I. RAD Section 8 PBV Post Closing

A. Davis-Bacon Coverage

At present, second component RAD PBV follows the standard in regular PBV. Essentially, construction, including rehabilitation work, performed in connection with the initial placement of a project under a PBV HAP contract constitutes development of the project and is subject to Davis-Bacon wage rates where the project contains nine or more assisted units. Thus, RAD PBV existing housing may be subject to Davis-Bacon. HUD is considering possible revisions to this standard, under which RAD PBV existing housing would not be subject to Davis-Bacon. If this change were made, RAD PBV existing housing and RAD PBRA would have the same standard—non-applicability of Davis-Bacon.

B. Ownership Determination Process – HOTMA and PBV PHA Ownership

The focus here will be on distinguishing between RAD “ownership and control” requirements detailed in the RAD Notice, and PHA ownership of units. HOTMA significantly narrowed HUD’s prior, regulatory definition of PHA ownership of units. However, the revised definition still remains distinct from the RAD ownership and control standard. In the case of PHA ownership, the PHA generally must employ an independent entity to determine rent reasonableness and perform property inspections.

C. Contractual Issues When RAD PBV (Component One) and Regular PBV are Combined.

This will be a relatively brief discussion of some problems that have arisen in these cases. First, the PHA may not use one contract—i.e., putting the regular PBV units under the RAD Contract. There are fundamentally different standards that apply here, and separate contracts must be used. Second, PHAs may not revise the contracts. The program regulations require that contracts be used word-for-word. In limited cases, HUD Headquarters may approve a change to contractual language.

D. Uniformity between RAD PBV and Non-RAD PBV (RAD provisions to consider applying to regular PBV when they co-exist at the same project) –

1. Background. For Component One RAD, the RAD statute grants HUD broad waiver authority. Specifically, the statute states that “the Secretary may waive or specify alternative requirements for (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) any provision of section 8(o)(13) of the United States Housing Act of 1937 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” . . . for properties with assistance converted under the demonstration, upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective conversion of assistance under the demonstration.”

1 The statute also requires that HUD publish by notice in the Federal Register any waivers or alternative requirements no later than 10 days before the effective date of such notice.
HUD has used this authority to establish a broad array of RAD-specific PBV and PBRA requirements. With respect to RAD PBV, for instance, the current notice (H-2017-03, REV-3, January 12, 2017) lists over 40 RAD-specific requirements (i.e., requirements that replace or add to regular PBV requirements). However, all RAD notices (beginning with the initial 2012 notice) have limited the RAD waiver authority to RAD units. While participants can add non-RAD PBV or PBRA units to a project, these units are subject to normal statutory and regulatory requirements (i.e., the RAD waivers do not cover non-RAD units).

2. SFHA and NYCHA. In 2015, SFHA submitted a waiver request in connection with 40 properties (32 public housing properties and eight additional “RAD Placement Projects”) involving conversion to RAD PBV. As part of its “Redevelopment Plan,” regular PBV assistance (following public housing disposition) would also be provided to properties. The SFHA requested that HUD extend certain RAD waivers to the regular PBV units. A particular focus of SFHA was harmonizing the treatment of all residents (whether assisted under RAD PBV or regular PBV) in its portfolio by applying the RAD provisions on “PBV Resident Rights and Participation” to regular PBV. HUD eventually approved the waiver request. As a result, RAD provisions such as no rescreening of families upon conversion; phase-in of tenant rent increases; the earned income disregard; resident procedural rights; resident participation and funding; and a number of other provisions applied to PBV families identified in the waiver as “Current Residents.”

In 2018, NYCHA requested a similar waiver with respect to “PBV Resident Rights and Participation.” (NYCHA also requested additional waivers such as eliminating the requirement to use an AHAP.) HUD also approved the NYCHA waiver request.

3. Revised RAD Notice. The RAD notice is currently being revised and expected to be published in June 2019. The scope of RAD waivers to regular PBV units in a property is presently undecided. However, the general approach could be modeled on the approved SFHA and NYCHA waivers. In particular, the RAD provisions governing resident rights and participation could generally be applied non-RAD residents assisted under a regular section 8 PBV or PBRA HAP contract.

