



**Office of Public Housing  
Boston, MA**

**Public Housing Capital Fund and American  
Recovery and Reinvestment Act of 2009  
Environmental Reviews**



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SUBJECT: The Boston Office of Public Housing Did Not Provide Adequate Oversight of Environmental Reviews of Three Housing Agencies, Including Reviews Involving Recovery Act Funds

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) results of our review of the Boston Office of Public Housing's oversight of environmental reviews pertaining to the Public Housing Capital Fund program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (817) 978-9309.



February 7, 2014

## **The Boston Office of Public Housing Did Not Provide Adequate Oversight of Environmental Reviews of Three Housing Agencies, Including Reviews Involving Recovery Act Funds**

# Highlights

Audit Report 2014-FW-0001

### **What We Audited and Why**

We audited the U.S. Department of Housing and Urban Development's (HUD) Boston Office of Public Housing as part of a nationwide audit of HUD's oversight of environmental reviews. We selected the Boston Office based on our risk assessment. Our audit objectives were to determine whether the Boston Office's oversight of public housing environmental reviews within its jurisdiction ensured that (1) the responsible entities performed the required reviews and (2) HUD did not release funds until all required documents were submitted.

### **What We Recommend**

Our recommendations include requiring three housing agencies to (1) repay HUD, for transmission to the U.S. Treasury, more than \$4.8 million and providing support or repaying more than \$34 million in 2009 American Recovery and Reinvestment Act funds, (2) provide support for or repay HUD more than \$45 million in Public Housing Capital Fund grant funds, and (3) take available actions against three housing agencies and their responsible entities. To correct systemic weaknesses identified in this report, we will make recommendations to HUD headquarters officials in an upcoming nationwide audit report.

### **What We Found**

The Boston Office did not provide adequate oversight to three public housing agencies to ensure that the responsible entities properly completed and documented environmental reviews. Further, the Boston Office did not maintain sufficient internal control records. These conditions occurred because the Boston Office thought that the Office of Community Planning and Development was responsible for monitoring responsible entities for compliance with requirements and because the Boston Office elected not to follow the Office of Public Housing's guidance. As a result, three housing agencies spent more than \$85 million, including more than \$39 million in Recovery Act grant funds, for projects that either did not have required environmental reviews or the environmental reviews were not adequately supported.

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## **BACKGROUND AND OBJECTIVES**

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In January 1970, Congress passed the National Environmental Policy Act of 1969 (NEPA). The objective of this legislation was to establish a national policy that would encourage productive and enjoyable harmony between man and his environment and to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man. To carry out the policy set forth in the Act, Congress directed that it is the continuing responsibility of the Federal Government to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. Further, Congress authorized and directed all agencies of the Federal Government to identify and develop methods and procedures to ensure that the agencies complied with environmental policies, regulations, and public laws of the United States.

To further the purpose and policy of NEPA, the President issued Executive Order 11514, Protection and Enhancement of Environmental Quality, on March 5, 1970. Based on the executive order, the heads of Federal agencies are required to continually monitor, evaluate, and control their agencies' activities so as to protect and enhance the quality of the environment. In addition, Federal agencies are required to review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, to identify any deficiencies or inconsistencies that prohibit or limit full compliance with the purposes and provisions of the Act.

The U.S. Department of Housing and Urban Development (HUD) responded to NEPA and Executive Order 11514 by developing 24 CFR (Code of Federal Regulations) Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, which allows HUD to transfer responsibility for environmental reviews to State and local governments. This responsibility includes the environmental review, decision making, and action that would otherwise apply to HUD under NEPA and other provisions of law. However, it also requires HUD to monitor, inspect, and ensure that the environmental process decisions are carried out during project development and implementation.

Our audit objectives were to determine whether the Boston Office of Public Housing's oversight of public housing environmental reviews within its jurisdiction ensured that (1) the responsible entities performed the required reviews and (2) HUD did not release funds until all required documents were submitted.

## RESULTS OF AUDIT

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### Finding: The Boston Office of Public Housing Did Not Provide Adequate Oversight of Environmental Reviews

The Boston Office of Public Housing did not provide adequate oversight of three public housing agencies to ensure that the responsible entities properly completed and documented environmental reviews. Further, the Boston Office did not maintain sufficient internal control records. These conditions occurred because the Boston Office thought that the Office of Community Planning and Development (CPD) was responsible for monitoring responsible entities for compliance with requirements and because the Boston Office elected not to follow the Office of Public Housing's internal guidance. As a result, three housing agencies spent more than \$85 million, including more than \$39 million in Recovery and Reinvestment Act of 2009 grant funds, for projects that either did not have required environmental reviews or the environmental reviews were not adequately supported.

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#### **The Boston Office Did Not Provide Adequate Oversight To Ensure Environmental Compliance**

We reviewed three public housing agencies under the Boston Office's jurisdiction. There were significant deficiencies at each housing agency. Although the Boston Office staff reviewed responsible entity environmental review records, it failed to discern that the reviews did not meet regulatory requirements. Instead, it accepted the responsible entities' reviews at face value and released funding to the housing agencies.

