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U. S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Notice CPD-98-10

All Environmental Officers
Field CPD Division Directors
Field CPD Representatives
SHOP Recipients and Subrecipients

Issued: October 14, 1998
Expires: October 14, 1999

Cross References: Notices CPD 98-04 and 97-02

Subject: Modified Environmental Processing for Self-Help Homeownership Opportunity Program (SHOP)

I. Introduction

A. Purpose

The purpose of this notice is to modify the environmental review processing set forth in the provisions of CPD Notice 97-02 (as extended by CPD Notice 98-04)--Environmental Guide for Self-Help Homeownership Opportunity Program (SHOP). The notice authorizes HUD field offices under certain circumstances to conduct compliance reviews in accordance with 24 CFR Part 50--Protection and Enhancement of Environmental Quality. When the unit of general local government within which the project is located declines or is unable (as determined by the HUD field office CPD Division Director) to perform the environmental review procedure under 24 CFR Part 58--Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, then HUD will no longer request upper levels of government such as the county and then the State to perform the review procedure. Instead, Subrecipients may supply the HUD Field Office with information that would help HUD complete the environmental review procedure under 24 CFR Part 50. In Attachment A, the notice defines the information to be provided by Subrecipients to the HUD field office CPD Division Director. Also, the notice replaces CPD Notices 98-04 and 97-02.

B. Background

Section 11 of the Housing Opportunity Program Extension Act of 1996 authorizes local and state governments to perform the environmental review for SHOP housing projects as follows:

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"(m) ENVIRONMENTAL REVIEW- A grant under this section shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994."

Implementing regulations cite special projects at 58.1(b)(7) and the SHOP program at 58.1(b)(9). In both cases, the regulations identify local and state governments as the "Responsible Entity" for performing the environmental review at 58.2(a)(7)(ii), as follows:

"(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;..."

Based on program experience, there is evidence of instances where local, county and state governments have declined to perform the environmental review procedure. In some cases, delays caused by the "step-up" process have resulted in the loss of properties on which the real estate option to purchase expired.

II. Modified Environmental Processing

The Subrecipient and the HUD Field Office should make every reasonable effort to have the unit of general local government, county or State perform the environmental review where this is practicable. However, when the unit of general local government in which the project is located declines or is unable to perform the environmental review procedure under 24 CFR Part 58 as determined by the HUD field office CPD Division Director, HUD will no longer request upper levels of government such as the county and then the State to perform the review procedure. Instead, at the Subrecipient's option, Subrecipients may supply the HUD Field Office with information that would help HUD complete the environmental review procedure under 24 CFR Part 50 (see Protocol -- **Attachment A**).

The following applies when the unit of general local government has declined or is unable to perform the environmental review and the Subrecipient requests HUD to carry out the environmental processing:

As set forth in 50.3(h) for HUD grant programs in which the funding approval must occur before the selection of properties, a successful applicant shall:

"(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part;

- (2) Carry out mitigating measures required by HUD or select alternate eligible property; and
- (3) Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received."

The term "local funds" refers to any nonfederal funds. The term "HUD approval" means environmental approval by the HUD field office Division Director for Community Planning and Development (CPD) or his/her designee.

III. Responsibilities

This notice and the Protocol contained in **Attachment A** define the responsibilities of all parties involved in the environmental processing for SHOP grants. Involved are: Recipients (i.e., the national nonprofit organization receiving the SHOP grant), the Subrecipient (i.e., the local affiliate awarded a SHOP grant by the Recipient for land acquisition and/or infrastructure), the responsible entity (RE) (which is the unit of general local government, Indian tribe, Alaska native village, county or State authorized to perform the environmental review), and the HUD field office CPD Division Director.

A. Recipient's environmental responsibility

SHOP program Recipients are responsible for the following:

- (1) All program and environmental requirements.
- (2) The submission of **HUD form-7015.15--Request for Release of Funds and Certification** (hereafter RROFs) and cover letters, both signed by the Recipient, to the appropriate local HUD field office CPD Division Director. The Recipient must complete only **Part 3 of HUD form-7015.15. Parts 1 and 2 of HUD form-7015.15** will have been completed and signed by the Responsible Entity (RE).
- (3) Receiving from the local HUD field office CPD Division Director the approval of the RROF or written notification that HUD has completed the environmental review, and notifying the Subrecipients that they may commence work.

