



Offices of Housing, Public and Indian Housing, and Community Planning and Development, Washington, DC

Implementation of and Compliance With Environmental Requirements



To: Nani A. Coloretti, Deputy Secretary, SD
Jemine A. Bryon, General Deputy Assistant Secretary,
Public and Indian Housing, P

//signed//

From: Gerald Kirkland, Regional Inspector General for Audit, 6AGA

Subject: HUD Did Not Adequately Implement or Provide Adequate Oversight To Ensure Compliance With Environmental Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's implementation and oversight of compliance with environmental requirements.

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.



Audit Report Number: 2015-FW-0001

Date: June 16, 2015

HUD Did Not Adequately Implement or Provide Adequate Oversight To Ensure Compliance With Environmental Requirements

Highlights

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development's (HUD) implementation and oversight of compliance with environmental requirements as part of the HUD Office of Inspector General's annual audit plan to contribute to improving HUD's execution of and accountability for its fiscal responsibilities. Our objective was to determine whether HUD, specifically its Offices of Housing; Public Housing, and Native American Programs within Public and Indian Housing; and Community Planning and Development, ensured that it adequately implemented environmental requirements and provided adequate oversight to ensure compliance with these requirements.

What We Found

HUD did not adequately implement environmental requirements or provide adequate oversight to ensure compliance with these requirements. For example, Housing and Public Housing did not adequately monitor or provide training to their staff, grantees, or responsible entities on how to comply with environmental requirements. Also, HUD did not have an adequate reporting process for the program areas to ensure that the appropriate headquarters programs were informed of field offices' environmental concerns. Further, our review of five Public Housing field offices found that none of them followed environmental compliance requirements. These conditions occurred because HUD did not clearly define program area responsibilities. Further, Public Housing did not understand requirements or did not consider compliance to be a priority. As a result, HUD may have increased the risk to the health and safety of the public and failed to prevent or eliminate damage to the environment, and five Public Housing field offices allowed public housing agencies to spend almost \$405 million for activities that either did not have required environmental reviews or had reviews that were not adequately supported.

What We Recommend

We recommend that HUD (1) comply with and provide adequate oversight to ensure compliance with environmental requirements, (2) either establish an independent program office with overall departmental responsibility for developing and enforcing compliance with environmental policies by all program offices and grantees or establish an agreement that clearly outlines all program offices' environmental oversight responsibilities, and (3) clarify the delegation of authority in Federal Register notices related to its responsibility for implementation and compliance with environmental requirements.

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Background and Objective

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 NEPA, 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 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 NEPA.

The U.S. Department of Housing and Urban Development (HUD) responded to NEPA and Executive Order 11514 by developing 24 CFR (Code of Federal Regulations) Part 50, Protection and Enhancement of Environmental Quality, and 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Regulations at 24 CFR Part 50 direct HUD to carry out the policies of NEPA and other laws and authorities. This responsibility includes an independent evaluation of the environmental issues, the scope and content of the environmental compliance finding, and making the environmental determination. Further, the regulations state that it is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to ensure that the requirements are implemented. Regulations at 24 CFR Part 58 allow State and local governments to assume HUD's responsibility for environmental reviews. However, these regulations do not relieve HUD of all environmental responsibilities. Instead, they require HUD to monitor, inspect, and ensure that environmental process decisions are carried out during project development and implementation.

The Office of Inspector General's (OIG) initial assessment of HUD's implementation of environmental requirements found that the Office of Native American Programs and Community Planning and Development had developed processes for implementing and overseeing compliance with environmental requirements. However, the Offices of Housing and Public

Housing¹ had not developed processes to ensure adequate implementation and oversight of compliance with environmental requirements. Rather, they depended primarily on Community Planning and Development's Office of Environment and Energy to meet their programs' requirements. Based on OIG's initial assessment, we advised Housing, Public and Indian Housing, and Community Planning and Development that program areas should develop a memorandum of understanding or agreement among them to clarify roles and responsibilities for ensuring implementation and oversight of compliance with environmental requirements. Community Planning and Development's former Deputy Assistant Secretary for Grant Programs and Housing's former Acting General Deputy Assistant Secretary agreed with the recommendation for a memorandum of understanding or agreement. However, the former General Deputy Assistant Secretary for Public and Indian Housing did not agree with OIG's findings or the recommendation to develop a memorandum of understanding or agreement and stated that Public and Indian Housing had direct oversight and that its offices complied with requirements, including providing training and conducting monitoring. To validate these claims, which seemed contrary to OIG's initial assessment, OIG performed detailed reviews of five public housing field offices² and reported the results in five separate audit reports (see appendix B for the universe of the Public Housing field offices and the number of public housing agencies in their jurisdictions).

