



**Office of Public Housing
Kansas City, KS**

**Public Housing Capital Fund and American
Recovery and Reinvestment Act of 2009
Environmental Reviews**



Issue Date: May 12, 2014

Audit Report Number: 2014-FW-0002

TO: Frances M. Cleary
Director of the Kansas City Office of Public Housing, 7APH

//signed//

FROM: Gerald R. Kirkland
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SUBJECT: Improvements Are Needed Over Environmental Reviews of Public Housing and Recovery Act Funds in the Kansas City Office

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Kansas City Office of Public Housing's oversight and performance of environmental reviews pertaining to the Public Housing Capital Fund Program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (817) 978-9309.



May 12, 2014

Improvements Are Needed Over Environmental Reviews of Public Housing and Recovery Act Funds in the Kansas City Office

Highlights

Audit Report 2014-FW-0002

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) Kansas City, KS, Office of Public Housing as part of a nationwide audit of HUD's oversight of environmental reviews. We selected the Kansas City Office based on our risk assessment. Our audit objectives were to determine whether the Kansas City Office ensured that (1) the responsible entities or the Kansas City Office performed the required reviews and (2) HUD did not release funds until all requirements were met and required documents were submitted.

What We Recommend

We recommend that two housing agencies repay HUD, for transmission to the U.S. Treasury, more than \$1 million and support or repay almost \$19 million. We also recommend that the Director of the Kansas City Office of Public Housing take available actions against two housing agencies and their responsible entities. To correct systemic weaknesses identified in this report, we will make recommendations to HUD headquarters in an upcoming nationwide audit report.

What We Found

The Kansas City Office did not provide adequate oversight of two public housing agencies to ensure that the responsible entities properly completed and documented environmental reviews as required by 24 CFR (Code of Federal Regulations) Part 58. Further, it did not maintain sufficient internal control records. These conditions occurred because the Kansas City Office thought that the Office of Community Planning and Development (CPD) was responsible for monitoring responsible entities; thus, it did not monitor them or the housing agencies, and it did not properly implement the environmental requirements.

The Kansas City Office also did not follow environmental requirements of 24 CFR Part 50 for the nine public housing agencies that we reviewed. This occurred because the Kansas City Office did not have adequate standard operating procedures and its culture concerning environmental reviews was inattentive.

As a result, the Kansas City Office may have increased the risk to the health and safety of public housing agency residents and the general public, and may have failed to prevent or eliminate damage to the environment. Further, the 11 housing agencies spent more than \$27 million, including more than \$12 million in Recovery Act grant funds, for projects that either did not have environmental reviews, or that did not have adequately supported environmental reviews.

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BACKGROUND AND OBJECTIVES

In January 1970, Congress passed the National Environmental Policy Act of 1969 (NEPA). The objective of this legislation was to establish a national policy that would encourage productive and enjoyable harmony between man and his environment and to promote efforts to prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man. To carry out the policy set forth in the Act, Congress directed that it is the continuing responsibility of the Federal Government to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. Further, Congress authorized and directed all agencies of the Federal Government to identify and develop methods and procedures to ensure that the agencies complied with environmental policies, regulations, and public laws of the United States.

To further the purpose and policy of NEPA, the President issued Executive Order 11514, Protection and Enhancement of Environmental Quality, on March 5, 1970. Based on the executive order, the heads of Federal agencies are required to continually monitor, evaluate, and control their agencies' activities so as to protect and enhance the quality of the environment. In addition, Federal agencies are required to review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, to identify any deficiencies or inconsistencies that prohibit or limit full compliance with the purposes and provisions of the Act.

The U.S. Department of Housing and Urban Development (HUD) responded to NEPA and Executive Order 11514 by developing 24 CFR (Code of Federal Regulations) Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, and 24 CFR Part 50, Protection and Enhancement of Environmental Quality. Regulations at 24 CFR Part 58 allow State and local governments to assume HUD's responsibility for environmental reviews. This responsibility includes the environmental review, decision making, and action that would otherwise apply to HUD under NEPA and other provisions of law. However, the regulations also require HUD to monitor, inspect, and ensure that the environmental process decisions are carried out during project development and implementation. Regulations at 24 CFR Part 50 direct HUD to carry out the policies of NEPA and other laws and authorities. This responsibility includes an independent evaluation of the environmental issues, the scope and content of the environmental compliance finding, and making the environmental determination.

Our audit objectives were to determine whether the Kansas City Office of Public Housing ensured that (1) the responsible entities or the Kansas City Office performed the required reviews and (2) HUD did not release funds until all requirements were met and required documents were submitted.

RESULTS OF AUDIT

Finding 1: The Kansas City Office of Public Housing Did Not Provide Adequate Oversight of 24 CFR Part 58 Environmental Reviews

The Kansas City Office did not provide adequate oversight of two public housing agencies to ensure that the responsible entities properly completed and documented environmental reviews. Further, it did not maintain sufficient internal control records. These conditions occurred because the Kansas City Office thought that the Office of Community Planning and Development (CPD) was responsible for monitoring responsible entities; thus, it did not monitor them or the housing agencies, and it did not properly implement environmental requirements. As a result, the Kansas City Office may have increased the risk to the health and safety of public housing agency residents and the general public, and may have failed to prevent or eliminate damage to the environment. Further, the two housing agencies spent more than \$20 million, including almost \$9 million in Recovery and Reinvestment Act of 2009 grant funds, for projects that either did not have environmental reviews that met requirements or had environmental reviews that were not adequately supported.

The Kansas City Office Did Not Provide Adequate Oversight To Ensure Environmental Compliance

To assess compliance with requirements, we performed reviews of the Kansas City, KS, and Kansas City, MO, housing authorities and their responsible entities, the Government of Wyandotte County-Kansas City, KS, and the City of Kansas City, MO, respectively. There were significant deficiencies at each housing agency. Although, the Kansas City Office maintained environmental records of the housing agencies, it failed to recognize that the reviews did not meet regulatory requirements. Instead, it improperly implemented requirements and released funding to the housing agencies. As a result, the Kansas City Office may have increased the risk to the health and safety of public housing agency residents and the general public, and may have failed to prevent or eliminate damage to the environment.

The Kansas City Office Did Not Provide Adequate Oversight To Ensure That the Responsible Entities Properly Completed Part 58 Environmental Reviews

Because the Kansas City Office did not provide adequate oversight, it did not determine that the two public housing agencies and their responsible entities improperly implemented 24 CFR Part 58 environmental review requirements. A responsible entity assumes the responsibility for conducting the environmental

reviews, decision making, and other actions that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA.¹ The environmental review process consists of all actions that a responsible entity must take to determine compliance.² The Kansas City Office did not determine that the responsible entities

- Improperly used tiering when performing a housing agency’s environmental reviews;
- Incorrectly classified many housing agency projects as categorically excluded not subject to 24 CFR 58.5;
- Incorrectly implemented compliance determinations;
- Had not completed the environmental reviews before releasing funds;
- Failed to reevaluate project changes; and
- Failed to meet public notification requirements.

The City of Kansas City, MO, Improperly Used Tiering

The Kansas City Office did not determine that the City of Kansas City, MO, improperly used tiering when performing environmental reviews of the Kansas City, MO Housing Authority’s developments and projects. A responsible entity may tier the environmental review to eliminate repetitive discussions of the same issues when there is a requirement to evaluate a policy or proposal in the early stages of development. Tiering is also appropriate when site-specific analysis or mitigation is not currently feasible and it would be better to conduct a more narrow or focused analysis at a later date.³ In a tiered review, the responsible entity conducts a broad level of review (tier I) that addresses and analyzes those environmental impacts related to the proposed action that might occur on a typical site within the geographic area, to include floodplains, coastal zones, wetlands, etc. Once the broad review is completed, a public notification and certification to Request Release of Funds (form HUD-7015.15) is issued.

The last process consists of the site-specific reviews (tier II), during which environmental effects are addressed based on a known site location. This process includes historic preservation, hazardous materials, noise abatement, asbestos removal, etc. The City’s environmental review coordinator, in response to his review of the 5-year Capital Fund plan, reported in the environmental review record that tier II reviews would be conducted on development sites and activities “as they are identified.” However, the developments and projects were identified in the housing agency’s 5-year Capital Fund plan, which included repairs, rehabilitation, and improvements. Therefore, the City’s environmental certification on the form HUD-7015.15 was inaccurate as the City certified compliance with the requirements of 24 CFR 58.5 and 58.6 when they had not been met and site-specific compliance had not been determined.

