

Memorandum

To: Council of Large Public Housing Authorities
From: Reno & Cavanaugh, PLLC
Date: April 30, 2021
Re: Summary of Faircloth-to-RAD Conversions Guidance

Introduction

On April 7, 2021, HUD issued guidance, “[Faircloth-to-RAD Conversions](#),” (the “**Guidance**”) on how public housing authorities (“**PHAs**”) can utilize public housing authorized under their Faircloth limit to create additional units through the Rental Assistance Demonstration (“**RAD**”) program. HUD also held a webinar on April 26, 2021 to discuss the Guidance and answer questions on the new repositioning strategy (the “**Webinar**”). Links to the Webinar’s recording and presentation slides can be accessed on the RAD Resource Desk’s [Training and Q&A Webinars](#) page under the “RAD with Public Housing Programs Webinars” tab.

Established by the Quality Housing and Work Responsibility Act of 1998, the Faircloth limit is the maximum number of public housing units for which a PHA may receive Capital Funds and Operating Funds under its Annual Contributions Contract (“**ACC**”). That number includes units that were removed from the inventory in the past and have not been replaced. Because many PHAs have not replaced units up to their Faircloth limit, there are roughly 220,000 units nationwide with available federal assistance that can be converted through RAD. The new Faircloth-to-RAD transaction will allow PHAs to convert their unused Faircloth units into RAD units through a combined Mixed-Finance and RAD process. Faircloth-to-RAD conversions are currently only available through the Mixed-Finance program, though HUD is reviewing other mechanisms, such as conventional development and acquisition.

We know that the Council of Large Public Housing Authorities (“**CLPHA**”) and many PHAs have long expressed interest in maximizing PHAs’ resources under the Faircloth limit as a new

repositioning option for PHAs. Below is a summary of the new Faircloth-to-RAD Conversion process as described in the Guidance and Webinar.

Faircloth-to-RAD Conversions

Transaction Process – Mixed-Finance and RAD Combination

New Hybrid Mixed-Finance and RAD Process. Under the Faircloth-to-RAD conversion, units are developed as public housing with preapproval to then convert to RAD through a streamlined process. The process is a hybrid of Mixed-Finance development under 24 C.F.R. § 905.604 and RAD conversions that involves both the Office of Public Housing Investments (“OPHI”) and the Office of Recapitalization (“Recap”).

How to begin? Request a Notice of Anticipated Rents. PHAs begin the process by requesting a Notice of Anticipated RAD Rents (“NARR”) on the RAD Resource Desk and reserving conversion authority under RAD. The NARR provides estimated RAD rents for the units after conversion that can be used for underwriting.

PHAs Submit a Mixed-Finance to RAD Development Proposal. Once HUD issues the NARR and holds a preliminary conversion call, PHAs submit all of the normal documentation required for a standard Mixed-Finance closing, including a development proposal, development proposal calculator, and required evidentiary documents. The project’s underwriting is reviewed by OPHI under the Mixed-Finance process, so all development activity, even costs solely attributable to the RAD conversion, is included in the Mixed-Finance Development Proposal (“MFDP”). However, to prepare for the RAD conversion, PHAs must also submit the following six items to the RAD Resource Desk:

1. an overview of the ownership structure,
2. selection of the project receiving project-based vouchers or project based rental assistance,
3. certification of board approval of the RAD conversion,
4. an operating pro forma,
5. an approved significant amendment to the PHA Plan, and

6. an initial year funding tool.

HUD Issues a Mixed-Finance Approval Letter and a RAD Conversion Conditional Approval. If approved by Recap and OPHI, the project receives a Mixed-Finance Approval Letter and a RAD Conversion Conditional Approval (“**RCCA**”), at which point the project proceeds to closing under the standard Mixed-Finance process.

What happens once the units have been developed under the Mixed-Finance rules? HUD Simultaneously Issues a CHAP and RCC. Once constructed, the units must meet the public housing requirements in 24 C.F.R. Part 905 Subpart F in order to be entered into the PIH Information Center (“**PIC**”) as public housing. HUD encourages PHAs to submit RAD closing documents toward the end of construction. Once the units are in PIC, Recap will issue a Commitment to Enter into a Housing Assistance Payments Contract (“**CHAP**”) and a RAD Conversion Commitment (“**RCC**”) simultaneously. After the CHAP and RCC are received, the project proceeds to a traditional RAD closing.

Faircloth Limits and Reservation of Units

How do I find out how many units my PHA can develop under Mixed-Finance to RAD? PHAs can review their Faircloth limit through the following link on the RAD Resource Desk—[Faircloth Limits as of November 30, 2020](#)—which HUD will update quarterly.

PHA must reserve RAD conversion authority. PHAs must reserve RAD conversion authority for the Faircloth units. The Guidance explains that PHAs can reserve the units by utilizing an existing RAD Portfolio Award or by applying for a new one. If the PHA does not have existing public housing properties to obtain a RAD Portfolio Award, the PHA can reserve conversion authority by partnering with a PHA which does have an existing RAD Portfolio Award.

Calculating Rents and Notice of Anticipated RAD Rents (NARR)

How is rent calculated? The RAD rent for Faircloth units is equal to the estimated amount of Operating Funds and Capital Funds that the units would receive at the time of conversion. HUD

estimates the amount of Operating Funds and Capital Funds based on the project's characteristics, such as age, which PHAs provide when applying for a NARR.

Can the PHA rent bundle or use MTW flexibility with Mixed-Finance to RAD? Pursuant to Sections 1.6.B.5 and 1.7.A.5 of the RAD Notice (Notice H-2019-09 PIH-2019-23 (HA)), PHAs may modify the RAD rents through mechanisms like rent bundling and using MTW flexibility.

Conversion Year Funding Issues

Just as in RAD, the first year of conversion will be funded under the public housing program.

The Guidance emphasizes that PHAs must account for the project's year of conversion funding when financing a Faircloth-to-RAD conversion. For the remainder of the calendar year in which conversion occurs (i.e. the year of conversion), the project relies on Operating Funds and Capital Funds under normal public housing subsidy allocations.

Mixed-Finance to RAD will not receive Capital Funds in the conversion year. However, new public housing projects do not receive Capital Funds for the year they are entered into PIC, meaning Faircloth-to-RAD projects will not receive Capital Funds in the year of conversion. Operating Funds will be available in the year of conversion, but projects must have a Date of Funding Availability and submit processing materials by the "new project submission deadline" (typically in early summer).

Consider creating a project-level conversion reserve. To account for possible funding gaps between the public housing subsidy received by the PHA and the RAD rents in the year of conversion, the Guidance notes that PHAs and developers may wish to consider a year of conversion reserve for the project.

Lease-Up Options and Resident Engagement

There are two ways to structure lease-up. PHAs have two lease-up options under Faircloth-to-RAD conversions: (i) begin leasing the units prior to the RAD conversion under public housing rules; or (ii) begin leasing the units after RAD conversion under the Section 8 program.

If leased as public housing before RAD Conversion, PHAs need to follow the RAD engagement process to convert. HUD explains that if the units are leased prior to conversion, PHAs must comply with the resident engagement requirements under the RAD program, such as issuing a RAD Information Notice.

The Guidance includes templates for HUD forms. In addition to further details on the transaction process and requirements, the Guidance includes a template NARR, RCCA, and MFDP for RAD conversions. The Guidance also includes a timeline of the transaction process and a table displaying PHAs with over 1,000 units available under their Faircloth limit.