




No. 2017-03
February 15, 2017

PROGRAM GUIDANCE

PROGRAM: All Programs Administered by the Office of Native American Programs Indian Community Development Block Grant (ICDBG)

FOR: All Tribal Government Leaders, Tribally Designated Housing Entities, and the Department of Hawaiian Home Lands

FROM: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, PN 

SUBJECT: Certifying Officers for Environmental Reviews under 24 CFR Part 58

PURPOSE: This guidance explains who can serve as a Certifying Officer for environmental reviews prepared under 24 CFR Part 58 for all programs administered by HUD's Office of Native American Programs (ONAP), including who can be delegated that responsibility and how a delegation can be made. This guidance clarifies when a Certifying Officer signature is required, and how to document that the Responsible Entity (RE) Tribe has made the required environmental review determinations when Form HUD-7015.15 is not required.

BACKGROUND: The Request for Release of Funds and Certification (Form HUD-7015.15), must be signed by a Certifying Officer, in accordance with the regulations at 24 CFR § 58.71. The Certifying Officer must be someone who has the authority to represent the RE Tribe and agrees to be subject to the jurisdiction of the federal courts in accordance with 24 CFR § 58.13. The Certifying Officer has the authority to obligate the RE Tribe to satisfy any judgment stemming from legal action related to the RE Tribe's performance of environmental responsibilities.

For HUD's Native Hawaiian Housing programs, the Certifying Officer is required to be the Director of the Department of Hawaiian Home Lands in accordance with 25 USC 4226(c)(2).

The Native American Housing Assistance and Self-Determination Act (NAHASDA) and the authorizing statute for the Indian Community Development Block Grant program specifically require that the Certifying Officer be the chief executive officer (Tribal Leader) or other officer of the RE Tribe. See 25 USC 4115(c)(2) and 42 USC 5304(g)(3)(B).

REQUIREMENTS: Accordingly, for all HUD-ONAP programs, the Certifying Officer is required to be the Tribal Leader when the RE is a Tribe.

PROGRAM GUIDANCE 2017-03(R)

For all programs except the Native Hawaiian Housing programs, it is possible to delegate the Certifying Officer responsibility to another officer of the RE Tribe.

In all cases, the Certifying Officer must be someone who represents the RE Tribe and agrees to be subject to the jurisdiction of the federal courts in accordance with 24 CFR § 58.13.

Delegate: The Certifying Officer can only be the Tribal Leader or other officer of the RE Tribe. Thus, delegation is only possible to an officer of the RE Tribe. An officer must be someone employed by the Tribe. An employee of a Tribally Designated Housing Entity (TDHE) cannot be delegated Certifying Officer responsibility because TDHEs are not a department of a Tribe.

Form of Delegation: In order for a delegate to be considered the Certifying Officer, the delegate must provide evidence of a delegation. A delegation can be made in the form of a formal written delegation from the Tribal Leader, or a resolution from the tribal legislative body. The delegation must have specific language in order to comply with 24 CFR Part 58, as set forth in Form HUD-7015.15. The delegation should address whether persons “Acting” in the position of the delegate have authority to sign as a Certifying Officer. A model written delegation from a Tribal Leader that includes the specific, required language from 24 CFR Part 58 is attached to this guidance.

Any delegations should be kept on file by the RE Tribe and provided to the appropriate Area ONAP when submitting a Form HUD-7015.15, and upon the request of an Area ONAP.

When a Certifying Officer Signature is Required: The Request for Release of Funds and Certification (Form HUD-7015.15) must be signed by the Certifying Officer for the RE Tribe, in accordance with the regulations at 24 CFR § 58.71.

Documenting Environmental Review Determinations: Responsible Entities must make an environmental review determination for all HUD assisted activities, and must document the determination in an environmental review record, even if the activity is determined to be exempt.¹ HUD recommends that a Certifying Officer sign every environmental review record, regardless of whether Form HUD-7015.15 is required. A Certifying Officer’s signature provides evidence that the RE Tribe made the environmental review determination. An RE Tribe may choose to provide evidence that the RE Tribe made the environmental review determination through other means. At a minimum, HUD would expect an RE Tribe to have a procedure in place requiring each environmental review record to be signed by an RE Tribe employee. In addition to the environmental review determination, the environmental review record must include all environmental review documents, public notices, and written environmental findings.² Environmental findings must be supported by verifiable source documentation and base data.³

Additional Guidance: Any questions related to this Program Guidance should be directed to the local ONAP Program Environmental Specialist. Contact information can be found on the [ONAP Codetalk environmental resources website](#). You may also contact Hilary Atkin, ONAP Environmental Clearance Officer, at Hilary.C.Atkin@hud.gov or (202) 402-3427.

Attachment

¹ There are several references in Part 58 to the RE making and documenting environmental determinations, including 24 CFR § 58.22(b), 24 CFR § 58.34(b) and 24 CFR § 58.35(d).

² See 24 CFR § 58.38(a).

³ See 24 CFR § 58.38(b).

Tribal Letterhead

DATE

Re: Certifying Officer Delegation for Environmental Review

Name of Delegate, the *Title of Delegate* of the *Name of Tribe* has been designated as the Certifying Officer for *Name of Tribe* for the U.S. Department of Housing and Urban Development (HUD)-related environmental documents for all projects and activities funded under *list HUD Programs*.

Name of Delegate is authorized to and consents to assume the status of responsible federal official under the National Environmental Policy Act (NEPA) of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities, insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision making, and actions that have been assumed by the *Name of Tribe*.

Name of Delegate is authorized and accepts, on behalf of the *Name of Tribe* and *Name of Delegate*, the jurisdiction of the federal courts for the enforcement of all of these responsibilities of the Certifying Officer as the responsible federal official.

If you have any questions or concerns about this matter, please contact *name* at *contact information*.

Signature of Tribal Leader

Name of Tribal Leader
Title of Tribal Leader