E. Second Component Issues. Discussion will focus on changes with respect to the second component (e.g., the no rescreening statutory language) and common issues/questions with respect to this component (e.g., RAD contract coverage in cases where there is a preservation prepayment that terminates a RAP or Rent Supplement contract.)

F. Increasing First Component RAD PBV Rents. These rents tend to be well below the rents in the regular PBV program. HUD policies (such as PBV rent bundling) that are designed to help increase RAD PBV rents.
II. **RAD Section 8 PBRA Post Closing**

**A. Full Assignment of a RAD PBRA HAP Contract**

1. Full assignment and collateral assignment: definitions and differences.

2. The Owner is contractually required to obtain the written consent of HUD before making a full assignment of the HAP contract. See section 2.20(a) (“ASSIGNMENT, SALE, FORECLOSURE, OR DEED IN LIEU OF FORECLOSURE”) of RAD HAP Contract for conversions from Public Housing (“Except as permitted in sections 2.24 and 2.25 of this Contract, the Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion of this Contract or the project, or of any part of the Contract or the project, or any of the Owner’s interest in the Contract or the project, without the prior written consent of HUD”). See also corresponding section of RAD PBRA HAP Contract for conversions from Moderate Rehabilitation (section and from Rent Supp or RAP).

3. Assignment form: “HUD Assignment, Assumption and Amendment of Section 8 HAP Contract (03/14)

**B. Inapplicability of Davis- Bacon for Component Two:** 83 Fed. Reg. 63668 (Dec. 11, 2018)

**C. Appropriate remedies for Component One defaults**

1. The historical PBRA remedy for default (i.e., terminating the HAP Contract after notice and failure to cure) is not appropriate considering the statutory requirement of “transfer of assistance for material violations or substantial default.”

2. Concepts concerning workable, appropriate enforcement mechanisms in lieu of HAP Contract termination.

**D. Accommodating housing “designated” only for elderly families (a uniquely public housing concept) in conversions to PBRA.**

1. By law, PBRA units cannot be “designated” housing.

2. The statutory elderly preference (Housing and Community Development Act of 1992, Title VI, Subtitle D) for which Section 8 projects constituting “Covered Section 8 Housing,” as defined in section 659, is not available for projects converting to PBRA.

III. RAD Post Closing Issues, Protocols and Solutions

A. Revised Documents and Incomplete/Revised Title Policy (PHA)

1. DOT found after Closing needing release

   **Issue:** It has been an ongoing issue with respect to revised documents and title information being provided after closing. This requires multiple reviews of documents previously approved including surveys, title exceptions, property descriptions, Declarations of Trust, Releases and Partial Releases of Declarations of Trust. Months after closing and over the shut down the PHA was attempting to sell a property that was part of a former RAD transaction. However, they discovered that a second Declaration of Trust existed that was not found as part of the original title work. The PHA requested release of the DOT for this property in order to fully clear the title for the RAD transaction and complete the sale of the property.

   **Protocol and Solution:** When we learn of situations like this, we coordinate with Recap (Bev Rudman and Closing Coordinator from the particular transaction), with PIH (to make sure the property was removed from PIC) and suggest, if available, that the previous Field Closer perform the review and work with Vickie Longosz on resolution. In cases like this, another Partial Release of Declaration of Trust had to be reviewed and sent to headquarters OGC with a brief legal review memorandum and document for signature by Dominique G. Blom in order to fully clear the transaction. PIH confirmed release of the property from PIC and Recap adjusted the post-closing records.

2. Incomplete Final Title Policies

   **Issue:** There have been issues with incomplete final title policy. In one case, the policy was missing pages previously approved as part of the proforma on a RAD that closed a few months ago.

