



**Office of Public Housing
Detroit, MI**

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



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TO: Willie C.H. Garrett, EMPA,
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//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 Detroit Office

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) results of our review of the Detroit Office of Public Housing's oversight 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.



September 24, 2014

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

Highlights

Audit Report 2014-FW-0005

What We Audited and Why

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

What We Recommend

We recommend that three housing commissions repay HUD, for transmission to the U.S. Treasury, almost \$1 million and support or repay more than \$33 million. We also recommend that the Director of the Detroit Office of Public Housing take available actions against the three housing commissions and their responsible entities. To correct systemic weaknesses identified in this report, we will make recommendations to HUD headquarters officials in an upcoming nationwide audit report.

What We Found

The Detroit Office did not provide adequate oversight of three public housing commissions 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 Detroit Office thought that the State of Michigan's environmental officer was responsible for monitoring responsible entities for compliance with requirements and because it did not properly implement the environmental requirements. As a result, the Detroit 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 three housing commissions spent more than \$34.7 million, including more than \$18 million in Recovery and Reinvestment Act grant funds, for projects that either did not have required environmental reviews or the environmental reviews were not adequately supported.

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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 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, which allows 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.

Our audit objectives were to determine whether the Detroit Office of Public Housing's oversight of public housing environmental reviews within its jurisdiction ensured that (1) the responsible entities performed the required reviews and (2) HUD did not release funds until all required documents were submitted.

RESULTS OF AUDIT

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

The Detroit Office did not provide adequate oversight of three public housing commissions to ensure that the responsible entities properly completed and documented environmental reviews as required by 24 CFR Part 58. Further, it did not maintain sufficient internal control records. These conditions occurred because the Detroit Office thought that the State of Michigan's environmental officer was responsible for monitoring responsible entities for compliance with requirements and because it did not properly implement the environmental requirements. As a result, the Detroit 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 three housing commissions spent more than \$34.7 million, including more than \$18 million in Recovery and Reinvestment Act grant funds, for projects that either did not have required environmental reviews or the environmental reviews were not adequately supported.

The Detroit Office Did Not Provide Adequate Oversight To Ensure Environmental Compliance

To assess compliance with requirements, we reviewed the Dearborn Housing Commission, the Detroit Housing Commission, and the Pontiac Housing Commission and their respective responsible entities, the City of Dearborn, the City of Detroit, and the City of Pontiac. There were significant deficiencies at each housing commission. Although Detroit Office staff reviewed responsible entity environmental review records, it failed to discern that the reviews did not meet regulatory requirements. Instead, it accepted the responsible entities' reviews at face value and released funding to the housing commissions. As a result, the Detroit 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 Detroit Office Did Not Provide Adequate Oversight To Ensure That the Responsible Entities Properly Completed Part 58 Environmental Reviews

Because the Detroit Office did not provide adequate oversight, it did not determine that the three public housing commissions 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 Detroit Office did not determine that the responsible entities

- Failed to notify HUD when they would not perform the environmental reviews,
- Failed to review the housing commissions' consultants' work to ensure proper compliance,
- Had not certified as the responsible entities on the requests for release of funds and certifications,
- Had not completed the environmental reviews before the Detroit Office released funds,
- Failed to reevaluate project changes, and
- Failed to meet public notification requirements.

The Responsible Entity Failed To Notify HUD That It Would Not Perform the Environmental Reviews for the Dearborn Housing Commission

The City of Dearborn, as the responsible entity, did not perform the Dearborn Housing Commission's environmental reviews, nor did it review the environmental records completed by the housing commission for compliance with the requirements. The housing commission's executive director stated that the housing commission had performed its own environmental reviews and had made the compliance determinations because HUD began requiring them in 1998 under 24 CFR Part 58. According to the housing commission's executive director, the City of Dearborn denied the commission's request to perform the reviews and told the commission it would need to perform its own reviews.

The City offered advice and guidance on how to perform the environmental reviews but confirmed that it did not perform the housing commission's environmental reviews. According to requirements,³ a responsible entity that believes it does not have the legal capacity to carry out the environmental responsibilities must notify the local HUD office for further instructions. However, this requirement was not met. Rather, the Dearborn Housing Commission assumed all responsibility for its environmental reviews. Therefore, the housing commission and responsible entity improperly implemented the environmental review process. Additionally, the mayor of Dearborn, as the certifying officer, signed the request for release of funds and certification,⁴ certifying that his office had fully carried out its responsibilities for environmental review, decision making, and action related to the projects set forth. The mayor

¹ 24 CFR 58.4(a)

² 24 CFR 58.30(a)

³ 24 CFR 58.11(a)

⁴ Form HUD-7015.15

further certified that his office assumed responsibility for and complied with NEPA, the environmental procedures, and statutory obligations of the laws cited in 24 CFR 58.5 and 58.6 on projects for which it did not perform the environmental reviews.

The Responsible Entity Failed To Review the Detroit Housing Commission's Consultant's Work for Proper Compliance

The City of Detroit, as the responsible entity, failed to review the Detroit Housing Commission's consultant's work for proper compliance with environmental requirements. While a housing commission may use consultants to perform a significant portion of the environmental review, only HUD or a responsible entity may determine compliance with requirements. In accordance with the requirements,⁵ 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. However, the Detroit Housing Commission submitted a memorandum to the City, stating that the environmental review was completed by a consultant, who determined that the capital improvements for the developments were considered to be categorically excluded according to 24 CFR 58.35 and would not require a request for release of funds and certification. The City accepted the consultant's environmental review at face value and stated to HUD that the review indicated that the capital improvements were in compliance and requested HUD to release the funds to the housing commission. Had the responsible entity performed an independent review and made the compliance determination, it should have determined that a request for release of funds and certification was required based on the development activities being categorically excluded subject to 24 CFR 58.35.

The Detroit Office Did Not Determine That the City of Pontiac Did Not Certify the Request for Release of Funds and Certification

The Detroit Office allowed the Pontiac Housing Commission to expend its 2011 Public Housing Capital Fund grant of \$457,861 without the responsible entity certifying to compliance with environmental requirements. The City of Pontiac did not certify the 2011 request for release of funds and certification. According to the requirements,⁶ the responsible entity must certify that it has complied with the requirements that would apply to HUD under NEPA before a recipient can undertake any physical activities. However, the request for release of funds and certification improperly showed the Pontiac Housing Commission as the responsible entity and the recipient. Further, the request was signed by the housing commission's finance report manager as the certifying officer of the responsible entity, and the housing commission's executive director signed as the recipient. The requirements at 24 CFR 58.72(b) state that HUD may disapprove a certification and request for release of funds if it has knowledge that the responsible entity or other participants in the development process have not

⁵ 24 CFR 58.4(a)

⁶ 24 CFR 58.2(a)(7)(B) and 58.5

complied with the items in 24 CFR 58.75. Had the Detroit Office provided proper oversight, it should have found that the request for release of funds and certification was not properly executed by the responsible entity, and it should not have released the funds.