¹ 24 CFR 58.4(a)

² 24 CFR 58.30(a)

³ 24 CFR 58.15

The Responsible Entity Incorrectly Classified Kansas City, KS, Housing Authority Projects as Categorically Excluded Not Subject to Requirements

The Kansas City Office did not find that the responsible entity incorrectly categorized the Kansas City, KS, Housing Authority's 2009 Recovery Act and its 2011 and 2012 Capital Fund projects as categorically excluded not subject to 24 CFR 58.5 when many of the projects should have been classified as categorically excluded subject to the requirements. By incorrectly categorizing the housing agency's projects as "maintenance" activities, the housing agency was allowed to spend significant funds on "repairs and improvements" that failed to meet 24 CFR 58.5 requirements. Further, it appeared that the housing agency influenced the responsible entity to determine that the projects were categorically excluded from review and provided the responsible entity with a sample environmental letter to use. Categorically excluded refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. However, compliance with the other applicable Federal environmental laws and authorities listed in 24 CFR 58.5 is required for certain projects considered as categorically excluded subject to the requirements. This category includes activities such as acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities when the facilities and improvements are in place and will be retained in the same use.⁴

The City of Kansas City, MO, Incorrectly Implemented Compliance Factors

The City of Kansas City, MO, incorrectly implemented several compliance factors. For example, the City determined that the Kansas City, MO, Housing Authority's program activities fell below the noise reduction and control threshold for compliance with 24 CFR Part 51, Subpart B. The City interpreted HUD's noise rule regulation as not applying to modernization projects, such as repair, rehabilitation, or improvements. However, HUD encouraged noise attenuation features for modernization projects located in all noise-exposed areas.⁵ As a result of the misinterpretation, the Kansas City, MO, Housing Authority replaced windows at several properties where the presence of noise impacts should have been considered but were not. Failure to consider the noise impacts precluded the opportunity to include noise mitigation during renovations and potentially exposed residents to avoidable environmental effects.

Other compliance factors incorrectly implemented by the City included floodplain management, explosive and flammable (hazardous) operations, and environmental justice. For example, the City of Kansas City, MO, misapplied a particular provision of HUD's floodplain management regulation to the housing agency's entire inventory of properties. The City applied a provision related solely to single-family dwellings when the housing agency's properties were multifamily developments. Because the City misapplied the floodplain

⁴ 24 CFR 58.35(a)(1)

⁵ 24 CFR 51.101(a)(5)

management regulation, it may have failed to identify and mitigate any potential flood hazards for developments that may have been located in a floodplain. In addition, neither of the responsible entities, the Government of Wyandotte County-Kansas City, KS, nor the City of Kansas City, MO, provided documentation showing how the housing agencies achieved compliance with floodplain management requirements.⁶

The Kansas City Office Failed To Find That a Housing Agency Obligated Funds Before the Environmental Review Determination

The Kansas City Office failed to determine that the Kansas City, KS, Housing Authority obligated more than \$1 million in Recovery Act funds before the responsible entity, the Unified Government of Wyandotte County-Kansas City, KS, performed and documented the environmental review determination. HUD assistance cannot be committed to any activity or project until the responsible entity has documented its environmental determination and HUD has approved the form HUD-7015.15.⁷ The Kansas City, KS, Housing Authority obligated more than \$1 million in 2009 Recovery Act capital funds before the environmental review was completed. The housing agency and various contractors signed five contracts between May 21 and October 8, 2009; however, the environmental review was not signed by the responsible entity until November 17, 2009.

The Kansas City Office Did Not Determine That a Housing Agency Failed To Report Substantial Project Changes

The Kansas City Office did not determine that the Kansas City, KS, Housing Authority failed to submit to the responsible entity for its reevaluation any changes that occurred between the housing agency's annual plan and approved 5-year environmental review. However, the Kansas City Office reported in its Recovery Act remote monitoring report that some work items, including significant amendments, were not in the 2009 annual plan or the 5-year Capital Fund program action plan. The housing agency must inform the responsible entity promptly of any proposed substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original scope.⁸ The responsible entity must reevaluate its environmental findings to determine whether the original findings are still valid and update the environmental review record by including the reevaluation in its record. The Authority's modernization coordinator and the responsible entity's director agreed that changes to the annual plan were not submitted for reevaluation of the environmental clearance.

⁶ 24 CFR Part 55, Subpart C-Procedures for Making Determinations on Floodplain Management

⁷ 24 CFR 58.22(a)

⁸ 24 CFR 58.47(a)(1) and (b)(3)

The Kansas City Office Failed To Determine That a Responsible Entity Did Not Comply With Public Notification Requirements

The Kansas City Office failed to determine that the City of Kansas City, MO, did not provide required public notification of specific locations affected by a housing agency's use of its 2009 Recovery Act and its 2011 and 2012 Capital Fund grants. According to requirements,⁹ the responsible entity, using the current HUD-recommended format or an equivalent, must prepare and publish a notice of intent to request release of funds before it signs the form HUD-7015.15. The HUD-recommended format includes identifying the project title, purpose, location, and estimated cost. The responsible entity listed the location only as "citywide, Kansas City, Missouri," although it knew the actual project locations.

The Kansas City Office Did Not Provide Adequate Oversight To Ensure That the Responsible Entities Properly Documented Part 58 Environmental Reviews

The Kansas City Office did not determine that responsible entities failed to properly identify their project descriptions or adequately document support in their environmental review records. The responsible entity must maintain a written record of the environmental review. The environmental review record must contain all of the environmental review documents, public notices, and written determinations or findings as evidence of the review, decision making, and actions. Further, the documents must describe the project and the activities that the recipient has determined to be part of the project, evaluate the effects of the project on the environment, and document compliance with applicable statutes and authorities.¹⁰

The Kansas City, MO, Housing Authority's environmental review records for its 2009 Recovery Act and its 2011 and 2012 Capital Fund grants did not provide adequate project descriptions of the activities that the housing agency determined to be part of the project. Project descriptions should detail the (1) location so the public can locate the site; (2) purpose and need to describe what is being done and why it is necessary; (3) area, which provides the character, features, resources, and trends; and (4) activity description, which gives complete details about what will be done, the type of project, and the timeframe for implementation.

Similarly, the Kansas City, KS, Housing Authority's environmental review records for its 2009 Recovery Act and its 2011 and 2012 Capital Fund grants did not contain complete project descriptions of the various developments. Specifically, the responsible entity did not provide significant and relevant information, including the number of buildings, number of units, age of structures, location maps, or site photographs. Further, HUD's Office of Environment and Energy guidance¹¹ states that a complete and clear project

⁹ 24 CFR 58.43(a) and 58.70

¹⁰ 24 CFR 58.38

¹¹ OneCPD Storyboards: Environmental Review, dated November 13, 2012

description is the first step in the environmental review process. The project description should provide location-specific information and geographic boundaries, as well as a delineation of all activities included in the overall scope of the project. However, the housing agency and the responsible entity provided only a property name and work items such as roof replacement; exterior repair or painting; and heating, ventilation, and air conditioning improvements.

None of the records for the Kansas City, MO, Housing Authority's Recovery Act or 2011 and 2012 Capital Fund grants complied with requirements to document all factors identified in 24 CFR 58.5 and 58.6. While the environmental review was performed based on a 5-year plan that covered the years 2008-2012, the record did not contain the required compliance documentation supporting most of the items identified on the statutory checklists. For example, the statutory checklist requires compliance with airport clear zones and accident potential zones.¹² However, the responsible entity determined that no single-family housing existed within the zones without providing a basis to support its determination.

Similarly, the Kansas City, KS, Housing Authority's environmental review records did not comply with records requirements.¹³ None of the records contained required compliance documentation supporting the items identified on the checklist. For example, the responsible entity determined that the housing agency's projects were not located in a Federal Emergency Management Agency (FEMA)-identified special flood hazard area.¹⁴ However, it did not provide supporting documentation to verify that the housing agency's projects were located outside a special flood hazard area.

The Kansas City Office Did Not Ensure That Agencies Verified and Documented Compliance Requirements

The two housing agencies and their responsible entities did not address or provide documentation supporting their compliance with any of the following requirements: historic preservation, floodplain management, flood insurance, contamination and toxic site hazards, noise control, explosive and flammable operations, environmental justice, air quality, sole-source aquifers, wetland protection, endangered species, wild and scenic rivers, farmland protection, and airport clear zones. For example, neither of the responsible entities provided documentation showing how the two housing authorities achieved compliance with floodplain management requirements¹⁵ or that they complied with flood insurance requirements. Other specific examples of noncompliance include

¹² 24 CFR Part 51, Subpart D

¹³ 24 CFR 58.38

¹⁴ 24 CFR 58.6

¹⁵ 24 CFR Part 55, Subpart C-Procedures for Making Determinations on Floodplain Management

- *Contamination and toxic site hazards* - The Kansas City, KS, Housing Authority's environmental review record contained Environmental Protection Agency (EPA) facts sheets indicating low levels of metals and pesticides in the soil near one of its projects and that the responsible entity was working with EPA to remove any remaining hazardous materials from the site. However, it did not consider this information in the housing agency's environmental review.
- *Explosive and flammable operations* - The City of Kansas City, MO, determined that the proposed activities did not provide an increase in unit density; therefore, the housing agency was not implicated. However, it neglected to mention other thresholds, such as regulations¹⁶ that apply to vacant units made habitable, as well as converting a building to residential use.
- *Historic preservation* - The housing agencies and their responsible entities did not completely comply with Section 106 of the National Historic Preservation Act, which requires an agency official to identify historic properties in consultation with the State historic preservation officer of the intended effect on historic properties. Consultation is required even if the responsible entity believes that no historic properties are present or that historic properties may be present but the undertaking will have no adverse effect upon them.
- *Air quality, sole-source aquifers, wetland protection, endangered species, wild and scenic rivers, farmland protection, and airport clear zones* - The housing agencies and their responsible entities provided no documentation to support that the above compliance factors were addressed and met requirements. If these compliance factors did not require further review and the specific projects met the requirements, documentation supporting that they were addressed must be maintained in the environmental review record.

The Kansas City Office Did Not Ensure That Operating Costs Met Environmental Requirements

For both 24 CFR Parts 58 and 50 reviews, the Kansas City Office did not ensure that funds transferred to housing agency operating accounts met environmental requirements. Staff members stated that no requirement or guidance existed that prohibited operating costs from being used as a capital improvement; therefore, they did not look at the work items performed with operating funds as the funds lose their Capital Fund requirements once transferred from the Capital Fund account to the operating account. They further stated that this determination was based on the definition and perception of what is defined for modernization and

¹⁶ 24 CFR Part 51, Subpart C-Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

capital improvements and claimed that the definition was too vague and left to the users' interpretation. However, HUD's Field Office Environmental Review Guidance¹⁷ states that housing agencies should provide a description of operating costs to HUD or the responsible entity to allow completion of the environmental review.

Further, 24 CFR 990.116 provides that the environmental review procedures of NEPA and the implementing regulations at 24 CFR Parts 50 and 58 are applicable to the operating fund program. In addition, the housing agencies' annual contributions contracts¹⁸ prohibit any costs incurred as part of the development or modernization costs from being included in operating expenditures. Responsibility for determining whether operating funds meet environmental requirements is determined by the type and nature of the projects or activities for which the costs were incurred and not on the characterization of funds, such as capital or operating.

The Kansas City Office Did Not Maintain Sufficient Internal Control Records

The Kansas City Office did not meet the minimum internal control requirements of HUD's Field Office Environmental Review Guidance. The guidance required, at a minimum, maintaining tracking logs that detailed who performed the environmental reviews, whether the form HUD-7015.15 was received and cleared, and whether HUD performed the environmental reviews directly. The guidance further required maintaining a separate environmental file for each housing agency.

The Kansas City Office tracking log did not include the date on which the form HUD-7015.15 was received, the date on which the environmental review was completed by the responsible entity, the date on which the review was signed by the responsible entity's certifying official, the date for the Kansas City Office's required 15 day wait period, the release of funds date, the year of the grant, or the grant number. Further, several staff members maintained their own personal logs, which were also incomplete and did not meet the requirements.

¹⁷ Section 5: Program Requirements – Capital Fund Program (Special Note)

¹⁸ Form HUD-53012A

The Kansas City Office Did Not Properly Implement Environmental Requirements

The Kansas City Office Did Not Allow the Responsible Entities To Review Projects in Annual Statements Against the Approved 5-Year Environmental Record

The Kansas City Office did not follow requirements¹⁹ that mandated that the responsible entities make all environmental compliance determinations on work items listed in the housing agencies' annual statements, to include comparing them to the approved 5-year environmental review. Instead, it compared the annual statements to the approved 5-year environmental reviews and added a typed "note to file," stating that the work was equal or substantially similar in nature. Therefore, it was not necessary to request that the responsible entity determine whether the results of that year's annual environmental review remained valid. In some instances, staff added handwritten notes that described work items, which were considered categorically excluded subject to 24 CFR 58.5, thus requiring further review by the responsible entity that performed the original 5-year environmental review. The responsible entities were required to accept legal responsibility for environmental reviews by certifying compliance with the requirements, which the Kansas City Office placed at risk by making decisions that should have been made by the responsible entities.

The Kansas City Office Did Not Adequately Monitor Housing Agencies or Their Responsible Entities

The Kansas City Office did not monitor the housing agencies or their responsible entities for environmental compliance. Further, the Kansas City Office itself had not been monitored for compliance. According to the Kansas City Office's Public Housing technical division director, the Kansas City Office did not perform onsite monitoring of housing agencies to ensure environmental compliance. However, according to 24 CFR 58.77(d), HUD intended to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities at least once every 3 years. Further, Executive Order 11514 required Federal agencies to continually monitor, evaluate, and control their agencies' activities to protect and enhance the quality of the environment.

The Kansas City Office Did Not Provide Training Directly Related to Capital Funds and Processing of Environmental Reviews

The Kansas City Office did not provide environmental training to the housing agencies or responsible entities to ensure compliance. It could require training for housing agencies and their responsible entities if it became aware of deficiencies

¹⁹ 24 CFR 58.4 and 58.30

through monitoring;²⁰ however, it did not require training for anyone directly involved in meeting or ensuring compliance with the requirements. For example, a housing agency modernization coordinator told us that the Office of Public Housing had not provided it formal training on environmental reviews and compliance requirements. A housing agency assistant director told us that agency staff did receive training from CPD, but the training was geared toward CPD programs and was not relevant for Capital Fund modernization programs.

The Kansas City Office Believed That CPD Was Responsible for Ensuring Compliance

In its response to the draft report, the Director of the Kansas City Office of Public Housing stated that the Office of Public Housing is not the delegated HUD office that ensures that responsible entities perform appropriately under the regulations at 24 CFR Part 58. The Director further stated that implementation and interpretation of the provisions is the responsibility of CPD and the Office of Environment and Energy. The Director also stated that it is the Kansas City Office's position that CPD is responsible for monitoring responsible entities performing environmental reviews. The Director's response included a Federal Register Notice to support the position.²¹

While CPD is responsible for implementation and interpretation of the provisions, it is only responsible for monitoring compliance for CPD programs. According to the Notice's summary, its purpose was for the Assistant Secretary for CPD to redelegate to the CPD Deputy Assistant Secretaries and other specified HUD officials all powers and authorities necessary to carry out CPD programs, except those powers and authorities specifically excluded. The Notice did not delegate authority for CPD to conduct environmental reviews of Office of Public and Indian Housing programs. Even if the notice had been interpreted to grant such authority, it was issued after the questioned environmental reviews were completed and certified. Thus, it would not have applied to the grants reviewed during the audit.

²⁰ 24 CFR 58.77(d)(ii)

²¹ The Kansas City Office's response included an attachment. The attachment was Federal Register Notice 31972 Volume 77, Number 104 dated May 30, 2012 *Consolidated Delegation of Authority for the Office of Community Planning and Development*. We did not include the attachment in the report, but it is available for review or can be obtained at www.federalregister.gov.

The Two Housing Agencies Spent More Than \$20 Million for Questioned Costs

Because the environmental reviews did not comply with requirements, the two housing agencies incurred more than \$20 million in questioned costs, including almost \$9 million in Recovery Act funds, as detailed in table 1.

Table 1: Questioned costs

Year	Kansas City, KS, Housing Authority	Kansas City, MO, Housing Authority	Total
2009 Recovery Act funds	\$4,478,750	\$4,517,915	\$8,996,665
2011 capital funds	2,827,316	2,920,093	5,747,409
2012 capital funds	2,555,880	2,710,079	5,265,959
Total	\$9,861,946	\$10,148,087	\$20,010,033

Conclusion

The Kansas City Office did not provide adequate oversight to ensure that the housing agencies and responsible entities properly completed and documented environmental reviews for the two public housing agencies in its jurisdiction that we reviewed. Thus, it was unaware that the public housing agencies and their responsible entities did not properly implement environmental review requirements. Because the environmental reviews did not comply with requirements, the Kansas City Office may have increased the risk to the health and safety of public housing agency residents and the general public, and may have failed to prevent or eliminate damage to the environment. Further, the housing agencies incurred more than \$20 million in questioned costs, including almost \$9 million in Recovery Act funds.

The Kansas City Office was responsible for verifying that environmental reviews complied with requirements, conducting periodic monitoring, and providing training to the housing agencies and responsible entities. Since the conditions described above appeared to have been systemic, there are no recommendations in this report to address the causes. Rather, we plan to make recommendations to HUD headquarters in a future report. However, based on the results of our review of the two agencies, the Kansas City Office should review the deficiencies cited and implement the recommended corrective actions, including repaying more than \$1 million in ineligible costs and supporting or repaying more than \$18.9 million in unsupported costs.