The Boston Office Did Not Provide Adequate Oversight To Ensure That the Responsible Entities Properly Completed Environmental Reviews for All Years Because the Boston Office did not provide adequate oversight, it did not determine that a contractor improperly performed environmental reviews for the Boston Housing Authority and made determinations of compliance with requirements. While a housing agency may use consultants to perform a significant portion of the environmental review, only HUD or a responsible entity may perform the reviews and determine compliance with requirements. A responsible entity assumes the responsibility for conducting the environmental reviews, decision making, and other actions that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA.<sup>1</sup> The environmental review process consists of all actions that a responsible entity must

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<sup>1</sup> 24 CFR 58.4(a)

take to determine compliance.<sup>2</sup> The Boston Office did not determine that the City of Boston failed to meet the following requirements

- Assume responsibility for decision making,<sup>3</sup>
- Review consultant work to ensure proper compliance,<sup>4</sup>
- Identify itself as the entity to receive public comments,<sup>5</sup>
- Reevaluate substantial changes in projects,<sup>6</sup>
- Maintain the environmental review record,<sup>7</sup> and
- Inform HUD if it does not have the capacity to perform the environmental reviews for the housing agency.<sup>8</sup>

The City of Boston, as the responsible entity, did not perform the environmental reviews for the Boston Housing Authority. The City's compliance manager stated in an email to the housing agency that it did not have the capacity to perform the reviews directly but would train a designated housing authority employee. According to requirements,<sup>9</sup> a responsible entity that believes it does not have the legal capacity to carry out the environmental responsibilities must notify the local HUD office for further instructions. However, this requirement was not met. Rather, the Boston Housing Authority assumed all responsibility for its environmental reviews. Further, it used a contractor to perform the reviews and make the compliance determinations. Therefore, the housing agency and responsible entity improperly implemented the review process. Additionally, the mayor of Boston, as the certifying officer, signed the form HUD-7015.15, certifying that his office had fully carried out its responsibilities for environmental review, decision making, and action related to the projects set forth. The mayor further certified that his office assumed responsibility for and complied with NEPA, the environmental procedures, and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6 on projects for which it did not perform the environmental review.

The Nashua Housing Authority performed the environmental reviews for its 2011 and 2012 Capital Fund grants and determined the level of environmental compliance. While the housing agency is allowed to perform a portion of the review, 24 CFR 58.4(a) requires the responsible entity to complete the review and determine environmental compliance. If the City of Nashua, the responsible entity, had performed a complete review to determine environmental compliance,

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<sup>2</sup> 24 CFR 58.30(a)

<sup>3</sup> 24 CFR 58.4(a)

<sup>4</sup> 24 CFR 58.30

<sup>5</sup> 24 CFR 58.43(c)

<sup>6</sup> 24 CFR 58.47(a)(1) and (b)(3)

<sup>7</sup> 24 CFR 58.38

<sup>8</sup> 24 CFR 58.11(a)

<sup>9</sup> Ibid.

it should have found that the environmental review records submitted by the housing agency were incomplete and lacked supporting information.

The New Bedford Housing Authority's 2009 Recovery Act environmental review did not comply with Federal regulations. The Authority did not provide its 2009 Recovery Act projects to the City of New Bedford for environmental review. A Boston Office public housing facilities management specialist in an email dated April 8, 2009, stated to the former executive director of the housing agency that "... if New Bedford is to say the environmental was covered with your 5-year CFP Plan as part of your PHA Plan, that is fine. However, please write us to indicate this." The City of New Bedford director told us that the 2008 review he performed applied only to the City's 2008 Capital Fund grant – not the 5-year plan. He further explained that the housing agency decided to use its 2008 environmental review to cover its 2009 Recovery Act Capital Fund grant. In addition, the agency's executive director told the Boston Office that the agency did not propose any new capital elements. Therefore, the components in the agency's 2007, 2008, 2009, or 5-year plan would cover the 2009 Recovery Act grant. However, HUD reported in its 2010 monitoring report for the housing agency's 2009 Recovery Act grant that the budget contained work items that were not part of an approved budget or 5-year plan. According to 24 CFR 58.30, the environmental review process consists of all the actions that a responsible entity must take to determine compliance, not the housing agency or HUD field office.

The Boston Office Did Not Provide Adequate Oversight to Ensure That the Responsible Entities Properly Documented Environmental Reviews for All Years  
During its reviews of responsible entity environmental review records, the Boston Office staff did not determine that responsible entities failed to submit required documentation, make required levels of environmental determinations, sign or date their compliance review checklists, properly identify their project descriptions, or adequately document support for their environmental reviews. According to 24 CFR 58.38, the responsible entity must maintain a written record of the environmental review. The record must contain all of the environmental review documents, public notices, and written determinations or findings as evidence of the review, decision making, and actions. Further, documents must describe the project, evaluate the effects of the project on the environment, and document compliance with applicable statutes and authorities. Although the requirements were not met, the Boston Office released funds to the housing agencies.

The City of Nashua concluded that the Nashua Housing Authority's projects were categorically excluded, subject to 24 CFR 58.5, and could be converted to exempt status, meaning that public notifications and requests for release of funds and certification were not required. Similarly, the City of New Bedford concluded that the New Bedford Housing Authority's 2011 and 2012 Capital Fund projects were categorically excluded, subject to 24 CFR 58.5, and could be converted to exempt status. However, neither housing agency nor responsible entity had

supporting documentation to show that they met compliance requirements or that no mitigating factors existed that required further compliance. Therefore, we were unable to determine whether public notifications or requests for release of funds and certification should have been required or whether the projects could convert to exempt. For exempt activities, the responsible entity does not need to undertake an environmental review, consultation, or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5

The Boston Office did not follow requirements when it approved and released funds to the New Bedford Housing Authority before the responsible entity documented in writing its environmental determination. The requirements at 24 CFR 58.22 state that a recipient may not commit HUD assistance for any activity or project until the responsible entity has documented its environmental determination and HUD has approved the recipient's Request for Release of Funds and Certification. If a project is exempt, the recipient may perform the activity immediately after the responsible entity has documented its determination. The housing agency inappropriately withdrew more than \$22 thousand from its 2012 Capital Fund grant for salaries and benefits before the responsible entity made an exempt determination and placed the decision on record as required.