HUD provided more than \$6.7 billion in capital funding to public housing agencies during the audit period, including almost \$3 billion in American Recovery and Reinvestment Act funds in 2009 and a total of more than \$3.7 billion in capital funds in 2011 and 2012. For fiscal years 2013 through 2015, HUD provided almost \$5.3 billion in Capital Fund grants to public housing agencies.

Our objective was to determine whether HUD, specifically its Offices of Housing; Public Housing and Native American Programs within Public and Indian Housing; and Community Planning and Development, ensured that it adequately implemented environmental requirements and provided adequate oversight to ensure compliance with these requirements.

¹ When discussing both the Office of Public Housing and the Office of Native American Programs, we use the term Public and Indian Housing; when discussing only the Office of Public Housing, we use the term Public Housing; and when discussing only Indian housing, we use the term Office of Native American Programs.

² Boston, MA, Kansas City, KS, Greensboro, NC, Columbia, SC, and Detroit, MI

Results of Audit

Finding: HUD Did Not Adequately Implement or Provide Adequate Oversight To Ensure Compliance With Environmental Requirements

HUD did not adequately implement or provide adequate oversight to ensure compliance with environmental requirements. For example, Housing and Public Housing did not adequately monitor or provide training to their staff, grantees, or responsible entities on how to comply with environmental requirements.³ Also, HUD did not have an adequate reporting process to ensure that the appropriate headquarters programs were informed of field offices' environmental concerns. Further, none of the five Public Housing field offices reviewed followed environmental compliance requirements. These conditions occurred because HUD did not clearly define program area responsibilities. Further, Public Housing did not understand requirements or did not consider compliance to be a priority. As a result, HUD may have increased the risk to the health and safety of the public and failed to prevent or eliminate damage to the environment, and five Public Housing field offices allowed public housing agencies to spend almost \$405 million for activities that either did not have required environmental reviews or had reviews that were not adequately supported.

Housing and Public Housing Failed To Monitor Field Offices

The program environmental clearance officers for Housing and Public Housing did not provide adequate oversight to their respective program field offices to ensure compliance with environmental requirements. This condition occurred because the program environmental clearance officers did not clearly understand their roles and responsibilities. For example, the former Housing program environmental clearance officer stated that while he could have monitored the field offices, he depended on Community Planning and Development's Office of Environment and Energy to monitor them. However, his job description included monitoring and evaluating field office environmental activities and developing a workload measurement reporting system, which he did not do. The current Housing program environmental clearance officer stated that she had not monitored field offices.

The Public Housing program environmental clearance officer stated on several occasions that her role was only to serve as a liaison between headquarters and the field offices related to requirements and she did not deal with compliance. However, a July 16, 2010, memorandum from a former Assistant Secretary for Public and Indian Housing to Public and Indian Housing principal staff stated that the role of the Public Housing program environmental clearance officer is to provide environmental compliance reviews and serve as a liaison for Public and Indian

³ Our initial assessment found that the Office of Native American Programs and Community Planning and Development performed monitoring and training. We did not perform detailed testing to determine whether the monitoring or training was adequate.

Housing. Regulations at 24 CFR 50.10(a) state that it is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to ensure that the requirements are implemented. Further, the regulations⁴ state that only the program approving officials can establish an environmental management and monitoring program as part of the project approval. Without adequate monitoring, HUD could not ensure that field offices performed environmental reviews that complied with 24 CFR Part 50.

Housing and Public Housing Did Not Adequately Monitor Responsible Entities

HUD is required⁵ to monitor responsible entities,⁶ whether the monitoring is in-depth or limited, and exercise quality control over the environmental activities performed by responsible entities at least once every 3 years to ensure that they comply with environmental requirements. However, Housing and Public Housing did not adequately monitor their responsible entities to ensure compliance with environmental requirements. The former Housing program environmental clearance officer stated that Housing did not faithfully monitor its risk sharing program because he believed that there were few environmental reviews and the reviews were not important. Public Housing did not monitor its responsible entities because it believed that it was the Office of Environment and Energy's responsibility. The Deputy Director of the Boston Office of Public Housing stated that the Boston Office presumed that the responsible entities conducted the environmental reviews properly. Therefore, it accepted certifications from responsible entities at face value. Similarly, the Director of the Detroit Office of Public Housing stated that the role of HUD is to ensure that the responsible entity signs off on the certification, if needed, or that it signs a letter to HUD advising of findings as appropriate. He further stated that it is not the role of HUD to second-guess responsible entities.