B. Subrecipient's environmental responsibility

SHOP program Subrecipients are responsible for the following:

- (1) negotiating an arrangement with the RE (unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use

responsibility) for the performance of the environmental review. If not feasible, or if the RE is unwilling to undertake such review, the Subrecipient should, in close coordination with the Recipient, notify the local HUD field office CPD Division Director by supplying a letter from the local government declining to perform the environmental review or simply the name, title, address, and phone number of the local government representative who communicated the negative decision. Subrecipients may choose: (i) to request HUD to ask the county or State to perform the environmental review, or (ii) to supply HUD with all available and relevant information requested in **Attachment A** and needed for HUD to perform the environmental review in a timely manner.

(2) supplying the RE or HUD with information on the location of the properties (street address where available) and the nature and scope of the activities to be undertaken along with all available environmental information.

(3) carrying out mitigating measures required by the RE or HUD or selecting an alternate eligible property; and

(4) preparing a cover letter for the RROF indicating its agreement to abide by any special conditions resulting from the environmental review, when the environmental review is done by an RE, and submitting it to the Recipient (the National Organization that received the funds directly from HUD) with the RROF. The Recipient must then sign the RROF and submit it to the local HUD field office CPD Division Director. HUD must allow the public a 15 day objection period from the date of its receipt of the RROF, or from the time specified in the notice published pursuant to 58.70 of the regulations, whichever is later, before it can approve the release of funds. If the environmental review is done by HUD, no RROF is required and the Recipient may authorize the Subrecipient to commence work upon written notification from the local HUD field office that the environmental review is completed.

(5) complying with the prohibition on the commitment or expenditure of any SHOP funds or nonfederal funds to most program activities with respect to any eligible property, until HUD has notified the Recipient that it has completed its environmental review or approved the RROF and the Recipient has authorized the Subrecipient to proceed.

(6) reporting to the entity performing the environmental review any changes in the scope of the project and any changes in environmental conditions.

(7) providing data for the RE's or HUD's performance of the environmental review when requested.

C. Responsible Entity (RE) environmental responsibility

The RE shall determine whether a NEPA environmental assessment is required and shall also determine whether the assisted activities will trigger thresholds for other applicable

Federal environmental laws and authorities. A "Responsible Entity" (RE) is the unit of general local government, Indian tribe or Alaska native village that exercises land use responsibility over the SHOP properties (or, if the local HUD field office determines that the involvement of these entities is infeasible, the county or State). The RE is requested to:

- (1) assume environmental responsibility under 24 CFR Part 58.
- (2) determine the appropriate level of environmental review.
- (3) conduct the environmental review in compliance with 24 CFR Part 58.
- (4) prepare and disseminate or publish, as appropriate, a Notice of Finding of No Significant Impact (FONSI), a Notice of Intent to Request Release of Funds (NOI/RROF) or a combined FONSI notice and NOI/RROF. The FONSI and the combined notice require a 15 day public comment period from the date of publication or, if no publication, 18 days from the date of mailing or posting, before the RROF can be submitted to HUD. (Should the RE or HUD determine that exceptional circumstances pertain to the project, the FONSI and a combined notice require a 30 day public comment period before the RROF can be submitted to HUD.) The NOI/RROF requires a 7 day comment period from the date of publication or, if no publication, 10 days from the date of mailing or posting, before the RROF can be sent to HUD.
- (5) execute the certification portion of the RROF by completing only **Parts 1 and 2 of HUD form-7015.15** and by dispatching the form to the Recipient, who must complete only **Part 3 of HUD form-7015.15** before providing the form to HUD. The RE must also include a description of any special conditions (see 58.71(b)).
- (6) transmit the executed RROF to the Subrecipient for submission to the Recipient who will subsequently submit it to the HUD field office CPD Division Director along with the Subrecipient's and Recipient's cover letter agreeing to adhere to any special environmental conditions required by the RE in carrying out the SHOP activities.
- (7) re-evaluate properties and activities where the scope of the project or environmental conditions have changed.
- (8) document and maintain all findings in an Environmental Review Record (ERR) and provide a copy to the Recipient for its project files.

D. HUD Field Office CPD Division Director and staff responsibilities

(1) Responsibilities for processing under Part 58:

These are the responsibilities when the HUD Field Office is processing under Part 58, which is the normal procedure. When an RE has agreed to undertake the environmental review for a Subrecipient's project, the HUD Field Office CPD Division Director and staff shall:

- (a) advise the RE and the Subrecipient of the procedures to be followed under Part 58;
- (b) arrange for technical assistance as needed, either in-house or through a contractor;
- (c) monitor RE/Subrecipient environmental compliance;
- (d) approve the RROF submitted by the Recipient at the end of the 15 day statutory waiting period allowed for public objection to the release of funds (see 24 CFR 58.74); and
- (e) obtain the CPD Division Director's signature as the HUD Authorizing Officer on HUD form 7015.16-Authority to Use Grant Funds or on letter (see Attachment C), and dispatch to the Recipient.