The Boston Housing Authority's environmental records did not contain detailed project descriptions for the projects and the activities that the housing agency determined to be part of the projects as required by 24 CFR 58.38(a)(1). Project descriptions should detail the (1) location so the public can locate the site; (2) purpose and need to describe what is being done and why it is necessary; (3) area, which provides the character, features, resources, and trends; and (4) activity description that gives complete details about what will be done, the type of project, and the timeframe for implementation.

Further, neither the Nashua Housing Authority's nor the New Bedford Housing Authority's environmental records contained complete project descriptions. Specifically, the responsible entities did not provide significant and relevant information, including the number of buildings, number of units, age of structures, location maps, or site photographs. The environmental review record must describe the project and the activities that the recipient has determined to be part of the project.<sup>10</sup> Further, HUD's environmental Web site<sup>11</sup> states that a complete and clear project description is the first step in the environmental review process. The project description should provide location-specific information and geographic boundaries, as well as a delineation of all activities included in the overall scope of the project. However, the housing agency and the responsible entity provided only a street address and work items such as "replace windows" and "remove and replace existing siding."

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<sup>10</sup> 24 CFR 58.38

<sup>11</sup> Web site is [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/review](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review).

None of the records for the Nashua Housing Authority’s Recovery Act or 2011 and 2012 Capital Fund grants contained required compliance documentation supporting the items identified on the statutory checklists. For example, the statutory checklist requires compliance with Section 106 of the National Historic Preservation Act. However, the City of Nashua unilaterally determined that developments were “not considered historic properties,” without providing a basis to support its determination. The City of Nashua was required to consult with the State historic preservation officer regardless of the properties’ historical status.<sup>12</sup> The support could have included evidence of a documented finding sent to the State historic preservation officer or a supported determination that the projects complied with a State historic preservation officer programmatic agreement.

Further, the New Bedford Housing Authority’s 2011 and 2012 Capital Fund grant environmental review records did not comply with records requirements.<sup>13</sup> The records contained a statutory checklist that did not include the supporting basis or supporting documentation to substantiate the items that the records addressed, such as historic preservation, contamination and toxic substances, floodplain management and flood insurance, and noise abatement and control. For example, the City of New Bedford referenced a phase I or phase II environmental assessment as a source but did not provide pertinent information, such as what developments were studied, who conducted the studies, when or where the studies were conducted, and the studies’ specific results and conclusions. These documents are considered “proprietary” source documentation and must be included in their entirety in the environmental review record.<sup>14</sup>

The Boston Office Did Not Ensure That Agencies Verified and Documented Compliance Requirements

The housing agencies and their responsible entities did not address or provide documentation supporting their compliance with any of the following requirements:

- **Historic preservation** - The housing agencies and their responsible entities did not comply with Section 106 of the National Historic Preservation Act, which requires an agency official to identify historic properties, in consultation with the State historic preservation officer, and determine the intended effect on historic properties. Consultation is required even if the responsible entity believes that no historic properties are present or that historic properties may be present but the undertaking will have no adverse effect upon them.
- **Coastal zone management** - The housing agencies and their responsible entities did not comply with the Massachusetts Office of Coastal Zone

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<sup>12</sup> 36 CFR 800.4(d)(1)

<sup>13</sup> 24 CFR 58.38

<sup>14</sup> Ibid.

Management as watersheds make up the entire eastern half of the State. Contaminants, such as asbestos, can be released into the air from activities such as roof and heating, ventilation, and air conditioning system replacements. Further removal and replacement of underground storage tanks can release contaminants into the soil and groundwater, which can be carried by rivers and streams, or through drainage systems to the coast.

- ***Air quality*** - The housing agencies and their responsible entities did not comply with air quality requirements to determine whether hazardous air pollutants were in the building materials that were replaced. Failure to properly identify, abate, dispose of, and perform other required actions regarding asbestos before beginning renovation activities may create health hazards.
- ***Noise control*** - The housing agencies and their responsible entities did not comply with noise control requirements for major rehabilitation or conversion projects to determine whether there was a need for noise reduction features.
- ***Contamination and toxic site hazards*** - The housing agencies and their responsible entities did not comply with requirements regarding contamination and toxic site hazards. One housing agency's properties were listed as disposal sites by the Massachusetts Department of Environmental Protection. These sites were found to have contamination hazards, such as oil and hazardous materials, which should have been addressed to ensure that no remediation work was required. The other housing agencies provided no supporting documentation to validate statements, such as "none of the existing developments have known toxic chemicals or other environmental hazards on site," made in the environmental review records.
- ***Environmental justice*** - The housing agencies and their responsible entities did not comply with environmental justice requirements. Environmental justice requirements are designed to focus Federal attention on the environmental and human health conditions that any of the compliance factors may have on minority and low-income communities. Any unmitigated adverse impact that can occur with such things as contamination or toxic sites, noise, and air quality could result in an environmental justice compliance violation.
- ***Floodplain management and flood insurance*** - The housing agencies and their responsible entities did not always comply with floodplain management or flood insurance requirements. One location was identified by the Federal Emergency Management Agency (FEMA) as being in a special flood hazard area. The housing agency provided no documentation showing that it met the requirements of having obtained and maintained flood insurance at the development. Similarly, the other two housing agencies provided no supporting documentation to verify that their properties were not in a flood zone.

- ***Sole-source aquifers, wetland protection, endangered species, wild and scenic rivers, farmland protection, explosive and flammable operations, and airport clear zones*** - The housing agencies and their responsible entities on most occasions provided no documentation supporting that the above compliance factors were addressed and met requirements. If these compliance factors did not require further review and the specific projects met requirements, documentation supporting that they were addressed must be maintained in the environmental review record.

Because these compliance requirements were not verified, the residents had no assurance that they were not exposed to unnecessary risk, contamination, pollution, or other adverse environmental effects.