   **Protocol and Solution:** This requires additional work with the PHA counsel to get the complete policy and for Field Counsel to complete their review. If these missing pages present issues of ownership or encumbrances, Field Counsel will need to work with PHA counsel, Recap, PIH and Headquarter’s OGC to revise all necessary documents which will may require resigning and re-recording of documents such as the RAD Use Agreement, Releases of Declaration of Trust, Subordination of Liens to the RAD Used Agreement.
3. Incorrect Legal Descriptions and Erroneous Release of Declaration of Trust

**Issue:** A PHA’s RAD Conversions were undertaken in three Phases. The Phase I conversion took place in June 2017. The Phase II conversion took place in December 2017. This conversion involved the allocation of 9% LIHTC by the state Housing Finance Agency for new construction of 20 units and the December 2017 closing was somewhat rushed at the calendar year end of 2017 due to fears regarding the impact of the then new Tax Reform legislation on the LIHTCs. In the course of the parties completing the financing part of closing Phase II, it was discovered that the legal description used was incorrect and overbroad because it failed to exclude Phase III from the legal description (Phase III was structured as a separate phase, but is completely within the perimeter of Phase II). A contributing factor involved certain measurement errors discovered by the surveyor on subsequent visits to the site. The parties reached out to the Field Closing Attorney and the RAD closing coordinator for corrections.

**Protocol and Solution:** Field Counsel reviewed the partial release of the RAD Use Agreement to the extent that it was encumbering the Phase III portion of the site. Additionally, because the Phase III site was no longer encumbered by a DOT, yet was still public housing until such time Phase III was ready to convert, we required the parties re-encumber the Phase III portion under DOT. Field Counsel provided Recap and HQ OGC with a legal review memorandum and documents for signature. Thereafter in December 2018, the Phase III RAD conversion occurred, and the DOT was released.

4. Rooftop Telecommunication Leases on RAD Covered Projects

**Issue:** Public Housing Field Office Directors often request Field Counsel to review proposed rooftop telecommunication leases on RAD Covered Projects.

**Protocol and Solution:** Field Counsel do a lease review memorandum to Recap and provide lease to Recap and HQ OGC for consideration. Generally, these are approved as is unless there is some interference to the operation of the RAD project.

B. Transfer of Assistance Issues

1. Ongoing management of scattered site properties with a RAD Declaration of Restrictive Covenant

**Issue:** Assistance was transferred from scattered site properties to a new project. At closing RAD Fair Market Value Sales Declaration of Restrictive Covenants (RAD DRCs) were recorded against many of the scattered site properties. **Note:** There are 3 options given in RCCs for Converting Properties of the PHAs in Transfer of Assistance transactions if the property is not going through section 18 or Part 200 retention, i.e., RAD Model Covenants for FMV sales, Use
Models are available and to be posted on RAD Resource Desk. Since the deal closed, PHA has returned to request releases for the RAD DRCs when a sale is pending.

Protocol and Solution: This requires keeping track of the status of these properties with RAD DRCs, reviewing the draft releases and ensuring the sale is in accordance with the DRC, preparing supporting legal review memorandums and sending releases to HQ to get signed. In addition, Field Counsel need to work out signing time and logistics with the PHA and Recap, regularly check in with PHA about whether sales have closed and for updated info on the status of the properties and following up with PHA to obtain recorded copies of the releases for Recap records. Without a good template of the properties in advance and good organization and cooperation with the PHA, this could become burdensome especially for an indefinite amount of time depending on how long it takes the properties to sell. Generally, RCCs and RAD DRCs expect sales to occur within one year of closing.

2. Ongoing follow-up regarding scattered site properties where the DOT remained on the property post RAD closing due to pending sales

Issue: In cases where the RCC allows the DOT to stay on post RAD closing for certain scattered site properties, there are several logistical as well as legal follow-up requirements. In one case, the PHA already had pending sales pursuant to an auction. Post RAD closing, most but not all of those properties were ready to close.

Protocol and Solution: The DOT releases can be grouped from one DOT into one corresponding release. This approach will require that all properties have to be released with instructions to PHA to record a RAD DRC against any properties that didn’t sell within 30 days of the DOT being released. Unfortunately, Field Counsel have been faced with months of time passing since closing and getting recorded copies of DOT releases for the properties that did sell, and getting a DRC recorded against those that didn’t. Coordination between Field Counsel and PHA is essential.