In addition, the mayor's signature on the Pontiac Housing Commission's 2009 Recovery Act grant request for release of funds and certification did not appear to be authentic.

The Detroit Office Failed To Find That Two Housing Commissions Obligated and Expended Funds Before the Responsible Entities Completed the Environmental Reviews

The Detroit Office failed to determine that the Pontiac Housing Commission obligated and expended more than \$270,000 in Recovery Act funds before the responsible entity, the City of Pontiac, 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 request for release of funds and certification⁷ if required. The Pontiac Housing Commission obligated and expended more than \$270,000 in 2009 Recovery Act capital funds on contracts for repairs and improvements before the environmental review was completed. The housing commission and various contractors signed seven contracts between April 13 and September 17, 2009; however, the Detroit Office did not sign the form HUD-7015.16, Authority to Use Grant Funds, until October 15, 2009. All but one of the contracts had terms of completion of no more than 2 months. In addition, on March 22, 2012, the Detroit Office disbursed more than \$82,000 of the Pontiac Housing Commission's 2012 capital funds for operations use without a completed environmental review. The Detroit Office noted in the Line of Credit Control System (LOCCS) that no environmental review had been received, but it released the funds to the housing commission anyway. As of November 7, 2012, the 2012 Capital Fund grant environmental review was in process.

Further, the Dearborn Housing Commission obligated and expended more than \$63,000 between April 28, 2009, and January 22, 2010, in 2009 Recovery Act funds on architect and engineering fees and a rehabilitation contract before the environmental review was completed. On December 29, 2009, HUD reported in its remote monitoring report to the housing commission that it had identified work items, specifically, replacement of exterior windows and doors and an exterior insulating finish system at Townsend Towers that required an environmental review. The housing commission responded that it had submitted a multiyear environmental review for the upcoming 5-year Capital Fund program on September 29, 2009, which included the replacement work. However, after further discussion, the Detroit Office informed the housing commission that an

⁷ 24 CFR 58.22(a)

environmental review and request for release of funds and certification was required for the 2009 Recovery Act grant projects. According to HUD's remote monitoring report, the housing commission had already obligated 100 percent of its funds. HUD was concerned that the housing commission may have inappropriately obligated the Recovery Act funds due to a deficient procurement policy and before completing the environmental review. After receiving the monitoring report, the Dearborn Housing Commission completed and submitted a request for release of funds and certification with a statutory checklist covering 24 CFR 58.6 that was dated January 5, 2010. However, HUD noted receipt of the certification on October 1, 2009, several months before the housing commission and the responsible entity actually signed and submitted the request for release of funds and certification. The Acting Director of the Detroit Office of Public Housing did not sign the Authority to Use Grant Funds until February 23, 2010.

The Detroit Office Did Not Determine That a Housing Commission Failed To Report Substantial Project Changes

The Detroit Office did not determine that the Detroit Housing Commission failed to submit to the responsible entity for reevaluation any changes that had occurred between the housing commission's annual plan and its approved 5-year environmental review. For example, the housing commission's 2011 annual statement showed Americans With Disabilities Act 504 compliance work totaling \$825,000 at Brewster Homes, but the 5-year environmental review did not list any type of 504 compliance work. Further, the 2012 annual statement listed nine activities in six different developments totaling more than \$2.9 million that were not included in the 5-year environmental review record (see table 1). The housing commission 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 finding to determine whether the original findings are still valid and update the environmental review record by including the reevaluation in its record. However, the housing commission's director of compliance and capital improvements stated that the commission had not had any changes in activities that would have required the environmental review to be updated.

⁸ 24 CFR 58.47(a)(1) and (b)(3)

Table 1 Activities not included in the 5-year environmental review record

Activity	Brewster Home	Forest Park	Sheridan Place I and II	Smith Homes	Riverbend Towers	Woodbridge Senior Village	Total
Replace storm doors	\$ 80,000						\$80,000
Asphalt shingles	425,000						425,000
Replace windows		\$550,000					550,000
Replace trash compactors			\$ 60,000				60,000
Replace windows & seal exterior			1,018,318				1,018,318
Replace vinyl siding				\$625,000			625,000
Replace exhaust fans					\$35,000		35,000
Replace boilers					45,000	\$ 93,000	138,000
Replace aluminum railings						34,000	34,000
Totals	\$505,000	\$550,000	\$1,078,318	\$625,000	\$80,000	\$127,000	\$2,965,318

The Detroit Office Failed To Determine That Two Responsible Entities Did Not Comply With Public Notification Requirements

The Detroit Office failed to determine that the Pontiac Housing Commission, instead of the responsible entity, prepared, published, and received public comments. The requirements⁹ state that if the responsible entity makes a finding of no significant impact, it must prepare a finding of no significant impact notice, using the current HUD-recommended format or an equivalent format. The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments before it completes its environmental certification and before the recipient, the housing commission, submits its request for release of funds and certification. However, the housing commission, instead of the responsible entity, developed its own finding of no significant impact notice, it did not use the HUD-recommended format or equivalent, and there was no evidence it was published as a publication date was not provided. Further, the finding of no significant impact did not include a request for comments or state the comment period, it did not provide information on where project information was maintained and could be examined or copied, and it did not provide for objections to the request for release of funds and certification by the public.

⁹ 24 CFR 58.43

The Detroit Office also failed to determine that the responsible entity, the City of Detroit, did not publish the required finding of no significant impact and a notice of intent to request a release of funds and certification after the environmental determination was made that the Detroit Housing Commission's projects were categorically excluded under 24 CFR 58.35. If the responsible entity had determined that the projects could convert from categorically excluded to exempt, publication would not have been required. Since the City did not make this determination, a public notification was required.

