



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING —
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All Multifamily Regional Center Directors
All Multifamily Satellite Office Directors
All Multifamily Asset Management Division
Directors
All Multifamily Operations Officers
All Multifamily Field Counsel
All Contract Administrators
All Multifamily Project Owners

Notice H-2023-##

Issued: ##/##/2023

Expires: This Notice remains in effect
until amended, superseded, or rescinded

SUBJECT: Approval and Processing of Requests to Bifurcate Contracts

I. Purpose

This Notice explains the standards and conditions a Project Owner must meet to obtain HUD approval to bifurcate a project-based Section 8 Housing Assistance Payments (HAP) contract. It also describes the steps involved in bifurcating a HAP contract following HUD approval. Throughout this Notice, HUD uses the term “bifurcate” to describe the division of a contract, even if the contract will be divided into more than two contracts.

II. Applicability

- A. This Notice applies to the bifurcation of HAP contracts under all project-based Section 8 programs administered by HUD’s Office of Multifamily Housing.
- B. This Notice does not apply to a request from a Project Owner to transfer the budget authority associated with a HAP contract to another HAP contract pursuant to Section 8(bb) of the United States Housing Act of 1937. A Project Owner who wishes to request HUD approval for an 8(bb) transfer must do so separately, following the applicable HUD guidance.

III. Terminology

Bifurcation entails the division of a HAP contract into two or more contracts. In this Notice, HUD refers to the initial contract that is subject to bifurcation as “Contract A.” HUD refers to the contracts that result from bifurcation as Contracts A1 and A2.

Note that a bifurcation may result in the creation of more than two contracts (i.e., Contract A1, Contract A2, Contract A3). All contracts other than Contract A1 are referred to in this Notice as “Contract A2.”

IV. Bifurcation: Standards for Approval

- A. Facilitates asset management or preservation of project-based assistance. HUD will consider a request for bifurcation only where the Project Owner’s request demonstrates that bifurcation is consistent with facilitating the asset management of a HUD-assisted project or the long-term preservation of project-based assistance, as determined by HUD. For example:

- 1 1. The HAP may cover:
- 2 a. A project comprised of more than one structure, where each structure would
- 3 more appropriately be managed as a separate financial asset.
- 4 b. A project whose capital needs cannot be met with a single award of Low
- 5 Income Housing Tax Credit equity, requiring ownership of the project (and
- 6 the associated HAP contract) to be divided in order to obtain two LIHTC
- 7 awards that are adequate to address the project’s capital needs.
- 8 2. The request to bifurcate a HAP may be demonstrably tied to a larger preservation
- 9 strategy, including for example a strategy that will entail a subsequent request for
- 10 HUD approval to transfer budget authority pursuant to section 8(bb), following
- 11 the applicable HUD guidance.
- 12 B. Owner(s) in good standing. All Project Owners must be in good standing with HUD.
- 13 For example, if the owner of Project A will continue to own a HAP-assisted project
- 14 following bifurcation, then the owner of Project A must be in good standing with
- 15 HUD. If the proposal includes assigning a HAP contract resulting from bifurcation to
- 16 a new owner, then the bifurcation request from the owner of Project A must include
- 17 documents acceptable to HUD from which HUD may ascertain whether the proposed
- 18 new owner has successfully owned and operated HUD-affiliated or other multifamily
- 19 housing projects. The owner of Project A is advised to consult with the local HUD
- 20 Account Executive to ascertain which documents are required to obtain approval.

21 **V. Bifurcation: Conditions for Approval**

22 The conditions for approval vary based on whether the contract is a non-M2M HAP

23 contract, a M2M HAP contract, or a RAD PBRA HAP contract, as described below.

24 A. Bifurcation of a non-M2M HAP contract. HUD will approve a request to bifurcate a

25 non-M2M contract if the following conditions are met:

- 26 1. *Unit mix and configuration.* The total number of assisted units and the bedroom
- 27 size of such units across all resulting contracts following bifurcation must equal
- 28 the number and bedroom size mix of assisted units under Contract A prior to
- 29 bifurcation.¹
- 30 2. *Renewal rents.* Immediately following bifurcation, Contracts A1 and A2 shall be
- 31 terminated and renewed with the execution of new renewal Contracts A1 and A2
- 32 (see section VIII., Processing Steps; also, make note of item 4, below). All
- 33 resulting HAP contracts not subject to a Mark-to-Market Use Agreement will be
- 34 renewed under Option 2 with an OCAF rent increase, Option 4, or Option 5
- 35 depending on project eligibility. For projects subject to a Mark-to-Market Use

¹ A Project Owner who wishes to reconfigure units prior to or following bifurcation may request HUD approval to do so following the procedures outlined in Notice H 2011-03, “Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units.” Although this Notice addresses the conversion of efficiency units to one-bedroom units, it also establishes the factors HUD will take into account when considering owner requests for the reconfiguration of other unit types, which HUD will do on a case-by-case basis.

