OFFICE OF HOUSING

Office of Multifamily Housing Programs

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

On September 20th, 2023, HUD hosted a webinar on Faircloth-to-RAD Development. A recording of the webinar can be found here. A copy of the slides can be found here.

The questions below were asked by participants during the presentation. If you have any further questions about Faircloth-to-RAD Development, please contact RAD@HUD.gov.

Table of Contents

Faircloth Authority

1. **Can Faircloth Authority be transferred between PHAs?**
   Yes. PHAs may transfer their Faircloth Limit as part of a PHA transfer or consolidation in accordance with Notice PIH 2014-24 which involves the transfer of all Public Housing assets and liabilities (in addition to the Faircloth limit). A PHA may undergo a consolidation or transfer even if it has no remaining Public Housing units, but just the transfer of a Faircloth Limit under transfer or consolidation is **not** permitted. A PHA may also transfer its Faircloth Limit through the PIH Partnerships Provision of RAD Notice (Section 1.5.L), which permits two or more PHAs to coordinate efforts and pool resources or capacity to enable the conversion of a public housing project. PHAs interested in this option should contact the RAD Resource Desk at resourcedesk@radresource.net.

2. **When a PHA is doing a transaction that would result in a closeout of their Public Housing Program, do they still gain Faircloth units that they can develop prior to closing out the Public Housing Program? For instance, if a PHA with 40 units left in their Public Housing portfolio is doing the 50 & Under Small PHA for Section 18, are 40 units added to their Faircloth Authority?**
   Yes, certain repositioning tools (i.e., Streamlined Voluntary Conversion, Small PHA RAD Blends, Section 18 "under 50") that are only available to small PHAs require the PHA to close out its public housing program. A PHA can use one of these tools and may develop Faircloth-to-RAD units ***prior*** to closing out their public housing program.

As an additional example, a 100-unit PHA with 40 units of additional Faircloth authority decides to pursue a Small PHA RAD & Section 18 Blend. The PHA may complete their RAD & Section 18 Blend transaction and unit removal and then delay their mandatory close out to first develop up to 120 units of Faircloth to RAD units (40 units of their existing authority plus 80 units generated via the blend). The PHA may not develop traditional PH units, and the PHA must complete close out activities following the closing of their Faircloth-to-RAD project.

3. **If my PHA is not on the Faircloth authority list, do we assume our PH ACC was terminated or are only PHAs listed with PH units included on the list?**
   You can find a list of every PHAs Faircloth Authority produced by the Office of Capital Improvements here. The list is updated approximately once a year. If you do not see your PHA on this list and you believe you have not yet closed out your public housing program and should still have Faircloth authority, contact RAD@HUD.gov.

4. **Does the answer about transfer of Faircloth Authority also apply to unused authority after a PHA closes the PH program?**
   Once a PHA has closed out its public housing program and terminated its ACC contract any Faircloth authority is permanently lost.

Notice of Anticipated RAD Rents (NARR)

5. **Does the NARR generally serve the same purpose as the initial Commitment to Enter a Housing Assistance Payment (CHAP) issued by HUD's Office of Recapitalization in other types of RAD projects?**
   Generally, yes. The NARR serves to communicate to the PHA what their post-conversion RAD rents for the newly built or acquired Faircloth units will be and to reserve conversion authority under the statutory cap set for the number of units that are permitted to convert under RAD. PHAs can use that to leverage other sources of financing for the project.

6. **How long does it typically take to get a NARR following submission of a request?**
   Assuming all required information has been provided to HUD in the correct format, issuance of a NARR typically takes between 2-4 weeks.

7. **Can you please clarify how to request augmented rent for an existing NARR? Does the PHA need to make a fresh NARR request?**
   A PHA will receive a provisional, unsigned NARR that includes the un-augmented rents. If the PHA wishes to augment the rents, they can communicate that to the Office of Recapitalization and a new NARR with the augmentation included will be generated assuming the project meets the eligibility screening. The rents will be amended accordingly, and the NARR will be signed and considered final.