Recommendations

We recommend that the Director of the Kansas City Office of Public Housing require

- 1A. The Kansas City, KS, Housing Authority to repay \$1,039,797 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury for contract obligations that occurred before the environmental review was completed by the responsible entity. Repayment must be from non-Federal funds.
- 1B. The Kansas City, KS, Housing Authority and the Unified Government of Wyandotte County-Kansas City, KS, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or require the housing agency to repay \$3,438,953 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1C. The Kansas City, KS, Housing Authority and the Unified Government of Wyandotte County-Kansas City, KS, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or require the housing agency to repay \$2,827,316 to HUD from non-Federal funds.
- 1D. The Kansas City, KS, Housing Authority and the Unified Government of Wyandotte County-Kansas City, KS, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or require the housing agency to reimburse \$2,555,880 to the Authority's 2012 Capital Fund grant from non-Federal funds.
- 1E. The Kansas City, MO, Housing Authority and the City of Kansas City, MO, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's Recovery Act grant or require the housing agency to repay \$4,517,915 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1F. The Kansas City, MO, Housing Authority and the City of Kansas City, MO, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2011 Capital Fund grant or require the housing agency to repay \$2,920,093 to HUD from non-Federal funds.
- 1G. The Kansas City, MO, Housing Authority and the City of Kansas City, MO, to provide support that they complied with 24 CFR Part 58 requirements for the Authority's 2012 Capital Fund grant or require the housing agency to reimburse \$2,710,079 to the Authority's 2012 Capital Fund grant from non-Federal funds.

- 1H. The housing agencies to work with their respective responsible entities and local HUD environmental officer to show that no harm occurred from completion of all the projects or mitigate any harm that did occur.

We also recommend that the Director of the Kansas City Office of Public Housing

- 1I. Take one or more of the following actions with the two housing agencies and their respective responsible entities:
 - Require attendance by responsible staff and management of the housing agency and responsible entity at HUD-sponsored or -approved training;
 - Refuse to accept the certifications of environmental compliance on subsequent grants;
 - Suspend or terminate the responsible entity's assumption of the environmental review responsibility; and
 - Initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the housing agency.

Finding 2: The Kansas City Office of Public Housing Did Not Follow 24 CFR Part 50 Requirements When It Performed Environmental Reviews

The Kansas City Office did not follow 24 CFR Part 50 environmental requirements when it performed environmental reviews for all nine public housing agencies within its jurisdiction that we reviewed.²² This condition occurred because the Kansas City Office did not have standard operating procedures that followed requirements and the culture concerning environmental reviews was inattentive. As a result, the Kansas City Office may have increased the risk to the health and safety of public housing agency residents and the general public, and may have failed to prevent or eliminate damage to the environment. Further, the nine housing agencies spent more than \$7 million, including more than \$3 million in Recovery Act funds, for projects that did not have a proper environmental review and were not adequately supported.

The Kansas City Office Did Not Follow 24 CFR Part 50 Requirements

For the nine public housing agencies reviewed, the Kansas City Office did not follow requirements when it performed environmental reviews and when it determined compliance with NEPA. Regulations at 24 CFR Part 50 direct HUD to carry out the policies of NEPA and other laws and authorities. This responsibility includes an independent evaluation of the environmental issues, the scope and content of the environmental compliance finding, and making the environmental determination. Failure by HUD to adequately conduct Part 50 environmental reviews results in the residents' having no assurance that they were not exposed to unnecessary risk, contamination, pollution, or other adverse environmental effects. The Kansas City Office did not

- Properly evaluate compliance with the majority of the required compliance factors,
- Provide verification as environmental records were incomplete and lacked supporting documents,
- Comply with internal control requirements,
- Monitor staff for compliance, or
- Follow training provided by HUD environmental officers.

²² We reviewed the Bancroft, IA, Council Bluffs, IA, Sedgwick, KS, Topeka, KS, Valley Falls, KS, Anderson, MO, Independence, MO, Plattsburg, MO, and Sedalia, MO housing agencies.

The Kansas City Office Did Not Properly Evaluate Compliance With the Majority of the Compliance Factors

The Kansas City Field Office did not comply with 24 CFR Part 50 environmental review requirements for any of the nine sampled housing agencies' 2009 Recovery Act or 2011 and 2012 Capital Fund grants. It sent questionnaires to housing agencies that asked questions related to only a few of the compliance factors and then used the information obtained to complete the Environmental Assessment and Compliance Findings for the Related Laws (form HUD-4128) and the Sample Field Notes Checklist. However, there was no documentation supporting the answers provided by the housing agencies or the environmental determinations made by the Kansas City Office. Further, the questionnaires for some housing agencies were missing.

The Kansas City Office did not properly evaluate compliance with any of the following compliance factors: historic preservation, floodplain management and flood insurance, noise impacts, contamination and toxic site hazards, air quality, sole-source aquifers, wetlands protection, endangered species, wild and scenic rivers, farmland protection, explosive and flammable operations, airport clear zones, and environmental justice. Kansas City Office staff marked the majority of the housing agencies' forms HUD-4128 compliance factors as "not applicable" and then marked the compliance factors on the Sample Field Notes Checklist as "review is unnecessary due to nature of physical improvements." However, the Kansas City Office did not have supporting documentation to validate the compliance determination made on either document. The following examples demonstrate the Kansas City Office's failure to properly evaluate or document compliance with some of the compliance factors.

- *Historic preservation* – Historic preservation impacts were not evaluated before activities were undertaken at any of the selected housing agencies. Two of the housing agencies had developments that either could have been eligible for listing as a historic property or could have impacted historic properties adjacent to the development and required consultation with the State Historic Preservation Office.²³
 - (1) The Plattsburg Housing Authority undertook rehabilitation at a building that may have been eligible for listing in the National Register of Historic Places. It appeared that the Authority's executive director reported to the Kansas City Office that no historic properties were registered on or adjacent to the site. However, without consulting with the State Historic Preservation Office, the Kansas City Office did not ensure compliance with the requirements.
 - (2) The Council Bluffs Housing Authority provided the Kansas City Office information stating that a project was not located adjacent to a

²³ 24 CFR 50.4(a) and 36 CFR 800.4(d)(1)

property listed in the National Register of Historic Places. However, there were two historic properties adjacent to the development. Rehabilitation of the development included exterior work, which could have had an adverse effect on these historic properties. In addition, the historic eligibility of the development was not determined. The Kansas City Office claimed that the proposed work items consisted of nonroutine maintenance and did not have the potential to adversely affect the historic properties. This claim contradicted the reported “rehabilitation” work that was performed.

- (3) The remaining seven housing agencies lacked adequate documentation to substantiate compliance. The Kansas City Office did not consult with the State Historic Preservation Office to determine whether the housing agency’s properties were affected. Instead, it used generalized language on the form HUD-4128 or the checklists, stating that the work performed did not have an effect on historical properties if any were present.
- *Floodplain management and flood insurance* – The Kansas City Office did not evaluate floodplain management or flood insurance requirements at any of the selected housing agencies. Three of the nine housing agencies had developments that did not meet the requirements.²⁴
- (1) The Sedgwick Housing Authority had a development that was identified as being in a special flood hazard area; thus, flood insurance was required. However, contrary to the requirements, the Kansas City Office concluded that the development did not require flood insurance.
 - (2) The Bancroft Housing Authority had several developments that appeared to be located within a special flood hazard area; thus, flood insurance was required. However, the Kansas City Office did not ensure compliance by correctly identifying on the FEMA maps where the developments were located and whether they were located in a special flood hazard area.
 - (3) The Council Bluffs Housing Authority had a development located within a 500-year floodplain. However, the Kansas City Office incorrectly determined that the development was outside the zone and, therefore, did not determine whether the projects constituted a “critical action” that would require compliance with the floodplain management 8-step decision-making process.

²⁴ 24 CFR Parts 50.4(b) and 55.20

(4) The remaining six housing agencies lacked supporting documentation to substantiate that the developments were not located in a special flood hazard area. The Kansas City Office generally referenced a FEMA map panel number on the form HUD-4128 or checklist, but the map was not included in the files.

- *Noise control* – The Kansas City Office did not evaluate compliance with noise control requirements for major rehabilitation or conversion projects to determine whether there was a need for noise reduction features. Five (Topeka, Sedalia, Independence, Anderson, and Sedgwick) of the nine housing agencies had substantial rehabilitation projects that did not meet the noise reduction and control requirements.²⁵ All five had railroads within their established threshold distances. Two of the housing agencies also had a main road or highway within the threshold, and another had a major interstate. As a result, the noise levels at each development exceeded requirements, which required HUD to strongly consider conversion of the developments to land uses that were compatible with high noise levels. However, the Kansas City Office incorrectly determined that noise control was “not applicable due to nature of physical improvements” at the five developments.
- *Hazardous operations and toxic site hazards* – The Kansas City Office did not evaluate any of the nine housing agencies for hazardous operations or toxic chemicals and radioactive substances. The Bancroft Housing Authority was not identified as having potentially hazardous operations or toxic hazards at or near the property. The Kansas City Office marked the housing agency’s form and checklist for its Pleasantview Manor development as having complied because no industrial facilities handling explosive or fire-prone materials, such as storage tanks, were adjacent to the property. However, the Iowa Department of Natural Resources identified two leaking underground storage tanks located 0.4 and 0.3 miles from the development site as “high risk.” The Kansas City Office’s review did not identify or evaluate these tanks, nor did it provide supporting documentation to validate compliance with the requirements.²⁶
- *Air quality* – The Kansas City Office did not evaluate or record whether any of the nine housing agencies had been properly inspected for the presence of asbestos and if found, whether the appropriate notification, abatement, and disposal measures had been implemented as required.²⁷ Four of the housing agencies’ rehabilitation projects included replacement of major systems (heating, ventilation, and air conditioning), roofing, windows, and flooring, all of which can contain asbestos materials. The

²⁵ 24 CFR 50.4(k) and 24 CFR Part 51, Subpart B

²⁶ 24 CFR 50.3(i)(1)

²⁷ 24 CFR 50.4(h)

other five housing agencies did not provide specific projects. Thus, a determination could not be made as to whether air quality should have been addressed. The Kansas City Office marked the housing agencies' forms and checklists as complying with the air quality State implementation plan, but no supporting documentation was provided to substantiate these determinations. Noncompliance with Federal asbestos requirements can result in criminal as well as civil charges.

