



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention:

NOTICE PIH 2011-69 (HA)

Public Housing Agencies
Public Housing Directors
HUD Field Offices

Issued: December 27, 2011

This notice remains in effect until amended, revoked, or superseded

Cross References:
Notice PIH 2011-7 (HA)
Section 9(g)(3) of the United States
Housing Act of 1937

Subject: Prohibition on Exceeding Statutory Limitation of the Number of Public Housing Units

I. Purpose: The purpose of this Notice is to advise Public Housing Agencies (PHAs) and HUD Field Offices of the Department's decision that all PHAs, including Moving to Work PHAs, are prohibited from adding public housing units that exceed the statutory limit. This restriction applies to the construction, as well as the use of acquisition and acquisition with rehabilitation development methods, of all public housing units in excess of the Faircloth limit, regardless of the source of funds.

II. Background: The Quality Housing and Work Responsibility Act of 1998 (QHWRA) imposes a statutory limit on new construction of public housing (Faircloth limit) in Section 9(g)(3)(A) of the United States Housing Act of 1937 (Housing Act). The Housing Act states that PHAs cannot use the Capital Fund or the Operating Fund to construct any public housing unit if the construction would result in a net increase from the number of public housing units owned, assisted, or operated by the PHA on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

The Housing Act permits two exceptions. First, Section 9(g)(3)(B) of the Housing Act states that a PHA may use amounts allocated from the Capital Fund or the Operating Fund for the construction and operation of units that exceed the Faircloth limit as long as the Capital and Operating Fund formulas do not provide increased funding for the construction, rehabilitation, or operation of the additional units.

Second, the Housing Act states that, subject to reasonable limits set by the Secretary, a PHA may construct new units in excess of its Faircloth limit and receive additional funding for such units under the Capital and Operating Fund formulas, if the PHA meets the following two conditions found in Section 9(g)(3)(C) of the Housing Act: (1) the units are part of a mixed-finance project, or otherwise leverage significant additional private or public investments; and (2) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under Section 8(o) of the Act for the same period.

In addition, an exception to the limit on new construction of public housing is found in the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act contained a provision that permitted PHAs to construct public housing units above their Faircloth limit when the construction of those units is funded with Recovery Act funds only, and not traditional Capital Funds or HOPE VI funds. Therefore, the prohibition described in this Notice, which restricts the construction and funding of Operating and Capital assistance for public housing units that exceed the Faircloth limit, does not apply to units developed with only Recovery Act funds and no other public housing funding.

III. Verifying a PHA's Faircloth Limit: The Department uses data the PHAs have submitted to the Department in the Inventory Management System/Public Housing Information Center (IMS/PIC) system as its source of information for public housing units. In 2007 and 2008, PHAs certified to the number of units in its inventory as of October 1, 1999 through IMS/PIC. Every fiscal year, the Department issues specific directives to PHAs to accurately report all units in their inventory for purposes of providing the funding for Operating Fund and Capital Fund assistance. Public Housing Field Office staff monitor all information submitted by PHAs in the IMS/PIC Development Sub-Module to ensure its accuracy in reflecting actions such as demolition/disposition, deprogrammed units, vacancy exemptions and special use units.

With the issuance of this Notice, the Department has published a link on its Office of Public and Indian Housing, [Office of Capital Improvements website](#) that lists each PHA's Faircloth limit. For PHAs that had more units in their inventory on October 1, 2011 than they did on October 1, 1999, the list establishes the maximum number of units eligible for Operating Funds and Capital Funds. The Department will continue to update this list as necessary to reflect any additional adjustments that are permitted in accordance with Section V of this Notice.

IV. No Units Exceeding the Faircloth Limit: Given the current budgetary environment, the Department has determined that it is not fiscally prudent to permit PHAs to exceed their Faircloth limit. Since annual Congressional appropriations of Capital and Operating Funds are not adjusted proportionally (i.e., increased) as a result of the addition of public housing units, the increase of units above the Faircloth limit for a particular PHA results in the reduction of Capital and Operating Funds to be provided proportionally for all other PHAs in the national public housing inventory. For this reason, at this time, the Department will not be approving development proposals that

propose to construct or acquire public housing units that exceed the Faircloth limit beyond those in place at a PHA's inventory as of October 1, 1999, except for the circumstances described below.

