



HUD RELEASES: ENVIRONMENTAL REVIEW REQUIREMENTS FOR RAD TRANSACTIONS

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On December 04, 2014, HUD posted their “Environmental Review Requirements for RAD Transactions” on the HUD Exchange website. You can locate the document here: <https://www.hudexchange.info/news/hud-issues-environmental-review-requirements-for-rad-transactions/>. HUD describes the 38-page guidance as follows:

“This document outlines how to perform environmental reviews for Rental Assistance Demonstration (RAD) transactions. This guidance is intended for both Public Housing Agencies (PHAs) and HUD staff involved in the environmental review process, and describes the steps that both parties will take to complete environmental reviews. Environmental review procedures for RAD transactions will vary depending on whether the transaction is using Federal Housing Administration (FHA) insurance and whether the transaction is converting to Project-Based Rental Assistance (PBRA) or Project-Based Vouchers (PBV). Therefore, this guidance is divided into three sections – Transactions using FHA insurance, Non-FHA transactions converting to PBRA, and Non-FHA transactions converting to PBV – with separate environmental procedures for each transaction type.”

D3G’s Director of Environmental Services, Ms. Staige Miller, EP, digested the 8-page technical guidance and provided this summary of Environmental Review Requirements (ERR) for RAD Transactions.

Summary of Environmental Guidance

- A. The ERR is broken into 3 categories with varying degrees of environmental due diligence:
 1. Transactions using FHA mortgage insurance
 2. Non-FHA transactions converting to PBRA
 3. Non-FHA transactions converting to PBV

- B. National Environmental Policy Act (NEPA) reporting and compliance is based upon a combination of the proposed rental assistance contract type and debt structure, specifically:
 1. All Project Based Rental Assistance (PBRA) and FHA mortgage insurance transactions will require Part 50 reviews. This consists of HUD Form 4128 completion.
 2. Project Based Voucher Assistance (PBV) and Non-FHA mortgage insurance transactions will require Part 58 reviews. Typically this review follows HUD’s recommended format.

- C. Transactions using FHA mortgage insurance (e.g., Section 223(f), Section 221(d4), etc.), regardless of rental subsidy type (PBV or PBRA):

1. The Public Housing Authority should work through their FHA Lender and fully comply with the HUD Multifamily Accelerated Process (MAP) Guide Chapter 9; inclusive of an ASTM E1527 compliant Phase I Environmental Site Assessment and out-of-scope hazardous material (lead-based paint and asbestos materials) and radon gas testing.
2. Categorical exclusions from NEPA Review are recognized in the newly released guidance; however, Part A of the 4128 must always be completed.
3. To be categorically excluded from 24 CFR Part 50, the transaction must follow the subsequent rule and should any of these conditions not be met, then completion of Part A and B of the Form 4128 is required:
 - o Unit density is not changed more than 20%;
 - o Does not involve changes in land use from residential to non-residential;
 - o Estimated cost of rehab is less than 75% of the total estimated cost of replacement after rehabilitation; OR,
 - o An acquisition of a structure that will be retained for the same use with no repairs, rehab, demolition or construction.

D. Transactions using Non-FHA debt (e.g., Fannie Mae, Freddie Mac, Conventional, etc.) and converting to PBRA:

1. The PHA will follow HUD Multifamily Accelerated Process (MAP) Guide Chapter 9 **EXCEPT** as follows:
 - o Radon testing is not required.
 - o For SR or NC activities planned or anticipated, a Phase I ESA must be submitted in accordance with Chapter 9.
 - o For all other transactions, one of the following can be completed:
 - a. A transaction screen in accordance with ASTM E1528-14. The professional must have either: (a) a science degree and at least 1 year of experience; or (b) 3 years of experience. If concerns are identified, a full Phase I ESA must be provided; OR,
 - b. A Phase I ESA.

E. Non-FHA Transactions converting to PBV:

1. The Part 58 ERR is to be completed by the Responsible Entity (RE).
2. The PHA must submit one of the following to HUD:
 - o The completed HUD Form 7015.15 Request for Release of Funds (RROF); OR,
 - o If this form is not required the RE's finding of exempt activity.
3. All RAD transactions will be either:
 - o Categorically Excluded Subject to 58.5; OR
 - o Require an Environmental Assessment; OR
 - o Require an Environmental Impact Statement (EIS).

Processing Details of the Environmental Guidance

HUD's recently released guidance contains some key points for processing, as well as recommendations for PHAs, including:

1. Environmental assessment reports must be submitted to HUD with the Financing Plan (the 180 day CHAP milestone).
2. HUD recommends that PHAs begin assembling environmental reports early in the planning process.
3. HUD staff will conduct the environmental review, and they encourage their staff to use the recently released HUD Environmental Review Online System (HEROS) for reviews.
4. If the PHA financing involves debt, HUD recommends the PHA work through its lender to ensure compliance and acceptance.
5. Any environmental conditions and mitigation will be included in the RAD Conversion Commitment (RCC) and the Housing Assistance Payment (HAP) contract.

To summarize the guidance, these are our conclusions and recommendations:

- A. HUD Environmental Form 4.4, as required by the RAD PCA Scope of Work, is a screening tool only and does **not** provide compliance with the recently issued guidance.
- B. D3G emphasizes HUD's recommendation that PHAs begin assembling environmental reports early in the planning process, and attempt to coincide with the 90-day CHAP milestone.
- C. If using PBRA and/or FHA mortgage insurance programs, environmental consulting firms should demonstrate HUD MAP Chapter 9 knowledge (Ask your Lender!).
- D. Most property condition assessment firms can also complete environmental reviews, so ask your Needs Assessor if they can assist with environmental compliance. Killing two birds with the same stone can save time and money in these complex transactions.
- E. Consider having your environmental consultant assist with the NEPA studies. D3G has an expedited NEPA process for both PBRA and PBV conversions. Just because HUD indicates their staff will conduct the environmental review, does not mean they necessarily have to perform the entire study. D3G's staff has routinely provided both HUD and Responsible Entities fully compliant NEPA reporting in a compressed time-frame, allowing HUD to effectively "Review don't Redo".

Still confused? If so, give us a call or request a copy of our Environmental Review Requirements spreadsheet matrix which provides a good reference guide and describes where and when each of the above conditions apply.