- *Other NEPA-related laws and authorities cited in 24 CFR 50.4* – The Kansas City Office did not evaluate any of the nine housing agencies for compliance with environmental justice, sole-source aquifers, wetland protection, endangered species, wild and scenic rivers, farmland protection, and airport clear zones. These other NEPA-related laws and authorities were marked on the form and checklist as “not applicable” and “not applicable due to nature of physical improvements” without supporting documentation to validate these determinations.

Environmental Records Were Incomplete and Lacked Supporting Documentation

The Kansas City Office did not properly document its decision making for compliance with NEPA. Specifically,

- Project descriptions were missing from the files or were not adequate to determine the level of environmental review needed to comply with requirements. In addition, identical language was regularly used to describe different projects in different communities. The common language found in the review records was “listed in the HA’s [housing agency] Annual Statement and 2005-2009 or 2010-2014 CFP [Capital Fund program] 5-Year Action Plan.” However, a project description should include the following details: (1) location – a street address or map coordinates, information that the public could use to locate the development; (2) purpose and need – what is being done and why; (3) area – the character, features, and resources of the area and how the project benefits it; and (4) activity description – complete details about what is being done (the type of project, the timeframe, and the size of the project).

For example, the Topeka Housing Authority project information associated with the form HUD-4128 failed to clearly describe the activities proposed for each development. Further, the Authority’s annual statement did not describe the number of buildings, number of units, or age of structures. It also did not provide site plans, location maps, or site photographs that would support what activities comprised the projects, where the projects were located, and when the activities would be performed. HUD’s Office of Environment and Energy guidance²⁸ states

²⁸ OneCPD Storyboards: Environmental Review, dated November 13, 2012

that a complete and clear project description is the first step in the environmental review process.

- The environmental review records contained form HUD-4128 as required, and for the most part, the Sample Field Notes Checklist; however, they lacked supporting documentation for the compliance factors addressed. Staff marked the forms for many of the compliance factors, including noise abatement, hazardous operations, airport hazards, and protection of wetlands, as “not applicable.” The forms of source documentation were statements on the field notes checklist of “not applicable due to nature of physical improvements” and “questionnaire completed by housing agency executive director.” Further, staff marked factors including floodplain management, historic preservation, toxic chemicals, and radioactive materials, and other authorities cited in 24 CFR 50.4 as “refer to attached field notes checklist.” The source documentation for these factors included statements of “HA’s 2005 & 2006 PHA [public housing agency] Plans,” “review unnecessary due to nature of physical improvements,” and “Housing Authority’s CFP Annual Statement and Five-Year Action Plan.” A properly marked FEMA map identifying the actual locations of housing agency properties, a documented finding sent to the State historic preservation officer or a programmatic agreement with the State historic preservation officer, an airport clear zone map that can be obtained by the local airport management, and a national wetlands inventory map found on the U.S. Fish and Wildlife Web site are examples of valid source documentation.
- Many of the environmental review records contained a “note to file,” signed by a staff person, which stated, “proposed work for the 2009, 2011, or 2012 CFP fund is either similar to or not substantially different than work proposed under the 2005-2009 or 2010-2014 Five-Year PHA Plan covered by the last environmental review. Work includes such items as operations, management improvements, fees and costs and dwelling structures, site improvement, equipment and repair and replacement of building components.” The environmental review must be reevaluated and updated when the basis for the original environmental or compliance findings is affected by a change unless the change is the amount of financing or mortgage insurance.²⁹

The Kansas City Office Did Not Comply With Internal Control Requirements

The Kansas City Office did not comply with internal control requirements set forth in HUD’s Field Office Environmental Review Guidance, which required, at a minimum, (1) a list of responsible entities that HUD determined would or would not perform the environmental reviews on behalf of HUD, (2) a list of form HUD-7015.15s that had been received and the corresponding clearance provided,

²⁹ 24 CFR 50.36

(3) a list of environmental reviews conducted by the Kansas City Office, and (4) separate environmental files for each housing agency within its jurisdiction. The Kansas City Office's tracking log was incomplete as it did not contain a list of forms HUD-7015.15 that detailed the grant year, the grant number, the date received, the required waiting period, and the date on which funds were released. The log also did not contain a list of environmental reviews conducted by the Kansas City Office that included the grant year, grant number, date on which the environmental review was completed, date on which the review was signed by the approving official, and date on which the letter was sent to the housing agency approving its use of the funds. Further, several staff members maintained their own logs, which also did not meet the internal control requirements.

The Kansas City Office Was Not Monitored for Compliance

The Kansas City Office had not been monitored for compliance with environmental requirements. The Kansas City regional environmental officer stated that he monitored only HUD's CPD programs because he did not have authority over any other HUD programs. The Kansas City Office's Public Housing technical division director stated that unless the environmental reviews were included in HUD's Office of Public and Indian Housing's quality management reviews of the Kansas City Office, the Kansas City Office was not monitored for compliance with the requirements. Executive Order 11514 required Federal agencies to continually monitor, evaluate, and control their agencies' activities to protect and enhance the quality of the environment.

The Kansas City Office Did Not Follow Training Provided by HUD Environmental Officers

The Kansas City Office did not follow training requirements when it performed environmental reviews. The regional environmental officer stated that there was at least one 3-day training course held in the Kansas City region per year. He further stated that he had held half-day and 1-day training courses that focused on particular program areas including public housing. However, the Kansas City Office public housing staff members stated that they were not environmental specialists and did not have the time or knowledge to perform the environmental reviews under Part 50 as they were taught in the training classes, which included onsite reviews to ensure that housing agencies met requirements.

Kansas City Office Standard Operating Procedures Did Not Meet Part 50 Requirements

The Kansas City Office developed standard operating procedures that did not meet the requirements set forth in 24 CFR Part 50. The standard operating procedures are written field office procedures for conducting environmental reviews of capital funds. The Kansas City Office's procedures directed its staff to use information on the questionnaire provided by the housing agency's executive

director to satisfy the requirements and to complete part A of the form HUD-4128 by marking “not applicable” to the majority of compliance factors listed at 24 CFR 50.4. The questionnaire addressed only 3 of the 14 compliance factors and directed the staff not to recreate the wheel, but to use historical data from previous reviews as much as possible. The procedures also directed the staff that if the question related to historical preservation was answered “no” by the housing agencies, no further action would be required. However, all projects in Missouri and Iowa have to be submitted to the State historic preservation officer for consultation and clearance regardless of the effect. Only Kansas had a programmatic agreement between the State Historic Preservation Office and HUD that did not require consultation.

The standard operating procedures referenced that the procedures had been developed through consultation with the regional environmental officer. However, the regional environmental officer stated that use of the term “not applicable” was not an acceptable method for explaining how a project met environmental compliance. Further, he stated that he had not reviewed or commented on any written document and that while he had consulted with staff to develop procedures, the items he addressed were not part of the standard operating procedures presented. Requirements³⁰ state that the environmental review is a process for complying with NEPA and other laws and authorities and that HUD must comply with all environmental requirements, guidelines, and statutory obligations.

The Kansas City Office Culture Was Inattentive Related to Environmental Reviews

The Kansas City Office culture concerning the environmental review process was inattentive. Kansas City Office staff stated that housing agencies generally should not be required to meet the environmental requirements as the requirements did not apply to Capital Fund grants because all the housing agency activities were routine maintenance. However, according to guidance³¹ issued by the Office of Environment and Energy, maintenance merely keeps a building in good order and in ordinary, efficient operating condition, such as trimming trees and shrubs, fixing gutters or floors, replacing broken windows, fixing leaks, or replacing kitchen appliances that are not attached to the building. Repairs and improvements add to the value of the building, appreciably prolong its useful life, or adapt it to new uses, such as installing roofs; windows; or heating, ventilation, and air conditioning systems.

