



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention:	NOTICE PIH 2013-07 (HA)
Public Housing Agencies	Issued: March 5, 2013
Public Housing Directors	
PIH Field Offices	This notice remains in effect until amended, revoked or superseded.

Title: Agreements with Responsible Entities and Timing for Environmental Reviews

I. Purpose: This guidance provides public housing agencies (PHAs) and PIH field offices with information on environmental reviews to emphasize the need for positive working relationships and timely, thorough reviews. Certain activities using HUD financial assistance require an environmental review record. PHAs fulfill these regulatory requirements through either the appropriate unit of general local government or through HUD as represented by the appropriate field office. Completing environmental reviews as early as feasible is a sound management practice, as is a formal agreement with local partners performing such reviews.

II. Background: Environmental reviews may be conducted by the unit of general local government when the HUD program legislation has a statutory provision authorizing a unit of general local government to assume federal environmental review responsibilities (assumption provision). Programs under Public and Indian Housing (PIH) with an assumption provision under Section 26 of the Housing Act of 1937 (42 U.S.C. 1437x) are: Operating Fund Grants; HOPE VI Revitalization and Demolition (but not HOPE VI Main Street); **Capital Fund Grants**; and Section 8 (but not Section 8 special allocations under 24 CFR Part 886, which include additional assistance for projects with HUD-insured and HUD-held mortgages and Section 8 for disposition of HUD-owned projects). Programs without an assumption provision have environmental reviews performed by HUD under 24 CFR Part 50 and not by a unit of general local government.

A unit of general local government that performs environmental reviews is referred to as the Responsible Entity (RE) and holds jurisdictional authority for the community in which a particular site is located. **The full definition of an RE is in 24 CFR 58.2(a)(7) and the regulations that provide instructions for REs to perform environmental reviews are found at 24 CFR 58.** For PHAs, the RE is the unit of general local government where the project is located and which exercises land use responsibility. HUD may determine the unit of general local government to be unable to fulfill responsibilities, in which case HUD may designate the county to act as RE. If HUD determines that it is infeasible for the county in which the project is located to act as the RE, then HUD may designate the state as RE. If these entities cannot act as RE, then HUD must conduct the environmental review under Part 50.

A sound working relationship between PHAs and REs substantiates transparent planning for the benefit of residents. In working together, PHAs and REs protect the environment and ensure safe and decent housing for residents within sustainable communities. PIH supports the objective to secure environmental reviews in an efficient and timely manner with preference for reviews under part 58 rather than part 50 because of place-based expertise in local land use reviews. Through these regulations, regional and field environmental officers provide technical assistance, training and monitoring of PIH field offices, PHAs and their associated REs.

III. Agreements with REs: In order to outline the roles and responsibilities of the PHA and RE, PIH offers a recommended format for a Memorandum of Understanding (MOU) as Attachment A to this notice. Attachment A is a sample to serve as a guide for agreements to meet local needs and objectives. An agreement may be executed to address all environmental reviews in general or specific project-based reviews on a case by case basis. Such written agreements are recommended to clearly delineate the roles of the RE and PHA and avoid delays, risks or miscommunications.

IV. Timing: A complete environmental review record is required prior to a choice-limiting action, and must include any determination that the activity is exempt (see 24 CFR 58.34(a)), categorically excluded from review under the National Environmental Policy Act (NEPA) but subject to the related laws and authorities (see 24 CFR 58.35(a)), or categorically excluded and not subject to the related laws and authorities (see 24 CFR 58.35(b)). A choice-limiting action occurs when a PHA commits or expends HUD or non-HUD funds on activities for a project assisted under the U.S. Housing Act, including but not limited to activities that require HUD approval, such as a request for release of funds (RROF) for demolition/disposition applications. Choice-limiting includes actions to acquire, rehabilitate, demolish, convert, lease, repair or construct properties. Choice-limiting actions performed prior to environmental clearance can result in regulatory or statutory violations that can jeopardize HUD funding of the project.

Three aspects of the environmental review record are noted due to the time required to complete independent verifications and the associated procurements under 24 CFR 85.36. These are 1) the review of projects proposed in a wetland and/or floodplain, 2) the determination of whether there will be adverse effects on historic, cultural or archaeological resources, and avoidance or mitigation of such effects, in consultation with the State or Tribal Historic Preservation Officer and other consulting parties, including Indian tribes that attach religious and cultural significance to affected historic properties and 3) a Phase I Environmental Assessment for potential toxins or petroleum-based hazards and a follow-up Phase II if recognized environmental conditions are uncovered. Requirements for sites free of hazardous materials are in 24 CFR 58.5(i)(2) and 50.3(i). The results under any of these three reviews may trigger the need to seek alternative sites or mitigation activities.