1 Agreement, please refer to paragraph B of this section.

2 3. *Renewal term.* Generally, each new renewal HAP contract resulting from
3 bifurcation must have a term of 20 years. HUD does not require Contracts A1 and
4 A2 to be subject to Preservation Exhibits solely as a result of bifurcation. If prior
5 to bifurcation Contract A had a Preservation Exhibit, however, then both
6 Contracts A1 and A2 will be subject to Preservation Exhibits, but such
7 Preservation Exhibits shall include only the number of years remaining on
8 Contract A prior to bifurcation.

9 4. *Transfer of budget authority.* If the Project Owner has submitted or intends to submit
10 within 12 months of the Project Owner's bifurcation request a request to transfer
11 budget authority pursuant to Section 8(bb) of the Housing Act from either Contract
12 A1 or Contract A2, then the timing of termination and renewal for Contracts A1 and
13 A2 following the bifurcation shall be governed by Notice H 2015-03² or successor
14 guidance rather than this Notice.

15 B. Bifurcation of a M2M contract. In the case of a M2M HAP contract, the following
16 conditions apply:

- 17 1. *Renewal option.* Option Three B (i.e., renewal with a Full M2M Renewal
18 Contract) is the only subsequent renewal option for which Contracts A1 and A2
19 are eligible while the M2M Use Agreement is in effect.
- 20 2. *Renewal Term.* The term of a Full M2M Renewal Contract may not exceed the
21 term of the M2M Use Agreement.³ In general, if the project was originally
22 restructured with Market Rents, the Full M2M Renewal Contract may be
23 extended for a term of 20 years. The M2M Use Agreement will also be extended
24 to be coterminous. If the project was originally restructured with Exception Rents,
25 the M2M Use Agreement cannot be extended; therefore, the Full M2M Renewal
26 Contract may be less than 20 years so both the Renewal Contract and Use
27 Agreement are coterminous.
- 28 3. *Contract rents.* The rent level for Contracts A1 and A2 will remain unchanged.
29 Rents will be adjusted only in accordance with the terms of the new Full M2M
30 Renewal Contract (i.e., on that contract's anniversary date, by OCAF).
- 31 4. *Use Agreement.* The M2M Use Agreement shall be bifurcated on a pro rata basis
32 according to the number of bedrooms covered by Contracts A1 and A2.
- 33

² Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937

³ Please see Section 5-5 of the *Section 8 Renewal Guide* for the specific requirements pertaining to M2M properties while the M2M Use Restriction is in place.

1 5. *Treatment of Note(s).*⁴ HUD may administratively require the bifurcation of some
2 or all of the outstanding balance (including both principal and any accrued
3 interest) under the Note(s). HUD will amend and restate the Note(s) to allocate
4 the debt on a pro rata basis according to the number of bedrooms that are covered
5 by Contracts A1 and A2, respectively. Contracts A1 and A2 will remain
6 encumbered by all the mortgage liens and use agreements associated with such
7 Note(s). The Return to Owner, Surplus Cash, and the resulting payments to HUD
8 under the Note(s) shall be calculated based on the entirety of the projects
9 encumbered by the mortgage liens associated with the Note(s).

10 C. Bifurcation of a RAD PBRA HAP contract. In the case of a RAD PBRA HAP
11 contract, Contracts A1 and A2 will use the most current form of RAD PBRA HAP
12 contract and maintain its terms (e.g., rent adjustments, mandatory contract renewal at
13 expiration for projects converted from public housing or 202 PRAC assistance, etc.),
14 except that HUD will require that, at a minimum, the term of the original contract be
15 maintained for the contracts that result from bifurcation. For example, if bifurcation
16 occurs in year 7 of a 20-year RAD PBRA HAP contract, HUD will require the
17 resulting Contracts A1 and A2 to have terms of at least 13 years. HUD has developed
18 a “Bifurcation Exhibit” that must be executed as part of a RAD PBRA HAP contract
19 bifurcation (see Attachment II). At the end of the original RAD PBRA HAP contract
20 term, the contract will be eligible for renewal in accordance with the RAD statute and
21 the *Section 8 Renewal Policy Guidebook*.

