

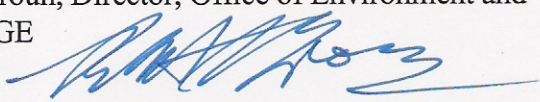


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

SEP 21 2005

MEMORANDUM TO: REGIONAL AND FIELD ENVIRONMENTAL OFFICERS

FROM: Richard H. Broun, Director, Office of Environment and  
Energy, DGE 

SUBJECT: HUD Environmental Regulations and Section 106 Agreement  
Documents

The purpose of this memorandum is to clarify that, in order to maintain clear distinctions of legal environmental responsibility, HUD **does not** sign Section 106 agreement documents covering 24 CFR Part 58 programs and grants. HUD must not sign either as a signatory or as a consulting/concurring party. This memorandum also articulates the roles of the field office and the Office of Environment and Energy (OEE) in providing technical assistance on Section 106 agreements that have precedent-setting implications, such as statewide applicability or mixed HUD assistance.

Field office environmental staff is hereby directed to amend any Part 58 Section 106 agreement documents to remove HUD as a signatory or consulting/concurring party. Staff should accomplish this as soon as is feasible. Section 106 agreements should contain standard clauses that establish an amendment process. If they do not, staff can file an amendment request in accordance with 36 CFR 800.6(c)(7).

HUD's role under 24 CFR Part 58:

HUD has unique legislative authority, as specified in several statutes, including the Housing and Community Development Act of 1974, as amended, that allows State, Tribal, and local governments ("responsible entities" or REs) to assume responsibility for all of HUD's environmental requirements in a number of HUD programs. This has been codified in 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." Within Part 58, Sections 106 and 110 of the National Historic Preservation Act and 36 CFR Part 800 are identified as specific requirements that may be assumed by the RE. As noted in various subsections of 36 CFR Part 800, including §800.2(a), REs are the "agency official" for the purposes of Section 106. HUD may provide technical assistance or otherwise facilitate Section 106 agreements for REs. However, as noted above, HUD **is not** a signatory to those agreements. The legal responsibility lies with the RE.



Part 58 includes two of HUD's most popular and flexible programs -- Community Development Block Grants and HOME Investment Partnership Grants. A list of Part 58 programs and grants and their authorizing statutes is identified at §58.1(b) and is available on line at:

<http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/laws/index.cfm#assumption>

HUD's role under 24 CFR Part 50:

A separate set of regulations, 24 CFR Part 50, "Protection and Enhancement of Environmental Quality," establishes procedures for HUD compliance with environmental requirements, including Section 106. Under Part 50, HUD is directly responsible for environmental compliance. Part 50 covers all HUD grant and other programs not specifically identified in §58.1(b). For Part 50 programs, HUD is a signatory to Section 106 agreement documents. The HUD signatory should be the head of the field office from which the grant is administered. If that is not possible, then OEE will determine the appropriate signatory.

There may be cases where a Part 58 program and a Part 50 program will provide assistance to the same project or undertaking. In such cases, it is legally appropriate for both an RE and HUD to sign a Section 106 agreement for a specific project. However, the project-specific agreement must clearly state that HUD is signing only for the assistance covered by Part 50, and that it is not signing for assistance covered by Part 58. Cases such as these and others with precedent-setting implications will be handled on a case-by-case basis, and the field office must request OEE technical assistance.

For questions or comments regarding this policy, please contact David Blick, Historic Preservation Officer at (202) 708-2894, ext. 5718 or [David\\_G\\_Blick@hud.gov](mailto:David_G_Blick@hud.gov), or me at (202) 708-2894, ext. 4439 or [Richard\\_Broun@hud.gov](mailto:Richard_Broun@hud.gov).