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

The Detroit 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 Pontiac Housing Commission's environmental review records for its 2009 Recovery Act and its 2011 Capital Fund grant 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 Dearborn Housing Commission'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 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 commission and the responsible entity provided only a property name, and activities that included replacement of exterior windows, doors, and an exterior

¹⁰ 24 CFR 58.38(a)

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

insulation and finish system as outlined in the housing commission's revised 5-year plan.

None of the records for the Detroit Housing Commission'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 Section 106 of the National Historic Preservation Act. The Detroit Housing Commission's consultant unilaterally determined that all 20 developments were "not listed as a historic property" and provided summaries that included a "limited historical review" of Sanborn fire insurance maps, aerial photographs, and municipal records. However, the City of Detroit was required to consult with the State historic preservation officer regardless of the properties' historical status.¹² In addition, the support should have included evidence of a documented finding sent to the State historic preservation officer or a supported determination that the projects complied with a State historic preservation officer programmatic agreement.

Similarly, none of the records for the Dearborn Housing Commission's Capital Fund grants contained all the required compliance documentation supporting the items identified on the statutory checklists. For example, while the environmental review records showed that all the housing commission's developments were less than 50 years old and that no monitoring or adverse historical impact is applicable, the environmental review records should still have documentation supporting consultation with the State historic preservation officer, or documentation that the projects complied with a specific stipulation in a programmatic agreement.

Further, the Pontiac Housing Commission's environmental review records did not comply with records requirements.¹³ None of the records contained all of the required compliance documentation supporting the items identified on the checklist. For example, the statutory checklist requires compliance with airport clear zones and accident potential zones.¹⁴ However, the Pontiac Housing Commission determined that airport clear zones and accident potential zones did not apply to the projects without providing a basis to support its determination. The support could have included a map documenting the proximity of the airport to the project sites.

¹² 36 CFR 800.4(d)(1)

¹³ 24 CFR 58.38(b)

¹⁴ 24 CFR 51, subpart D

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

The three housing commissions and their responsible entities did not properly evaluate or provide documentation supporting their compliance with the following requirements:

- ***Historic preservation*** - The housing commissions and their responsible entities did not 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, and determine the intended effect on historic properties. Consultation is required even if the housing commission and responsible entity believe that no historic properties are present or that historic properties may be present but the undertaking will have no adverse effect upon them. While the Pontiac Housing Commission sent notification letters to the State historic preservation officer, the requirements state that only HUD or an agency official has delegated legal responsibility for compliance with Section 106.
- ***Floodplain management and flood insurance*** - The housing commissions and their responsible entities did not always comply with floodplain management or flood insurance requirements. While 12 of the 20 environmental review records for the Detroit Housing Commission contained a Federal Emergency Management Agency map with the subject property identified, none of the maps identified the flood zones the properties were located in. Further, the remaining eight developments had no documentation showing whether the developments were in a designated flood zone or required flood insurance. Similarly, the Pontiac Housing Commission did not address or provide supporting documentation to verify that its properties were not in a flood zone.
- ***Contamination and toxic site hazards*** - The housing commissions and their responsible entities did not comply with requirements regarding contamination and toxic site hazards. The Dearborn Housing Commission's environmental review record stated that there was no landfill, waste incineration facility, or compost facility within the City limits. The Dearborn Housing Commission further stated that the project would not produce hazardous waste, debris, fumes, or noxious odors and would not cause the elimination of lead-based paint hazards and asbestos, if encountered. However, the responsible entity did not evaluate the presence or possible presence of contamination, toxic materials, or radioactive substances as required by 24 CFR 58.5(i)(2). The Detroit Housing Commission's responsible entity failed to evaluate the threat from radon gas, which is a radioactive substance and subject to the noted requirements, while the Pontiac Housing Commission provided no

supporting documentation to validate the statement “not applicable” in the environmental review record.

- **Noise control** - The housing commissions and their responsible entities did not comply with noise control requirements for major rehabilitation or conversion projects to determine whether there was a need for noise reduction features. The Detroit Housing Commission stated that “no known noise hazards were identified within the project areas”; however, seven of its properties were adjacent to a Detroit freeway and located within an “unacceptable” noise zone that exceeded the 65 decibels allowed. Regulations¹⁵ strongly encourage HUD to convert noise-exposed sites to land uses compatible with the high noise levels or at least actively seek to incorporate noise attenuation features into rehabilitation projects. The Dearborn Housing Commission stated that no activities anticipated under the Capital Fund grant rehabilitation program would increase the noise in or around the subject activities and that no noise pollution problems existed in residential areas, other than traffic noise from major thoroughfares. However, the housing commission did not address the noise control from these major thoroughfares. The Pontiac Housing Commission stated that noise control was not applicable to its rehabilitation projects but did not provide supporting documentation to substantiate the decision.
- **Air quality** - The housing commissions and their responsible entities did not comply with air quality requirements to determine whether hazardous air pollutants were in the building materials that were replaced. All of the housing commissions performed major rehabilitation activities, such as replacement of roofs or heating, ventilation, and air conditioning systems, which can have asbestos-containing building materials. Failure to properly identify, abate, dispose of, and perform other required actions regarding asbestos before beginning renovation activities may create health hazards.
- **Environmental justice** - The housing agencies and their responsible entities did not comply with environmental justice requirements. Environmental justice requirements are designed to focus Federal attention on the environmental and human health conditions that any of the compliance factors may have on minority and low-income communities. Any unmitigated adverse impact that can occur with such things as contamination or toxic sites, noise, and air quality could result in an environmental justice compliance violation.

¹⁵ 24 CFR 51, subpart B

- *Sole-source aquifers, coastal zone management, wetland protection, endangered species, wild and scenic rivers, farmland protection, explosive and flammable operations, and airport hazards* - On most occasions, the housing commissions and their responsible entities provided no documentation supporting 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.

Because these compliance requirements were not verified, HUD may have allowed an increased risk to the health and safety of the residents and the general public since it could not ensure that they were not exposed to an unnecessary risk of contamination, pollution, or other adverse environmental effects.

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

The Detroit Office did not ensure that funds transferred to housing commission operating accounts met environmental requirements because it believed there was no regulation that required it to do so. A staff member stated that there was nothing in the operating subsidy regulations, 24 CFR Part 990, to allow an environmental review or give control over what is moved from the Capital Fund account to the operating account; therefore, the Detroit Office did not require a breakdown of what operating funds were used for. However, HUD's Field Office Environmental Review Guidance¹⁶ 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 Public Housing Operating Fund program. In addition, the housing agencies' annual contributions contracts¹⁷ prohibited 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 58.5 laws and authorities. However, the Office of Public Housing or the responsible entity must review the expenditures from the operating account to ensure that a proper level of environmental review was performed for activities that were subject to review.