#### Necessary Follow-up Reviews Were Not Performed

The Boston Housing Authority's consultant marked the statutory checklist for the Foley property "further review required" because the property included areas that FEMA identified as having special flood zone hazards. A further review was required to determine whether the property needed additional flood insurance. However, the environmental record did not contain documentation showing that a further review was performed or that the housing agency obtained or maintained flood insurance on the property. According to 24 CFR 58.6, the responsible entity must address the Flood Disaster Protection Act of 1973 and Section 582 of the National Flood Insurance Reform Act of 1994 in the environmental review record regardless of whether the activities are exempt or categorically excluded.

The consultant also marked several other compliance factors "further review required," on the Boston Housing Authority's statutory checklist, but neither the consultant, the housing agency, nor the responsible entity performed further reviews. The Boston Housing Authority director told us that the Authority should have marked "not applicable" instead of "further review required" on the compliance factors since the funds were used for system replacement projects. She further stated that the housing agency did not have a formal review or documentation supporting that it had performed the next step (further review) of the Part 58 process for system replacement projects. Specifically, 24 CFR 58.35(a)(1) states that some activities are categorically excluded under NEPA but are subject to review under authorities listed in 24 CFR 58.5. Some of these activities include acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities when the facilities and improvements are in place and will be retained in the same use; for example, replacement of water or sewer lines, reconstruction of curbs and sidewalks, or repaving of streets.

#### The Boston Office Did Not Ensure That Operating Costs Met Environmental Requirements

The Boston Office did not ensure that funds transferred to housing agency operating accounts met environmental requirements. Staff stated that there was

no need to question the funds once they were transferred and that the housing agencies did not need to record what the funds were used for.

However, 24 CFR 990.116 provides that the environmental review procedures of NEPA and the implementing regulations at 24 CFR Parts 50 and 58 are applicable to the operating fund program. Further, the annual contributions contract<sup>15</sup> prohibits any costs incurred as part of the development or modernization costs from being included in operating expenditures. Responsibility for determining whether operating funds meet environmental requirements is determined by the type and nature of the projects or activities for which the costs were incurred and not on the characterization of funds, such as capital or operating.

#### The Boston Office Did Not Effectively Monitor Housing Agencies or Responsible Entities

The Boston Office did not effectively monitor the housing agencies or the responsible entities for environmental compliance. Further, the Boston Office itself had not been monitored for compliance. According to the Boston Office deputy director, the office had not monitored housing agencies to ensure compliance because there was not enough staff or funding. However, according to 24 CFR 58.77(d), HUD intended to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities at least once every 3 years. Further, Executive Order 11514 required Federal agencies to continually monitor, evaluate, and control their agencies' activities to protect and enhance the quality of the environment.

#### **The Boston Office Did Not Maintain Sufficient Internal Control Records**

The Boston Office did not maintain tracking logs or separate files for each housing agency as required by HUD's Field Office Environmental Review Guidance. The guidance required, at a minimum, maintaining tracking logs that detailed who performed the environmental reviews; whether the form HUD-7015.15, Request for Release of Funds and Certification, was received and cleared; and whether HUD performed the environmental reviews directly. The guidance further required maintaining a separate environmental file for each housing agency.

The Boston Office deputy director said that the Boston Office had one combined log that was most likely incomplete and not current. He also said that separate environmental review files were not necessary and the office did not maintain them.

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<sup>15</sup> Form HUD-53012A

**The Boston Office Believed That CPD Was Responsible for Ensuring Compliance**

The Boston Office deputy director cited section A.1.h of a notice published in the Federal Register on May 30, 2012, that his office believed delegated the overall departmental responsibility for compliance with NEPA to CPD. However, according to the notice’s summary, its purpose was for the Assistant Secretary for Community Planning and Development to redelegate to the Deputy Assistant Secretaries and other specified HUD officials all powers and authorities necessary to carry out CPD programs, except those powers and authorities specifically excluded. The notice did not delegate authority for CPD to conduct environmental reviews of Office of Public and Indian Housing programs. Even if the notice had been interpreted to grant such authority, it was issued after most of the questioned environmental reviews should have been completed and certified. Thus, it would not have applied to the grants reviewed during the audit.

**The Three Housing Agencies Spent More Than \$85 Million for Questioned Costs**

Because the environmental reviews did not comply with requirements, the housing agencies incurred more than \$85 million in questioned costs, including more than \$39 million in Recovery Act funds, as detailed in table 1.

**Table 1: Questioned costs**

<b>Year</b>	<b>Boston Housing Authority</b>	<b>Nashua Housing Authority</b>	<b>New Bedford Housing Authority</b>	<b>Total</b>
2009 Recovery Act funds	\$33,329,733	\$1,169,494	\$4,860,197	\$39,359,424
2011 capital funds	21,478,604	874,261	3,154,021	25,506,886
2012 capital funds	17,058,105	728,596	2,989,066	20,775,767
<b>Total</b>	<b>\$71,866,442</b>	<b>\$2,772,351</b>	<b>\$11,003,284</b>	<b>\$85,642,077</b>

**Conclusion**

The Boston Office did not provide adequate oversight to ensure that the responsible entities properly completed and documented environmental reviews for all three public housing agencies within its jurisdiction that we reviewed. Thus, the Boston Office was unaware that the public housing agencies and their responsible entities did not properly implement environmental review requirements. Because the environmental reviews did not comply with

requirements, the housing agencies incurred more than \$85 million in questioned costs, including more than \$39 million in Recovery Act funds.

The Boston Office was responsible for verifying that environmental reviews complied with requirements, conducting periodic monitoring, and providing training to the housing agencies and responsible entities. Since these conditions appeared to have been systemic, there are no recommendations in this report to address the causes. Rather, we plan to make recommendations to HUD headquarters in a future report. However, based on the results of our review of the three agencies, the Boston Office should review the deficiencies cited and implement the recommended corrective actions, including repayment of ineligible and unsupported costs.

