

RAD-PBV Independent Entity Requirements Summary

When do you need an independent entity?

A PHA is required to obtain the services of an “independent entity” to perform certain functions for a project that is owned by the PHA. The use of an independent entity is required by statute and is intended to assure that such functions are performed in an unbiased manner.



What is an independent entity?

An independent entity is an entity that is not connected with the PHA legally, financially, or in any other manner that could cause either party to improperly influence the other. For example, the independent entity must not include individuals who have a relationship with the PHA or the project that would interfere with the entity’s exercise of independent judgement. Examples of organizations that might be qualified to provide independent entity services include: a neighboring PHA, a local government agency, PHA vendors, real estate agencies, non-profit social service agencies, and law firms specializing in affordable housing law.

For a PHA-owned RAD PBV project, what functions must be performed by an independent entity?

For a RAD PBV project, an independent entity must:

- Verify rent reasonableness of RAD PBV units (the rent reasonableness determination must be provided to the PHA and local HUD Office of Public Housing);
- Determine the annual contract rent increase based on the appropriate Operating Cost Adjustment Factor (OCAF), assuring that application of the OCAF will not cause rents to exceed a reasonable level; and
- Conduct HQS inspections (the inspection report must be provided to the PHA and local HUD Office of Public Housing).

How do I know whether a project is “PHA-owned”?

A project is PHA-owned if:

- The PHA is the owner of record;
- It is owned by an entity in which the PHA has a controlling interest (for example, the ownership entity might be a limited liability corporation in which the PHA is the only member or controls a majority of the membership interest,
- or the ownership entity might be a limited liability partnership in which the PHA holds more than a 50 percent interest in the General Partner (i.e., the controlling partner)); or
- More than 50 percent of the members of the PHA’s Board of Directors serve on the Board of Directors of the ownership entity.

Examples of scenarios in which a project is not PHA-owned include when a PHA’s only interest in the project consists of a fee interest as ground lessor of the property on which the project is located or when the PHA holds only a security interest under a mortgage or deed of trust on the property.

Does HUD need to approve the PHA's selection of independent entity?

If the PHA selects an independent entity that is a unit of general local government, then the PHA is not required to obtain HUD approval of the independent entity. If the PHA itself is a unit of general local government or an agency of such government, then the next level of general local government (i.e. a County or State Government Agency) may serve as the independent entity without HUD approval. If the PHA will select an independent entity that is not a unit of general local government, then the PHA must submit the independent entity for HUD approval before the function to be performed by the entity takes place. Notice PIH 2017–21, Attachment B, paragraph (3), explains the HUD independent entity approval process. The PHA must follow 2 CFR Part 200 procurement rules in selecting an independent entity.

More questions?

Attachments A and B to Notice PIH 2017-21 cover the topics of PHA-owned units and independent entities in detail. If this information does not address your question, please contact your Network RAD SME or send your question to HCVPolicyQuestions@hud.gov. If you have a question about whether a specific project meets the definition of "PHA-owned," contact local Field Office counsel.