¹⁶ Section 5: Program Requirements – Capital Fund Program (Special Note)

¹⁷ Form HUD-53012A

The Detroit Office Did Not Maintain Sufficient Internal Control Records

The Detroit 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 request for release of funds and certification was received and cleared, and whether HUD performed the environmental reviews directly. The guidance further required maintaining a separate environmental file for each housing commission.

The Detroit Office's tracking log for fiscal years 2001 through 2012 had only the public housing commission's name and either a date or the word "exempt" under each year. There was no explanation as to what the date referred to. The tracking log for fiscal years 2013 through 2018 expanded this information to include the date of the exempt or categorically excluded letter or the date of the request for release of funds and certification notice and the date the Detroit Office released the funds. However, neither of the tracking logs included the grant number, identified the responsible entity, 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, or the date of the Detroit Office's required 15-day wait period.

The Detroit Office Believed That the State of Michigan's Environmental Officer Was Responsible for Monitoring for Compliance

The Detroit Office did not monitor the housing commissions or their responsible entities for environmental compliance. According to the Detroit Office's Public Housing Director, the monitoring role is assigned to the environmental officer for the various States. The Director stated that he could not speak for the current environmental officer but the previous State of Michigan environmental officer had completed onsite monitoring reviews for the responsible entities. However, according to 24 CFR 58.77(d), HUD intended to conduct indepth 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 criteria does not provide for the transfer of monitoring responsibility to the States.

The Detroit Office Did Not Properly Implement the Environmental Requirements

The Detroit Office Did Not Understand the Environmental Requirements

The Detroit Office did not understand the environmental requirements when releasing funds to the recipients. For example, it would override the responsible entity's decision-making process and release funds to the recipient. During a quality management review in July 2011, HUD's Office of Environment and Energy found that the Detroit Office had violated two environmental regulations.¹⁸ The first violation occurred when three housing commissions received an authority to use grant funds from HUD before waiting the required 15 calendar days from receipt of the request for release of funds and certification or from the time specified in the notice published by the responsible entity, whichever was later. The other violation occurred when the Detroit Office failed to determine that a responsible entity did not publish the required notification, but the Detroit Office issued the authority to use grant funds in violation of the environmental requirements. The Detroit Office of Public Housing Director, in response to the violations, stated that what the quality management review team observed were cases in which the responsible entity submitted a request for release of funds and certification when such a request was not necessary. The Director further stated that his office's "practice" was to release the funds to the housing commission without waiting for the 15-day comment period when it decided that a responsible entity had unnecessarily submitted a request for release of funds and certification.

The Director assured the quality management review team that his office would no longer correct determinations made by the responsible entity and would wait the 15 days after receiving the request for release of funds and certification from the responsible entity. While the Detroit Office should not change determinations made by the responsible entity that assumed the responsibilities of NEPA and other laws and authorities for HUD, it should provide oversight and guidance to the housing commission and responsible entity to ensure that the environmental requirements are properly implemented in the future. However, a public housing staff member stated that management had instructed staff to process the environmental reviews and not check them for compliance.

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

The Detroit Office did not provide environmental training to the housing commissions or responsible entities to ensure compliance. The quality management review report included a corrective action encouraging staff and recipients involved with environmental reviews to attend training provided, but

¹⁸ 24 CFR 58.73 and 58.77(a)

the Director of the Detroit Office of Public Housing responded that his office would only “encourage” staff to attend training. The regulations¹⁹ allow HUD to “require” training for housing agencies and their responsible entities if it becomes aware of deficiencies through monitoring; however, the Detroit Office did not require training for anyone directly involved in meeting or ensuring compliance with the requirements. Further, two of the housing commission’s executive directors stated they had not received environmental training and were not aware of training being offered. Both executive directors commented that they wished there was some type of guidance provided by HUD, other than 24 CFR Part 58, that explained the environmental review process.

The Three Housing Commissions Spent More Than \$34.7 Million for Questioned Costs

Because the environmental reviews did not comply with requirements, the three housing commissions incurred more than \$34.7 million in questioned costs, including more than \$18 million in Recovery Act funds, as detailed in table 2.

Table 2: Questioned costs

Year	Dearborn Housing Commission	Detroit Housing Commission	Pontiac Housing Commission	Total
2009 Recovery Act funds	\$564,270	\$17,275,908	\$589,605	\$18,429,783
2011 capital funds	366,971	7,756,710	457,861	8,581,542
2012 capital funds	337,776	7,275,028	82,470	7,695,274
Total	\$1,269,017	\$32,307,646	\$1,129,936	\$34,706,599

Conclusion

The Detroit Office did not provide adequate oversight to ensure that the housing commissions and responsible entities properly completed and documented environmental reviews for the three public housing commissions in its jurisdiction that were reviewed. Thus, it was unaware that the public housing commissions and their responsible entities did not properly implement environmental review requirements. Because the environmental reviews did not comply with requirements, the Detroit Office may have increased the risk to the health and safety of public housing commission residents and the general public and may have failed to prevent or eliminate damage to the environment. Further, the

¹⁹ 24 CFR 58.77(d)(ii)

housing commissions incurred more than \$34.7 million in questioned costs, including more than \$18 million in Recovery Act funds.

The Detroit Office was responsible for verifying that environmental reviews complied with requirements, conducting periodic monitoring, and providing training to the housing commissions and responsible entities. Since these conditions 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 three commissions, the Detroit Office should review the deficiencies cited and implement the recommended corrective actions, including repaying almost \$1 million in ineligible costs and supporting or repaying more than \$33 million in unsupported costs.

Recommendations

We recommend that the Director of the Detroit Office of Public Housing require

- 1A. The Dearborn Housing Commission to repay \$63,255 in Recovery Act grant funds to HUD for its transmission to the U.S. Treasury for architect and engineering fees and contract obligations that occurred before the environmental review was completed by the responsible entity. Repayment must be from non-Federal funds.
- 1B. The Dearborn Housing Commission and the City of Dearborn to provide support that they complied with 24 CFR Part 58 requirements for the Commission's Recovery Act grant or require the Commission to repay \$501,015 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1C. The Dearborn Housing Commission and the City of Dearborn to provide support that they complied with 24 CFR Part 58 requirements for the Commission's 2011 Capital Fund grant or require the Commission to repay \$366,971 to HUD from non-Federal funds.
- 1D. The Dearborn Housing Commission and the City of Dearborn to provide support that they complied with 24 CFR Part 58 requirements for the Commission's 2012 Capital Fund grant or require the housing commission to reimburse \$337,776 to its 2012 Capital Fund grant from non-Federal funds.
- 1E. The Detroit Housing Commission and the City of Detroit to provide support that they complied with 24 CFR Part 58 requirements for the Commission's Recovery Act grant or require the Commission to repay \$17,275,908 to

HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.

