

PRACTical RAD: Environmental Review Video Transcript

Hello and welcome to another video in the “PRACTical RAD” series. This series provides practical guidance to owners of Section 202 properties seeking to convert their Project Rental Assistance Contract, or PRAC, to a Housing Assistance Payments contract, also known as HAP, through HUD’s Rental Assistance Demonstration Program, commonly referred to as RAD.

Other videos in this series include an Overview of the RAD program, Conversion Milestones, Capital Needs Assessments, Financial Strategies, Rents, and Supportive Services.

To qualify for RAD Conversion, a 202 PRAC owner must develop and submit a Conversion Plan that satisfies all RAD program requirements.

A complete list of all conversion requirements applicable to Section 202 PRAC properties can be found in Housing Notice H-2019-09, PIH-2019-23, Section IV, Attachment 4A or other subsequent guidance.

RAD requirements include submitting reports and documentation which allow HUD or, if applicable, a Responsible Entity, to perform an environmental review of the converting property to determine whether it meets federal, state, and local environmental standards and to ensure that the project site will not adversely affect the health of residents.

All 202 PRAC RAD conversions are subject to environmental review. HUD cannot approve an applicant’s RAD Conversion Plan unless the required environmental review has been completed and the property has been determined to be environmentally acceptable.

Once an owner has submitted a RAD application, they must be careful not to take any action that might have an adverse impact on the environment or limit their choice of reasonable alternatives. Such actions are known as “Choice Limiting Actions.”

Taking a Choice Limiting Action can impact an owner’s eligibility to complete a RAD conversion.

Choice Limiting Actions are discussed in greater detail later on in this video.

After watching this video, 202 PRAC owners will be able to answer the following questions:

- Which HUD environmental review protocol applies to my property?
- Who is responsible for conducting my environmental review?
- Where do I submit my environmental reports?
- What is HUD’s contamination & toxic substances policy?
- Is a Phase I Environmental Site Assessment required?
- What are Related Laws and Authorities?
- What are the four levels of environmental review?

The National Environmental Policy Act of 1969, known as NEPA, established national policy, goals, and procedures for protecting, restoring, and enhancing environmental quality.

All Federal agencies must comply with NEPA.

HUD has two sets of protocols for complying with NEPA, 24 CFR Part 50 and Part 58.

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If you elect to receive Project-Based Rental Assistance, or PBRA, your environmental review will be conducted under 24 CFR Part 50.

Part 50 also applies if you elect to receive Project Based Vouchers, or P-B-Vs, and your conversion plan includes an FHA insured loan, other than a Risk Share loan.

All other RAD conversions involving PBVs are reviewed under 24 CFR Part 58. This video focuses primarily on reviews conducted under Part 50.

HUD is responsible for conducting environmental reviews under Part 50.

Part 58 allows recipients of HUD program funds - such as states, local governments, and native tribes that receive HOME, CDBG and similar funds - to assume authority for conducting environmental reviews related to the use of those funds. A recipient of HUD funds who conducts such environmental reviews on behalf of HUD is referred to as a Responsible Entity, or RE.

If your RAD conversion includes multiple federal funding sources, multiple environmental reviews may be required.

In such case, HUD encourages all parties to coordinate and complete only one environmental review.

HEROS is HUD's Environmental Review Online System.

If HUD is responsible for performing your environmental review, owners or their designees must upload all information needed to complete the review to HEROS.

If your RAD conversion includes an FHA insured loan, your lender will procure the required reports and upload them to HEROS.

If your conversion doesn't include an FHA insured loan, you can find information on how to access HEROS and upload information by going to www.hudexchange.info and searching on the term "environmental review."

Chapter 9 of the Multifamily Accelerated Processing Guide, known as the MAP Guide, outlines the policies and procedures that owners and FHA lenders must follow to meet environmental review responsibilities, and describes the environmental reports and documents that must be uploaded to HEROS.

The RAD program follows the MAP guide for Environmental Review requirements under Part 50.

HUD's Contamination & Toxic Substances policy requires properties proposed for use in HUD programs to be free from hazardous materials, substances, and contamination that could affect the health and safety of occupants or conflict with the intended use of the property.

To demonstrate compliance with this requirement, all RAD conversion properties must submit a Phase I Environmental Site Assessment, or ESA.

An ESA is a scientific report that identifies known and potential contamination from hazardous substances.

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It must be prepared in accordance with the requirements listed in section 9.4.1 of the MAP guide.

A Phase I ESA includes a site visit and a review of historical records to identify current and past uses of the proposed site and adjacent properties. Sampling and testing are not required.

The Phase I ESA must make an initial determination about whether the proposed property complies with HUD's contamination and toxic substances policy or if further investigation or corrective action is required.

If the Phase I indicates the presence of a Recognized Environmental Condition or another unacceptable risk to HUD is present, then a Phase II ESA is required.

A Phase II ESA involves testing of soil, soil vapor, and groundwater.