22 **VI. Required Contents of Project Owner’s Bifurcation Request to HUD**

23 Only the owner of Project A may request HUD approval to bifurcate Contract A. To
24 request HUD approval for a bifurcation, the owner of Project A must submit the
25 following information (as applicable) to the Regional Center Director (RD) for the
26 geographic location in which Project A is located:

27 A. A narrative statement with supporting documentation explaining why bifurcation is
28 necessary to facilitate the asset management of a HUD-assisted project or the long-
29 term preservation of assistance.

30 B. A description of any contemplated redevelopment activities that are anticipated to
31 take place at Project A subject to HUD’s approval of the Project Owner’s bifurcation
32 request. The description must include the anticipated timeline for the conduct and
33 completion of redevelopment activities, the improvements to be made, and the
34 benefits to tenants;

⁴ Through the M2M restructuring, HUD adjusts the rents down to market and the owner obtains a new first mortgage loan that is supportable at the new rents. In most M2M restructuring transactions, HUD pays off a portion of the existing FHA-insured or HUD-held formerly insured first mortgage through a one-time, non-default payment of claim made on behalf of the owner. HUD documents the owner’s continuing obligation to repay this amount through a Mortgage Restructuring Note (“MRN”) and/or a Contingent Repayment Note (“CRN”). The Demo Program, a precursor to M2M, operated in much the same way, with the owner’s obligation documented by one or more “Demo Notes.” Except as otherwise specified, for the remainder of this Notice, the term “M2M” shall be used to mean either M2M or the Demo Program, and the term “Note(s)” shall be used to mean an MRN, CRN, or Demo Note.

- 1 C. A copy of the original HAP contract and the MAHRA contract renewal that is currently in place;
- 2 D. A description of the proposed bifurcation, including:
- 3 1. The number and bedroom counts of units assisted under Contract A;
- 4 2. The number of HAP contracts into which Contract A will be divided; and
- 5 3. The number and bedroom counts of assisted units at Contracts A1 and A2
- 6 following bifurcation.
- 7 E. The name(s) and address(es) of the proposed signatories of Contracts A1 and A2
- 8 following bifurcation.
- 9 F. Requests to renew Contracts A1 and A2 for 20-year terms.⁵ The requests must
- 10 comply with the requirements of the *Section 8 Renewal Policy Guidebook*.⁶ The
- 11 owner of Project A is advised to contact the RD prior to submitting a bifurcation
- 12 request to learn what additional materials may be required to support the renewal
- 13 request. Examples of such materials include, but are not limited to, a capital needs
- 14 assessment, a sources and uses statement, a document showing financing terms, a
- 15 LIHTC commitment or award letter, or a statement from a current lender consenting
- 16 to the bifurcation and renewal.
- 17 G. A copy of any Use Agreement to which Project A is subject. HUD program counsel
- 18 will be consulted on any request that involves the bifurcation of a Use Agreement.
- 19 H. For any project that is assisted under a RAD PBRA HAP contract or was restructured
- 20 under the M2M program, additional materials may be required depending on
- 21 activities occurring in connection with the bifurcation (e.g., sale or refinance). A
- 22 Project Owner is advised to contact the Office of Recapitalization to learn what, if
- 23 any, additional materials or approvals will be required.

24 The RD will require up to 14 calendar days to review the request *for completeness*.

25 Requests that are incomplete will be returned to the Project Owner.

26 VII. HUD Review

27 After determining that a request for bifurcation is complete, the RD will evaluate the

28 request. If the RD does not support the request, s/he will notify the Project Owner, citing

29 specific reasons for the denial. If the RD supports the request, the RD will issue a

30 memorandum to the Director of the Office of Asset Management and Portfolio Oversight

31 (OAMPO). The memorandum will describe the proposed bifurcation and state the reason

32 for which the RD supports the request. OAMPO will review all materials and either

33 approve or deny the request. If OAMPO denies the request, it will notify the owner of

34 Project A. If OAMPO approves the Project Owner's request, then HUD will process the

35 bifurcation (see section VIII., below).

