

CY 2021 Guidance on Complying with the Maximum Number of Units Eligible for Operating Subsidy Pursuant to Section 9(g)(3)(A) of the Housing Act of 1937

Section 9(g)(3) of the Housing Act of 1937 ("Faircloth Amendment") limits the construction of new public housing units. The Faircloth Amendment stipulates that the US Department of Housing and Urban Development (HUD) cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units the Public Housing Agency (PHA) owned, assisted or operated as of October 1, 1999. This requirement is referred to as the "Faircloth Limit."

The Faircloth Limit is adjusted when a PHA: removes units from, adds units to, or consolidates units in the Annual Contributions Contract (ACC), consolidations, and rental assistance demonstration (RAD) removals. PHAs will not be funded for those units that exceed the posted Faircloth limit, and PHAs are responsible for reviewing the Faircloth limits and notifying HUD if they believe that their posted Faircloth Limit is not accurate.

Instructions

This guidance provides instructions on how HUD Field Offices (FOs) can make adjustments to their Unit Months in Columns 'A', 'B', and 'C' of Section 2, of the HUD-52723 in compliance with the Faircloth Limit [established by the Capital Fund Division, PIH's Capital Fund Office as further described in Notice PIH-2011-69 and the National List (click on the web-link) of Maximum Number of Units Eligible for Capital Funding and Operating Subsidy by PHA.

<https://www.hud.gov/sites/dfiles/PIH/documents/CY21-Faircloth-Limit.pdf>

FOs will

1. Determine whether the Faircloth Limit is exceeded—that is, add up the amounts in Section 2, Column A, Line 15 for all Public Housing projects in the PHA's portfolio that receive Operating Subsidy. Compare the result with the established Limit (the National List). For purposes of this guidance, the amount, by which the PHA exceeds the Faircloth Unit Months Limit is referred to as the *Excess Units*.
2. Ensure that PHAs, which exceed the Faircloth Limit, do not receive funding for Excess Units. Since they cannot make changes directly to unit status data in Section 2 of the HUD-52723, PHAs must request changes be made by entering their request in the comments for Section 2. To the extent a PHA has Excess Units, PHAs should request the Field Office (FO) reduce Unit Months, beginning with the newest project in the inventory and working backward in chronological order (i.e., last-in-first-out).
3. The FO must modify unit status data in the 52723 to ensure compliance with Faircloth before submitting the HUD-52723s to HUD. Whether or not a PHA comment is included in the HUD-52723 requesting Excess Units be removed from Section 2, the FO must ensure that the PHA does not have Excess Units. To the extent a PHA has Excess Units, the FO must reduce the unit months in Section 2, Column A of the HUD-52723. Beginning with the newest project (the project most

recently added to the PHA's inventory), the FO will reduce the Unit Months in Line 11 until it reaches zero, then Line 1, and continue through Line 10 until each line is zero and until the number of Excess Units is completely depleted. If the PHA still has Excess Units after all the lines in Section 2 have been reduced to zero, the FO should follow the same process with the next newest project and continue that process until the PHA has no Excess Units remaining.