



**Office of Public Housing
Columbia, SC**

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



Issue Date: June 19, 2014

Audit Report Number: 2014-FW-0003

TO: Eric A. Bickley
Director of the Columbia Office of Public Housing, 4EPH

//signed//

FROM: Gerald R. Kirkland
Regional Inspector General for Audit, Fort Worth Region, 6AGA

SUBJECT: Improvements Are Needed Over Environmental Reviews of Public Housing and Recovery Act Funds in the Columbia 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 Columbia 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.



June 19, 2014

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

Highlights

Audit Report 2014-FW-0003

What We Audited and Why

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

What We Recommend

Since the conditions and causes in this report are systemic, we will make recommendations for corrective actions to HUD headquarters in an upcoming nationwide audit report. Therefore, this report does not contain recommendations.

What We Found

The Columbia Office did not follow environmental requirements at 24 CFR (Code of Federal Regulations) Part 50 when it determined compliance with National Environmental Protection Act of 1969-related laws and authorities for the 41 public housing agencies in its jurisdiction. Specifically, it did not properly evaluate environmental conditions or maintain required documentation. This condition occurred because the Columbia Office did not have standard operating procedures and its management and staff were not adequately trained to ensure environmental compliance. As a result, the Columbia 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 Columbia Office approved 41 housing agencies to spend more than \$76.4 million, including more than \$35.8 million in American Recovery and Reinvestment Act funds, on projects that did not have a proper environmental review and were not adequately supported.

TABLE OF CONTENTS

Background and Objectives	3
Results of Audit	
Finding 1 The Columbia Office of Public Housing Did Not Follow 24 CFR Part 50 Requirements When It Performed Environmental Reviews	4
Scope and Methodology	12
Internal Controls	14
Appendixes	
A. Auditee Comments and OIG’s Evaluation	16
B. Criteria	19

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 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 50, Protection and Enhancement of Environmental Quality. Regulations at 24 CFR Part 50 direct HUD to carry out the policies of NEPA and other laws and authorities. This responsibility includes performing an independent evaluation of the environmental issues, determining the scope and content of the environmental compliance finding, and making the environmental determination.

Our audit objectives were to determine whether the Columbia Office ensured that it performed the required reviews and did not release funds until all requirements were met and required documents were submitted.

RESULTS OF AUDIT

Finding 1: The Columbia Office of Public Housing Did Not Follow 24 CFR Part 50 Requirements When It Performed Environmental Reviews

The Columbia Office did not follow environmental requirements at 24 CFR Part 50 when it determined compliance with NEPA-related laws and authorities for the 41 public housing agencies in its jurisdiction. Specifically, it did not properly evaluate environmental conditions or maintain required documentation. This condition occurred because the Columbia Office did not have standard operating procedures and its management and staff were not adequately trained to ensure environmental compliance. As a result, the Columbia 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 Columbia Office approved 41 housing agencies to spend more than \$76.4 million, including more than \$35.8 million in American Recovery and Reinvestment Act funds, on projects that did not have a proper environmental review and were not adequately supported.

The Columbia Office Did Not Follow 24 CFR Part 50 Requirements

For the 41 public housing agencies in its jurisdiction, the Columbia Office did not properly implement environmental review requirements to ensure 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 performing an independent evaluation of the environmental issues, determining the scope and content of the environmental compliance finding, and making the environmental determination. Failure by HUD to adequately conduct 24 CFR Part 50 environmental reviews may have increased the risk to the health and safety of public housing agency residents and the general public since HUD could not ensure that they were not exposed to an unnecessary risk of contamination, pollution, or other adverse environmental effects. The Columbia Office did not

- Follow the environmental requirements when it performed environmental reviews,
- Properly evaluate environmental conditions with the required compliance factors,
- Maintain complete environmental records and supporting documentation,
- Comply with internal control requirements,
- Ensure that funds transferred to housing agencies' operating accounts met environmental requirements, or

- Understand environmental requirements well enough to properly monitor staff for compliance.

The Columbia Office Did Not Follow Environmental Requirements When It Performed Environmental Reviews

The Columbia Office did not perform the environmental reviews or address the compliance factors listed in Part A of the form HUD-4128¹ on an individual basis for each housing agency. Rather than performing an independent evaluation for each housing agency, the public housing revitalization specialist stated that he looked at each of the housing agencies' annual plans individually and completed one master form HUD-4128 for the environmental reviews. The form was based on all housing agencies' activities being exempt or categorically excluded. He then added each housing agency name to the master form and printed it as the record for each of the 41 housing agencies' 2009 Recovery Act and 2011 and 2012 Public Housing Capital Fund grants. He placed the forms into each housing agency's file, along with the annual plans that he used to determine the level of review.