The Office of Native American Programs and Community Planning and Development developed monitoring programs that could be used as tools for monitoring by all program areas. For example, the Office of Native American Programs has an environmental review compliance monitoring plan that instructs its field office management and staff on how to conduct monitoring reviews. This plan provides the staff with guidance on pre-visit preparation, onsite review procedures, steps for addressing each of the environmental levels of review,⁷ and summarizing the results. In addition, the Office of Native American Programs ensures that it conducts onsite monitoring of its field offices as required.⁸ Figure 1 is an excerpt from its monitoring program. It shows an example of some of the monitoring steps to determine compliance with activities that are categorically excluded not subject to 24 CFR 58.5.

⁴ 24 CFR 50.22

⁵ 24 CFR 58.77(d)

⁶ Regulations at 24 CFR 58.2(a)(7)(ii)(B) define the responsible entity for public housing agencies as the unit of general local government, within which the project is located, that exercises land use responsibility.

⁷ Environmental levels of review are categories that determine the extent of review needed for the activities or projects and include exempt activities, categorically excluded not subject to section 58.5, categorically excluded subject to section 58.5, environmental assessments, and environmental impact statements.

⁸ 24 CFR 58.77(d)

Figure 1



RECIPIENT NAME:	Regulatory/ Statutory Citation	Other Tools	Ref. Pg.	Remarks
VII. Categorical Exclusions, Not Subject to 24 CFR § 58.5				
A. Typical categorically-excluded activities, which are not subject to §58.5, include:				
1. Tenant-based rental assistance;	24 CFR 58.35(b)(1)			
2. Supportive services (i.e., health care, housing services, etc.)	24 CFR 58.35(b)(2)			
3. Operating costs (i.e., maintenance, security, utilities, etc.)	24 CFR 58.35(b)(3)			
4. Economic development activities (i.e., equipment purchase, operating expenses not associated with construction or expansion, etc.)	24 CFR 58.35(b)(4)			
5. Down payment or close cost assistance to homebuyers for existing units.	24 CFR 58.35(b)(5)			
B. Determine if the activities listed in the ERR are included in the list of categorical exclusions, not subject to 24 CFR § 58.5.	24 CFR 58.35(b)			
C. Determine if the responsible entity (the Tribe) reviewed compliance with regulatory requirements of 24 CFR § 58.6.				

Community Planning and Development has a comprehensive planning and development monitoring handbook⁹ that contains guidance for monitoring all of its programs. Its environmental monitoring objectives include

- Determining whether the responsible entity complied with the procedures and requirements of 24 CFR Part 58.
- Examining whether the responsible entity adequately assessed the project’s impact on the environment and the environment’s impact on the project.
- Providing technical assistance to the responsible entity to remedy problems identified and reduce or eliminate incidences of noncompliance in the future.

Both the Office of Native American Programs and Community Planning and Development provided examples of environmental monitoring programs to Public Housing. However, Public Housing did not use them or develop its own monitoring program.

⁹ HUD Handbook 6509.2, REV-6

Housing and Public Housing Did Not Provide Adequate Training

Housing and Public Housing did not provide adequate training to their staff, grantees, or responsible entities on how to comply with environmental requirements. Instead, they incorrectly believed that the Office of Environment and Energy was required to provide training to their respective program areas. While the Office of Environment and Energy's regional environmental officers provided environmental training, the training primarily focused on Community Planning and Development programs, which have environmental reviews performed under 24 CFR Part 58 by the grantees. However, Housing's environmental requirements are predominantly related to 24 CFR Part 50, which means that HUD was required to perform the reviews. Some Public Housing field offices had reviews performed by responsible entities under 24 CFR Part 58, while others performed them under 24 CFR Part 50. While the environmental requirements of 24 CFR Parts 58 and 50 are the same, the process for the environmental review varies depending on whether the reviews are performed by a responsible entity or HUD.

HUD did not ensure that all of its program areas' management or staff was trained to perform 24 CFR Part 50 environmental reviews.

Although the former Housing program environmental clearance officer's responsibilities included developing training materials and training Housing staff involved in implementing environmental requirements, he did not develop materials or provide training. He further stated that the appraisers who perform the environmental reviews under 24 CFR Part 50 for Housing had received no training in the last 7 to 8 years and that the Office of Environment and Energy was responsible for all environmental training provided to program areas.