8. **If a NARR request is appropriately submitted, a NARR will be issued, correct? There's no competitive process for a NARR issuance?**
   Correct, requesting a NARR is not a competitive process, nor does it commit you to pursuing a Faircloth-to-RAD development. However, units reserved via NARR count against the RAD program cap.

9. **Is there a way to determine what the RAD rents would be prior to requesting a NARR?**
No, the only way to get an accurate estimate of what the Faircloth-to-RAD rents would be is to request a NARR. In general, we have seen NARR rents that are 10-20% lower than regular RAD rents for new construction. This is because the NARR rents assume a newly constructed building and so include significantly less capital fund dollars than regular RAD projects.

10. **Is a PHA required to notify residents if you request a NARR?**
A PHA is required to notify residents in cases where it is contemplating a Faircloth-to-RAD development of an existing, occupied property. In that case, prior to requesting a NARR, the PHA must issue a Resident Information Notice (RIN) and possibly also a General Information Notice (GIN) and conduct at least two meetings with residents.

Augmenting Faircloth-to-RAD Rents

11. **How does rent augmentation work for non-MTW and expansion MTW agencies? Do these agencies only need to augment rents for year 1? How are augmented rents funded in subsequent years after year 1?**
For agencies whose renewal funding is based on HAP expenses in the prior year (the expansion MTW agencies and non-MTW agencies), PHAs will use voucher reserves (or MTW funds in the case of expansion MTWs) to augment the rents in the first full calendar year after conversion. Once expended, those funds are incorporated into the agency's voucher renewal baseline for the following year.

    The augmentation portion of the Faircloth-to-RAD rent is paid from the agency's HAP reserves only during the first full calendar year following conversion. In subsequent years, that funding is permanently removed from the agency's reserves and is counted as part of the agency's regular Section 8 funding that gets renewed annually by HUD.

12. **How are augmented rents funded in subsequent years after year 1 for Original MTW Agencies?**
For agencies whose renewal funding is based on a formula in their MTW Agreement (the initial 39 MTW agencies), agencies can use any MTW funds to augment the rents and will need to incorporate into their long-term budgeting of their annual MTW funding the level of subsidy the agency is using to augment the RAD rents in year 1 **and** any subsequent years over the life of the contract.

13. **If a non-MTW PHA is augmenting rents, does the augmented amount need to be funded from their HAP reserves, or could they find that money from some other source? Are you allowed to use State non-federal funds designed by a legislative body to augment or top-off the Faircloth-to-RAD rent?**
The augmentation to the Faircloth-to-RAD rents by non-MTW agencies can only be paid for out of voucher/HAP reserves. State non-federal funds could be used as development sources or to build up reserves but cannot be used to fund the augmented rent levels.

14. **What is the process that non-MTW agencies will need to use to amend an existing NARR with augmented rents?**
    If you have an existing NARR and you want to augment the rents up to the 110% limit, contact the Office of Recapitalization (RAD@HUD.gov) and we will amend your NARR so you do not need to submit a new NARR request. For new NARR requests, the base NARR rents prior to any rent augmentation will be shown on the Resource Desk and we will ask the PHA whether you want to augment rents and by what amount prior to issuing the signed NARR.

15. **If a non-MTW agency uses Small Area Fair Market Rents (SAFMR), can we use our payment standard in a zip-code as the payment limit to augment to, or can we still only go to 110% FMR?**
    If a PHA is using SAFMRs as the payment standard for their project-based voucher program, then the cap on the Faircloth-to-RAD rent augmentation would be 110% of the applicable SAFMR.

16. **For a non-MTW agency, what documentation is available to confirm a PHA has reserve funds sufficient to set augmented rents at 110% of FMR for PBVs?**
    HUD monitors available reserves through HUDCAPS and VMS systems. Note that a PHA would only have to have the available reserves at the time of conversion, which for new construction could be many years after requesting an initial NARR.

17. **Can a PHA amend an existing HAP with augmented rents?**
    No. Augmentation of rents can only be done as part of a Faircloth-to-RAD development.

18. **Can a Housing Authority use rent bundling from a RAD PBV transaction to supplement Faircloth-to-RAD rents?**
    Yes, a PHA pursuing a Faircloth-to-RAD development could use rent bundling to augment Faircloth-to-RAD rents. See Section 1.6.B.5.b and Section 1.6.B.5.f in the RAD Notice on Rent Bundling for PBV and PBRA, respectively, for more information.

