

Special Attention of:
Directors, Office of Public Housing,
All Demolition/Disposition Processing Centers,
Public Housing Agencies (PHAs)

Notice PIH 97- 8 (HA)

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Cross References:

24 CFR Parts 50, 58, 941, 968
and 970, Handbooks 7417.1
REV-1, 7485.1 REV-4 and
7485.3G

Subject: Environmental Review: Public Housing and 24 CFR Part 58

- 1. Purpose.** The purpose of this Notice is to provide information to HUD Field Offices (FOs) and PHAs regarding the final rule at 24 CFR part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, which was published April 30, 1996, in the Federal Register at 61 FR 19120. The final rule was effective May 30, 1996. This Notice is intended to facilitate the orderly transition to the responsible entities in assuming HUD's processing responsibility for compliance with the National Environmental Policy Act of 1969 (NEPA). The part 58 environmental review procedure identifies the PHA as the program recipient and provides that a responsible entity may assume the responsibility for carrying out the review requirements for HUD. The regulation is effective as of October 14, 1996, for public housing development, demolition/disposition, and modernization. Responsible entity, defined for purposes of these programs, is the unit of general local government with land use and building permit jurisdiction for the project site, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State.
- 2. Background.** On April 11, 1994, the President signed into law the Multifamily Housing Property Disposition Reform Act of 1994 [(MHPDRA) P.L. 103-233]. This law allows the assumption of environmental reviews by recipients of HUD assistance and other responsible entities in applicable HUD programs to carry out, in accordance with NEPA, the NEPA implementing regulations of the Council on Environmental Quality, and other NEPA related Federal laws. As the law pertains to public housing programs under section 26 of the U.S. Housing Act of 1937, as added by section 305 of MHPDRA, the Secretary **may**, in lieu of current environmental regulations (24 CFR part 50), provide for the release of

funds for projects and/or activities upon the request of the PHA, if the responsible entity, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decision-making and action.

3. **Applicability.** a. The Department has issued regulations at 24 CFR part 58, covering the following applicable programs: (1) Title I Community Development Block Grant Programs; (2) the Rental Rehabilitation Program and the Housing Development Grant Program; (3) the HOME programs under the Cranston-Gonzalez National Affordable Housing Act; (4) the homeless programs authorized by Title IV of the Stewart B. McKinney Homeless Assistance Act; (5) grants to States and units of general local government for abatement of lead-based paint; (6) Indian Housing and most Section 8 programs under Title I of the United States Housing Act of 1937; (7) Special projects funded under an Appropriations Act of HUD; (8) the FHA Multi-Family Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992; and (9) the Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996. It was determined that the rule would not become effective for the Public Housing Development and Modernization Programs until October 14, 1996.

b. Pursuant to § 58.4, responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA; the FO Public Housing Director (PHD) may determine, in a particular case or cases, that a different responsible entity should be designated to perform the review or that it will conduct the environmental review itself. Also, pursuant to §58.11(b), if the PHA objects to the responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD's PHD will review the facts to determine who will perform the environmental review.

4. **FO Responsibility.** The PHD shall:

- a. **Inform the PHA in writing,** requesting that the PHA contact the responsible entity and ascertain whether the responsible entity is willing to assume the environmental review responsibilities, unless the PHD has rejected the use of the responsible entity and HUD will perform the environmental review itself.
- (1) **For the Comprehensive Grant Program (CGP),** notify each CGP agency within 45 days of the date of this Notice regarding the assumption of HUD's

environmental review responsibilities by the responsible entities.

(2) For the Comprehensive Improvement Assistance Program (CIAP), the Public Housing Development Program, and demolition/disposition, notify the PHA at the appropriate time in FO processing, regarding the responsible entity's assumption of HUD's environmental review responsibilities.