This prohibition applies even if a PHA elects to not add the newly built or acquired public housing units to the Capital and Operating Fund formulas once they are under management. This prohibition also applies if the additional units are part of a mixed-finance project, or otherwise leverage significant additional private or public investments, and the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance for the same period.

V. Exceptions to Prohibition on Exceeding Statutory Limitation: The following are the exceptions to the prohibition on exceeding the October 1, 1999 unit count.

1. Mixed-finance public housing units developed prior to the issuance of this Notice. PHAs that received approval from the Department to develop public housing units through the mixed finance development program under 24 CFR Part 941 before the date of this Notice will be allowed to include the new units in the Operating Fund and the Capital Fund formulas.
2. Merged or consolidated PHAs. When PHAs are consolidated, the Faircloth limit for the newly consolidated PHA is the sum of the units from each of the component PHAs.
3. Units transitioned between dwelling and non-dwelling purposes. Non-dwelling units are included in the Capital Fund Formula calculation¹; therefore, these units should all be included in the October 1, 1999 unit count. In some cases, for those PHAs that improperly excluded these units from its 1999 certification, the Faircloth limit has been corrected.
4. The certification to the October 1, 1999 count was inaccurate. In some instances, the certification to the October 1, 1999 unit count was inaccurate. The Department has corrected those instances where the developments had a Date of Full Availability (DOFA) before October 1, 1999. In the other instances, the Department reviewed documentation provided by the PHA to make a determination to add the units to the PHA's Faircloth limit.
5. Reconfiguration was approved after October 1, 1999. Reconfigurations occur when the interior walls are moved or removed in order to change the design, sizes, or number of units within a building, as approved by the Field Office (see §970.3(6)). The Department will allow corrections to the Faircloth limit (i.e., increased or decreased) for reconfigurations approved after October 1, 1999, as long as these reconfigurations do not result in a greater number of bedrooms than the PHA had on October 1, 1999.

¹ Only some categories of non-dwelling units receive full operating subsidy under the Operating Fund Formula (see guidance issued under Notice PIH 2011-07 (HA)).

6. Approval or funding provided to develop units was given prior to October 1, 1999, but units had a DOFA after October 1, 1999. The Faircloth limit may be increased when units are developed with assistance provided under the former Section 5 and Section 14; approved as development projects by the Field Office in the period between 1991-1997; approved using the authority under PIH Notice 96-56 (modernization for development and development for modernization); approved under the Holman Consent Decree; and approved under Section 14(q) of 1937 Act. Where PHAs have yet to develop units with Section 5 funds, the number of units developed is limited to the number of units approved as part of the grant award.
7. Development through the Recovery Act. The Recovery Act granted authority to exceed Faircloth requirements. Therefore, all units that were developed with only Recovery Act funds, and no other public housing funding, are permitted to receive funding, despite the Faircloth limit, and these additional units will be included in the Faircloth count.

VI. Future Considerations: When a PHA's unit inventory data currently in the IMS/PIC system is incorrect and the Department is presented with convincing documentation, the Department will correct the data in IMS/PIC and the Faircloth limit will be adjusted accordingly. Otherwise, the additional units in a PHA's inventory will not be eligible for funding under the Operating Fund and the Capital Fund formulas.

VII. Departmental Policy Decision: The Department has made the policy decision that no funding will be provided through either the Operating Fund or the Capital Fund programs for units that exceed the Faircloth limit in FY 2012 and FY 2013. During FY 2013, the Department will reconsider whether PHAs will be prohibited from adding public housing units that exceed their Faircloth limit.

VIII. Fair Housing Requirements: This Notice does not in any way affect any of the obligations or requirements that a PHA has under 24 CFR 100.205 or under 24 CFR 8.22 (a) and (b) to ensure that newly constructed housing projects are designed and constructed to be accessible to and usable by individuals with handicaps and meet the minimum threshold number of units that shall be accessible to persons with mobility impairments.

IX. Program Assistance: For assistance regarding the implementation of the above noted prohibitions to the Faircloth limit, please contact the nearest HUD Office of Public Housing within your state. Locations of these offices are available on HUD's website at <http://www.hud.gov>.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing