



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

Special Attention of:

Notice: PIH-2015-01

ONAP Administrators and Staff,
Field Environmental Officers, and
Indian Housing Block Grant
(IHBG) Recipients

Issued: January 9, 2015

Expires: Effective until revoked,
superseded, or rescinded

Cross Reference: 24 CFR §1000.20(a), Notices PIH 1999-37(ONAP), PIH 2000-37(TDHE),
PIH 2001-31(TDHE) and PIH 2002-25(TDHE)

Subject: Indian Housing Block Grant (IHBG) Program: Guidance and Procedures for
Environmental Reviews under Part 50

I. Introduction

A. Purpose

This Public and Indian Housing (PIH) Notice rescinds Notice PIH 1999-37, issued August 19, 1999, and the three subsequent Notices that either extended or reinstated that Notice.

This Notice provides instructions on conducting environmental reviews under 24 CFR Part 50 for tribes that do not assume these responsibilities under 24 CFR Part 58. In addition, it also describes the responsibilities of the HUD Area Office of Native American Programs (AONAP) and defines the information to be provided by recipients to the AONAP Administrator to facilitate HUD's compliance with environmental review responsibilities under 24 CFR Part 50.

B. Authority

Section 105 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4115) grants authority for tribes to assume environmental review responsibilities, which are set out in HUD's regulations at 24 CFR Part 58. The regulations at 24 CFR 58.4(c) contain specific responsibilities of Indian tribes.

IHBG program regulations at 24 CFR §1000.20(a) state that a HUD environmental review must be completed for any IHBG activities not excluded from review under 24 CFR §50.19(b) **before** a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or non-HUD funds used in conjunction with such IHBG-assisted activities with respect to the property. Regulations at 24 CFR §1000.20(a) provide Indian tribes the option of having HUD carry out the environmental review responsibilities of a project under 24 CFR Part 50 or assuming the environmental responsibilities under 24 CFR Part 58. Under 24 CFR Part 50 the

recipient provides HUD with all available, relevant information necessary for HUD to perform the environmental review. By contrast, under 24 CFR Part 58 the tribe assumes all of the responsibilities for the environmental review, decision making, and actions as specified and required in the regulations.

If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR Part 50. Tribes that select this option are to submit an Environmental Assurance that the applicant agrees to assist HUD to comply with 24 CFR Part 50 (see Attachment A).

This Notice uses the terms and thresholds in 24 CFR Part 50 to determine which environmental review procedures apply to particular types of activities. This Notice does not address the eligibility of any activity under the IHBG program. Affordable housing activities that are eligible for IHBG funding are set forth in Section 202 of NAHASDA.

C. Timing and Outcome

HUD's award of IHBG funds to a recipient does not constitute approval of any proposed sites. The results of the environmental review may require that proposed activities be modified or that proposed sites be rejected. **Recipients must not undertake or commit HUD or non-HUD funds for a project before HUD completes the environmental review.**

After funds are awarded, a tribe may choose to not assume environmental review responsibilities under 24 CFR Part 58. Instead, a recipient may request reviews pursuant to 24 CFR 50. If a part 50 review is requested, the tribe supplies HUD with all available relevant information necessary for HUD to perform the environmental review. HUD's ability to conduct expeditious and timely environmental reviews under 24 CFR Part 50 is dependent on the availability of resources; therefore, the tribe should notify HUD as soon as possible of its intent to have HUD conduct the environmental review. The tribe must submit the Environmental Assurance in Attachment A to HUD to decline accepting the environmental review responsibilities under 24 CFR Part 58; otherwise, the tribe will assume the environmental responsibilities under 24 CFR Part 58.

D. Definitions

1. HUD Approval - written approval by the AONAP Director in the AONAP jurisdiction in which the IHBG project is located. AONAP Directors handle all responsibilities related to the purpose of this Notice, including rejections of activities with significant adverse environmental impacts.
2. HUD Approving Official - the AONAP Administrator serves as the HUD approving official as defined in 24 CFR §50.2 for the IHBG program within the HUD field office jurisdiction.

3. Qualified Data Source - may include any Federal, State, local, or tribal agency with expertise or experience in environmental protection or any other source qualified to provide reliable information on the particular subject.

II. Responsibilities

A. Recipient's Environmental Responsibility

Recipients shall:

1. Notify HUD of the tribe's intention to have HUD perform the environmental review under 24 CFR Part 50 by submitting Attachment A – Environmental Assurance of Compliance with 24 CFR §50.3(h) with the grant agreement;
2. Supply HUD with all available, relevant information necessary for HUD to perform the environmental review required by 24 CFR Part 50 for each project as specified in Attachment B or Attachment C of this Notice;
3. Carry out mitigating measures required by HUD or select an alternate eligible property;
4. Not acquire, rehabilitate, convert, lease, repair, demolish, or construct property, nor commit or expend HUD or non-HUD funds for these program activities with respect to any eligible property, until HUD approval of the property is received. Ensure that any subrecipient, or any contractor of the recipient or subrecipient, also does not commit or expend HUD or non-HUD funds.

B. HUD AONAP Administrator and Staff Responsibilities

The AONAP Administrator and staff shall:

1. Communicate with the IHBG recipient on the environmental review responsibilities and provide adequate outreach on how to obtain the environmental information that the recipient must supply to HUD;
2. Ensure that the Environmental Assurance is returned to the Area ONAP with the Grant Agreement;
3. Ensure that the Grant Agreement contains or, as appropriate, has attached to it the following items:
 - a. An appendix containing a copy of this Notice;
 - b. The name, address, phone, and fax numbers of the AONAP Administrator to whom recipients must supply the environmental information, and from whom recipients obtain environmental approval of the project; and
 - c. A schedule for the recipient's required submission of environmental information to the AONAP Administrator as set forth in this Notice.

4. Evaluate any information (in accordance with 24 CFR §50.32) supplied by the recipient or its contractor, be responsible for its accuracy, supplement the information as necessary, and make the environmental determinations and the environmental finding;
5. Establish, as necessary (in accordance with 24 CFR §50.22), commitments for environmental management and monitoring of the implementation of mitigation and other safeguards;
6. Complete the environmental review in accordance with 24 CFR Part 50 using the HUD Environmental Review Online System (HEROS);
 - upload the information provided by the recipient or other sources used for completing the environmental analysis and findings into HEROS;
 - obtain certification from the AONAP Administrator as the HUD Approving Official; and
 - allow the Regional Environmental Officer (REO) or Field Environmental Officer (FEO) to review environmental assessments for projects with 200 or more units prior to certification from the AONAP Administrator.
7. AONAP must maintain this environmental review record and make it available upon request.

III. Basic Environmental Requirements

A. Levels of Environmental Review

There are four levels of environmental review under 24 CFR Part 50, each with different documentation requirements:

1. Categorically Excluded from National Environmental Policy Act (NEPA), Not Subject to the Laws and Authorities;
2. Categorically Excluded from NEPA, Subject to the Laws and Authorities;
3. Environmental Assessment; and
4. Environmental Impact Statement

a. Categorically Excluded from NEPA, Not Subject to the Laws and Authorities

The regulation at 24 CFR §50.19(b) lists the activities that do not require environmental review under the other laws and authorities cited at 24 CFR §50.4 or under NEPA except in extraordinary circumstances (24 CFR §50.20(b)). Recipients

may commit and expend funds for the following activities after HUD documents the categorical exclusion and approves the project:

- 1.) Environmental and other studies, resource identification and the development of plans and strategies;
- 2.) Information and financial advisory services;
- 3.) Administrative and management expenses;
- 4.) Public services that will not have a physical impact or result in any physical changes;
- 5.) Inspections and testing of properties for hazards or defects;
- 6.) Purchase of insurance;
- 7.) Purchase of tools;
- 8.) Engineering or design costs;
- 9.) Technical assistance and training;
- 10.) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;
- 11.) Tenant-based rental assistance;
- 12.) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
- 13.) Operating costs including maintenance, security, operation, utilities, furnishings, supplies, equipment*, staff training and recruitment and other incidental costs;
- 14.) Economic development activities, including but not limited to, equipment purchase*, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities;
- 15.) Activities to assist homeownership of existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title to the property

referenced in 24 CFR §50.19(b)(15). These activities are subject to the requirements of: the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) as amended by the National Flood Insurance Reform Act of 1994; the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501 et. seq.); and 24 CFR §51.303(a)(3) Airport Runway Clear Zones and Clear Zones; and

- 16.) Housing pre-development costs including legal, consulting, developer, and other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- * Equipment purchased as part of operating costs or economic development activities is subject to compliance with the requirements of the Flood Disaster Protection Act of 1973 as amended by the National Flood Insurance Reform Act of 1994 (24 CFR §§50.19(b)(13) and (14)). If equipment is federally assisted and located within the special flood hazard area, flood insurance is required.

Documentation

For “Categorically Excluded, Not Subject To the Laws and Authorities” activities, HUD will document the categorical exclusion in HEROS. The tribe or tribally designated housing entity (TDHE) shall submit to HUD a project description, including a list of activities to be undertaken, the estimated total project cost, the amount of HUD funding to be used towards the project, and categorically excluded activities. For activities that require additional compliance as discussed above, the tribe or TDHE must also submit qualified data sources to the ONAP Administrator using Attachment B as appropriate. The ONAP Administrator or his or her designee will make the appropriate determination using Attachment B.

If you have any questions about whether an activity identified in your Indian Housing Plan requires submission of documentation to HUD, contact the Area ONAP staff before you commit IHBG, local, or other funds to the activity.

b. Categorically Excluded from NEPA, Subject to Laws and Authorities

The regulation at 24 CFR §50.20(a) lists the following relevant categorically excluded activities subject to the Federal laws and authorities cited at 24 CFR §50.4:

- 1.) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities;
- 2.) Rehabilitation of existing buildings and improvements when the following conditions are met:

- i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in the floodplain or a wetland;
- ii. In the case of multifamily residential buildings: (A) unit density is not changed more than 20 percent; (B) the project does not involve changes in land use from residential to non-residential; and (C) the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and
- iii. In the case of non-residential structures, including commercial, industrial, and public buildings: (A) the facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and (B) the activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

3.) Individual actions:

- i. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
- ii. An individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart, and there are not more than four units on any one site.

Note: Paragraphs 3.i. and ii. do not apply to the rehabilitation of a building for residential use (with one to four units). That rehabilitation is categorically excluded if it meets the conditions in paragraph 2.i. above.

- 4.) Acquisition (including leasing) or disposition of, or equity loans on, an existing structure, or acquisition (including leasing) of vacant land, provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

Documentation

HUD will document the environmental review in HEROS. The recipient must provide information from Attachment C as appropriate.

c. Environmental Assessment

All other activities require an Environmental Assessment, unless the project is determined to have a significant impact on the human environment; would provide a site for hospitals or nursing homes containing a total of 2,500 or more beds; or would involve 2,500 or more

housing units, in which case HUD must prepare an environmental impact statement (24 CFR 50.42).

Documentation

HUD will document the environmental review in HEROS. The recipient must provide information to HUD on all questions in Attachment C.

d. Environmental Impact Statement

HUD will prepare an environmental impact statement for projects deemed to have a significant impact on the human environment and for projects that involve 2,500 or more housing units or beds. It is the policy of the Department to reject proposals that have significant adverse environmental impacts, and to encourage the modification of projects to enhance environmental quality and minimize environmental harm (24 CFR §50.3(a)).