However, failure to evaluate each housing agency's projects or activities based on the environment surrounding that particular location can lead to inaccurate conclusions. For example, the City of Myrtle Beach is on the east coast of South Carolina and has a large mass of land zoned as a special flood zone area, which can have a direct impact on public housing projects. These projects, if located within the special zone, were required to meet the Federal requirements² regarding flood insurance. Conversely, the City of Greenville, SC, is located in the western region of the State, and the majority of its land mass is considered outside any flood zone requirements. Thus, flood insurance was not required for the majority of the land mass. However, because the Columbia Office did not make individual assessments that showed that the housing developments were either inside or outside the flood zones, it was unable to assure that potentially at risk units and tenants were protected from loss. Regulations at 24 CFR 50.11 state that the HUD approving official must make an independent evaluation of the environmental issues and maintain copies of the environmental reviews and findings in the project files. The environmental information must be an accurate scientific analysis and concentrate on the issues that are truly significant to the project or activities in question related to that particular area.

The Columbia Office Did Not Properly Evaluate Environmental Conditions With the Required Compliance Factors

The Columbia Office did not properly evaluate compliance with the factors listed at 24 CFR 50.4. Rather, it marked all of the housing agencies' forms HUD-4128 compliance factors as "not applicable," stating that an environmental assessment was not required because the Capital Fund grants satisfied the criteria. While an

¹ Environmental Assessment and Compliance Findings for the Related Laws

² 24 CFR 50.4(b) and 55.20

environmental assessment may not have been required if the projects were determined to be categorically excluded based on 24 CFR 50.20, the compliance factors listed in 24 CFR 50.4 must be evaluated. Following are examples of compliance factors that the Columbia Office did not evaluate:

- *Historic preservation* – The Columbia Office did not evaluate historic preservation impacts before activities were undertaken at any of the housing agencies. The regulations require a HUD official to identify historic properties in consultation with the State historic preservation officer and in the case of South Carolina, in consultation with the Eastern Band of Cherokee Indians and the Catawba Indian Nation, even if HUD believes that no historic properties are present or that historic properties may be present but the undertaking will have no adverse effect upon the properties.³
- *Floodplain management and flood insurance* – The Columbia Office did not evaluate floodplain management or flood insurance requirements.⁴ The State of South Carolina has several flood zones, including special flood hazard areas that have a 26 percent chance of flooding during a standard 30-year home mortgage. Federal floodplain management regulations and mandatory flood insurance purchase requirements apply to special flood hazard areas. However, the Columbia Office did not ensure compliance by correctly identifying on Federal Emergency Management Agency maps where the developments were located and whether they were located in a special flood hazard area.
- *Noise control* – The Columbia 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.⁵ For example, the Greenville Housing Authority converted a community center into six apartments without considering potential noise impacts. Noise sources within established thresholds requiring consideration included an interstate 516 feet and a railroad 2,307 feet from the project. The projected day-night noise level for the site was 70 decibels, which exceeded the 65-decibel HUD standard requiring mitigation. However, the Columbia Office did not determine whether there was a need for noise reduction features.
- *Hazardous operations and toxic site hazards* – The Columbia Office did not evaluate for hazardous operations or toxic chemicals and radioactive substances.⁶ The U.S. Environmental Protection Agency (EPA) identified

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

⁴ 24 CFR 50.4(b) and 55.20

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

⁶ 24 CFR 50.3(i)(1)

Greenville County as the only county in South Carolina rated as “zone 1” for radon gas. A zone 1 rating means that there is a predicted average indoor radon screening level greater than the EPA-recommended action level for addressing radon exposure. However, the Columbia Office did not evaluate any of the Greenville Housing Authority developments for site contamination.

- *Air quality* – The Columbia Office did not evaluate or record whether any of the 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.⁷ Housing agency rehabilitation projects included replacement of major systems (heating, ventilation, and air conditioning), roofing, flooring, and windows, all of which can contain asbestos materials. Therefore, the Columbia Office should have evaluated the air quality and implemented the proper procedures. Instead, it marked on the form HUD-4128 that housing agencies were in compliance or conformance with the air quality plan and provided no evidence of how compliance was determined.
- *Airport hazards or airport clear zones* – The Columbia Office did not evaluate or support that it evaluated airport hazards before the Greenville Housing Authority performed work at its developments. One development, Arcadia Hills, performed renovation activities that included converting a community center into six apartments. Within the complex of buildings that comprise the Arcadia Hills public housing project, there appeared to be at least 140 residential buildings owned by the Authority that were located within 2,500 feet of the end of the runway. Any major rehabilitation activity required consideration of airport hazards by evaluating the property location relative to the runway protection zone of the Greenville Downtown Airport.⁸ However, no support was provided to explain the evaluation and environmental determination.
- *Other NEPA-related laws and authorities cited in 24 CFR 50.4* – The Columbia Office also did not evaluate compliance with environmental justice, sole-source aquifers, wetland protection, endangered species, wild and scenic rivers, coastal barrier resources, and farmland protection. These other NEPA-related laws and authorities were marked on the form as “not applicable” without evidence to validate the determinations.

