

more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) 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.

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to § 58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) 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;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses

and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003]

#### § 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.