Mixed Finance Development Proposal

19. **Does the Office of Public Housing Investments architect review the project for Uniform Federal Accessibility Standards (UFAS), or does the HUD Field Office?**
    The Office of Public Housing Investment conducts the review of the project for UFAS.

20. **If we are not charged taxes at all, do we have to ask for a Payment in Lieu of Taxes (PILOT)? Our PILOT is only $1/unit/year but would rather pay $0 if allowed by HUD.**
    Yes. As part of the Mixed Finance Development Proposal, PHAs are asked to submit a legal opinion documenting and supporting any PILOT or cooperative agreement for the property. If that payment is zero, or one dollar, evidence of that agreement should be submitted.

21. **To prepare for a quick RAD conversion closing process, is there any guidance on what changes need to be reflected in key transaction documents - like the owner's LIHTC partnership agreement and the management documents - to expedite the closing process?**
    The standard RAD closing documents in the RAD Closing Checklist would need to be submitted, so any submission would need to satisfy those requirements.

We are unable to accept blended closing documents that satisfy both Mixed Finance and RAD requirements. By statute, we need to have a public housing closing that addresses the nature of public housing and a closing that addresses RAD requirements.

22. **Is the Mixed Finance Development Proposal for a Faircloth-to-RAD deal reviewed by the HUD Panel as with a standard mixed finance ACC deal?**
    Yes, when the assigned Grant Manager completes their review of the Mixed Finance Development Proposal, they will bring the project to Mixed Finance panel.

23. **How long does the process take to complete the RAD conversion after construction completion? Are PHAs and developers able to start the conversion process prior to construction closeout to complete RAD conversion soon after construction completion?**
    We encourage PHAs to begin the conversion process before construction completion. A PHA can submit its closing package before the construction is completed. That would set the Office of Recapitalization up to process the conversion quickly once construction is finally complete.

24. **How long does it take to go from Date of Full Availability (DOFA) to RAD closing? In non-Faircloth-to-RAD closings, we have seen many months in between DOFA and closing.**
    If the PHA is ready with the requisite closing documents, as soon as the property achieves DOFA, we can issue the RCC and go right into closing. We can conduct our closing review and close within that month. The exact timing depends on the PHA's preference. Some prefer to fully lease the building before conversion which adds time before closing.

25. **What constitutes a Certificate of Occupancy?**
    A certificate of occupancy is issued by a local building or housing department verifying that it has met all applicable local housing and zoning codes and is what permits a structure to be occupied.

26. **Is the Date of Full Availability (DOFA) determined by completion of buildings or the entire project?**
    The Date of Full Availability is defined as the point at which the project receives certificates of occupancy for 95% of the units. It is calculated at the project level.

27. **Why would a PHA convert via RAD Project Based Vouchers (PBV) vs. RAD Project Based Rental Assistance (PBRA)?**
    The primary difference is that PBVs are administered by the Housing Authority's voucher program, and the PHA receives administrative fees. The PBRA contract is administered by HUD. In general, PHAs select the program with which they are most familiar, or they feel aligns best with their organization's goals.

    The rent augmentation flexibility is only available to PBV conversions.

28. **At Mixed Finance Development Proposal submission, is a PHA required to indicate whether the project will convert to PBV or PBRA. Can this change later in the process?**
    Yes, this can be changed; however, PHAs should be aware that for PBRA conversions, HUD completes the Part 50 environmental review. If you change from PBV to PBRA, you may need to

ensure that your environmental review was completed in accordance with the requirements laid out in Attachment 1A in the RAD Notice, "Financing Plan Requirements and Feasibility Benchmarks for Public Housing Conversions."

29. **Are the vouchers or RAD funding available for a period or do they sunset?**
When a new property is built via Faircloth-to-RAD, for a PBV conversion, HUD provides new funding to the PHA's voucher account that is a permanent new allocation. When the PHA spends those funds, they become eligible for renewal and the units are permanently added to the agencies' voucher ACC. It's a new increment of rental assistance funds that are provided.

