

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 (aka the Faircloth Limit)

Section 9(g)(3) of the Housing Act of 1937 ("Faircloth Amendment") limits the construction of new public housing units. The Faircloth Amendment states that the Department 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 PHA owned, assisted or operated as of October 1, 1999. This requirement is referred to as the "Faircloth Limit." The Faircloth Limit is adjusted for PHA transfers of ACC units, consolidations, and 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 their posted Faircloth Limit is in error.

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

Instructions:

FOs will

- (i) Determine whether the Faircloth Limit is exceeded—that is, total Section 2 Column A Line 15 for all projects, and divide the sum by 12. Compare the result with the established Limit (see attached List). The amount, by which the PHA exceeds the Faircloth Limit, will be known as the Excess Units for the purpose of this guidance.
- (ii) Ensure that PHAs, which exceed the Faircloth Limit do not receive funding for Excess Units. Hence HUD will reduce Unit Months, beginning with the newest project in the inventory and working backward in chronological order. Unit months will be reduced as noted below.
- (iii) Annualize the Excess Units by multiplying the Excess Units by 12 (Annualized Excess Units). The Annualized Excess Units must be reduced from the Unit Months reported in Section 2 of the PHA's 52723 Tools. FOs shall reduce the unit months in columns A, B, and C of the 52723 form by the Annualized Excess Units, beginning with Line 1, and continuing through Line 4 (Line 2 shall not be reduced). Beginning with the newest project if the total Unit Months reduced is less than the Annualized Excess Units, the FO will continue to reduce Unit Months until the number of Annualized Excess Units is completely depleted. The balance in each cell can be '0' (i.e., zero) after the adjustment is made
- (iv) PHAs should contact their FO with any questions. FOs should contact FMD as needed.