The required level of environmental review depends on both the nature of the assistance and the activity. For example, a project receiving only a tenant-based rent subsidy such as a Housing Choice Voucher (HCV) does not require an environmental review because physical conditions are not altered in a manner to require reviews under the National Environmental Policy Act (NEPA) and the related federal laws and authorities. The review in this instance is limited to a determination of the level of review and documentation of the “other” requirements at Section 58.6. If a site to be acquired by a PHA or its developer is intended to contain project-based rent subsidies, then NEPA and the related laws and authorities may apply. Under Part 58, the RE makes this determination and the PHA records this finding. HUD itself is not permitted to make an exempt finding on behalf of the RE under Part 58.

HUD strongly encourages PHAs and development partners to begin the environmental review as early as possible. For instance in projects with Low Income Housing Tax Credit (LIHTC) funding, it is advantageous to complete the review before submitting the LIHTC application to avoid the risk of rejecting an allocation from a state finance agency should the site subsequently fail environmental clearance.

Similarly, when first amending a Capital Fund plan (Parts 905 or 968) or Five-Year Plan (Part 903) to incorporate a new development, modernization, rehabilitation or acquisition proposal, embarking on environmental clearance at this initial phase also reduces subsequent delays or risks to such future plans.

V. Moving to Work Agency Requirements: PHAs participating in the Moving to Work Demonstration (“MTW”) are authorized to combine operating and capital assistance provided under section 9 and voucher assistance under section 8 of the 1937 Act as part of the regular appropriations process. To ensure that all housing authorities address environmental reviews, MTW agencies adhere to the same requirements as non-MTW agencies in terms of environmental reviews under Part 50 and/or Part 58. See also PIH notices 2011-31 and 2011-45.

VI. Paperwork Reduction Act: Information collection requirements pertaining to this notice are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) with the control number of 2506-0087.

VIII. Additional Information: Questions concerning this notice may be directed to PIH’s Office of Policy, Programs and Legislative Initiatives (OPPLI) on 202-402-3494 or Linda.K.Bronsdon@hud.gov. Information on environmental reviews is found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing

Attachment A

Memorandum of Understanding
Between the ABC local jurisdiction and XYZ Housing Authority
for the completion of environmental reviews

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made on [insert month, day, year] by and between the XYZ Housing Authority, an incorporated public housing authority (hereinafter referred to as the PHA) and the ABC local jurisdiction, a body politic and incorporated, acting as the Responsible Entity (hereinafter referred to as RE).

WHEREAS, the PHA maintains public housing under Section 9 of the United States Housing Act of 1937, and may elect to pursue housing projects and/or activities with federal financial assistance subject to environmental reviews pursuant to the National Environmental Policy Act of 1969 (NEPA) and implementing regulations of the Council on Environmental Quality, including but not limited to the regulations at 40 CFR Parts 1500-1508, and implementing regulations of the U.S. Department of Housing and Urban Development (HUD), including but not limited to HUD's regulations at 24 CFR Part 58; and

WHEREAS, as the recipient of federal financial assistance, the PHA may secure assistance for completing environmental reviews by the unit of general local government where the project is located as the RE authorized to assume environmental review obligations pursuant to 24 CFR 58.2(a)(7)(ii)(B); and

WHEREAS, the RE certifies it is authorized to: (1) assume responsibility for environmental review, decision making and action under NEPA and each provision of law designated in 24 CFR 58.5 applicable to any and all of the HUD financial assistance awarded to the PHA; (2) accept jurisdiction of the Federal courts for enforcement of these environmental responsibilities; and (3) execute the certification portion of HUD's Request for Release of Funds (RROF) and certifications as set forth in 24 CFR 58.4, 58.13, and 58.71; and

WHEREAS, the PHA requested the RE to complete the environmental review record with respect to the PHA's projects or activities pursuant to the conditions and provisions set forth in this MOU and the RE accepts responsibility to act as the responsible Federal agency under NEPA and the laws and authorities in 24 CFR 58.5 with respect to said projects and activities.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth below, the PHA and RE hereby agree as follows:

Article 1. Incorporation of recitals: The recitals sets forth above are incorporated by reference as if fully set forth herein and made a part hereof.