B. Qualified Data Sources

Recipients are encouraged to obtain information at the earliest possible stage. The guidance in Attachment C should be followed to provide HUD with information pertaining to compliance with the Federal environmental laws and authorities for projects that are categorically excluded from NEPA, but are subject to laws and authorities at 24 CFR §50.4, and for environmental assessments. Attachment B should be used for homebuyer assistance activities for existing units or units already under construction or equipment purchase. Information provided by recipients must be from a qualified data source. A single letter from a qualified source could possibly provide threshold information for several of the applicable Federal environmental laws and authorities.

IV. Conclusion

If a tribe chooses not to assume environmental review responsibility under 24 CFR Part 58, a recipient shall supply HUD with all available relevant information necessary for HUD to perform the environmental review under 24 CFR Part 50. HUD retains all decision-making authority, but relies on the tribe or TDHE to provide information required to complete the environmental review. Tribes that select this option are to submit an Environmental Assurance that the applicant agrees to assist HUD to comply with 24 CFR Part 50. **Recipients are strongly cautioned not to undertake or commit funds for acquisition, demolition, or development of proposed properties before HUD's approval of specific properties or areas.**

/s/

Jemine A. Bryon, Acting Assistant Secretary for
Public and Indian Housing

Attachment A

ENVIRONMENTAL ASSURANCE OF COMPLIANCE WITH 24 CFR §50.3 (h)

Complete only if your tribe is not assuming environmental responsibilities under 24 CFR Part 58.

The undersigned agrees to assist the Department of Housing and Urban Development (HUD) in complying with the requirements of 24 CFR Part 50 – Protection and Enhancement of Environmental Quality with respect to the projects or activities included in Program Number _____ . As part of this assistance, the Indian tribe, or Tribally Designated Housing Entity on its behalf, shall:

- (1) Supply HUD with all available relevant information necessary for HUD to perform the environmental review required by 24 CFR Part 50 for each project;
- (2) Carry out mitigating measures required by HUD or select an alternative property; and,
- (3) Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit any funds, HUD or non-HUD, for these program activities with respect to any eligible property, until HUD approval of the property is received.

NAME & TITLE: _____
(type or print)

SIGNATURE & DATE: _____

Attachment B

ENVIRONMENTAL REVIEW INFORMATION: Homebuyer Assistance Program (section 1) and Equipment Purchase (section 2) under the Indian Housing Block Grant Program

Section 1: Homebuyer Assistance Program (existing housing units without rehabilitation)

Provide documentation as identified in “type of documentation” for **each housing unit**. HUD may request additional information or clarification when conducting the environmental review.

Project Address: _____

Use of funds (e.g., down payment, gap financing) _____ Amount: _____

Documentation Attached:	Law or Authority	Type of Documentation
<input type="checkbox"/> Yes	Coastal Barrier Resources Act	- Coastal Barrier Resources Act (CBRA) Map with project site identified; or - Statement that the project is not in a state with Coastal Barrier Resources ¹
<input type="checkbox"/> Yes	Flood Insurance	- Flood Insurance Rate Map with project site identified. - Documentation of flood insurance if the unit is in a 100 year floodplain
<input type="checkbox"/> Yes	Airport Clear Zones	- Map showing the site relative to any airports and the Accident Potential Zone (APZ) or Runway Protection Zone/Clear Zone (RPZ/CZ) or documentation from a qualified data source - A copy of the disclosure statement signed by the purchaser if unit is in a RPZ/CZ

¹ Only Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Puerto Rico, Rhode Island, South Carolina, Texas, the Virgin Islands, Virginia, and Wisconsin have Coastal Barrier Resources System units. See <http://www.fws.gov/cbra/Maps/index.html> for maps.

Section 2: Equipment Purchase

Provide documentation as identified in “type of documentation” for equipment to be purchased. HUD may request additional information or clarification when we conduct the environmental review.

Project Address: _____

Project description _____ Amount: _____

Documentation Attached:	Law or Authority	Type of Documentation
<input type="checkbox"/> Yes	Floodplain	- Flood Insurance Rate Map with project site identified. - Documentation of flood insurance if the unit is in a 100 year floodplain