

## **MASTER LEASE vs. DELAYED CONVERSION AGREEMENT/DELAYED HAP**

Scenario: When a RAD conversion involves a transfer of assistance to units that will be newly constructed or rehabbed and residents will remain in their original Public Housing units after the closing of construction financing while the replacement RAD units are being built or rehabbed:

- What options do the PHA and Project Owner have related to the timing of the conversion of assistance (from public housing to Section 8)?
- What documents must be used under each option?
- What restrictions and/or benefits are connected with each option?

There are two options that can be utilized to accommodate the RAD conversion and while relocation of residents to the new units is delayed until rehab or construction completion.

The replacement units may be on an adjacent site or at some other location, but the location of the new units must not be encumbered by the DOT.

### **OPTION 1: Conversion at Construction Closing/MASTER LEASE of former public housing units**

The conversion of assistance occurs at the same time as the closing of the construction financing. At the closing of construction financing closing the Section 8 HAP Contract is executed. The HAP contract reflects the replacement units, even though the physical units may not exist at the time of closing. The public housing units are removed from PIC effective on the day before the HAP effective date. The PHA is required to submit HUD Form 50058 End of Participation Certifications (EOPs) into PIC effective on this date.

The Year of Conversion funding procedures commence with the effective date of the HAP contract. In the Year of Conversion, the PHA would convey public housing funds to the Project Owner. The Project Owner is due Rehab Assistance Payments during the period of construction. Via the Master Lease, discussed in the next paragraph, the Project Owner would pay funds back to the PHA in order to provide compensation for housing the residents at the former public housing property.

So that the residents can continue to be housed at the former public housing site, the Project Owner **Master Leases** the former public housing project from the PHA, then sub-leases individual units to the tenants (through Section 8 compliant leases). The tenants are therefore considered Section 8 tenants at closing. The Project Owner utilizes an **Interim Tenancy Addendum** to the Section 8 compliant lease. The tenancy addendum serves to treat the PHA as "Interim Landlord" for the tenants. Further, it states that the residents will be moved to the replacement units as they become ready for occupancy so that relocation of residents can occur all at once at final completion, or in stages as construction phases are completed.

Copies of the **Master Lease Agreement for RAD Temporary Housing in Place**, and **Interim Tenancy Addendum to Tenant Lease** templates are located on the RAD Resource Desk.

## **OPTION 2: DELAYED CONVERSION AGREEMENT AND DELAYED HAP**

The conversion of assistance is separated from the closing of construction financing and is delayed until construction completion. At the closing of construction financing the Project Owner, PHA, and HUD enter into a Delayed Conversion Agreement which states the when the new construction (or substantial rehab) is completed, the HAP contract will be executed. The residents will become Section 8 tenants only when they move to the replacement units. The HAP Contract is drafted but it is not signed and is presented as an exhibit to the Delayed Conversion Agreement.

The HAP Contract is not executed or effective until the units referenced in the HAP Contract are complete and the Owner certifies to HUD that:

- a. The project is ready to comply with section 2.6(a) of the HAP contract, that the contract units and related facilities meet the decent, safe, and sanitary housing requirements set forth therein.
- b. All necessary certificates of occupancy and other governmental approvals necessary for the occupancy of the units have been received.

The Converting Project remains under Public Housing ACC until construction completion. Consequently, during this period the project is eligible for public housing Operating Fund and Capital Fund, the project remains subject to public housing oversight (REAC inspections, financial reporting, etc), and the residents remain under their public housing lease.

When the construction/rehab of the replacement units is completed, the conversion of assistance occurs. The HAP contract is executed. The public housing units are removed from PIC effective on the day before the HAP effective date. The PHA is required to submit **HUD Form 50058** End of Participation Certifications (EOPs) into PIC effective on this date. Initial Year Funding procedures commence with the effective date of the HAP contract.

The Project Owner does not receive any subsidy until the HAP Contract is executed. The Owner is not eligible for any rehab assistance payments.

The **Delayed Conversion Agreement** is executed by the Owner, PHA, and HUD (Office of Recap Director). There are separate templates of the Delayed Conversion Agreement for PBRA vs PBV on the RAD Resource Desk.

## **DISCUSSION**

The PHA and Project Owner must decide which option best suits their situation and identify their choice in their Financing Plan submission. Some considerations include:

- 1) The Delayed Conversion Agreement cannot accommodate “multi-staged” HAP contract, wherein units can be added to the HAP contract as they come on-line incrementally. The HAP is executed in whole when all units are ready for occupancy. As such, this option may not be suitable for properties that are being developed in stages and that have lease-up deadlines. Alternatively, HUD has permitted the HAP contract to be executed in whole when the first units become ready for occupancy. However, as some residents will still be living in the public housing property while the remaining replacement units are built, this arrangement still requires a Master Lease, albeit for a shorter term

- 2) Under the Master Lease approach, because the conversion occurs at construction financing, those units are no longer eligible for public housing subsidy at an earlier stage. However, the Master Lease would convey converted subsidy back to the PHA in order to house the residents remaining in the former public housing property.
- 3) Under the Master Lease, because the Year of Conversion funding procedures commence at the close of construction financing, by the time construction is complete and the property is ready for occupancy, in most cases the funding for the HAP contract be coming from Section 8 funds and in accordance with the HAP contract rent schedule.
- 4) When a property is vacant, the options are simplified because there is no need for a Master lease, there no tenant leases to modify, and there is no one to relocate. Completing the conversion at time of construction financing may be advantageous where the PHA is interested in selling or repurposing the former public housing asset. Delaying the conversion meanwhile extends the period during which the property is included in the Capital Fund formula.