- 1F. The Detroit Housing Commission and the City of Detroit to provide support that they complied with 24 CFR Part 58 requirements for the Commission's 2011 Capital Fund grant or require the Commission to repay \$7,756,710 to HUD from non-Federal funds.
- 1G. The Detroit Housing Commission and the City of Detroit to provide support that they complied with 24 CFR Part 58 requirements for the Commission's 2012 Capital Fund grant or require the Commission to reimburse \$7,275,028 to its 2012 Capital Fund grant from non-Federal funds.
- 1H. The Pontiac Housing Commission to repay \$273,774 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.
- 1I. The Pontiac Housing Commission and the City of Pontiac to provide support that they complied with 24 CFR Part 58 requirements for the Commission's Recovery Act grant or require the Commission to repay \$315,831 to HUD for its transmission to the U.S. Treasury. Repayment must be from non-Federal funds.
- 1J. The Pontiac Housing Commission to repay \$457,861 in 2011 capital funds to HUD for its statutory violation of the requirement that the responsible entity, not the Commission, sign as certifying officer on the request for release of funds and certification. Repayment must be from non-Federal funds.
- 1K. The Pontiac Housing Commission to reimburse \$82,470 to the Commissions' 2012 Capital Fund grant for operation expenditures that occurred before the environmental review was completed by the responsible entity. Repayment must be from non-Federal funds.
- 1L. The housing commissions to work with their respective responsible entities and local HUD environmental officer to show that no harm occurred from completion of all of the projects or mitigate any harm that occurred.

We also recommend that the Director of the Detroit Office of Public Housing

- 1M. Take one or more of the following actions with the three housing commissions and their respective responsible entities:

- Require attendance by responsible staff and management of the housing commission and responsible entity at HUD-sponsored or approved training;
- Refuse to accept the certifications of environmental compliance on future 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 commission.

SCOPE AND METHODOLOGY

We conducted our audit work between November 2012 and August 2013 in Detroit, MI, at the HUD field office, Dearborn Housing Commission, City of Dearborn, Detroit Housing Commission, City of Detroit, Pontiac Housing Commission, and City of Pontiac and 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;
- Interviewed staff from HUD's Detroit Office, selected housing commissions, and their respective responsible entities';
- Analyzed HUD's field office's, the housing commissions', and the responsible entities' environmental review processes for compliance with environmental requirements;
- Analyzed environmental review records for the selected housing commissions to ensure that environmental requirements were met;
- Compared the housing commissions' 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 commissions and noted any noncompliance issues related to environmental reviews;
- Reviewed HUD's LOCCS grant budgets, vouchers, and obligations and expenditures detail data. We verified the reliability of LOCCS data with other sources of information, such as contracts, annual plans, and environmental certifications; however, we did not rely on LOCCS data to support our conclusions.
- Compared the Detroit 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 commissions' 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 Detroit Office and 3 of 129 housing commissions within its jurisdiction based on our risk assessment, using information that we obtained related to funding levels, historic value, industry uses, and the 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 finding 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 Detroit Office, the housing commissions, and responsible entities properly implemented mandated environmental review requirements including

- Controls to ensure that HUD did not release funds and the housing commissions did not obligate or expend funds before completion of the environmental reviews by the responsible entity;
- Controls to ensure that the Detroit Office complied with HUD's Field Office Environmental Review Guidance for maintaining tracking logs and files;
- Controls to ensure that the housing commissions and responsible entities were monitored for environmental compliance; and
- Controls to ensure that the housing commissions 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 Deficiency

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

- The Detroit Office did not provide adequate oversight to ensure that the housing commissions and responsible entities within its jurisdiction complied with environmental requirements (finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$ 63,255	
1B		\$ 501,015
1C		366,971
1D		337,776
1E		17,275,908
1F		7,756,710
1G		7,275,028
1H	273,774	
1I		315,831
1J	457,861	
1K	82,470	
Totals	<u>\$877,360</u>	<u>\$33,829,239</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>Ref to OIG Evaluation</u>	<u>Auditee Comments</u>
	<p align="right">U.S. Department of Housing and Urban Development</p> <p align="right">Michigan State Office Office of Public Housing Patrick V. McNamara Federal Building 477 Michigan Avenue Detroit, MI 48226-2592 Tel. (313) 226-6880</p> <p>To: [REDACTED], Senior Auditor, CFE, CICAHUD - Office of Inspector General</p> <p>From: Willie C. H. Garrett, 5FPH, Director, Office of Public Housing</p> <p>Subject: Office of Inspector General Environmental Review (at Pontiac, Detroit, and Dearborn)</p> <p>Per our exit conference discussion held on August 21, 2014, the following are a few of the comments to the draft "subject" report.</p> <p>Finding: Detroit Field Office did not provide adequate oversight of 24 CFR Part 58 Reviews by the following actions:</p> <ul style="list-style-type: none">OIG Comment: DFO accepted, at face-value, the responsible entities reviews. <p>Comment 1</p> <p>DFO Response: Under part 24 CFR 58, the responsible entity assumes all responsibilities under NEPA. The role of HUD is to ascertain that the responsible entity sign off on the certification (form HUD 7015.15), if needed; or that it signs the letter to HUD advising of findings, as appropriate. It is not the role of HUD to second-guess responsible entities.</p> <ul style="list-style-type: none">OIG Comment: The City of Dearborn, as the responsible entity, did not perform the environmental review. It was performed by the PHA. <p>Comment 2</p> <p>DFO Response: The DFO is unaware of any part 58 rules that prevent the PHAs and/or its consultants from performing the necessary steps for the environmental clearance, so long as the responsible entity sign off on the findings. In this case, the City of Dearborn signed off on the certification. HUD is in no position to direct responsible entities on how to conduct their tasks. The City of Dearborn fulfilled its responsibilities by signing off on the certification, as required by 24 CFR Part 58.</p> <ul style="list-style-type: none">OIG Comment: The City of Detroit accepted the consultant's review at face value. <p>DFO Response: Same response as above.</p> <ul style="list-style-type: none">OIG Comment: The Detroit Office did not determine the City of Pontiac did not certify the request for release of funds (form HUD 7015.15). The Detroit office, thus, allowed the PHC to expend its funds of \$457,861 (the entire amount of its 2011 CFP grant). <p>Comment 3</p> <p>DFO Response: This is a legitimate observation. However, the certifying officer's signature title box indicated "Finance Manager". DFO staff, erroneously, assumed the certifier is the Finance Manager for the City of Pontiac. The DFO office disagrees with the IG in its recommendation that the entire grant amount of \$457,861 should be recaptured from the PHC. A sizable amount of the grant was expended on activities that are classified as "exempt" after a</p> <p align="center">Visit us on the web at http://www.hud.gov/local/det/detpmain.html</p>