The Columbia Office Did Not Maintain Complete Environmental Records and Supporting Documentation

The Columbia Office did not properly document its decision making for compliance with NEPA. The environmental review records for the housing

⁷ 24 CFR 50.4(h)

⁸ 24 CFR 50.4(k) and 24 CFR Part 51, Subpart D

agencies' 2009 Recovery Act and 2011 and 2012 Capital Fund grants did not include complete project descriptions. For example, they did not identify the project names or locations. Instead they listed "2011 or 2012 capital fund program formula funding" and "Greenville Housing Authority" or "Reference Attached PHA [public housing agency] Listing" without providing the street, city, county, or State information as requested on the form HUD-4128. Also, the activities proposed for each development were not clearly described, and the number of buildings, number of units, and age of structures were not listed. The records also did not provide site plans, locational maps, or site photographs that would support what activities comprised the projects, where the projects were located, and when the activities would be performed.

The environmental review records contained form HUD-4128 as required; however, the Columbia Office staff marked all of the housing agencies' forms HUD-4128 compliance factors as "not applicable" without supporting documentation to validate the compliance determinations made. Examples of valid source documentation include

- A properly marked Federal Emergency Management Agency map identifying the 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.

The Columbia Office Did Not Comply With Internal Control Requirements

The Columbia 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 request for release of fund certifications that had been received and the corresponding clearance provided, (3) a list of environmental reviews conducted by the Columbia Office, and (4) separate environmental files for each housing agency within its jurisdiction. The Columbia Office's tracking log was incomplete as it was maintained for Capital Fund grants completed under 24 CFR Part 50 only and did not contain a list of the project or grant number, the fund year, the engineer who performed the review, any mitigation actions required, the date the review was completed, the date it was signed, and the date the letter was sent to the housing agency approving use of the funds. Further, the Columbia Office's Public Housing director and staff stated that the log did not contain much information. Further, the Public Housing director stated that he was not sure whether the log was current. The Columbia Office also did not maintain a list of responsible entities that HUD determined would or would not perform the environmental reviews on its behalf.

The Columbia Office Did Not Ensure That Operating Costs Met Environmental Requirements

The Columbia Office did not ensure that funds transferred to housing agency operating accounts met environmental requirements because staff did not always question the use of such funds. A staff member stated that if a small housing agency annually transferred 100 percent of its capital funds into its operating account, the Columbia Office would question the use of the funds. However, the Columbia Office did not review transfers by large housing agencies into their operating accounts to determine whether the funds were spent on activities requiring environmental reviews. The staff member further stated that the housing agencies did not provide a detailed description of the use of the funds that they transferred to their operating accounts. The Greenville Housing Authority executive director confirmed that the Authority had not been required by the Columbia Office to provide details on how it used funds that it transferred to its operating account. However, HUD's Field Office Environmental Review Guidance⁹ 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 Part 50 are applicable to the operating fund program. In addition, the housing agencies' annual contributions contracts¹⁰ 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. Operating costs – such as maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs are categorically excluded not subject to 24 CFR 50.4 laws and authorities. However, Public Housing must review the expenditures from the operating account to ensure a proper level of environmental review was performed for activities that were subject to review.

Columbia Office Management Did Not Understand Environmental Requirements Well Enough to Properly Monitor Staff To Ensure Compliance

The Columbia Office's management did not understand environmental requirements well enough to ensure that staff properly performed the 24 CFR Part 50 environmental reviews for compliance with environmental requirements. The Columbia Office management had sought and received guidance from the field environmental officer. However, management still did not understand the environmental regulations and processes because they are very complex.