- b. The PHD may, in particular cases, reject the use of a responsible entity** in conducting environmental reviews on the basis of performance, timing, compatibility of objectives or evidence of environmental review deficiencies through limited or in-depth monitoring. The PHD shall fully document the basis for the rejections of responsible entities to perform HUD's environmental review responsibilities.
- c. The PHD may designate another responsible entity to conduct the review or have HUD conduct the review itself, as in the past, in accordance with the provisions of 24 CFR Part 50,** if a responsible entity objects to performing an environmental review, does not have the legal capacity to carry out the environmental requirements or if the PHD determines that the responsible entity should not perform the review.
- d. Where the responsible entity conducts the review, the PHD shall:**
- (1)** after the 15-calendar-day period discussed below, approve the responsible entity's certification submission executed by the entity's Certifying Officer on Form HUD-7015.15, Request for Release of Funds (RROF) and Certification, (see attached Appendix A), and release the funds. Such approval satisfies the responsibilities of the Secretary under NEPA and its related laws and regulations insofar as those responsibilities relate to the release of funds as authorized by section 26 of the U.S. Housing Act; or
- disapprove a RROF and certification, if: (a) it has received a valid objection; or (b) it has knowledge that the responsible entity has not complied with the items that are recognized bases of objection or that the RROF and certification are inaccurate.
- (2)** hold the Form HUD-7015.15 and certification for any project for 15 calendar days from the time of receipt from the PHA, as prescribed

by statute, or from the time specified in the notice of intent to request release of funds (NOI/RROF) published pursuant to §58.70, whichever is later, before executing a release of funds. This time frame is needed to allow any person or agency to object to a responsible entity's certification and RROF. The basis for a permissible objection is generally limited to items of a technical nature, such as missed steps or required documents not properly executed, and premature commitment of funds or incurring of costs. After the elapse of the 15-day waiting period and PHD determination that the environmental review process has been satisfactorily completed, the PHD shall execute Form HUD-7015.16, Notice of Removal of Grant Conditions, (see attached Appendix B), and advise the PHA in writing that funds for the proposed activities have been released for its use.

- e. **The PHD shall refer all inquiries and/or complaints** relating to environmental reviews covered by an approved certification to the responsible entity and its Certifying Officer. The FO shall follow-up on such complaints in conjunction with its monitoring responsibilities, as indicated in §58.77(d).

f. **The FO shall conduct monitoring** and exercise quality control pursuant to the requirements of §58.77(d). At least once every three years, the FO shall conduct in-depth monitoring and training of the environmental activities performed by the responsible entities; limited monitoring will be conducted during each program monitoring site visit. If through monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(1) In the case of problems found during limited monitoring, the FO may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(2) FO may require attendance by staff of the responsible entity at HUD-sponsored or approved training;

(3) PHD may refuse to accept the certifications of environmental compliance on subsequent grants;

(4) PHD may suspend or terminate the responsible entity's assumption of the environmental review responsibility.

5. **PHA Responsibility.** The PHA/recipient shall:

- a. **where requested by HUD's PHD, contact the responsible entity** regarding the responsible entity's willingness to assume the environmental review responsibilities;
- b. **where the responsible entity assumes the environmental review** responsibilities, provide the responsible entity with all available project and environmental information;
- c. **not obligate or expend any funds on, and refrain from undertaking, any physical activities or choice limiting actions to which the environmental review pertains until** the PHD has approved the RROF and certification; and
- d. **submit the RROF and certification of the responsible entity** to the PHD with a cover letter, requesting the release of funds and indicating that it agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

6. **Entity Responsibility.** The responsible entity that assumes the responsibility for environmental review, also assumes the decision-making and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified at §58.5, and shall comply with the laws and authorities listed in §58.6. In the preparation of environmental reviews, the responsible entity shall consult, as appropriate, environmental agencies, State, Federal, non-Federal entities and the public. The responsible entity must prepare its environmental reviews so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. After conducting the environmental review, the responsible entity shall execute a legally binding document, Form HUD-7015.15, certifying to the assumption of the environmental responsibilities. This form is to be executed by the responsible entity's Certifying Officer, who is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in §58.1(b). Therefore, the Certifying Officer becomes the responsible party for all the requirements of section 102 of NEPA, the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in §58.5. Also, the Certifying Officer shall

represent the responsible entity, be subject to the jurisdiction of the Federal courts and ensure that the responsible entity reviews and comments on all Environmental Impact Statements (EIS) prepared for Federal projects that may have an impact on the PHA's project.