## Recommendations

We recommend that the Director of the Boston Office of Public Housing require

- 1A. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or require the housing agency to repay \$33,329,733 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1B. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or require the housing agency to repay \$21,478,604 to HUD. Repayment must be from non-Federal funds.
- 1C. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or require the housing agency to reimburse \$17,058,105 to the Authority's 2012 Capital Fund grant from non-Federal funds.
- 1D. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or require the housing agency to repay \$1,169,494 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1E. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or require the housing agency to repay \$874,261 to HUD. Repayment must be from non-Federal funds.

- 1F. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or require the housing agency to reimburse \$728,596 to the Authority's 2012 Capital Fund grant from non-Federal funds.
- 1G. The New Bedford Housing Authority to repay \$4,860,197 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1H. The New Bedford Housing Authority and the City of New Bedford to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or require the housing agency to repay \$3,154,021 to HUD. Repayment must be from non-Federal funds.
- 1I. The New Bedford Housing Authority to repay \$22,786 from non-Federal funds to its 2012 Capital Fund grant for salaries and benefits that were released before the responsible entity documented that activities met exemption requirements.
- 1J. The New Bedford Housing Authority and the City of New Bedford to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or require the housing agency to reimburse \$2,966,280 to the Authority's 2012 Capital Fund grant from non-Federal funds.
- 1K. The housing agencies to work with their respective responsible entities and local HUD environmental officer to show that no harm occurred from completion of all of the projects or mitigate any harm that occurred.

We also recommend that the Director of the Boston Office of Public Housing

- 1L. Take one or more of the following actions with the three housing agencies and their respective responsible entities:
  - Require attendance by responsible staff and management of the housing agency and responsible entity at HUD-sponsored or approved training;
  - Refuse to accept the certifications of environmental compliance on subsequent grants;
  - Suspend or terminate the responsible entity's assumption of the environmental review responsibility; and
  - Initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the housing agency.

## SCOPE AND METHODOLOGY

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We conducted our audit work between October 2012 and August 2013 at the HUD Boston Office, Boston Housing Authority, City of Boston, New Bedford Housing Authority, and City of New Bedford (in Massachusetts); the Nashua Housing Authority and the City of Nashua (in New Hampshire); and our offices in Albuquerque, NM, and Houston, TX. Our review covered the 2009 American Recovery and Reinvestment Act grants and the 2011 and 2012 Capital Fund grants for each of the housing agencies.

To accomplish our objectives, we

- Reviewed applicable public laws and executive orders that direct the requirements of environmental compliance;
- Reviewed the Federal regulations related to the environmental review process and HUD's handbooks and guidance on environmental compliance;
- Reviewed various HUD job descriptions related to environmental oversight;
- Conducted interviews with staff from HUD's Boston Office, selected housing agencies, and their respective responsible entities;
- Analyzed HUD's Boston Office's, housing agencies', and the responsible entities' environmental review processes for compliance with environmental requirements;
- Analyzed environmental review records for the selected housing agencies to ensure that environmental requirements were met;
- Compared the housing agencies' original, revised, and final annual statements, as applicable, to determine the actual projects completed under the grants and any changes to the projects;
- Reviewed HUD's Recovery Act monitoring reports for the three selected housing agencies and noted any noncompliance issues related to environmental reviews;
- Reviewed HUD's Line of Credit Control System (LOCCS) grant budget, vouchers, and obligation and expenditures detail data. We did not evaluate the reliability of the LOCCS data as we used the data for informational purposes only.
- Compared the Boston Office environmental tracking logs to the minimum internal control requirements set forth in HUD's Field Office Environmental Review Guidance to ensure compliance; and
- Compared the housing agencies' contracts to LOCCS details and the environmental records to ensure that funds were not obligated or expended before completion of the review.

We selected the Boston Office and 3 out of 219 housing agencies within its jurisdiction based on our risk assessment using information that we obtained related to funding levels, historic value, industry uses, and the environmental process used.

We did not use or rely on computer-processed data to support our conclusions.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

# INTERNAL CONTROLS

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Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

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## Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objectives:

Controls to ensure that the Boston Office and the housing agencies and responsible entities within its jurisdiction properly implemented mandated environmental review requirements including

- Controls to ensure that HUD did not release funds and the housing agencies did not obligate or expend funds before completion of the environmental reviews by the responsible entity,
- Controls to ensure that the Boston Office complied with HUD's Field Office Environmental Review Guidance for maintaining tracking logs and files,
- Controls to ensure that the housing agencies and responsible entities were monitored for environmental compliance, and
- Controls to ensure that the housing agencies and responsible entities received adequate training on environmental compliance for Capital Fund grants.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

### **Significant Deficiency**

Based on our review, we believe that the following item is a significant deficiency:

- The Boston Office did not provide adequate oversight to ensure that housing agencies and responsible entities within its jurisdiction complied with environmental requirements (finding).