⁹ Section 5: Program Requirements – Capital Fund Program (Special Note)

¹⁰ Form HUD-53012A

Therefore, management could not ensure staff properly performed the environmental reviews. Further, the Columbia field environmental officer stated that he monitored only HUD's community planning and development programs because he did not have authority over any other HUD programs. 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 Columbia Office Did Not Develop Standard Operating Procedures To Meet 24 CFR Part 50 Requirements

The Columbia Office did not develop its own in-house standard operating procedures to ensure that it complied with 24 CFR Part 50 requirements. Instead, according to the Columbia Office's Public Housing director, the Columbia Office relied on the policies and procedures in 24 CFR Parts 50 and 58¹¹ and the 2009 PIH Field Office Environmental Review Guidance to guide them. However, these criteria do not provide detailed steps to be taken to ensure compliance. The requirements¹² 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 Columbia Office Staff Was Not Adequately Trained To Perform Environmental Reviews

The Columbia Office's public housing staff did not perform the environmental reviews according to the requirements at 24 CFR Part 50. The director is required to sign the form HUD-4128 as the HUD approving official; however, he had received limited environmental training, which included only a webinar and some guidance from the field environmental officer on what to do and what to look for. The public housing revitalization specialist who performed the environmental reviews stated that the only training that he had received was HUD webinar training several years earlier and that he was not aware of any classroom training provided by HUD. Regulations at 24 CFR 50.10 state that it is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to ensure that the requirements are implemented; however, without adequate

¹¹ Regulations in Part 58 allow State and local governments to assume HUD's responsibility for environmental reviews and include the decision making and other actions that would apply to HUD under NEPA and other provisions of law.

¹² 24 CFR 50.2(a) and 50.4

training for field office management and staff, HUD could not ensure that it complied with NEPA.

The 41 Housing Agencies Expended More Than \$76.4 Million Without Proper Environmental Reviews

As shown in table 1, the Columbia Office approved 41 housing agencies to spend more than \$76.4 million, including more than \$35.8 million in Recovery Act funds, on projects that did not have a proper environmental review and were not adequately supported. Since HUD failed to follow environmental review requirements, we are not recommending that the housing agencies repay the funds.

Table 1: Expended funds

Housing agency	2009 Recovery Act funds	2011 capital funds	2012 capital funds	Total
41 South Carolina housing agencies	\$35,878,821	\$21,721,457	\$18,894,427	\$76,494,705

Conclusion

The Columbia Office did not properly perform and document environmental reviews for all 41 public housing agencies in its jurisdiction. Thus, it did not properly implement environmental review requirements. Because the environmental reviews did not comply with requirements, the Columbia 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 \$76.4 million, including more than \$35.8 million in Recovery Act funds, on projects that did not have a proper environmental review and were not adequately supported.

Columbia Office management was responsible for verifying that environmental reviews complied with requirements by conducting periodic monitoring and ensuring that environmental compliance training was provided to staff.

Recommendations

Since these conditions appeared to have been systemic, we will make recommendations to HUD headquarters in a future report.

SCOPE AND METHODOLOGY

We conducted our audit work between November 2012 and August 2013 in Columbia, SC, at the HUD field office and in Greenville, SC, at the Greenville Housing Authority and the City of Greenville. We also conducted audit work at our offices in Albuquerque, NM, and Houston, TX. Our review covered the 2009 Recovery Act grant from March 18, 2009 to March 17, 2010 and fiscal years 2011 and 2012 Capital Fund grants from October 1, 2010 to September 30, 2012.

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 Columbia field office, the Greenville Housing Authority, and the City of Greenville;
- Analyzed HUD's field office's, the Greenville Housing Authority's, and the City of Greenville's environmental review processes for compliance with environmental requirements;
- Analyzed environmental review records to determine whether environmental requirements were met;
- Compared the housing agencies' original, revised, and final annual statements, as applicable, to determine the projects completed under the grants and any changes to the projects;
- Reviewed HUD's Line of Credit Control System (LOCCS) grant budget, vouchers, and obligation and expenditures detail data. We verified the reliability of LOCCS data with other sources of information, such as contracts, annual plans, and environmental certifications.
- Compared the Columbia 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 Columbia Office based on our risk assessment, using information we obtained related to funding levels, historic value, industry uses, and the environmental process used. We selected the Greenville Housing Authority and the City of Greenville to gain an understanding of their environmental review knowledge. In addition, we reviewed certain aspects of the environmental review process for all 41 housing agencies within the Columbia Office's jurisdiction

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 Columbia Office 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 the Columbia Office,
 - Controls to ensure that the Columbia Office complied with HUD's Field Office Environmental Review Guidance for maintaining tracking logs and files,
 - Controls to ensure that the Columbia Office monitored for environmental compliance, and
 - Controls to ensure that the Columbia Office 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 Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The Columbia Office did not follow environmental requirements when it performed environmental reviews for the public housing agencies within its jurisdiction (finding).