Where activities are categorically excluded from NEPA, but not exempt from all review, a responsible entity need not prepare an Environmental Assessment (EA) under NEPA, but must nevertheless prepare findings under the related environmental laws, and send the PHA an environmental certification, for activities that are categorically excluded under §58.35(a).

- a. **EA Requirements.** If a PHA activity is not exempt or categorically excluded under §§58.34 and 58.35, respectively, then the responsible entity shall prepare the EA for each development on which HUD funds are proposed to be used. In preparing the EA, the responsible entity may use the HUD-recommended format as shown in the HUD publication HUD-CPD-782(2), Environmental Review Guide for Community Development Block Grant Programs, dated September 1991, (see attached Appendix C), or an equivalent format. This publication contains Environmental Assessment Checklists that may be used as assessment tools in preparing EAs. Also, §58.40 provides requirements for preparing the environmental assessment. When the responsible entity completes the EA, it shall make either:

- (1) **A finding of no significant impact (FONSI)** in which the responsible entity determines that the project will not result in an action which will significantly affect the quality of human environment; or
- (2) **A finding of significant impact** in which the responsible entity determines that the project will result in an action which will

significantly affect the quality of the human environment. The responsible entity shall then follow the environmental review process under 24 CFR part 58, subpart G.

b. **FONSI Requirements.**

- (1) **If the responsible entity makes a finding of no significant impact,** it shall prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. At a minimum, the

responsible entity shall send the FONSI notice to individuals and groups known to be interested in its activities, to the local news media, to the appropriate tribal, local, State, and Federal agencies, to the appropriate Regional Office of the Environmental Protection Agency, and to the applicable HUD PHD. Also, the FONSI notice may be published in a newspaper of general circulation in the affected community. If it is not published, it must be posted in a public building (e.g. local Post Office) and within the project area or in accordance with procedures established as part of the citizen participation process.

- (2) **In addition to the FONSI notice, the responsible entity** shall publish a NOI/RROF. This may be accomplished simultaneously with the publication of the FONSI or as a separate notice. If done simultaneously, the combined notice shall:

(a) Clearly indicate that it is intended to meet two separate procedural requirements;

advise the public to specify in their comments which notice their comments address;

(3) **The responsible entity must consider the comments** and modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the PHA submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds. The public shall be given the following periods for comments on such notices:

- (a) **FONSI:** 15 calendar days from the date of publication or if no publication, 18 calendar days from the date of mailing and posting;
- (b) **NOI/RROF:** 7 calendar days from the date of publication or if no publication, 10 calendar days from the date of mailing and posting; and
- (c) **Concurrent or Combined Notices:** 15 calendar days from the date of publication or if no publication, 18 days from the date of mailing and posting.

(4) **The comment period for the FONSI must be extended** to 30 calendar days for exceptional circumstances such as:

- (a) When there is considerable interest or controversy concerning the project;
- (b) When the proposed project is similar to other projects that normally require the preparation of an EIS; or
- (c) When the project is unique and without precedent.