3. Release of DOT and Expectation of no RAD DRC, Section 18 Disposition or Part 200 Retention on a Transfer of Assistance Conversion

Issue: A PHA was under the mistaken impression that HUD was going to release the Converting Project from their DOT upon completion of the construction of the Covered Project and relocation of the existing tenants, and that the Converting Project would then remain unencumbered by a DOT or DORC so that the PHA would have maximum flexibility over use of the Converting Project. At no point in the RAD process, including at the time of requesting the release, had the PHA made a decision as to what they were going to do with the Converting Project.
**Protocol and Solution:** The PHA was informed of its 3 options below and that the DOT would remain on the Converting Project until it decided which option it wanted to follow:

1. Per the RAD Rev 3 Notice on Transfer of Assistance Protocol on Releases (sections 1.4(A)(4) and 1.4(A)(12)), HUD will release the DOT and PHA must record one of the Model RAD DRCs mentioned above.
2. A Section 18 Demolition/Disposition Application to the HUD’s Special Applications Center and covered by the regulations in 24 CFR Part 970.
3. A request to HUD’s Special Applications Center under 2 C.F.R. 200.311(c) to either retain or dispose of the property. Subsection (c)(1) speaks to the PHA retaining the property. Subsections (c)(2) and (3) speak to disposing of it. The retainage option, as well as one of the disposition options, would require a pay-back to HUD unless a good-faith exception to the regulations is granted by HUD.

**C. Tenant Lease Review Issues - Eviction without Proper Notice and Procedure.**

**Issue:** A PHA converted approximately 3,000 units through RAD conversions. As part of its RAD portfolio, a model lease was developed with specific grievance procedures, emanating from a Consent Decree. A model RAD rider was also developed in consultation with HUD-Headquarters to satisfy the tenant lease requirements included in the RAD Notice. Post-conversion, a tenant advocacy group sent a complaint to HUD alleging that tenants were being evicted without proper notice and procedures being followed in connection with the HUD-approved model lease template.

**Protocol and Solution:** In response, the Field Office and Headquarters reviewed the HUD-approved model leases for the PHA’s RAD portfolio and created lease termination notices for different types of lease violations. HUD communicated to the PHA and the various owners that the model lease termination notices should be used for all future actions to terminate tenant leases at the RAD-converted properties.

**D. Partial Release of RAD Use Agreement**

**Issue:** A PHA submitted a request for a partial release of the RAD Use Agreement to Recap for a non-dwelling portion of the RAD Project that had been used as a PHA administrative office but that was being transferred to the City to be used for providing social services.

**Protocol and Solution:** Recap issued a disposition approval letter, which required the recording of a new Use Agreement following the release of the RAD Use Agreement. Field Counsel reviewed the disposition documents, Partial Release of RAD Use Agreement and new Use Agreement for conformance with the disposition approval letter and to confirm the proper legal description was attached to all documents. After completing their review, Field Counsel provided a legal review memorandum and documents for signature to Recap and OGC HQ.
E. Failure to Complete Work Specified under RCC

1. Failure to Perform Work and Finding Gap Funding

**Issue:** Original low-bid contractor was unable to perform under the contract, so the costs increased with the new contractor.

**Protocol and Solution:** No additional public housing funding may be converted after RAD closing. The PHA obtained a HOME loan from the State to cover the gap. The HOME money came with a Deed of Trust to secure the loan and a Restrictive Covenant to keep the property affordable. Field Counsel reviewed the documents to assure they were subordinated to the previously recorded RAD Use Agreement both in time and by use of the RAD Subordination Agreement.

2. Failure to Complete Repairs and Make Required Monthly Deposits to the Replacement Reserve Account

**Issue:** Following RAD conversion of four properties, a PHA and non-profit RAD Owner failed to comply with the terms of the RCC by not completing required repairs and by not making required monthly deposits to the Replacement Reserve Account. PHA and Owner also cancelled the financing that HUD had approved in the RCC and that was certified to in the Certifications and Assurances. PHA and Owner requested HUD consent for a refinancing of the project in order to complete the repairs.