certain point during the review (BLI 1406, 1410, 1408, and 1430).

Comment 4

OIG Comment: The Mayor's signature on form 7015.15 for the Pontiac HC's 2009 ARRA grant appears "unauthentic".

DFO Response: This is a very subjective and accusatory observation. It is the opinion of the DFO-PIH staff that such comment be removed from the report.

Comment 5

- OIG Comment: The DFO allowed the Pontiac Housing Commission to obligate and expend \$270,000 in the 2009 ARRA grant (between April 13 and September 17, 2009) prior to the completion of the environmental review (October 15, 2009).

DFO Response: All PHAs were encouraged to use the ARRA grant for "shovel ready" projects. Most of these projects were addressed prior and already had an environmental review completed. The reviewer failed to inquire whether or not these projects were previously addressed in an existing ER.

Comment 6

- OIG Comment: The DFO allowed the Pontiac HC to expend \$82,000 in its 2012 CFP grant for BLI 1406 (operations), without a completed environmental review.

DFO Response: BLI 1406 is an activity involving the "transfer" of funds from the capital fund grant to the operating subsidy. This activity end up being classified as an "exempt" activity under the NEPA requirements. While the DFO requires ALL of its PHA to address the operations budget line item in the ER, allowing expenditures under this BLI without a FULL ER is considered on an individual basis.

Comment 5

- OIG Comment: The Dearborn HC obligated and expended \$63,000 between April 28, 2009 and January 22, 2010, under the 2009 ARRA grant prior to the completion of the ER. The reviewer appears to have addressed this matter with the PHA. The PHA stated that these activities were addressed in its approved 5 year action plan and the activities have previously been included in an ER.

DFO Response: All PHAs were encouraged to use the ARRA grant for "shovel ready" projects. Most of these projects were addressed prior and already had an environmental review completed. The 2009 did not "mandate" new environmental reviews for activities that had an existing ER.

Comment 7

- OIG Comment: The Detroit HC failed to notify the Responsible Entity (the City of Detroit) for reevaluation of changes since the completion of the ER on its 5 year action plan. The IG reviewer claims that the CFP 2012 Annual Statement listed 9 activities in 6 developments totaling more than \$2.9 million that were not included in DHC's 5 year environmental review.

DFO Response: This observation was disputed (to the IG reviewer) by DHC's Director of Compliance and Capital Improvements.

Comment 8

- **OIG Comment:** The DFO failed to determine that the PHC, not the City of Pontiac prepared, published, and received public comments.

DFO Response: Not enough detail is provided.

Comment 9

- **OIG Comment:** The DFO failed to determine that the RE (City of Detroit) failed to publish FONSI on “categorically excluded” activities.

DFO Response: Even though the reviewer did not mention the grant number, a FONSI is only required for categorically excluded and subject to 24 CFR Part 58.5, where one or more categories (statutes) are affected. The reviewer failed to make that determination prior to citing this issue as a finding.

Comment 10

- **OIG Comment:** The DFO did not determine that the RE properly identifies project descriptions (for Dearborn and Pontiac).

DFO Response: This is very subjective. What is adequate project description to the reviewer may not be the same for the RE. HUD will not mandate to the RE on how to do its business.

Comment 11**Comment 12**

- **OIG Comment:**The Dearborn HC and the Detroit HC did not have all of the ER records (every single document) in their office.

DFO Response: DFO staff does not believe that every single ERR document is required to be at the Commission office. The responsible entity is where all these records should be retained.

Comment 13

- **OIG Comment:** The Pontiac HC’s ERR did not contain records on the “airport clear zone and accident potential zones”.

DFO Response:Most of these records will not apply to maintenance type activities (the case at the Pontiac HC). Some of these items, addressed by the IG reviewer pertain to “new construction”.

- **OIG Comment:** DFO did not ensure that PHAs verified and documented compliance requirements (reviewer lists all statutes of part 58.5 – statutory check list).

DFO Response: The statutory checklist may be kept at the RE’s location. Furthermore, most of these records will not apply to maintenance type activities. Some of these items, addressed by the IG reviewer pertain to “new construction”.

- **OIG Comment:** The DFO did not ensure operating costs met ER requirement.

Comment 6

DFO Response. Do not concur. The DFO requires the PHAs to include BLI 1406 in its review. It must be noted that BLI 1406 activities are categorically excluded and turned into exempt activities (no further NEPA requirements) will then apply. No certification (form 7015.15, publication, or FONSI is require. BLI 1406 is a TRANSFER of funds from the CFP

grant into the operating subsidy. These funds, once transferred, become eligible under the operating subsidy rules at CFR 960.

- **OIG Comment:** DFO did not maintain minimum internal control requirements for HUD's FO (tracking logs, etc).

DFO Response: Do not concur. The DFO PIH maintains a very comprehensive log. The DFO places an automatic hold in LOCCS on any CFP,RHF,ARRA, Emergency, etc grants until such grants have ERs (even when 100% are budgeted for operations).

- **OIG Comment:** Reimburse \$34.5 million from DHC, Dearborn, and Pontiac.

DFO Response: Disagree. No reimbursements should be required (due to all the responses above).

Thank you!

Comment 14
Comment 15

Comment 16

OIG Evaluation of Auditee Comments

Comment 1 The Detroit Office stated that under part 24 CFR 58, the responsible entity assumes all responsibilities under NEPA and that it is the role of HUD to ascertain that the responsible entity signed off on the certification. Further, it is not the role of HUD to second-guess the responsible entities.