After we issued our draft audit report, HUD provided a list of training sessions, showing that during our audit period, training for Housing staff was limited to two training sessions on the environmental review process for Sections 202 and 811 programs and two sessions as part of new employee orientations. In addition, after we began our audit, the current Housing program environmental clearance officer¹⁰ provided environmental training to some field office staff and Housing stakeholders. In addition, following our review of the Greensboro and Columbia Public Housing field offices, some of the staff members responsible for environmental compliance attended training provided by the Office of Environment and Energy. HUD did not provide evidence of who attended the various training sessions.

The Office of Native American Programs and Community Planning and Development implemented training programs for their grantees. The Office of Native American Programs hired a contractor that provided annual environmental training to grantees. After we started our review, the Office of Environment and Energy implemented internal processes to improve its Community Planning and Development training program and further define its training curriculum and requirements so they would relate to all applicable programs. Specifically, it set training requirements for its staff and incorporated information relevant to other program areas into its training. It also increased its training efforts by providing more training to grantees and HUD

¹⁰ The current program environmental clearance officer was appointed in July 2013.

field office staff and recently developed training for Housing and Public Housing field office staff that performs 24 CFR Part 50 environmental reviews. While the Office of Environment and Energy had improved its training program, it is restricted in the amount of training that it can provide because it has limited resources and does not receive any resources or assistance from the other programs. Proper training of HUD staff could increase its ability to identify errors and noncompliance. Further, training of public housing agency staff and Housing stakeholders could reduce errors and noncompliance.

HUD Had an Inadequate Reporting Process for Environmental Issues but Was Making Improvements

HUD did not have an established reporting process for its program areas to ensure that the appropriate headquarters programs were informed of field offices' environmental concerns. Neither Housing's nor Public Housing's program environmental clearance officers received reports from field office staff showing oversight of environmental compliance. While the Office of Native American Programs held biweekly meetings with staff and monthly meetings with team leaders, it did not have formal written records showing the issues discussed or the actions taken. Only Community Planning and Development required a regular monthly written report. A formal reporting process could improve HUD's oversight.

The Office of Environment and Energy was piloting a recently developed electronic data system, HUD's Environmental Review Online System (HEROS), which is part of HUD's transformation of information technology systems. HEROS will convert HUD's paper-based environmental review process to a comprehensive online system that shows the user the entire environmental process, including compliance with related laws and authorities. It will allow HUD to collect data on environmental reviews performed by all program areas for 24 CFR Parts 50 and 58 compliance. The Office of Environment and Energy had also implemented an internal process within HEROS to track findings, which will allow the program areas to focus training on recurring issues.

Public Housing Failed To Ensure Environmental Compliance

Our audits of five Public Housing field offices not only identified deficient training, monitoring, and reporting, but also determined that the field offices did not follow 24 CFR Part 50 or 58 to determine compliance with environmental requirements. This condition occurred because the field offices did not (1) maintain sufficient internal control records, (2) have adequate standard operating procedures, and (3) ensure that funds transferred from capital funds to operating funds met environmental requirements. As a result, the five Public Housing field offices allowed public housing agencies to spend almost \$405 million for activities that either did not have required environmental reviews or had reviews that were not adequately supported.

The five field offices did not ensure or adequately address compliance with environmental requirements. The field offices and responsible entities frequently marked compliance factors as "not applicable" when they documented and supported compliance with the requirements at 24 CFR 50.4, 58.5, and 58.6. The field offices and responsible entities should have provided details that fully explained how each project complied with the environmental factors and maintained documentation to support that determination. Figure 2, obtained from the Office of Environment and Energy's environmental review training publication, shows how some documents are

typically marked as “not applicable,”¹¹ while figure 3 shows how the documents should be marked.

Figure 2

Documenting Compliance

Part A. Compliance Findings for §50.4 Related Laws and Authorities

§50.4 Laws and Authorities	Project is in Compliance		Source Documentation and Requirements for Approval
	Yes	No	
16. Coastal Barrier Resources	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/A
17. Floodplain Management (24 CFR Part 55)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
18. Historic Preservation (36 CFR Part 800)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
19. Noise Abatement (24 CFR Part 51 Subpart B)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
20. Hazardous Operations (24 CFR Part 51 Subpart C)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
21. Airport Hazards (24 CFR Part 51 Subpart D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
22. Protection of Wetlands (E. O. 11990)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
23. Toxic Chemicals & Radioactive Materials (§ 50.3(i))	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
24. Other § 50.4 authorities (e.g., endangered species, sole source aquifers, farmlands protection, flood, insurance, environmental justice)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A

N/A = Not Acceptable

¹¹ In figure 2, the “N/A = Not Acceptable” was inserted by the personnel providing training to show that stating “Not Applicable (N/A)” on the form is not an acceptable answer.