**Protocol and Solution:** The PHA, Owner, and HUD entered into a Conditions of Closing and Compliance Agreement in which HUD agreed to provide consent to the refinancing provided that certain conditions were met. PHA and Owner had to provide title evidence that the RAD Use Agreement remained in first position, subordination of the new loan to the RAD Use Agreement, and updated documents to reflect the change in the transaction including a legal opinion and Certification and Assurances. The PHA committed to fund the Replacement Reserve Account, to complete repairs within 18 months, and to provide copies of all recorded documents to HUD. In the case of noncompliance, HUD reserved the right to declare the Agreement and/or the RCC null and void and take such other remedies as may be available.
F. Refinancing after RAD Closing

Issue: There are frequent post closing requests for changes involving additional sources of income, permanent loan finance (PBRA or PBV) or refinancing. There are different approaches depending on when the financing or funding changes occur.

1. Protocol and Solution for Financing and Funding Changes that Occur Shortly after RAD Closing: These Standard Operating Procedures (SOPs) have been developed for these requests and outline the role of Field Counsel, PIH and Housing.

When the PHA/Owner determines that new money/additional sources of income must be added to the transaction in order to complete the new construction and/or repairs as agreed upon at the time of closing, a request, must be submitted, in writing, to the email address PostClosing@HUD.gov. Any request for HUD to consent to convert to permanent financing should also be submitted, in writing, to the above noted email address. Please allow 30-45 days for HUD to review the information and provide approval (if applicable) and/or consent. A HUD representative (“Assigned POC”) will then be assigned to assist with the processing of the PHA/Owner’s request for additional monies and/or consent to permanent financing.

If the project includes FHA insured financing, FHA will take the lead on approving any additional money and the written request should be sent to the FHA Account Executive who was assigned to the transaction with a copy to HUD at the above email address who will assist in getting the necessary documents signed.

a. NEW MONEY/ADDITIONAL SOURCES OF FINANCING (Not included/identified at the time of conversion). The following must accompany the email request:
   i. A statement from the PHA/Owner to include the following key items:
      a. An explanation of the proposed change(s);
      b. An explanation as to if the additional source(s) of funds was contemplated at the time of the financing plan submission;
      c. An explanation as to if the additional source(s) of funds was pre-approved at the time of the RAD conversion closing; and
      d. A requested timeline for HUD’s approval.
   ii. A statement from the PHA/Owner certifying that either 1) the scope of work has not changed, or 2) the scope of work has changed to which a written copy of the changes in the scope of work must accompany the email request. If the change in the scope of work is determined to be significant, the Transition
Manager will review for any possible effects on the original transaction.

For RAD PBRA transactions, the Multifamily Account Executive will also be provided a copy of any changes in scope of work. This may be combined in a single letter with a. above.

iii. A copy of the loan documents associated with the new money/additional sources. At a minimum, the loan documents required are:

   i.  Note
   ii. Mortgage/Deed of Trust
   iii. Subordination Agreement
   iv. Documentation that existing lender(s) have consented to the new debt
   v.  Amendment to the RAD Use Agreement (if applicable)

RECAP will request assignment to the HUD Field Attorney who was originally assigned to the conversion. If approved by the Regional OGC Contact for Assignment, the above legal documents will then be sent to the HUD Field Attorney who was originally assigned to the conversion to review and approve. Other documents may be requested by the HUD Field Attorney after initial review of the submitted documents.

iv. A new Sources and Uses and Key Business Terms (in the same format that was approved and included as Exhibit B to the RCC) showing the new money. This will be compared to the final Sources and Uses that was approved at the time of conversion to determine the extent of the changes and whether it affects the previous underwriting of the transaction.

v. If the scope of work has changed, a copy of all changes must be provided in the same format as originally used in the Exhibit D to the RCC. For PBRA transactions, the Multifamily Account Executive will also be provided a copy of any changes in scope of work.

vi. Once the review is complete, the parties will be notified of HUD’s approval or disapproval.

b. PERMANENT FINANCING AS A RESULT OF COMPLETION OF NEW CONSTRUCTION/SIGNIFICANT REPAIRS. Any request for
permanent financing or a bridge loan must be made in writing to the email address indicated above, pursuant to the following:

i. If the permanent financing was reviewed and approved as part of the financing plan submission and RAD conversion HUD does not need to consent to the permanent financing unless any one of the following has occurred:
   a. The construction budget exceeded the approved contingency, resulting in additional financing;
   b. There has been a significant change in the Scope of Work, resulting in additional financing;
   c. Additional debt has been added (subordinate debt shall be structured as a cash flow note); and/or
   d. The Developer Fee has increased.

c. If one or more of the items listed in b.i(a-d) above exists, then HUD will need to review and consent to the permanent financing. The following is required to be submitted in to HUD:

i. A copy of the loan documents associated with the additional permanent financing. At a minimum, these documents must include:

   (a) Note
   (b) Mortgage/Deed of Trust
   (c) Subordination Agreement
   (d) Documentation that existing lender(s) have consented to the new debt
   (e) Amendment to the RAD Use Agreement (if applicable)

The Regional OGC Contact for Assignment will be requested by Recap to assign, if possible, the previous HUD Field Attorney for the conversion to review these financing documents

(f) A statement certifying that the scope of work has or has not changed. If there has been a change in the scope of work, a copy of the change(s) in the scope of work must accompany the request and must be provided in the same format as originally used in the Exhibit D to the RCC. This will be reviewed and if the change in the scope of work is determined to be significant, the Transaction Manager will review for any possible effects.
on the original transaction. **For PBRA transactions, the MF Account Executive** will also be provided a copy of any changes in scope of work.

(g) If there were additional monies included in the permanent financing that was not included in the underwriting, a new Sources and Uses and Key Business Terms (in the same format that was approved and included as Exhibit B to the RCC) is required to be provided. This will be compared to the final Sources and Uses that was approved at the time of conversion to determine the extent of the changes and whether or not it affects the previous underwriting of the transaction.

Once the legal review (including a brief Field Attorney’s Legal Review Memorandum with any documents for signature) and the Transaction Manager review is complete, the parties will be notified of HUD’s approval or disapproval.

**DOCUMENTING THE ABOVE POST CLOSING CHANGES:**

a. **PRBA:** Any post closing changes to the RAD PBRA HAP Contract will be documented by utilizing the Amendment to the RAD PBRA HAP Contract. A draft copy will be provided by the Assigned POC. This will need to be executed by the same parties who executed the RAD PBRA HAP Contract at the time of closing. The Assigned POC will upload the fully executed copy onto the RAD Resource Desk.

b. **PBV:** The parties to the RAD PBV HAP Contract will agree on how they want to document any changes.
2. **Protocol and Solutions for Owners Seeking to Refinance Project-Based Voucher RAD Developments – Current Draft**

Owners of properties with a RAD Use Agreement must obtain HUD’s written consent prior to refinancing or restructuring secured debt, per RAD Notice, Rev. 3.² This Guidance lays out the process for Owners to request, and for HUD to approve such changes for projects that are operating under RAD-PBV HAP contracts. Any adjustments to the terms of the RAD Use Agreement must be forwarded to Housing’s Office of Recapitalization and any changes to RAD-PBV HAP contracts or other contractual obligations of the Owner must be forwarded to the HQ PIH PBV Office. PIH’s Office of Public Housing Investments will review all other requests from Owners seeking to refinance their RAD PBV Project. Within each of these reviews, the Office of General Counsel will be consulted.

**Background**

Unlike many projects developed under the PBV program, RAD-PBV projects include significant public housing capital investment as well as other private and public investments. Many projects incorporate reserves (Initial Deposit to Replacement Reserve (IDRR)) in their original financing packages and most make use of buildings or land previously developed using federal public housing funds. Under the RAD program, the Office of Recapitalization reviews each new RAD transaction to ensure that the project will be structured for sustained financial and physical stability. PIH, which manages the PBV program, has responsibility for reviewing any post-closing changes to the initial financing “to ensure the financing is consistent with long-term preservation” of the project. Reviews will be managed by PIH’s Office of Public Housing Investments (PHI) – contact Cheryl Fox.

**Required Documentation for Refinancing Approvals**

Not less than 30 days before the proposed financial closing, an Owner must submit a request for HUD approval. The request shall include A letter to the Director of the Office of *Urban Revitalization (Director: Susan Wilson)*) including the following:

a. Description of the proposed refinancing transaction (Similar to Lender’s narrative for Mixed Finance);

b. Revised Sources and Uses statement using the same format as Exhibit D to the RCC and a revised Exhibit E, providing the key business terms and describing the terms of the new source(s) or changes to existing financing;

c. Brief narrative of the impact on the property, residents, and other stakeholders

d. A revised operating pro forma, extending through the remainder of the term of the HAP Contract;

e. Updated environmental clearance documentation;³

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² Notice PIH 2012-32 REV 3 (January 12, 2017) (“RAD Notice Rev.3”), Sec. 1.6(D)(7), p.63.
³ A refinancing will likely fall under the categorical exclusion at 24 CFR 35(b)(7) “Approval of Supplemental Assistance,” requiring compliance with 24 CFR 58.6 only.
f. Ownership and control documentation demonstrating compliance with RAD statute and notice requirements as a confirmatory matter;
g. Title policy showing primacy of the RAD Use Agreement above all financing; and
h. Written certification of compliance with HUD and local physical conditions and management standards, and copies of inspection and audit reports or other records as determined necessary.

**Review Standards**

- Mortgage Terms Standard: HUD uses a three-pronged review standard for first mortgages secured by RAD-PBV projects. Recap applies this standard at the time of conversion and OPHI applies the same standard in its review of refinancing transactions. Unless otherwise approved by HUD, permanent debt financing must:
  a. Be at a fixed rate of interest, for a fixed term, fully amortized over no more than 40 years;
  b. Not impose a balloon payment until the earlier of the expiration of the HAP Contract or 17 years from the date of the permanent debt financing and
  c. Provide a debt service coverage ratio of 1.11 or higher or lender requirements.\(^4\)
  d. Subordinate to the RAD Use Agreement: All new financing must be subordinate to the RAD Use Agreement.

- Provide title policy showing primacy of the RAD Use Agreement. OGC and OPHI will be responsible for the title review.

- Debarment, Suspension and LDP Review: HUD will also review to ensure that the Lender is not debarred, suspended, subject to a limited denial of participation or excluded under 2 CF.R. § 2424 or on the GSA list of excluded parties.\(^5\)

- Ownership and Control Review: OGC will review to determine that the RAD PBV Project still meets the Ownership and Control Requirements under the RAD statute and RAD Notice.

The required written consent to mortgage or refinance a RAD-PBV will be issued as a memo from the Deputy Assistant Secretary for the Office of Public Housing Investments or the Director of the Office of Urban Revitalization with the concurrence of HQ OGC and copy to the Public Housing Director of the local HUD field office.

The procedure and documentation requirements contained in this Guidance are under review and subject to change.

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\(^4\) RAD Notice Rev. 3, Sec. 4(B)(1), p. 43  
\(^5\) RCC Condition 4
3. Conversion of Construction Loan to Permanent Loan

**Issue:** At the conversion of the construction loan to a permanent loan, the PHA submitted new draft versions of the PBV Rider to HAP Contract, Lender Rider to HAP Contract, and an Amendment to Subordination Agreement. The PBV Rider was being re-executed in order to use the new version of the form, and both Riders were being revised to specify that the Federal Home Loan Mortgage Corporation (“Freddie”) was pre-approved as a “Lender Temporary Custodian.” The Subordination Agreement that had been recorded at the RAD closing for the construction loan was being amended to included newly requested language regarding amendments to the loan documents that would not require HUD’s consent.

**Protocol and Solution:** Field Counsel requested that the PHA provide a pro forma title policy date-down endorsement, including copies of any documents shown on the date-down endorsement that had been recorded following the RAD closing. Field Counsel reviewed the pro forma date-down endorsement and documents recorded after the RAD closing to ensure that the RAD Use Agreement was still in first position. Field Counsel confirmed with Recap that Freddie was pre-approved as Lender Temporary Custodian and reviewed the draft versions of the PBV Rider to HAP Contract and Lender to Rider to HAP Contract to ensure both documents were consistent with the model forms. Field Counsel also confirmed with OGC HQ that the language in the Amendment to Subordination Agreement was acceptable (please be advised that changes to the form subordination language are no longer accepted). After completing their review, Field Counsel forwarded Word versions of the final approved documents to Recap and OGC HQ.