Article 2. Duties and Responsibilities of RE:

1. RE will perform and/or manage all environmental reviews and prepare all necessary documentation in support of the environmental review record for all activities pursuant to the PHA's projects and any accompanying documents necessary to be submitted to HUD, in full compliance with:
 - a) HUD's "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities" (24 CFR Part 58);
 - b) Section 102 of NEPA;
 - c) Related provisions of the Council on Environment Quality regulations contained in 40 CFR Parts 1500 through 1508; and
 - d) All other applicable Federal and State regulations.
2. Where appropriate and necessary in the environmental review process, RE will issue findings of no significant impact (FONSIs) or findings of significant impact, determine whether to hold public hearings, prepare environmental impact statements and records of decision, issue notices of FONSIs and notices of intent to request release of funds, and prepare requests for release of funds.
3. RE may retain consultants and experts for special reviews or investigations and obtain other outside services deemed necessary by RE to its functions hereunder. Prior to retaining any such experts, consultants or outside services, RE shall discuss the need for and scope of such work or services with the PHA. The PHA shall pay the cost of any such experts, consultants or outside services as eligible Capital Fund activities.

Article 3: Duties and Responsibilities of PHA

1. PHA procures at PHA's expense and provides RE with all available project and environmental information needed by RE in connection with activities pursuant to this MOU, including, without limitation, existing relevant information and any reports of investigation or study required to conduct an environmental review consistent with law and regulations.
2. PHA provides RE with documentation that adequately describes the full scope, purpose, and interrelationships of the subject HUD assisted project, which may include privately financed or non-federally assisted PHA financing, and any other documents and/or information requested by RE that RE reasonably believes is necessary to perform services required under this MOU and that are within the PHA's possession or control.
3. PHA serves as liaison with local community groups and residents regarding all aspects of RE services under this MOU, including, but not limited to, scheduling meetings and participating in public meetings. PHA provides the RE with prior

written notice of all meetings related to MOU services in order to allow the RE the opportunity to participate in such meetings.

4. PHA reimburses RE for expenses incurred for performing services under this MOU, including, but not limited to:
 - a. costs of publishing notices;
 - b. necessary travel expenses;
 - c. postage and express package delivery charges;
 - d. fees and expenses of experts, consultants and outside services retained by the RE;
 - e. RE's staff time devoted to performance of MOU services; and
 - f. actual costs incurred associated with any surveys or investigations.
5. PHA monitors environmental mitigation or procures such services to ensure compliance with environmental conditions specified in the authorization to use HUD funds or HUD approvals.
6. PHA provides the Five Year and Annual Plans to the RE in order to facilitate integration between RE planning and PHA activities and projects that require environmental reviews, including development, modernization or other capital activities.
7. PHA communicates to stakeholders the requirements for environmental reviews before any partner or stakeholder in the development makes a choice-limiting action upon submission of an application for HUD financial assistance.

Article 4. Agreement terms

1. This MOU is effective for a period of ____ years or until terminated by the PHA pursuant to the provisions of this MOU.
2. PHA may terminate this MOU at any time by giving ____ days written notice to RE.
3. RE may terminate this MOU for cause upon ____ days notice to PHA, including a statement of the reasons therefore, and after an opportunity for a hearing is afforded. As used herein, cause shall include any failure of PHA to promptly reimburse RE for costs, any other non-performance by PHA under this MOU or any material failure by PHA to comply with any term of this MOU.

ARTICLE 5. Conditions

1. No official, employee or agent of either party shall be charged personally by the other or by an assignee or subcontractor with any liability or expenses of defense or be held personally liable under any term or provision of this MOU, because of

such party's execution or attempted execution of this MOU, or because of any breach thereof.

2. This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof, and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this MOU that are not expressly addressed herein.
3. No changes or modifications of this MOU are binding unless made in writing and executed by the duly authorized officers of both the PHA and RE.
4. PHA and RE shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government now existing or hereinafter in effect, which may in any manner affect the performance of this MOU.
5. Whenever under this MOU either party, by a proper authority, waives either party's performance in any respect or waives a requirement or condition of either party's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the MOU regardless of the number of times either party may have waived the performance, requirement or condition.

ARTICLE 6. Authority and notice

1. Each person signing this MOU represents and warrants that such person has the requisite power and authority to enter into, execute, and deliver this MOU and that this MOU is a valid and legally binding and enforceable obligation in accordance with its terms.
2. All verbal and written communication, including required reports and submissions, shall be transmitted between RE and PHA as noted below.

Any notices sent to City shall be electronically transmitted to:

Any notices sent to the Authority shall be electronically transmitted to:

IN WITNESS WHEREOF, the ABC local jurisdiction and XYZ Housing Authority have executed this Memorandum of Understanding as of the date first written above and under the laws of the State of _____.

ABC Local Jurisdiction
[Title of Official]

XYZ HOUSING AUTHORITY
[Title of Officer]