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/	Unsupported 2/
1A		\$33,329,733
1B		21,478,604
1C		17,058,105
1D		1,169,494
1E		874,261
1F		728,596
1G	\$4,860,197	
1H		3,154,021
1I	22,786	
1J		2,966,280
<b>Totals</b>	<b><u>\$4,882,983</u></b>	<b><u>\$80,759,094</u></b>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

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### Ref to OIG Evaluation

### Auditee Comments

	<b>U. S. Department of Housing and Urban Development</b>
<b>New England</b>	Office of Public Housing Boston Hub Thomas P. O'Neill, Jr. Federal Building 10 Causeway Street Boston, Massachusetts 02222-1092
MEMORANDUM FOR: Gerald R. Kirkland, Regional Inspector General for Audit, 6AGA	
FROM: Marilyn B. O'Sullivan, Director, Office of Public Housing, Boston, 1APH	
SUBJECT:	Response to Draft Audit Report
The Boston Office of Public Housing Did Not Provide Adequate Oversight of Environmental Reviews of Three Housing Agencies, Including Reviews Involving Recovery Act Funds	
Thank you for providing this office the opportunity to respond to the draft report that was transmitted on November 27, 2013. As we discussed on December 5, 2013 please accept this memorandum as our response.	
<b>Comment 1</b>	Generally, we are in disagreement and will be filing non concurrence memoranda for recommendations 1A, 1B, 1C, 1D, 1E, 1F, 1H and 1J, if these draft recommendations are finalized. Each of the preceding draft recommendations suggest that the Boston Office of Public Housing should require the three local Housing Authorities and the local Responsible Entities "to provide support that they complied with 24 CFR Part 58 requirements" for various Capital Fund grants (CFG) and Recovery Act (ARRA) grants provided to the three Public Housing Authorities (PHAs) from 2009 to 2012. The Office of Inspector General found that the Boston Office (of Public Housing) "did not provide adequate oversight to three public housing agencies <b>to ensure that the responsible entities</b> (emphasis added) properly completed and documents environmental reviews."
<b>Comment 2</b>	Please consider the following:
<b>Comment 3</b>	<ul style="list-style-type: none"><li>The Office of Public Housing in Boston is not the delegated HUD office that ensures that Responsible Entities (REs) perform appropriately under the regulations at 24 CFR 58. Implementation and interpretation of the provisions in 24 CFR 50 and 58 is the responsibility of CPD and the Office of Environment and Energy. (See 24 CFR 50.10(b), which gives CPD and OEE (formerly Office of Community Viability and now the Office of Energy and Environment) overall Departmental responsibility for environmental policies and procedures for compliance with NEPA and related laws.</li></ul>
Phone (617) 994-8400      www.hud.gov      espanol.hud.gov      Fax (617) 565-7305	

**Comment 4**

- It is our position that HUD's Office of Community Planning and Development (CPD) is responsible for monitoring REs performing environmental reviews and offers attachments A and B as supporting evidence (Pending CPD notice #38 and email response from OEE stating that the pending guidance identified here as exhibit A updates the previous posted CPD notice 2003-1) that confirms CPD's monitoring authority. Evidence for IG's contrary position is requested. CPD holds the authority for assuring regulatory compliance with 24 CFR Part 58. PIH cannot interpret, waive, adjudicate, enforce or in any way address these regulatory requirements.

**Comment 5**

- The first stated objective of the IG is to ensure that "the responsible entities performed the required reviews". Should the IG find a failure under this first objective, the responsible party is the entity acting on behalf of HUD to fulfill its delegated responsibilities and not the Office of Public Housing nor PHAs.

**Comment 6**

- The Boston Office of Public Housing provided full oversight of the three identified PHAs for the programs charged to the Assistant Secretary for PIH by the Secretary and has documentation supporting that the an Environmental Review was completed prior to the expenditure or release of funds to the PHAs.

**Comment 7**

This office will also be in non-concurrence with Recommendation 1G. Recommendation 1G recommends that the Boston Office of Public Housing direct the New Bedford Housing Authority to repay \$4,860,197 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds. It is unclear from the narrative in the report why the entire Recovery Act grant was found to be potentially ineligible and the recommendation for full repayment. There is discussion on page 6 of the draft regarding disagreements whether certain elements of the ARRA grant were compliant with procedures of Part 58 prior to the implementation of the ARRA grant. Evidence cited includes a monitoring report from the Boston Office of Public Housing suggesting that some work items may not have been compliant. This office does not disagree that our monitoring report in January 2010 cited deficiencies in work items associated with the Recovery Act. The items cited by my office as potentially non-compliant include administrative and relocation costs in the total amount of \$87,000. This office concluded that the work items were covered subsequently since they were included in the Environmental Review Record post ARRA grant and required no further action by the New Bedford HA. If a determination is made that the NBHA was non-compliant with Environmental Review requirements prior to implementation of the ARRA then the non-compliant portions should be held as non-compliant and not the entire grant. Further, the work items are exempt or categorically excluded and received clearance post ARRA. Lastly, there was no harm to the United States or the local community.

**Comment 8**

Finally, recommendation 1K recommends a display of no harm in order to clear the recommendation. As is stated previously in the memorandum, it is the position of this Office of Public Housing that the Environmental Review Record is complete to our satisfaction in all instances. Since the record is clear we can find no harm caused by the implementation of the capital projects associated with the grants cited in this report. Further we believe that the burden

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of proof that would be required to complete the actions recommended cannot be adjudicated by the Office of Public Housing since we are not delegated to act in this capacity.

Recommendations from the draft report:

1A. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or repay \$33,329,733 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.

1B. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or repay \$21,478,604 to HUD. Repayment must be from non-Federal funds.

1C. The Boston Housing Authority and the City of Boston to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or reimburse \$17,058,105 to the Authority's 2012 Capital Fund grant from non-Federal funds.

1D. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or repay \$1,169,494 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.

1E. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or repay \$874,261 to HUD. Repayment must be from non-Federal funds.

1F. The Nashua Housing Authority and the City of Nashua to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or reimburse \$728,596 to the Authority's 2012 Capital Fund grant from non-Federal funds.

1G. The New Bedford Housing Authority to repay \$4,860,197 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.

1H. The New Bedford Housing Authority and the City of New Bedford to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or repay \$3,154,021 to HUD. Repayment must be from non-Federal funds.

1I. The New Bedford Housing Authority to repay \$22,786 from non-Federal funds to its 2012 Capital Fund grant for salaries and benefits that were released before the responsible entity documented that activities met exemption requirements.