³⁰ 24 CFR 50.2(a) and 24 CFR 50.4

³¹ Guidance for categorizing an activity as maintenance for compliance with HUD’s environmental regulations, 24 CFR Parts 50 and 58, dated March 28, 2006

Further, the staff members stated that Part 50 environmental reviews worked better for the office but that they had too much other work to deal with and could not spend a lot of time on environmental reviews. Kansas City Office management was not aware that Kansas City Office staff performed 78 percent of the environmental reviews for the jurisdiction, while responsible entities performed only 22 percent. The Kansas City Office’s Public Housing technical division director stated that there had been resistance from staff to allow the environmental reviews to be performed by the responsible entities under Part 58. The staff believed that the environmental reviews were too difficult to perform, and, thus, staff did not want to allow the responsible entities to perform them. However, the staff did not perform the environmental reviews as required by 24 CFR Part 50.

The Nine Housing Agencies Expended More Than \$7 Million in Funds

As shown in table 2, the Kansas City Office allowed nine housing agencies to spend more than \$7 million, including more than \$3 million in Recovery Act funds, on projects that did not have a proper environmental review and that were not adequately supported. Since HUD failed to follow environmental review requirements, we are not recommending that the housing agencies repay the funds.

Table 2: Expended funds

Housing agency	2009 Recovery Act funds	2011 capital funds	2012 capital funds	Total
Bancroft, IA	\$ 44,704	\$ 28,909	\$ 25,804	\$ 99,417
Council Bluffs, IA	431,026	290,779	268,294	990,099
Sedgwick, KS	32,024	20,758	19,122	71,904
Topeka, KS	1,266,146	868,856	780,404	2,915,406
Valley Falls, KS	32,634	23,651	19,701	75,986
Anderson, MO	60,807	42,490	36,400	139,697
Independence, MO	956,075	578,339	532,892	2,067,306
Plattsburg, MO	47,308	30,593	28,319	106,220
Sedalia, MO	394,310	272,984	258,210	925,504
Total	\$3,265,034	\$2,157,359	\$1,969,146	\$7,391,539

Conclusion

The Kansas City Office did not properly complete and document environmental reviews for all nine public housing agencies in its jurisdiction that we reviewed. Thus, it did not properly implement environmental review requirements. Because the environmental reviews did not comply with requirements, the Kansas City Office may have increased the risk to the health and safety of public housing

agency residents and the general public, and may have failed to prevent or eliminate damage to the environment. Further, the housing agencies spent more than \$7 million, including more than \$3 million in Recovery Act funds, on projects that did not have a proper environmental review and that were not adequately supported.

Kansas City Office management was responsible for verifying that environmental reviews complied with requirements by conducting periodic monitoring and ensuring training provided to staff was followed. Since these conditions appeared to have been systemic, we will make recommendations to HUD headquarters in a future report.

Recommendations

Recommendations will be made to HUD headquarters in a future report.

SCOPE AND METHODOLOGY

We conducted our audit work between October 2012 and August 2013 in Kansas at the HUD field office, Kansas City, KS, Housing Authority, Unified Government of Wyandotte County-Kansas City, Topeka Housing Authority, and City of Topeka. We also conducted audit work at the Kansas City, MO, Housing Authority, the City of Kansas City, MO, and our offices in Albuquerque, NM, and Houston, TX. Our review covered the Recovery Act grant and the 2011 and 2012 Capital Fund grants for each of the housing agencies.

To accomplish our objectives, we

- Reviewed applicable public laws and executive orders that direct the requirements of environmental compliance;
- Reviewed Federal regulations related to the environmental review process and HUD's handbooks and guidance on environmental compliance;
- Reviewed various HUD job descriptions related to environmental oversight;
- Conducted interviews with staff from HUD's Kansas City field office, selected housing agencies, and their respective cities;
- Analyzed HUD's field office's, housing agencies', and the cities' environmental review processes for compliance with environmental requirements;
- Analyzed environmental review records for the selected housing agencies to ensure that environmental requirements were met;
- Compared the housing agencies' original, revised, and final annual statements, as applicable, to determine the actual projects completed under the grants and any changes to the projects;
- Reviewed HUD's Recovery Act monitoring reports for selected housing agencies and noted any noncompliance issues related to environmental reviews;
- Reviewed HUD's Line of Credit Control System (LOCCS) grant budget, vouchers, and obligation and expenditures detail data. We did not evaluate the reliability of the LOCCS data as we used the data for information purposes only.
- Compared the Kansas City Office's environmental tracking logs to the minimum internal control requirements set forth in HUD's Field Office Environmental Review Guidance to ensure compliance; and
- Compared the housing agencies' contracts to LOCCS details and the environmental records to ensure that funds were not obligated or expended before completion of the review.

We selected the Kansas City Office and 11 of 228 housing agencies within its jurisdiction based on our risk assessment using information we obtained related to funding levels, historic value, industry uses, and environmental process used.

We did not use or rely on computer-processed data to support our conclusions.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objectives:

- Controls to ensure that the Kansas City Office and the housing agencies and responsible entities properly implemented mandated environmental review requirements including
 - Controls to ensure that HUD did not release funds and the housing agencies did not obligate or expend funds before completion of the environmental reviews by either the responsible entity or the Kansas City Office;
 - Controls to ensure that the Kansas City Office complied with HUD's Field Office Environmental Review Guidance for maintaining tracking logs and files;
 - Controls to ensure that the Kansas City Office, housing agencies, and responsible entities were monitored for environmental compliance; and
 - Controls to ensure that the Kansas City Office, housing agencies, and responsible entities received adequate training on environmental compliance for Capital Fund grants.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1)

impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- The Kansas City Office did not provide adequate oversight to ensure that the housing agencies and responsible entities within its jurisdiction complied with environmental requirements (finding 1), and did not follow environmental requirements when it performed environmental reviews for the public housing agencies within its jurisdiction (finding 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$1,039,797	
1B		\$ 3,438,953
1C		2,827,316
1D		2,555,880
1E		4,517,915
1F		2,920,093
1G		2,710,079
Totals	<u>\$1,039,797</u>	<u>\$18,970,236</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Regional Administrator, Region VII
Gateway Tower II, Room 507
400 State Avenue
Kansas City, KS 66101-2406
HUD Home Page: www.hud.gov

April 23, 2014

MEMORANDUM FOR: Gerald R. Kirkland, Regional Inspector General for Audit,
6AGA

FROM: Frances M. Cleary, Director, Office of Public
Housing, 7APH

SUBJECT: Comments on Draft Report, Improvements Are Needed
Over Environmental Reviews of Public Housing and
Recovery Act Funds in the Kansas City Office

Thank you for providing this Office with the opportunity to respond to the draft report that was transmitted on March 28, 2014. As we discussed on April 10, 2014, please accept this memorandum as our response.

Comment 1

This Office will be in non-concurrence with Recommendation 1A. Recommendation 1A requires that the Kansas City, KS Housing Authority repay \$1,039,797 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury for contract obligations that occurred before the environmental review was completed by the responsible entity and that the repayment be from non-Federal funds. While the timing of the signing of the environmental review by the responsible entity was after the contracts were executed, the environmental review did cover the work items and, therefore, no harm was done to the United States or to the local community. Because these were ARRA funds, housing authorities were under tremendous pressure to get the funds obligated and expended. A misjudgment based on expediting this procurement activity should not result in a financial penalty to the housing authority. A nationwide working group has been commissioned to develop procedures to ensure compliance with these issues in the future. In the interest of maintaining sound working relationships with those holding local place-based expertise, any mandatory repayments jeopardizes the desire to maintain part 58 reviews by the responsible entity.

Comment 2 Comment 1

Comment 3

Generally we are in disagreement and will be filing a non-concurrence memorandum for recommendations 1B, 1C, 1D, 1E, 1F and 1G, if these draft recommendations are finalized. Each of these draft recommendations suggest that the Kansas City Office of Public Housing should require the local housing authorities and the local responsible entities "to provide support that they complied with 24 CFR Part 58 requirements" for various Capital Fund grants (CFP) and Recovery Act (ARRA) grants provided to the housing authorities from 2009 through 2012. The Office of Inspector General found that this Office did not provide adequate oversight to these agencies to ensure that the responsible entities properly completed and documented environmental reviews.

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Please consider the following:

Comment 4

- The Office of Public Housing is not the delegated HUD Office that ensures that Responsible Entities perform appropriately under the regulations at 24 CFR Part 58. Implementation and interpretation of the provisions in 24 CFR Parts 50 and 58 is the responsibility of the Office of Community Planning and Development (CPD) and the Office of Environment and Energy (OEE).
- It is our position that CPD is responsible for monitoring Responsible Entities performing environmental reviews and offers attachment A as supporting evidence.

Comment 5

- As noted above, PIH supports the use of the local jurisdiction to serve as the responsible entity on behalf of HUD so to ensure local land use agents are involved early in the review process. Repayment obligations are likely to harm local partnerships.

Comment 6

Recommendation 1H recommends a display of no harm in order to clear the recommendation. As is stated previously in the memorandum, it is the position of this Office that the Environmental Review record is complete. Since the record is clear we can find no harm caused by the implementation of the capital projects associated with the grants cited in this report. Further, we believe that the burden of proof that would be required to complete the actions recommended cannot be adjudicated by this Office since we are not delegated to act in this capacity.