c. **Environmental Impact Statement (EIS) Requirements.**

- (1) **If the responsible entity makes a finding of significant impact**, it may adopt a draft or final EIS prepared by another agency, provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. However, an adopted EIS may have to be revised/modified to reflect the particular environmental conditions and circumstances of the activities proposed if these are different from the project reviewed in the EIS. In such cases, the entity must prepare, circulate, and file a supplemental draft EIS and comply with the clearance and time requirements of the EIS process, except that the scoping requirements under 40 CFR part 1501.7 shall not apply.
- (2) **After the determination is made that an EIS is needed**, the responsible entity shall publish a NOI/EIS, using the HUD-recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508. The entity shall proceed with the preparation of the Draft EIS (DEIS) and the Final EIS (FEIS) using the current HUD-recommended format or its equivalent.
- (3) **For all projects/activities which require an EIS**, the responsible entity shall follow the scoping process described in 40 CFR part 1501.7 and the requirements for public hearings and meetings prescribed in 40 CFR part 1506.6. In determining whether or not to hold a scoping meeting or public hearing, the responsible entity shall consider the following factors:
 - (a) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved;

- (b) The degree of interest in or controversy concerning the project;
- (c) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity; and
- (d) The extent to which public involvement has been achieved through other means.

(4) **The responsible entity shall wait at least 15 calendar days** after disseminating or publishing the NOI/EIS before holding a scoping meeting. Notices of hearings for NOI/EIS must be published in the local news media 15 days before the hearing date, and such notices must contain specific information as required by §58.59(b).

(5) **In addition, after preparation, the responsible entity shall** file and distribute the draft and final EIS, using the current HUD-recommended format or its equivalent, in the following manner:

- (a) Five copies to EPA Headquarters and its applicable Regional Office;
- (b) Copies made available at the offices of the responsible entity and the PHA/recipient;
- (c) Copies or summaries made available to persons who request them; and
- (d) For the final EIS only, one copy each to the State, the PHD and the HUD Headquarters Library.

(6) **The responsible entity must prepare a Record of**

Decision as part of the preparation and filing of the EIS as prescribed in 40 CFR 1505.2.

7. **RROF**. As stated in paragraph 6b, before the responsible entity proceeds with the certification, it shall take into consideration the comments received in response to the NOI/RROF. The responsible entity shall allow at least seven calendar days from the date of publication of the NOI/RROF or 10 calendar days from the date of mailing and posting before submitting its RROF and certification. The RROF and certification are then sent to the PHA/recipient that

is to receive the assistance. The request shall describe the specific project and activities covered by the request and shall include the responsible entity's certification, along with a description of any special environmental conditions that must be adhered to in carrying out the project. If the responsible entity determines that the proposed activity is exempt under applicable provisions listed at §58.34, it shall advise the PHA/recipient that it may incur costs on the proposed activities as soon as the HUD programmatic authorization is received. The PHA is responsible for forwarding the responsible entity's certification to HUD along with the RROF.

8. **Environmental Review Record (ERR)**. The responsible entity shall maintain a written environmental review record (ERR) undertaken for each project. The ERR shall be available for public review. The responsible entity shall use the current HUD-recommended formats or equivalent formats. The ERR shall:
- a. **provide a description of the project** and of the activities that the responsible entity has determined to be part of that project;
 - b. **contain all the environmental review documents**, public notices, written determinations or environmental findings, decisionmaking and actions relevant to the project;
 - c. **evaluate the effects** of the project or the activities on the human environment;
 - d. **document compliance with applicable statutes and authorities**, in particular those cited in §§ 58.5 and 58.6;
 - e. **record the written determinations** and review findings (e.g., exempt and categorically excluded determinations, findings of no significant impact); and
 - f. **contain source documents and relevant base data** used or cited in the preparation of the EAs.
9. **Environmental Review Costs**. The PHA may pay the responsible entity for the costs of conducting the environmental reviews. Such costs are eligible modernization or development costs and may be charged to Account 1410.19, Sundry. In this regard, pursuant to the Federal procurement regulations at 24 CFR Part 85.36(b)(5), the PHA can contract with the responsible entity for these services by entering into an intergovernmental agreement for procurement. Also, the PHA is responsible to do either a price or cost analysis for determining cost

reasonableness in connection with every procurement pursuant to § 85.36(f).

_____/s/_____
Acting Assistant Secretary for
Public and Indian Housing