1J. The New Bedford Housing Authority and the City of New Bedford to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or reimburse \$2,966,280 to the Authority's 2012 Capital Fund grant from non-Federal funds.

1K. The housing agencies to work with their respective responsible entities and local HUD environmental officer to show that no harm occurred from completion of all of the projects or mitigate any harm that occurred.

## OIG Evaluation of Auditee Comments

- Comment 1** The draft recommendations proposed requiring the housing agencies and the responsible entities to provide support for their environmental reviews, or repay questioned funds. We revised the recommendations to clarify that the housing agencies are responsible for repayment of funds if they cannot provide documentation supporting compliance with requirements. However, if the housing agencies and responsible entities can provide proper documentation to support compliance of the environmental decisions made, any supported amounts will not need to be repaid.
- Comment 2** As part of its oversight, the Boston Office was responsible for periodically monitoring the public housing agencies' environmental review records. If the Boston Office had monitored the records, it should have found that the records were incomplete and the environmental reviews were improperly performed by the housing agencies, which should have led the Boston Office to review the responsible entities in relation to their Capital Fund environmental reviews.
- Comment 3** While the criteria quoted does outline overall responsibility for environmental policy and procedures to CPD's Office of Environment and Energy (OEE),<sup>16</sup> this does not include implementation. As 24 CFR 50.10(a) states, it is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to assure that the requirements of this part are implemented. The Office of Public Housing has an Assistant Secretary who is responsible for ensuring implementation. Further, it has an environmental clearance officer whose role is to provide environmental compliance reviews.
- Comment 4** The Boston Office's response included attachments A and B.<sup>17</sup> Attachment A is a draft CPD Notice that has not been approved. Further, it is not applicable to our audit period. Attachment B is a series of emails between the HUD headquarters Office of Public Housing environmental clearance officer, Boston Office of Public Housing director, and an environmental specialist from OEE. The emails, written on December 5 and December 6, 2013, after we issued our draft report to the Boston Office, generally discuss the draft notice and a CPD Notice from 2003.

In the emails, the OEE environmental specialist states that the draft Notice updates a 2003 notice on risk assessments. She refers to a notice on the CPD grant program risk analysis. The reference appears to be to Notice CPD-03-01, Implementing Risk Analysis for Monitoring Responsible Entities for Compliance with 24 CFR Part 58 for FY 2003. The Notice expired on February 10, 2004. It

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<sup>16</sup> The Office of Environment and Energy is the office within CPD that has been delegated overall responsibility for environmental policies and procedures for compliance with NEPA and the related laws and authorities.

<sup>17</sup> We did not include the attachments in the report because the emails contain discussions about the draft notice. Since the notice is in draft form, the documents cannot be publicized.

was renewed on June 17, 2005, and expired on June 17, 2006. There is no evidence that it was subsequently renewed.

While none of the prior CPD notices or regulations confirm that OEE was responsible for ensuring compliance for public housing programs this is what the Boston Office asserts in its response. The purpose stated in Notice CPD-03-01 was to provide a consistent methodology for risk analysis to establish priorities for monitoring responsible entities. The notices gave the OEE field environmental officers directions for performing and ranking the risk of the responsible entities, but did not assign responsibility for monitoring public housing program compliance. In fact, Notice CPD-03-01 states that while field environmental officers are assigned primary responsibility for performing environmental risk analyses, other HUD guidance requires program staff to assess environmental concerns as part of their overall risk analysis. Program staff may inquire into environmental procedures when conducting on-site monitoring and can be a source of information to field environmental officers on the overall and environmental compliance profile. It further states that the results of the risk analysis should become a key part of the overall monitoring strategy that is communicated to the Field Office Director, the Headquarters Office of Community Viability, and other program office staff with whom collaboration about the overall environmental monitoring strategy is necessary. We believe that this demonstrates that the CPD risk analysis was intended to be a tool to assist not only CPD, but the other program areas in developing an overall monitoring strategy. It does not state that CPD or OEE were responsible for monitoring other program areas.

The emails show that the environmental clearance officer and the Boston Office Public Housing director were unclear as to who was responsible for monitoring. In one email, the headquarters environmental clearance officer states that she is still confused and recognizes that although regional and field environmental staff are assigned primary responsibility for performing environmental risk analyses, other HUD guidance requires program staff to assess environmental concerns as part of their overall risk assessment. The Boston Office Public Housing director refers to Notice CPD-03-01 and its extension through early 2006. She then states that she found CPD notices that speak of monitoring CPD programs but not for public housing programs. Ultimately, the headquarters environmental officer concludes that since all guidance is based on regulatory authority; there cannot be a notice issued without a supporting regulation. So during the time CPD Notice-03-01 is expired, the reliance on monitoring rests with the regulations, and OEE owns the regulations. However, she failed to recognize that the regulations do not assign monitoring responsibility to CPD or OEE for public housing programs.

We stand by our conclusions.

- Comment 5** Our objectives were to determine whether the Boston Office’s oversight of public housing environmental reviews within its jurisdiction ensured that (1) the responsible entities performed the required reviews and (2) HUD did not release funds until all required documents were submitted. According to the General Deputy Assistant Secretary for Public and Indian Housing, public housing does have some direct oversight and the regional offices performed training and monitoring.
- Comment 6** Based on the documentation provided to OIG from the Boston office, housing agencies, and responsible entities, the Boston Office of Public Housing did not provide oversight of the housing agencies and lacked documentation supporting the environmental reviews were properly completed. As shown in the report, on several occasions HUD released funds prior to completion of environmental reviews, which the regulations clearly state is not allowed including for activities that are considered exempt.
- Comment 7** The recommendation requires repayment of the New Bedford Housing Authority Recovery Act grant as there was no environmental review completed. The housing agency was influenced to state that its 2008 environmental review was a 5-year review and would cover the 2009 Recovery Act grant. The housing agency stated there were no additional items in its Recovery Act grant, but the HUD monitoring report showed otherwise. Any review of these additional items that occurred subsequently would not meet the compliance requirements, regardless of the categorization level.
- Comment 8** The environmental review records for the three housing agencies reviewed are not complete and did not address or support the compliance factors listed in 24 CFR 58.5. Based on the Boston Office’s response, the OIG added an additional recommendation, 1L, related directly to actions HUD may take when non-compliance issues are found.