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



**U. S. Department of Housing and Urban
Development**

South Carolina State Office
Strom Thurmond Federal Building
1835 Assembly Street
Columbia, South Carolina 29201-2480

June 9, 2014

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

FROM: Eric Bickley, Director, Public Housing Program Center, 4EPH

SUBJECT: Draft Report Comments
Environmental Review of Public Housing and Recovery Act Funds in
Columbia Office, South Carolina

The Columbia Public Housing Program Center appreciates the opportunity to comment on the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) draft report entitled Public Housing Capital Fund and American Recovery and Reinvestment Act of 2009 Environmental Reviews. The Columbia Public Housing Program Center is committed to complying with all regulations and standards governing environmental reviews and improving internal controls to maintain compliance.

The Columbia Public Housing Program Center's response to the OIG's specific finding is set forth below. Unless otherwise stated, this office accepts the OIG's finding and will take the necessary actions to ensure compliance.

OIG Finding 1:

The Columbia Office of Public Housing Did Not Follow 24 CFR Part 50 Requirements When It Performed Environmental Reviews

Columbia Public Housing Program Center Comments:

Comment 1

As a result of this finding, the Columbia Office of Public Housing, including the Director and his entire professional staff, participated in a two day training session April 29-30, 2014, on Part 58 reviews. This training was presented by the Regional Environmental Officer and her staff. Also, an all-day training will be conducted for the Columbia Office of Public Housing on August 20, 2014, which will cover Part 50 reviews. This training will also be conducted by the Regional Environmental Officer.

Comment 1

To further address the concerns of this finding, PIH established a committee that began meeting on April 24, 2014, to develop national protocol to address both Part 50 and Part 58 environmental reviews for the Office of Public Housing. This effort is still ongoing.

Item of Nonconcurrency:

Columbia Office Management Did Not Monitor Its Staff To Ensure Compliance

Comment 2

While the office was not in compliance with 24 CFR Part 50, the statement as indicated above is not a factual and true statement. Management did, in fact, review, question and monitor staff on the environmental review process. It should also be noted that management sought and received individual guidance from the Field Office Environmental Officer on this process approximately 3 years prior, in an effort to gain a better understanding of the requirements.

Comment 2

However, in light of the complexity surrounding this topic, management's knowledge and understanding of the full process and requirements necessary to ensure compliance was insufficient to provide the necessary level of review.

We appreciate the Office of Inspector General's interest in our programs. If you have any questions or need additional information, you may contact me at (803) 253-3238.

OIG Evaluation of Auditee Comments

Comment 1 The Columbia Office stated as a result of our finding the Public Housing director and entire staff participated in a two day training session in April related to 24 CFR part 58 reviews and would be attending training in August related to 24 CFR part 50 reviews. Further, according to the Columbia Office, PIH established a committee to develop national protocol to address both part 50 and part 58 environmental reviews for the Office of Public Housing.

We acknowledge that the Columbia Office and HUD are taking steps to address the deficiencies identified in the report, but we have not evaluated them and do not have an opinion on them at this time.

Comment 2 The Columbia Office stated that it had reviewed, questioned, and monitored staff, but that it did not understand the environmental regulations and processes well enough to ensure that the office complied with the requirements.

We revised the report as appropriate.

Appendix B

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 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 4

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 5

Regulations at 24 CFR 50.4 state, “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 6

Regulations at 24 CFR 50.10(a) state, “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.”

Criterion 7

Regulations at 24 CFR 50.11(a) state that the HUD approving official must make an independent evaluation of the environmental issues; take responsibility for the scope and content of the compliance finding, environmental assessment, or environmental impact statement; and make the environmental finding.

Criterion 8

Regulations at 24 CFR 50.11(b) state that copies of environmental reviews and findings must be maintained in the project file.

Criterion 9

Regulations at 24 CFR 50.20(a) state that the following actions, activities, and programs are categorically excluded from the NEPA requirements of this part. They are not excluded from individual compliance requirements of other environmental statutes, executive orders, and HUD standards cited in section 50.4, where appropriate. Form HUD-4128 must be used to document compliance.

- Rehabilitation of structures when the following conditions are met:
 - In the case of residential buildings, the unit density is not changed more than 20 percent,

- The project does not involves changes in land use (from nonresidential to residential or from residential to nonresidential), and
- The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

Criterion 10

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 11

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 12

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

Criterion 13

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 Public Housing Operating Fund program.

Criterion 14

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.¹³ 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 15

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

¹³ State historic preservation officer/tribal historic preservation officer

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 16

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 request for release of fund certifications 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.