Comment 4

Comment 7

Recommendation 1I recommends several actions. PIH encourages all persons involved in the preparation of environmental reviews to attend training sponsored by OEE. At this juncture, it is our intent to correct deficiencies via a nationwide protocol for PIH field offices.

Comment 8

For recommendations 2A and 2B, this Office will be in non-concurrence with these recommendations and recommend the issue be raised to the Headquarters level. Again, a nationwide working group is commissioned to develop procedures to ensure compliance with these issues in the future. Once these procedures are finalized, this Office will implement them in the Environmental Review process.

Comment 6

Comment 1

Comment 9

It appears that the underlying assertion of the Report is that harm was done due to the timing or manner in which these reviews were completed. You have provided no evidence that any harm was caused to the Department, the local communities or the Department's programs due to the timing or manner in which these reviews were conducted. While you may not agree with the manner in which the reviews were done, the responsible entities signed the Part 58 reviews and our Office signed the Part 50 reviews. To hold the housing authorities financially accountable would be inappropriate and likely cause displacement of families currently housed. . In lieu of repayments, corrections are forthcoming through improved protocols. Again, any financial penalties to the housing authorities would affect the residents of the public housing developments.

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If you have any questions regarding this matter, please feel free to contact me at (913) 551-5702.

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OIG Evaluation of Auditee Comments

Comment 1 The Kansas City Office stated that while the timing of the signing of the environmental review by the responsible entity was after the Kansas City, KS Housing Authority executed contracts, the environmental review did cover the work items and there was no harm to the United States or the local community. Further, because the funds were Recovery Act funds, housing authorities were under tremendous pressure to get the funds obligated and expended. The Kansas City Office concluded that a misjudgment based on expediting this procurement activity should not result in a financial penalty to the housing authority. It also expressed concerns about maintaining sound working relationships with the responsible entities.

The Recovery Act³² required that applicable environmental reviews under NEPA be completed on an expeditious basis. In addition, when the housing agencies signed their grant agreements, they agreed to carry out their capital activities in accordance with all HUD regulations, including the environmental review requirements under 24 CFR Part 58. Those regulations required the responsible entities to complete environmental certifications for each activity. Regulations required the housing agencies to refrain from undertaking any activities, including obligations or expenditures, until HUD approved the certifications.

The Kansas City Office did not provide any documentation to support that no harm occurred or that no adverse environmental conditions existed.

The Kansas City Office further attempted to justify the failure to follow requirements by discussing the tremendous pressure that housing agencies were under to obligate and expend the funds. While the housing agencies were under pressure to meet Recovery Act deadlines, they, along with HUD, were still required to follow all regulations.

In response to a previous OIG audit, the Assistant Secretary for Public and Indian Housing concurred that Recovery Act funds expended on construction activities were ineligible because the housing agency obligated and expended the funds before the environmental clearance had been completed. The Assistant Secretary required the housing agency to repay the ineligible amount. Similarly, because the Kansas City, KS, Housing Authority obligated more than \$1 million in Recovery Act funds, in violation of requirements, and the obligation and expenditure date has passed, it must repay the funds to HUD for its transmission to the U.S. Treasury.

The purpose of NEPA was to establish a national policy that would promote efforts to prevent or eliminate environmental hazards. We are concerned with the Kansas City Office's lack of regard for ensuring that the purpose of NEPA and other

³² Public Law 111-5, Section 1609

requirements were met. Rather it attempted to justify the improper expenditures as a timing issue and claimed that no harm occurred. Further, while we understand that repayments can affect a housing agency's processes, and potentially affect relationships with the responsible entities, we are more concerned with the effects that the lack of environmental compliance can have on the health and welfare of the people for whom HUD is tasked to provide decent, safe, and sanitary housing.

Comment 2 We acknowledge that HUD recently established a nationwide working group to develop procedures to address future compliance with environmental requirements.

Comment 3 The Kansas City Office stated that it is generally in disagreement with recommendations 1B, 1C, 1D, 1E, 1F and 1G, which recommend that the local housing authorities and the local responsible entities provide support that they complied with requirements.

If the housing agencies and responsible entities can provide proper documentation to support compliance of the environmental decisions made, any supported amounts will not need to be repaid. Since they were required to perform the reviews or support why they didn't, the supporting documentation should be readily available for submission to the Kansas City Office. If the supporting documents cannot be provided, then the housing agencies and responsible entities cannot support the determinations. Thus, the expenditures would be in violation of environmental requirements and would require repayment. Further, as part of its oversight, the Kansas City Office was responsible for periodically monitoring the public housing agencies' environmental review records. If the Kansas City Office had monitored the records, it should have found that the records were incomplete and the environmental reviews were improperly performed.

Comment 4 The Kansas City Office stated that the Office of Public and Indian Housing is not the delegated HUD Office that ensures that responsible entities perform appropriately under the regulations at 24 CFR Part 58. It claimed that implementation and interpretation of the provisions in 24 CFR Parts 50 and 58 are the responsibility of CPD and OEE.

According to regulations at 24 CFR 50.10(a), it is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to assure that the requirements of this part are implemented. The Office of Public Housing has an Assistant Secretary who is responsible for ensuring implementation. Further, it has an environmental clearance officer whose role includes providing environmental compliance reviews.

The Kansas City Office's response included an attachment. The attachment was Federal Register Notice 31972 Volume 77, Number 104 dated May 30, 2012, *Consolidated Delegation of Authority for the Office of Community Planning and*

Development. Federal Register notices can be obtained at www.federalregister.gov. The Kansas City Office believed this published Notice delegated the overall departmental responsibility for compliance with NEPA to CPD. However, according to the Notice's summary, its purpose was for the Assistant Secretary for CPD to redelegate to the CPD Deputy Assistant Secretaries and other specified HUD officials all powers and authorities necessary to carry out CPD programs, except those powers and authorities specifically excluded. The Notice did not delegate authority for CPD to conduct environmental reviews of Office of Public and Indian Housing programs. Even if the Notice had been interpreted to grant such authority, it was issued after the questioned environmental reviews were completed and certified. Thus, it would not have applied to the grants reviewed during the audit. We revised Finding 1 to reflect the Kansas City Office's misinterpretation of the Notice.

- Comment 5** The Kansas City Office stated that the Office of Public and Indian Housing supports the use of the local jurisdiction to serve as the responsible entity on behalf of HUD to ensure local land use agents are involved early in the review process. While the regulations at 24 CFR part 58 allow the responsible entity to assume HUD's responsibility for environmental reviews and maintaining this relationship can be important, if the responsible entities cannot follow the requirements, then the Kansas City Office has an oversight responsibility to suspend or terminate the responsible entities' assumption authority of the environmental review process as outlined in 24 CFR 58.77(d)(iv).
- Comment 6** The Kansas City office stated that the environmental review records were complete and there was no harm. However, according to our review of the records, the records were incomplete because there was no documentation to support the compliance factors listed in 24 CFR 58.5 or 58.6. Without complete environmental review records there is no evidence that no harm occurred. The regulations at 24 CFR 58.38 clearly state that the environmental review record must contain all verifiable source documents and relevant base data used as evidence of review, decision-making and actions pertaining to a particular project.
- Comment 7** The Kansas City Office stated that the Office of Public and Indian Housing encourages all persons involved in the preparation of environmental reviews to attend training sponsored by OEE.
- Although Office of Public and Indian Housing may have encouraged persons involved in the preparation of environmental reviews to attend training, we found that only one housing authority in the Kansas City Office's jurisdiction had attended training during the audit period, and that training was geared toward another program area.
- Comment 8** The Kansas City Office stated that it will non-concur with recommendations 2A and 2B of the draft report, and requested that the issue be raised to the Headquarters level.

Since the conditions and causes in Finding 2 are systemic, we removed the recommendations and will include recommendations in an upcoming nationwide report.

Comment 9 Throughout its response, the Kansas City Office demonstrated that its primary concerns are the recommendations to repay funds, the effect that repayment could have on the housing agencies, and its relationships with the responsible entities. It again displayed lack of concern with NEPA and its purpose of promoting efforts to prevent or eliminate environmental hazards. Further, it appears to be confident that no harm was caused to the Department, the local communities or the Department's programs. We fail to understand how the Kansas City Office can be confident that no harm was done when it did not monitor the housing agencies or responsible entities, and it did not perform its required Part 50 reviews. It is the Office of Public and Indian Housing's responsibility to ensure that it complies with NEPA, to include assuring that no harm was done.

Appendix C

CRITERIA

Criterion 1

The purpose of NEPA is to declare a national policy that will encourage productive and enjoyable harmony between man and his environment. To carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

Criterion 2

Executive Order 11514, section 2(a), states that the heads of Federal agencies must “monitor, evaluate, and control on a continuing basis their agencies’ activities so as to protect and enhance the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities.”

Criterion 3

Regulations at 24 CFR 58.2(a)(7)(ii)(B) state that “responsible entity” means, for public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility.