## Appendix C

### CRITERIA

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#### **Criterion 1**

The purpose of NEPA is to declare a national policy that will encourage productive and enjoyable harmony between man and his environment. To carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

#### **Criterion 2**

Executive Order 11514, section 2(a), states that the heads of Federal agencies must “monitor, evaluate, and control on a continuing basis their agencies’ activities so as to protect and enhance the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities.”

#### **Criterion 3**

Regulations at 24 CFR 58.2(a)(7)(ii)(B) state that “responsible entity” means, for public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility.

#### **Criterion 4**

Regulations at 24 CFR 58.4(a) state that “responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provision of law that further the purposes of NEPA, as specified in §58.5.”

#### **Criterion 5**

Regulations at 24 CFR 58.5 state that “the responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities.”

The statutory requirements (checklist) for categorically excluded projects subject to 24 CFR 58.5 include

- Air quality,
- Airport hazards (clear zones and accident potential zones),
- Coastal zone management,
- Contamination and toxic substances,
- Endangered species,
- Environmental justice,
- Explosive and flammable operations,

- Farmlands protection,
- Floodplain management,
- Historic preservation,
- Noise abatement and control,
- Water quality (sole-source aquifers),
- Wetland protection, and
- Wild and scenic rivers.

### **Criterion 6**

Regulations at 24 CFR 58.6 state that the responsible entity remains responsible for addressing requirements in its environmental review record and meeting these requirements, as applicable, regardless of whether the activity is exempt or categorically excluded.

The statutory requirements (checklist) for all projects subject to 24 CFR 58.6 include

- Airport runway protection zone and clear zone notification,
- The Coastal Barriers Resources Act and Coastal Barrier Improvement Act, and
- The Flood Disaster Protection Act (flood insurance).

### **Criterion 7**

Regulations at 24 CFR 58.11(a) state that a responsible entity that believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD office for further instructions.

### **Criterion 8**

Regulations at 24 CFR 58.22(b) state that if a project or activity is exempt under section 58.34 or is categorically excluded under section 58.35(b), no Request for Release of Funds and Certification is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in sections 58.34(b) and 58.35(d) but the recipient must comply with applicable requirements under section 58.6.

### **Criterion 9**

Regulations at 24 CFR 58.30(a) state that “the environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part.”

### **Criterion 10**

Regulations at 24 CFR 58.38 state that the responsible entity must maintain a written record of the environmental review undertaken under this part for each project. The document will be designated the “environmental review record” and must be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

### **Criterion 11**

Regulations at 24 CFR 58.38(a) state that “the environmental review record shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision-making and actions pertaining to a particular project of a recipient. The document shall:

1. Describe the project and the activities that the recipient has determined to be part of the project;
2. Evaluate the effects of the project or the activities on the human environment;
3. Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and
4. Record the written determinations and other review findings required by this part.”

### **Criterion 12**

Regulations at 24 CFR 58.38(b) state that the environmental review record must contain verifiable source documents and relevant base data used or cited in environmental assessments, environmental impact statements, or other project review documents. These documents may be incorporated by reference into the environmental review record, provided each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review must not be incorporated by reference but must be included in the environmental review record.

### **Criterion 13**

Regulations at 24 CFR 58.43(c) state that “the responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its Request for Release of Funds & Certification (RROF).”

### **Criterion 14**

Regulations at 24 CFR 58.47(a)(1) state that “a responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when the recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project.”

### **Criterion 15**

Regulations at 24 CFR 58.47(b)(3) state that when the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes, new circumstances or environmental conditions, or proposals to select a different alternative and must then permit the responsible entity to reevaluate the findings before proceeding.

### **Criterion 16**

Regulations at 24 CFR 58.77(d) state that at least once every 3 years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If, through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of environmental deficiencies, HUD may take one or more actions, including requiring attendance by staff of the responsible entity at HUD-sponsored or -approved training.

**Criterion 17**

Regulations at 24 CFR 990.116 state that “the environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. [United States Code] 4332(2)(C)) and the implementing regulations at 24 CFR parts 50 and 58 are applicable to the Operating Fund Program.”

**Criterion 18**

Regulations at 36 CFR 800.4(d)(1) state, “No Historic Properties Affected – If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in §800.16(i), the agency official shall provide documentation of this finding, as set forth in §800.11(d), to the SHPO/THPO.<sup>18</sup> The agency official shall notify all consulting parties including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official’s responsibilities under section 106 are fulfilled.”

**Criterion 19**

Office of Public and Indian Housing-Office of Field Operations, Field Office Environmental Review guidance states that “at a minimum, the Office of Public Housing must maintain the following:

- A list of responsible entities who HUD has determined will or will not perform the environmental review on behalf of the Department. This list will be an important document for determining which public housing agencies will need to submit the clearance documents;
- A list of Request for Release of Funds certifications that have been received and clearance provided;
- A list of environmental reviews that have been conducted by the Office of Public Housing for each program requiring environmental clearance; and
- Separate environmental clearance files for each public housing agency.”

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<sup>18</sup> State historic preservation officer/tribal historic preservation officer