30. **One of the slides described the flow of subsidy for new projects, stating that they are not eligible to receive capital funds in the first year, only operating subsidy. How does that subsidy level relate to the base NARR rents approved for the property? Will the first year NARR rents actually be lower in the first year than documented in the base NARR approved rent level? Is there a potential timing delay in the property receiving subsidy in the first year depending on when funds are requested?**
Correct. Any project built will not receive capital funding in the first year it is brought online. It will only receive operating funding if it is brought online before the cutoff date (typically around June each year).

For example, if you completed a Faircloth-to-RAD project in May of 2024 (before a June cut off for operating fund eligibility), you would receive operating fund for the remainder of the year. You would not receive any capital fund.

On January 1st, 2025, the flow of Section 8 HAP subsidy begins, and will be for the base NARR rents (without any rent augmentation).

PHAs should plan for significant operating reserves to fund the project in the initial year of conversion before the Section 8 HAP subsidy begins on January 1st.

31. **Can proceeds from a Section 18 Demolition/Disposition be used to fund RAD conversion in the year of conversion before Section 8 HAP contract funds kick in the following January?**
Yes. Section 18 proceeds can be used in the RAD sources and uses to fund the operating reserve. It would be recorded in the RAD financing plan.

32. **Are Faircloth-to-RAD developments eligible for Opportunity Zone rent boosts?**
Yes, Faircloth-to-RAD developments that are converting to PBRA are eligible for up to $100 per unit, per month increase to the rents if they are in an Opportunity Zone. There is a financial necessity analysis that must be done to qualify for the increase. See Section 1.7.A.5.e of the RAD Notice for more information.

33. **Is the RCCA issued prior to the Mixed Finance closing or after?**
The RCCA is issued by the Office of Recapitalization following the Mixed Finance Development approval letter issued by OPHI.

Site and Neighborhood Standards

34. **Does the PHA need to submit a site & neighborhood standards analysis for HUD review?**
    Yes. The Site and Neighborhood Standards (SNS) review is required as part of the Mixed Finance Development Proposal. That review is submitted to the local PIH Field Office. You can submit the SNS review simultaneously with the Mixed Finance Development Proposal or ahead of time; however, the MFDP cannot be approved without the SNS approval.

35. **In regard to Site and Neighborhood Standards, it's my understanding that by statute, PHAs can rebuild public housing back on site, even if the site is in a minority concentrated census tract, up to 50% of the original count. Does that also apply to Faircloth-to-RAD developments? When the RAD conversion occurs, it is existing housing, so the minority concentration should not be an issue. Is that correct?**
    Yes, those existing exceptions to Site and Neighborhood Standards would still apply. The RAD conversion defers to the SNS review approved during the Mixed Finance process.

Leasing Up Faircloth-to-RAD Units

36. **If we need to lease units prior to RAD conversion, are residents required to income qualify twice at initial occupancy as PH and then after RAD conversion or can they simply just sign the PBV lease documents. I am asking to meet tax credit requirements and qualify for a full year lease.**
    In this scenario, residents are only subject to income qualifications and other screening criteria at the time of move-in as public housing residents, and no secondary screening would be required at the time of the RAD conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at a converting project based on any rescreening, income eligibility, or income targeting.

    See Section 1.6.C.1 in the RAD Notice for further information.

37. **In the recent supplemental guidance, it clarified resident engagement 1) before NARR and 2) after issuance of RCC. What about in between? For example, if lease-up needs to begin after RCCA/construction completion but before actual RAD conversion, can resident simply be informed conversion plans at time of lease-up?**
    If a PHA begins lease up after construction completion but prior to the RCC issuance, then the procedures described in 1.8.I.2. of the RAD Notice as amended by RAD Supplemental 4B will apply.

38. **Is there a reason a PHA would choose to lease up units as public housing rather than wait for the RAD conversion to lease up units as Section 8?**
    To maximize the LIHTC equity, a PHA or developer often has an interest in fully leasing the building within the first month it is placed into service. Sometimes that schedule means it is easier to lease the units and convert them later.