Criterion 4

Regulations at 24 CFR 58.4(a) state that responsible entities must assume the responsibility for environmental review, decision making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA as specified in section 58.5.

Criterion 5

Regulations at 24 CFR 58.30(a) state that “the environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part.”

Criterion 6

Regulations at 24 CFR 58.5 state that “the responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities.”

The statutory requirements (checklist) for categorically excluded projects subject to 24 CFR 58.5 include

- Air quality,
- Airport hazards (clear zones and accident potential zones),
- Coastal zone management,
- Contamination and toxic substances,

- Endangered species,
- Environmental justice,
- Explosive and flammable operations,
- Farmlands protection,
- Floodplain management,
- Historic preservation,
- Noise abatement and control,
- Water quality (sole-source aquifers),
- Wetland protection, and
- Wild and scenic rivers.

Criterion 7

Regulations at 24 CFR 58.15 state that “responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date.”

Criterion 8

Regulations at 24 CFR 58.6 state that the responsible entity remains responsible for addressing requirements in its environmental review record and meeting these requirements, as applicable, regardless of whether the activity is exempt or categorically excluded.

The statutory requirements (checklist) for all projects subject to 24 CFR 58.6 include

- Airport runway protection zone and clear zone notification,
- The Coastal Barriers Resources Act and Coastal Barrier Improvement Act, and
- The Flood Disaster Protection Act (flood insurance).

Criterion 9

Regulations at 24 CFR Part 51, Subpart B, state that the purpose of this subpart is to provide policy on the use of structural and other noise attenuation measures where needed.

Criterion 10

Regulations at 24 CFR 58.35 state that categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. Compliance with the other applicable Federal environmental laws and authorities listed in section 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

Criterion 11

Regulations at 24 CFR 58.35(a)(1) state that the following activities are categorically excluded under NEPA but may be subject to review under authorities listed in section 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements when the facilities and improvements are in place and will be retained in

the same use without change in size or capacity of more than 20 percent (for example, replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

Criterion 12

Regulations at 24 CFR 51.101(a)(5) state that “for modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.”

Criterion 13

Regulations at 24 CFR 55.20, Subpart C state the procedures for making determinations on floodplain management, which contains eight steps, including public notices and an examination of practicable alternatives.

Criterion 14

Regulations at 24 CFR 58.22(a) state that neither a recipient nor a participant in the development process may commit HUD assistance under a program listed in section 58.1(b) on an activity or project until HUD has approved the recipient’s form HUD-7015.15 and the related certification from the responsible entity.

Criterion 15

Regulations at 24 CFR 58.47(a)(1) state that “a responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when the recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project.”

Criterion 16

Regulations at 24 CFR 58.47(b)(3) state that when the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes, new circumstances or environmental conditions, or proposals to select a different alternative and must then permit the responsible entity to reevaluate the findings before proceeding.

Criterion 17

Regulations at 24 CFR 58.43(a) state that if the responsible entity makes a finding of no significant impact, it must prepare a notice, using the current HUD-recommended format or an equivalent format. At a minimum, the responsible entity must send the notice to individuals and groups known to be interested in the activities; to the local news media; to the appropriate tribal, local, State, and Federal agencies; to the regional offices of the EPA having jurisdiction; and to the HUD field office. The responsible entity may also publish the notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings and within the project area or in accordance with procedures established as part of the citizen participation process.

Criterion 18

Regulations at 24 CFR 58.38 state that the responsible entity must maintain a written record of the environmental review undertaken under this part for each project. The document will be designated the “environmental review record” and must be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

Criterion 19

Regulations at 24 CFR 58.38(a) state that the environmental review record must contain all of the environmental review documents, public notices, and written determinations or environmental findings required by this part as evidence of review, decision making, and actions pertaining to a particular project of a recipient. The document must

- Describe the project and the activities that the recipient has determined to be part of the project;
- Evaluate the effects of the project or the activities on the human environment;
- Document compliance with applicable statutes and authorities, in particular those cited in sections 58.5 and 58.6; and
- Record the written determinations and other review findings required by this part.

Criterion 20

Regulations at 24 CFR 58.70 state that “the notice of intent to request release of funds must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.”

Criterion 21

Regulations at 24 CFR 58.38(b) state that the environmental review record must contain verifiable source documents and relevant base data used or cited in environmental assessments, environmental impact statements, or other project review documents. These documents may be incorporated by reference into the environmental review record, provided each source document is identified and available for inspection by interested parties.

Criterion 22

Regulations at 24 CFR Part 51, Subpart D, state that the purpose of this subpart is to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for runway clear zones at civil airports and clear zones and accident potential zones at military airfields and by establishing them as standards for providing HUD assistance, subsidies, or insurance.

Criterion 23

Regulations at 24 CFR Part 51, Subpart C, state that the purpose of this subpart is to establish safety standards which can be used as a basis for calculating acceptable separation distances for HUD-assisted projects from specific, stationary, hazardous operations which store, handle or process hazardous substances; alert those responsible for the siting of HUD-assisted projects to the inherent potential dangers when such projects are located in the vicinity of such hazardous

operations; provide guidance for identifying those hazardous operations which are most prevalent; provide the technical guidance required to evaluate the degree of danger anticipated from explosion and thermal radiation (fire); and provide technical guidance required to determine acceptable separation distances from such hazards.

Criterion 24

Office of Public and Indian Housing, Office of Field Operations, Field Office Environmental Review Guidance, states that public housing agencies wishing to expend capital funds on operating costs have been permitted to do so by reporting the amount of funds “transferred” to operating costs on budget line item 1406 and drawing the funds down to the general ledger after budget approval. Office of Public Housing staff should be aware that some public housing agencies are expending funds reported on budget line item 1406 on standard capital – not operating – costs after they have been added to the general ledger. ***Amounts allocated by public housing agencies to line 1406 should be only those used for true operating costs.*** The public housing agencies should provide a description of operating costs to HUD or the responsible entity to allow completion of the environmental review.

Criterion 25

Regulations at 24 CFR 990.116 state that the environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. [United States Code] 4332(2)(C)) and the implementing regulations at 24 CFR parts 50 and 58 are applicable to the Operating Fund Program.

Criterion 26

Regulations at 24 CFR 58.77(d) state that “at least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If, through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of environmental deficiencies, HUD may take one or more of the following actions:

- i. In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;
- ii. HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training;
- iii. HUD may refuse to accept the certifications of environmental compliance on subsequent grants;
- iv. HUD may suspend or terminate the responsible entity’s assumption of the environmental review responsibility; or
- v. HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.”

Criterion 27

Regulations at 24 CFR 50.4 state that “HUD and/or applicants must comply, where applicable, with all environmental requirements, guidelines and statutory obligations under the following authorities and HUD standards:”

- Historic properties;
- Flood insurance, floodplain management, and wetland protection;
- Coastal areas protection and management;
- Water quality and sole-source aquifers;
- Endangered species;
- Wild and scenic rivers;
- Air quality;
- Solid waste management;
- Farmlands protection;
- Noise abatement and control;
- Explosive and flammable operations;
- Airport hazards (clear zones and accident potential zones); and
- Environmental justice.

Criterion 28

Regulations at 36 CFR 800.4(d)(1) state, “No Historic Properties Affected – If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in §800.16(i), the agency official shall provide documentation of this finding, as set forth in §800.11(d), to the SHPO/THPO.³³ The agency official shall notify all consulting parties including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official’s responsibilities under section 106 are fulfilled.”

Criterion 29

Regulations at 50.3(i)(1) state, “It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.”

Criterion 30

Regulations at 24 CFR 50.36 state, “The environmental review must be re-evaluated and updated when the basis for the original environmental or compliance findings is affected by a major change requiring HUD approval in the nature, magnitude or extent of a project and the project is not yet complete. A change only in the amount of financing or mortgage insurance involved does not normally require the environmental review to be re-evaluated or updated.”

³³ State historic preservation officer/tribal historic preservation officer

Criterion 31

Regulations at 24 CFR 50.2(a) state, “The definitions for most of the key terms or phrases contained in this part appear in 40 CFR Part 1508 and in the authorities cited in §50.4,” to include the following definitions:

- Environmental review means a process for complying with NEPA (through an environmental assessment or environmental impact statement) or with the laws and authorities cited in section 50.4.
- HUD approving official means the HUD official authorized to make the approval decision for any proposed policy or project subject to this part.
- Project means an activity or a group of integrally related activities undertaken directly by HUD or proposed for HUD assistance or insurance.

Criterion 32

Office of Public and Indian Housing, Office of Field Operations, Field Office Environmental Review Guidance, states that at a minimum, the Office of Public Housing must maintain the following:

- A list of responsible entities that HUD has determined will or will not perform the environmental review on behalf of HUD. This list will be an important document for determining which public housing agencies will need to submit the clearance documents.
- A list of forms HUD-7015.15 that have been received and for which clearance has been provided.
- A list of environmental reviews that have been conducted by the Office of Public Housing for each program requiring environmental clearance.
- Separate environmental clearance files for each public housing agency.