While the regulations do require the responsible entity to make all decisions related to the environmental reviews, the Detroit Office has a responsibility to provide oversight and guidance to the housing commissions and responsible entities to ensure that the environmental requirements are properly implemented.

Comment 2 The Detroit Office stated it is unaware of any part 58 rules that prevent the housing commissions or hired consultants from performing the necessary steps for environmental clearance as long as the responsible entity signs the certification. Further, it stated that HUD is in no position to direct responsible entities on how to conduct their tasks.

According to regulations at 24 CFR 58.4, the responsible entities must assume the responsibility for environmental review, decision making, and action that would otherwise apply to HUD under NEPA and other provision of law. In addition, 24 CFR 58.12 states that the responsible entity must develop the technical and administrative capability necessary to comply with the requirements of this part. Finally, 24 CFR 58.30 states the environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. If the responsible entity does not have the expertise to perform the reviews, or does not want to perform them, they are required to notify HUD. The Detroit Office has a responsibility to the public to ensure that the environmental reviews are properly performed. Its failure to do so increases the risk of harm to the public and the environment.

Comment 3 The Detroit Office stated that its staff erroneously assumed the certifier was the Finance Manager for the City of Pontiac. It further disagreed that the entire grant amount of \$457,861 should be recaptured from the Pontiac Housing Commission as a sizable amount of the grant was expended on activities that were classified as “exempt” after a certain point during the review.

The Pontiac Housing Commission was listed with its name and address on the certification as being the responsible entity rather than the City of Pontiac. Detroit Office staff stated during the review that if they received a certification and determined that it was complete, they were to just process it. The certification was not reviewed to ensure it was properly completed and based on the results of our review, we believe there is strong evidence that better monitoring and oversight is needed with the environmental reviews. Accepting certifications without a thorough review of them does not ensure tenants are

protected. The environmental review certification did not meet requirements; therefore, expenditure of the funds violated requirements and must be repaid.

Comment 4 The Detroit Office stated that the comment that the Mayor’s signature on the certification form appears unauthentic is very subjective and an accusatory observation. The Detroit Office of Public Housing staff’s opinion is that the comment should be removed from the report.

The statement made in the report is based on observation of documentation and an interview with City of Pontiac officials. In addition, we did not question the funds based on the possible improper signature. We did not remove the statement.

Comment 5 The Detroit Office stated that all housing commissions were encouraged to use the Recovery Act grant for “shovel ready” projects. Most of the projects were addressed prior and already had an environmental review completed for which the OIG reviewer failed to inquire whether or not these projects were previously addressed in an existing environmental review. Further, the Detroit Office stated that the 2009 Recovery Act did not “mandate” new environmental reviews for activities that had an existing environmental review.

The Recovery Act²⁰ required that applicable environmental reviews under NEPA be completed on an expeditious basis. Although the Detroit Office claimed that “most” of the projects had prior reviews, it did not state that the Dearborn Housing Commission’s Recovery Act activities had a prior approved review. If an environmental review was previously performed, the environmental review record for the Recovery Act grant should have included the support from the previously approved reviews, but there was no evidence in the records. While the housing agencies were under pressure to meet Recovery Act deadlines, they, along with HUD, were still required to follow all regulations.

Comment 6 The Detroit Office stated it does not concur that it did not ensure operating costs met environmental review requirements. It requires the housing commissions to include budget line item 1406 in its reviews, but considers allowing expenditures under this budget line item without a full environmental review on an individual basis. It stated that the budget line item 1406 is an activity involving the “transfer” of funds from the capital grant to the operating subsidy. This activity ends up being classified as an “exempt” activity under the NEPA requirements and no further requirements apply. The Detroit Office further stated that because the budget line item 1406 is a transfer of funds from capital grants to operating subsidy, once transferred, they become eligible under the operating subsidy rules at 24 CFR 960.

²⁰ Public Law 111-5, Section 1609

The environmental review records did not identify the activities for which the housing commissions operating funds were used. The housing commissions should have provided the responsible entity a detailed breakdown of the budget line item 1406 so that the responsible entity could ensure it completed a proper level of environmental review. While the requirements at 24 CFR 58.35(b)(3) state that operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs are considered categorically excluded not subject to section 58.5, it must be documented as such by the responsible entity. Further, the Detroit Office circumvented the requirements of 24 CFR 58.22 by allowing expenditures from the budget line item before the responsible entity completed the environmental review. In addition, the requirements at 24 CFR 990.116 state that the environmental review procedures are applicable to the Public Housing Operating Fund program.

Comment 7 The Detroit Office stated that the Detroit Housing Commission's Director of Compliance and Capital Improvements disputed the OIG observation that it failed to notify the responsible entity (City of Detroit) for reevaluation of changes since the completion of the environmental review on its 5-year action plan.

The housing commission's director did not dispute the OIG's finding, but stated that the housing commission did not have any changes occur in activities that required an updated environmental review be completed. However, comparison of the 5-year approved plan to the annual statements, found that the activities listed in the annual statements were not part of the approved 5-year environmental review.

Comment 8 The Detroit Office stated that not enough detail was provided regarding its failing to determine that the Pontiac Housing Commission, not the responsible entity, prepared, published, and received public comments related to the environmental reviews.

Although we discussed this issue with the Detroit Office during the review, it did not at any time ask the OIG for additional information. A limited review by the Detroit Office of the documentation that it received from the housing commission related to the environmental review publication should have found that the public notice requirements were not met.

Comment 9 The Detroit Office stated that even though the OIG reviewer did not mention the grant number, a finding of no significant impact is only required for categorically excluded and subject to 24 CFR part 58.5, where one or more categories (statutes) are affected.

The responsible entity determined the projects were categorically excluded, but did not clarify whether the projects were subject to section 58.5 or if the projects could convert to exempt. Our review of the projects found that some of the

activities were categorically excluded subject to section 58.5; therefore, according to 24 CFR 58.43, the responsible entity must prepare and publish a finding of no significant impact notice along with a notice of intent to request the release of funds and certification. The Detroit Office appears to have a misunderstanding of these requirements.

Comment 10 The Detroit Office stated that what constitutes properly identified project descriptions for Dearborn and Pontiac is very subjective, and may vary between the OIG reviewer and the responsible entity.

According to 24 CFR 58.38 the environmental review records must describe the project and the activities that the recipient has determined to be part of the project. The OIG did not determine what constituted an adequate project description. Rather, HUD's Office of Environment and Energy has provided guidance through its website and its training sessions on the specific requirements for project descriptions.