(2) Responsibilities for processing under Part 50:

When a RE declines or is unable to perform processing under Part 58, then these are the responsibilities for the modified procedure.

In accordance with 50.32, the field CPD Division Director and staff may use any information supplied by the Subrecipient or its contractor, but are to independently evaluate the information, be responsible for its accuracy, and supplement the information, if necessary, to conform to the requirements of Part 50. The CPD Division Director and staff must:

- (a) document the Department's compliance on HUD form-4128, completing page 1 and only **Part A (Compliance Findings for 50.4 Related Laws)** of page 2 for HUD approval of:

- (1) proposed acquisition of four or less single family housing sites and construction of their onsite utility hookups; or

- (2) proposed acquisition of five or more single family housing sites (and construction of their onsite utility hookups) that are more than 2,000 feet apart.

- (b) document the Department's compliance on HUD form-4128, completing **Part A (Compliance Findings for 50.4 Related Laws) and Part B (Environmental/Program Factors)** for HUD approval of:

- (1) proposed acquisition involving five or more units of housing or housing sites that are 2,000 feet or less apart; or

- (2) all proposed infrastructure.
- (c) attach to HUD form-4128 the information provided by the Subrecipient and maintain the environmental review record;
- (d) prepare the written notification letter (see form letters in Attachment B); and
- (e) upon satisfactory completion of the review, obtain the CPD Division Director's signature as the HUD Approving Official on HUD form-4128 and dispatch the written notification to the Recipient with a information copy to the Subrecipient.

IV. Other

A. Basic environmental requirement

SHOP Recipients or their Subrecipients may not commit or expend any SHOP funds on activities: (i) unless they are exempt under 58.34 or not subject to 58.5 authorities under 58.35(b) until HUD has approved the Recipient's RROF, or (ii) where HUD determines that it will perform the environmental review, until HUD notifies the Recipient that HUD has completed the environmental review. The expenditure or commitment of SHOP funds prior to the HUD approval of either the RROF or the site may result in the denial of assistance for the property under consideration. Except where HUD determines to perform the environmental review, the RROF is a statutory requirement and cannot be waived; violation of this provision will result in disapproval of funds for the project or site. Furthermore, the Recipient or Subrecipient may not commit non-HUD funds on a SHOP project before the RROF is approved if the activity would have an adverse environmental impact or limit the choice of reasonable alternatives.

B. Purchase of real estate options

The purchase of a real estate option is allowable prior to HUD environmental review and approval of the property subject to the conditions that are stated in 58.22(b) regarding environmental acceptability and nominal price. Sec. 58.22(b) states:

"An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project."

C. Environmental consultant and administrative costs

FY 1998 SHOP administrative funds may be used to obtain the information that the Subrecipients are responsible for supplying to the HUD Field Office under this notice for properties to be purchased from FY 1998 SHOP funds. There is no requirement for an environmental review for the use of these funds for such purpose. 58.34(a)(1) and (3) respectively exclude from environmental review procedures both "environmental and other studies" as well as "administrative and management activities." This exclusion extends to the costs of environmental consultants engaged by Subrecipients and/or payments to local governments for this service. FY 1998 SHOP funds may not be used for this purpose in connection with SHOP projects funded from FY 1996. Use of administrative funds for FY 1999 and beyond will be dependent on further authorization language.

D. Other suggested "time-savers"

1. To achieve further time savings and effective delivery of information to HUD, Subrecipients are encouraged to use e-mail or FAX in communicating with the HUD Field Office staff responsible for performing the modified environmental processing for their projects under this notice.

2. When offering training for their Subrecipients, Recipients are encouraged to invite HUD Field Office staff to participate. Generally, HUD field environmental officers, if available from any of the HUD Field Offices, are the technical specialists best able to provide HUD environmental training and support to Subrecipients considering the use of SHOP funding.

3. To assure prompt HUD Field Office outreach and partnership with Subrecipients, Recipients are encouraged to contact the appropriate HUD Field Offices and provide the HUD field office CPD Division Director with a list of Subrecipients immediately upon award of SHOP funding to their Subrecipients.

4. When other Federal, State, or local agencies have prepared an environmental assessment or other environmental analysis for a property (or neighborhood) which the Subrecipient had selected for use in the local SHOP program, these documents should be requested and used to the extent possible. Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.5(a) require HUD to independently evaluate environmental information submitted by the Subrecipient and be responsible for its accuracy, as well as to verify (but not redo) acceptable work.