)(C)(ii) of the 1937 Act and 24 C.F.R. §§ 983.57(b)(1) and (c) do not apply.

**Signatures:
Contract Administrator**

Print or Type Name of Contract Administrator

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Owner

Print or Type Name of Owner

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)