Comment 11 The Detroit Office stated that HUD will not mandate to the responsible entity how to conduct its business.

The Detroit Office continues to fail to accept its oversight responsibility. Rather, it is willing to accept environmental reviews that are incomplete.

Comment 12 The Detroit Office stated that its staff does not believe that every single environmental review record document is required to be at the housing commission's office. The responsible entity is where all these records should be retained.

While the Detroit Office is correct that the responsible entity is required to maintain all documents that support the environmental review record, we did not state that it was required of the housing commissions. We stated that the environmental records for three different housing commissions did not contain all the required documentation as required per 24 CFR 58.38 and provided examples of what should have been included in the records maintained by the responsible entities.

Comment 13 The Detroit Office stated that most of the records, such as "airport clear zone and accident potential zones" will not apply to maintenance type activities. It further stated that some of the items addressed by the OIG reviewer pertain to "new construction."

The regulations at 24 CFR 58.35(a) state that activities including acquisition, repair, improvement, reconstruction, or rehabilitation require compliance with other applicable Federal environmental laws and authorities listed in section 58.5. The Detroit Office is incorrect that the compliance factors are applicable to "new construction" only. Projects that are categorically excluded subject to 58.5 still

have to be reviewed and supported with documentation for all the compliance factors, even if the factor in question may not be applicable.

Comment 14 The Detroit Office stated it does not concur that it did not maintain the minimum internal control requirements, but that it does maintain a very comprehensive log.

HUD's Field Office Environmental Review Guidance provided a list of items that were to be included in the tracking logs for the minimum internal control requirements to be met. Review of the Detroit Office's tracking logs found that some of the listed items were lacking as noted in the finding. Thus, it did not meet the minimum internal control requirements.

Comment 15 The Detroit Office stated it places an automatic hold in LOCCS on any capital fund, rapid housing fund, Recovery Act fund, or emergency fund grant until such grants have received an environmental review, even when the entire grant is budgeted for operations.

While the Detroit Office may have placed automatic holds in LOCCS until the environmental review is received, we found several instances where it disbursed funds to housing commissions before the responsible entity completed the environmental review. Therefore, the Detroit Office circumvented the requirements.

Comment 16 The Detroit Office disagreed that any reimbursements of the \$34.5 million from the Detroit Housing Commission, Dearborn Housing Commission, or Pontiac Housing Commission should be required.

If the housing commissions 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 did not complete them, the supporting documentation should be readily available for submission to the Detroit Office. If the supporting documents cannot be provided, then the housing commissions and responsible entities cannot support the determinations, and the expenditures are thus ineligible and must be repaid. Further, as part of its oversight, the Detroit Office was responsible for limited monitoring of the public housing commissions' environmental review records. We found that the commissions did not maintain complete records and the environmental reviews were not in compliance with requirements. Also, while 24 CFR part 58 allows the responsible entity to assume HUD's responsibility for environmental reviews, if the responsible entities cannot follow the requirements, then the Detroit Office has a responsibility to suspend or terminate the responsible entities' assumption authority of the environmental review process as outlined in 24 CFR 58.77(d)(iv).

As for requiring public housing commissions to repay ineligible funds, the former Assistant Secretary for Public and Indian Housing concurred that Recovery Act

funds expended on construction activities in a prior audit 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 Dearborn Housing Commission obligated more than \$63 thousand and the Pontiac Housing Commission obligated more than \$356 thousand in Recovery Act and Capital grant funds, in violation of requirements, it must repay the funds. Further, the Pontiac Housing Commission committed a statutory violation of the environmental requirements when it, not the responsible entity, signed the request for release of funds and certification, a legal binding document.

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 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 4

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 5

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 6

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

Criterion 7

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 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 58.11(a) state that a responsible entity that believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD office for further instructions.

Criterion 10

Regulations at 24 CFR 58.22(a) state that neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities or any of their contractors, may commit HUD assistance under a program listed in section 58.1(b) on an activity or project until HUD or the State has approved the recipient's request for release of funds and the related certification from the responsible entity.

Criterion 11

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 12

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 13

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 14

Regulations at 24 CFR 58.38(a) state that “the [environmental review record] shall contain all 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 shall:

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

Criterion 15

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. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review must not be incorporated by reference but must be included in the environmental review record.

Criterion 16

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 Environmental Protection Agency 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 17

Regulations at 24 CFR 58.43(c) state that the responsible entity must consider the comments and make modifications, if appropriate, in response to the comments before it completes its environmental certification and before the recipient submits its request for release of funds and certification.

Criterion 18

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 19

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 20

Regulations at 24 CFR 58.72(b) state that HUD (or the State) may disapprove a certification and request for release of funds if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in section 58.75 or that the request for release of funds and certification are inaccurate.

Criterion 21

Regulations at 24 CFR 58.73 state that HUD (or the State) will not approve a request for release of funds and certification for any project before 15 calendar days have elapsed from the time of receipt of the request for release of funds and the certification or from the time specified in the notice published under section 58.70, whichever is later. Any person or agency may object to a recipient’s request for release of funds and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) may refuse the request for release of funds and certification on any grounds set forth in section 58.75. All decisions by HUD (or the State) regarding the request for release of funds and the certification will be final.

Criterion 22

Regulations at 24 CFR 58.75(a) state, “the certification was not in fact executed by the responsible entity’s Certifying Officer.”

Criterion 23

Regulations at 24 CFR 58.77(a) state that HUD’s approval of the certification will be deemed to satisfy the responsibilities of the HUD Secretary under NEPA and related provisions of law cited in section 58.5 if those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in section 58.1(b).

Criterion 24

Regulations at 24 CFR 58.77(d) state that at least once every 3 years, HUD intends to conduct indepth 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 indepth monitoring of these environmental activities or by other means, HUD becomes aware of environmental deficiencies, HUD may take one or more actions, including requiring attendance by staff of the responsible entity at HUD-sponsored or -approved training.

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 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.²¹ 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 27

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.

²¹ State historic preservation officer/tribal historic preservation officer

Criterion 28

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 who HUD has determined will or will not perform the environmental review on behalf of the Department. 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 Funds certifications that have been received and clearance provided;
- A list of environmental reviews that have been conducted by the Office of Public Housing for each program requiring environmental clearance; and
- Separate environmental clearance files for each public housing agency.”