39. **The slides stated that the PHA had to lease to 95% to get the DOFA but it seems in your current answers, you are saying we do not need to get to 95% lease up to convert?**

The DOFA requirement is that 95% of units have received certificates of occupancy from the local building official. The units do not need to be occupied to achieve DOFA.

40. **If the Faircloth-to-RAD rents are low, PHAs may ultimately lease these units to families who would be considered "Zero-HAP," those for whom 30% of their income exceeds the HAP contract subsidy. If so, should the PHA apply for waiver to admit zero-HAP residents at the RAD application stage?**
It is possible that the lower Faircloth-to-RAD rents may lead to families being admitted such that 30% of their income is higher than the RAD rent. In those cases, the PHA could apply for the Zero-HAP waiver at the time of CHAP issuance after construction completion.

Ownership Requirements

41. **Can the PHA work with a private developer that will be the eventual owner and the PHA will only be the voucher administrator?**
All Faircloth-to-RAD projects must meet the RAD ownership and control requirements described in Section 1.4.A.11 of the RAD Notice, which requires that the project be owned or controlled by a public or non-profit entity. The Notice describes different ways acceptable ownership can be demonstrated including, but not limited to, a fee simple interest in the property, a long-term ground lease, or an alternate ownership and control agreement approved by HUD. A proposed project where there is no other PHA or nonprofit control except for the PHA as the voucher administrator does not meet the requirement.

42. **Can you expand on ownership requirements - A LIHTC partnership generally has only a small percentage owned by a nonprofit or PHA. Would that be an issue?**
HUD permits the ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, so long as the PHA or a non-profit entity preserves adequate ownership or control of the property. Refer to Section 1.4.A.11 of the RAD Notice for additional information on how HUD defines adequate ownership or control for LIHTC partnerships.

43. **Can you discuss how the process differs when ultimate owner will be a private nonprofit? Is it correct that the PHA must own and control through construction completion and issuance of DOFA?**
By regulation, a PHA does not need to have any ownership interest in a mixed finance development. As such, there is no difference in the project proposal requirements compared to when a PHA does have ownership in the project.

    Although a PHA does not need to have an ownership interest in a mixed finance project, the PHA must meet RAD requirements which mandate ownership or control by a nonprofit **or** a public entity.

44. **There are other requirements for RAD other than public/non-profit ownership, correct? Such as procurement and wage rate requirements? How does this affect projects where a non-profit developer who does not typically need to adhere to these requirements is leading the project.**

Davis-Bacon wage requirements and certain procurement regulations apply to different partners in the development of mixed finance projects. Please reach out to HUD's Office of Urban Revitalization at OUR@hud.gov for specific guidance on the mixed finance development requirements.

Faircloth-to-RAD Acquisition

45. **Can Faircloth-to-RAD be used in the acquisition of units that don't require new construction or rehab? How would that change the process of approval?**
The review process will generally be the same for Faircloth-to-RAD proposals that involve acquisition. If the acquisition will be of a property that is newly constructed or rehabbed, HUD will still review capital needs over the next 20 years to ensure they can be met. Depending on the age of the project, it may be exempt from a capital needs assessment, however it will be subject to environmental, site and neighborhood standards, and UFAS requirements.

46. **How does the Faircloth-to-RAD process differ (if any) for existing projects going through a substantial rehab?**
There are not significant differences in the process, but PHAs should be aware that Mixed Finance requirements still need to be met (e.g., CNA, environmental review, UFAS, site and neighborhood standards, etc.).

47. **Can a Faircloth-to-RAD development be mixed into a LIHTC re-syndication deal, i.e., the transaction would involve neither new construction units nor current public housing?**
Yes, a Faircloth-to-RAD development could include the acquisition of an existing LIHTC project set to undergo re-syndication. A portion of the units could be acquired by the PHA as part of a Faircloth-to-RAD development and designated as public housing before being converted to RAD.

48. **In a scenario in which occupied housing is being acquired and converted, how and when is income eligibility determined for existing residents? If fewer than 100% qualify, can units be added in the future at turnover?**
Program eligibility determinations for all households must be made prior to the project's Actual DOFA date. If the approved project is 100% Faircloth-to-RAD units, but fewer than 100% of the households qualify, units can be added to the Section 8 contract at unit turnover.