If the Phase II ESA concludes that hazardous waste or petroleum products are present at levels that exceed Local, State, Tribal, and Federal unrestricted criteria, or that it is likely that known or expected off-site contamination will migrate onto the site, HUD will require a Remediation Plan.

Owners must also demonstrate that their property complies with the Related Federal Laws and Authorities listed in Part 50.4, and all HUD-specific environmental requirements described in Chapter 9 of the MAP Guide.

Part 50 also groups properties into one of four categories: CENST, CEST, EA and EIS. These categories designate different levels of environmental review.

- 1) CENST stands for Categorical Excluded Not Subject To. It applies to properties that are Categorical Excluded from having to perform an Environmental Assessment and are Not Subject To compliance with the related laws and authorities listed in 24 CFR 50.4. CENST properties require the lowest level of environmental review. Properties participating in the RAD program may never be categorized as CENST.
- 2) CEST refers to properties that are categorically excluded from an Environmental Assessment but are subject to the related laws and Authorities listed in Part 50.4. Most RAD for 202 PRAC conversions fall into this category.
- 3) Properties categorized as EA require an Environmental Assessment and are subject to the related laws and authorities listed in Part 50.4.

Keep in mind that an EA is different from an ESA. An EA is a level of environmental review, while an ESA is a type of environmental report.

- 4) Lastly, properties categorized as EIS require an Environmental Impact Statement. EIS properties require the highest level of environmental review. Few, if any, 202 PRAC conversions are likely to be categorized as EIS.

Let's look at a couple of special situations.

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If your environmental review will be conducted by HUD under Part 50, and your proposed RAD conversion plan does not include FHA insured financing and does not include any rehab, construction, or demolition, HUD has already conducted a program wide review of most of the Related Laws and Authorities. Consequently, your property will only need to be reviewed for compliance with the Coastal Barrier Resources Act, Flood Insurance, Flood Plain Management requirements, and compliance with HUD's contamination and toxic substances policy.

For purposes of this slide, "rehab" refers to repairs, replacements, and improvements that exceed routine maintenance.

If your RAD conversion plan does not include FHA insured financing, but does include rehabilitation, demolition, or new construction, then your property must demonstrate compliance with all of the Related Laws and Authorities.

However, if the level of rehabilitation in your conversion plan does not rise to the level of substantial rehab, you may be able to submit a Transaction Screen, in lieu of submitting a Phase I ESA, so long as the Transaction Screen does not identify any potential environmental concerns.

If you believe that a Transaction Screen is an option for your property, contact your HUD Transaction Manager for additional information.

If your environmental review will be conducted by HUD under Part 50, and your RAD conversion plan includes FHA insured financing - other than an FHA risk-share loan, FHA Production will complete your environmental review using documentation submitted by your FHA Lender.

All required environmental review documents, including any remediation plans, must be submitted as part of the applicant's RAD Conversion Plan.

HUD cannot approve the Environmental Review unless the property is found to meet all applicable environmental review requirements.

If the environmental review documents do not meet HUD's requirements or reveal environmental conditions that require mitigation, HUD may require additional reports and/or an acceptable plan for conducting mitigation, in which case completion of the property's environmental review and closing of the RAD conversion will be delayed.

The RAD Conversion Agreement must include all required remediation and mitigation measures and cannot be issued without Part 50 or Part 58 approval.

Common causes for delay in the completion of a property's environmental review include:

- The need to provide information to the State Historic Preservation Office and allow SHPO 30 days to respond,
- The discovery of possible or actual environmental contamination, which triggers the need to conduct additional investigation or to develop a remediation plan, which requires HUD approval, OR

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- A determination that the property is located in a flood plain, which triggers a requirement to conduct a 5-or 8-step analysis.

As mentioned at the beginning of this video, HUD's environmental policy prohibits applicants from engaging in certain activities from the time of submission of their RAD application until HUD has completed the environmental review process.

Specifically, no action may be taken prior to completion of the environmental review that could: (1) have an adverse environmental impact, (2) limit the choice of reasonable alternatives, or (3) prejudice the ultimate decision on the proposal. Activities that limit the choice or reasonable alternatives include an action or commitment to undertake real property acquisition, repair, rehabilitate, construct, demolish or clear the site.

Activities that are prohibited until completion of the environmental review include demolition, modification of a wetland, or actions that adversely affect a historic property.

If you are uncertain whether an action would fall within HUD limitations, or if your property is located near or within a floodplain, wetland site, or a historic district, or have any other concerns, you should consult HUD before taking any action.

Thank you for your interest in RAD for Section 202 PRAC properties. This concludes our video.

Your HUD Transaction Manager is ready to assist you. If you have not yet been assigned a Transaction Manager, email the general mailbox at: RAD2@hud.gov.

For more information on HUD's Rental Assistance Demonstration program please see Section IV of HUD Notice H-2019-09, PIH-2019-23 or visit hud.gov/rad and the RAD Resource Desk at radresource.net