

PIH Guidance for Owners Seeking to Refinance Project-Based Voucher RAD Developments

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. 3.¹ 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 (OPHI) will coordinate and 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 a significant investment of public housing program resources. Many projects incorporate funds from a variety of public housing resources into their 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 OPHI.

Required Documentation for Refinancing Approvals

Not less than 30 days before the proposed financial closing, Owners or their representatives must submit a request for HUD approval. The request shall include:

1. A letter to the Director of the Office of Urban Revitalization including the following:
 - a. A narrative description of the proposed transaction, including any capital investment/rehabilitation to be undertaken,
 - b. Names and addresses for all parties to the transaction (Att 1),
 - c. Terms and providers for all sources of finance, and
 - d. the current and proposed ownership structure, and
 - e. A description of the impact on the property, residents, and other stakeholders, including any relocation or changes to lease terms or conditions.
2. A revised sources and uses statement using the same format as Exhibit D to the RCC

¹ Notice PIH 2012-32 REV 3 (January 12, 2017) (“RAD Notice Rev.3”), Sec. 1.6(D)(7), p.63.

3. a revised Exhibit E, providing the key business terms and describing the terms of the new source(s) or changes to existing financing;
4. A revised operating Pro Forma, extending through the remainder of the term of the HAP contract;
5. Updated environmental clearance documentation, if applicable²;
6. Ownership and control documentation demonstrating compliance with the RAD statute and notice requirements; and
7. Written certification of compliance with the terms of the RAD Conversion Commitment, project-based voucher program requirements, and copies of inspection and audit reports or other records as determined necessary;
8. Most recent audited financial statement;
9. Other documentation as requested by HUD.

Review Standards

1. **Mortgage Terms Standard:** HUD uses a three-pronged review standard for first mortgages secured by RAD-PBV projects. The Office of Recapitalization 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 have a balloon payment until after the earlier to occur of 1) expiration of the term of the HAP Contract; or 2) 17 years from the date of the permanent debt financing; and
 - c. Not have a debt service coverage less than the higher of 1.11 or lender requirements.³
2. **Subordination to the RAD Use Agreement:** OPHI and the OGC will review the mortgage securing the new loan to assure that it is subject to the RAD Use Agreement and that it will be recorded after the RAD Use Agreement in the local land records.
3. **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 CFR 2424 or on the GSA list of excluded parties.⁴
4. **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 by the Deputy Assistant Secretary for the Office of Public Housing Investments or the Director of the Office of Urban Revitalization with the concurrence of OGC and copy to the Public Housing Director of

² 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.

³ RAD Notice Rev. 3, Sec. 4(B)(1), p. 43

⁴ RCC Condition 4

the local HUD field office. Transactions involving changes to the HAP contract or RAD Use Agreement will require additional review and approval.

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

Attachment 1: Key Development Partners and Participating Parties*

Provide the following information for each major partner in the Project:

ROLE	ENTITY NAME & CONTACT INFORMATION (person, phone & email)	FINANCIAL INTEREST (%)	RELATIONSHIP TO PHA (if any)
Developer			
Ownership Entity			
General Partner or Managing Member of the Owner			
Limited Partner or Investor/Limited Member of the Owner			
Public Housing Authority, Instrumentality or Affiliate			
Property Manager			
Construction Lender			
Permanent Lender(s)			
Other			
Other			
Other			

If a PHA instrumentality or affiliate is involved in the project, provide a description of the relationship between the PHA and the instrumentality/affiliate as it relates to the project (see PIH Notice 2007-15):