⁵ See, however, paragraph V.A.4.

⁶ See footnote 3. In some cases, the term of the M2M HAP contract may be less than 20 years.

1 **VIII. Processing Steps Upon HUD Approval of a Project Owner’s Request to Bifurcate**

2 This section describes the steps involved in bifurcating Contract A once HUD approval
3 for bifurcation has been provided.

- 4 A. HUD will duplicate the original HAP contract and, if it has been renewed, the
5 renewal contract currently in effect. The result will be:
- 6 1. Contract A1: Original HAP contract and renewal contract in effect.
 - 7 2. Contract A2: Original HAP contract and renewal contract in effect.
- 8 B. For Contract A1, the existing HAP contract number will be retained. HUD will apply
9 a new HAP contract number to Contract A2 (the duplicated documents from step A).
10 The result will be:
- 11 1. Contract A1: Original HAP contract and renewal contract in effect; existing HAP
12 contract number retained.
 - 13 2. Contract A2: Original HAP contract and renewal contract in effect; new contract
14 number applied.
- 15 C. HUD will amend the rent schedules associated with Contracts A1 and A2 to reflect
16 the unit mix and the configuration of each renewal contract. The result will be:
- 17 1. Contract A1: Original HAP contract and renewal contract in effect; existing HAP
18 contract number retained. Rent schedule revised to reflect reduced number of
19 units assisted, with no change in unit configuration of assisted units.
 - 20 2. Contract A2: Duplicate of Contract A1; new contract number applied. Rent
21 schedule revised to reflect reduced number of units assisted, with no change in
22 unit configuration of assisted units.
- 23 The amendments must have an effective date and be signed by the Contract
24 Administrator and the respective project owners.
- 25 D. Except for RAD PBRA HAP contracts in their initial term, HUD will terminate
26 Contracts A1 and A2 and issue a new 20-year renewal contract for each one,^{7 8}
27 attaching the original HAP contract to each renewal contract. If Contract A was
28 subject to a Preservation Exhibit, then each renewal contract must include the
29 Preservation Exhibit included as Attachment I to this Notice. The result will be:
- 30 1. Contract A1: New 20-year renewal contract with materials from Paragraph C(1)
31 above and Preservation Exhibit included as attachments.
 - 32 2. Contract A2: New 20-year renewal contract with materials from Paragraph C(2)
33 above and Preservation Exhibit included as attachments.

34 Steps C. and D. must occur on the same date.

⁷ See footnote 3 for M2M HAP contracts.

⁸ See, however, paragraph V.A.4.

1 **IX. Paperwork Reduction Act**

2 The information collection requirements in this Housing Notice are approved under OMB
3 Approval number 2502–0587, issued under the Paperwork Reduction Act of 1995 (44
4 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may
5 not conduct or sponsor, and a person is not required to respond to, a collection of
6 information unless the collection displays a currently valid OMB control number.

Julia R. Gordon
Assistant Secretary for Housing — FHA
Commissioner

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Draft for Public Comment

PRESERVATION EXHIBIT

Subject to all applicable laws and regulations in effect upon expiration, the Renewal Contract shall renew automatically for a term of _____ year(s)¹ beginning on _____.² This requirement shall be binding on the Owner and the Contract Administrator, as identified in section 1 of the Renewal Contract, and on all their successors and assigns.

¹ Enter the number of years remaining on Contract A prior to bifurcation. If less than 1 year remained on Contract A prior to bifurcation, enter the number "1."

² Enter the date of the first day after expiration of the initial or renewal contract.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING PROGRAMS
BIFURCATION OF PROJECT-BASED SECTION 8
HOUSING ASSISTANCE PAYMENTS CONTRACT
ISSUED UNDER THE
RENTAL ASSISTANCE DEMONSTRATION
FOR THE MULTIFAMILY HOUSING PROJECT KNOWN AS
“__[Project Name]__”
(SECTION 8 PROJECT NUMBER _____)

Draft for Public Comment

This instrument, “Bifurcation of Project-Based Section 8 HAP Contract for the Multifamily Housing Project Known as ‘ _____ ’ (Section 8 Project Number _____)” (“Bifurcation”), provides as follows:

I. RECITALS

- A. The United States of America, acting by and through the Secretary of the Department of Housing and Urban Development (“HUD”), and __[Name of Current Owner]__, entered into a project-based Section 8 HAP Contract on __[Signature Date]__ and __[Signature Date]__, respectively, following the conversion of public housing units to project-based assistance under section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as authorized under the Rental Assistance Demonstration (“RAD”). See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55 (approved Nov.18, 2011) as amended. The Section 8 Project Number is _____. Section 1 identifies the project name as “_____.” The HAP Contract shall be referred to herein as “Original RAD HAP Contract.”
- B. Section 1 of the Original RAD HAP Contract reflects an effective date of _____, and a term of twenty (20) years. Section 1 reflects a total of _____ covered units (___ 1-BR units, ___ 2-BR units, ___ 3-BR units, and ___ 4-BR units) located at the following site(s): __[address]__.
- C. The Original RAD HAP Contract was executed on the contract form in use at that time for conversions under RAD from
- Public housing
 - Project Rental Assistance Contracts
 - Section 8 Moderate Rehabilitation or Single Room Occupancy
 - Rent Supplement
 - Rental Assistance Payment
- to project-based section 8.
- D. [LIHTC Only] In __[Year]__, __[Name of Current Owner]__ was awarded Low-Income Housing Tax Credits (“LIHTC”) to rehabilitate __[Project Name]__. To accommodate the LIHTC structure, the project buildings and improvements for __[Project Name]__ was transferred via a ground lease to __[New Tax Credit Entity]__. __[Name of Current Owner]__ retained ownership of the land.
- E. HUD has agreed to a request by __[Name of Current Owner]__ to bifurcate the Original RAD HAP Contract to reflect the resulting two projects. One of the resulting HAP Contracts will cover ___ units located on the __[Project Names]__ site, the Owner of which shall be __[Name of Owner]__. This project shall be known as “_____” and shall retain the Section 8 Project Number of the Original RAD HAP Contract (i.e., Section 8 Project Number of _____).
- F. The other resulting HAP Contract will cover ___ units at the __[Project Name]__ site, the Owner of which shall be __[Name of Owner]__. This project shall be known as “_____”. The Section 8 Project Number for this project is _____.

- G. Both HAP Contracts shall have an effective date of _____ and a term of __ years and ____ months.
- H. The initial rents of the HAP contracts shall follow the rent schedule previously in effect for the original HAP contract, adjusted by the applicable OCAF.
- I. The contract shall retain the same Anniversary date of the original HAP contract, which shall be _____.
- J. HUD, __[Name of Current Owner]__, and __[New Tax Credit Entity]__ agree to abide by the basic underlying arrangement reflected in the Original RAD HAP Contract by which HUD shall make housing assistance payments on behalf of eligible families occupying decent, safe, and sanitary dwellings. However, they further covenant that the agreement shall be memorialized on the contract form currently in use for conversions under RAD from public housing to project-based section 8 (Form HUD-52620 (04/2017)), which HUD began using on or around April 1, 2017.

II. BIFURCATION, REPLACEMENT OF ORIGINAL RAD HAP CONTRACT WITH TWO RAD HAP CONTRACTS ON FORM HUD-52620 (04/2017), AND AMENDMENT

- A. After bifurcation, the Original RAD HAP Contract shall be replaced by two project-based rental assistance RAD HAP Contracts, one for __[Project Name]__; the other for __[Project Name]_, as detailed above. Both HAP Contracts shall be executed on Form HUD-52620 (04/2017) and shall be governed by all of its terms, except for section 2.1(b) (“Condition of the Property”), which is hereby amended to read as follows:

“The Owner warrants that the rental units to be leased by the Owner under the HAP Contract are in decent, safe, and sanitary condition (as defined and determined in accordance with HUD regulations and procedures). The Owner further warrants that it will remedy any defects or omissions covered by this warranty throughout the initial term and during any renewal term of the HAP Contract.”

- B. All other terms of the HAP Contracts shall remain the same.

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SIGNATURE PAGE

Name of Project: [PROJECT NAME]

Name of Project Owner: [OWNER NAME]

Signature of authorized representative

Name of signatory (print or type)

Official title (print or type)

Date (mm/dd/yyyy)

Name of Project: [PROJECT NAME]

Name of Project Owner: [OWNER NAME]

Signature of authorized representative

Name of signatory (print or type)

Official title (print or type)

Date (mm/dd/yyyy)

United States of America Secretary of Housing and Urban Development

Signature of authorized representative

Name of signatory (print or type)

Official title (print or type)

Date (mm/dd/yyyy)