Figure 3

Documenting Compliance

Part A. Compliance Findings for §50.4 Related Laws and Authorities

§50.4 Laws and Authorities	Project is in Compliance		Source Documentation and Requirements for Approval
	Yes	No	
16. Coastal Barrier Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no sites in Nebraska located in the Coastal Barrier Resource System.
17. Floodplain Management (24 CFR Part 55)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Per FIRM Map Panel# 31055C0188J, dated May 3, 2010, the site is on located in unshaded Zone X, which is outside the 500 year and 100 year floodplains. A copy of the FIRM map is attached.
18. Historic Preservation (36 CFR Part 800)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The project has been reviewed in accordance with Section 106 of the National Historic Preservation Act of 1966. A letter from the Nebraska State Historical Society (attached) dated August 29, 2011 indicates that the proposed construction will not affect on any historic properties and requests notification upon discovery of unsuspected archeological remains. Tribal Historic Preservation Office (THPO) notification of all Tribes has been accomplished by HUD, in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, "Protection of Historic Properties," and as authorized by the U.S. Department of Housing and Urban Development (HUD), with a response from the Sac and Fox Tribe requesting notification upon any discovery of unsuspected archeological remains and no comment from the other Nebraska tribes contacted within 30 days of notice.
19. Noise Abatement (24 CFR Part 51 Subpart B)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The northernmost portion of the subject property lies 1,030 feet from Union Pacific Railroad tracks. Additionally, Highway 31 is located 618 feet to the east of the subject and North Main Street divides the subject property. Both of these roadways and the railroad were considered in the DNL calculations for the property. Per the attached Site DNL Calculator, the property is in the Normally Acceptable DNL range of less than 65dB.
20. Hazardous Operations (24 CFR Part 51 Subpart C)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Field observations conducted by representatives of The Assessment Group, Inc., as a part of the Phase I ESA, on June 22, 2011 did not indicate any above ground storage tanks or evidence of underground storage tanks on or adjacent to the subject property or visible from the subject. CERCLA, NPL, and SPL listings were consulted with no reported listings. Two UST listings were identified within 1/8 mile of the site, with one "tank in use" and one "closed". No AST's were reported. There are no RCRA sites located within the recommended search area per the environmental mapping attached to the Phase I ESA by The Assessment Group, Inc. dated June, 2011.
21. Airport Hazards (24 CFR Part 51 Subpart D)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The property is located 19.17 miles west of Epley Field, a civil airport and well outside of the Runway Clear Zone. The property is located 17.33 miles northwest of Offutt Air Force Base and well outside the Accident Potential Zone. Mapping is attached showing both of these airfields and their relationship to the subject property.

The Five Field Offices Did Not Have Adequate Controls

The five field offices did not meet the minimum internal control requirements of Public and Indian Housing’s field office environmental review guidance. The guidance¹² required, at a minimum, maintaining tracking logs that detailed who performed the environmental reviews, whether the request for release of funds and certification¹³ was received and cleared, and whether HUD performed the environmental reviews directly. The guidance further required maintaining a separate environmental file for each housing agency.

Boston

The Boston Office of Public Housing Deputy Director said that the Boston Office had one combined log that was most likely incomplete and not current. He also said that separate environmental review files were not necessary and the office did not maintain them.

¹² Section 6: Role of the Field Office - Internal Controls

¹³ The request for release of funds and certification, form HUD-7015.15, is used by the responsible entities and recipients when requesting the release of and the authority to use funds. The responsible entity certifies on the form that it has fully carried out its responsibilities for environmental review decision making and action pertaining to the activities identified on the form and that it has assumed responsibility for, has complied with, and will continue to comply with environmental requirements.

Kansas City

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

Detroit

The Detroit Office's tracking log for fiscal years 2001 through 2012 contained only the public housing agency's name and either a date or the word "exempt" under each year. The tracking logs did not include required items such as the grant number, the responsible entity, the date the environmental review was completed, or the date of the Detroit Office's required 15-day waiting period.

Columbia

The Columbia Office's tracking log was incomplete because it was maintained for Public Housing Capital Fund grants completed under 24 CFR Part 50 only and did not contain a list of the project or grant number, the fund year, or the engineer who performed the review. Mitigation actions required, the date the review was completed, the date it was signed, and the date the letter was sent to the housing agency approving use of the funds were also not in the Columbia Office's tracking log.

Greensboro

The Greensboro Office's tracking log was incomplete because it was maintained for new construction or demolition and disposition projects only. It did not include Capital Fund grants. The tracking log also did not contain the project or grant numbers, the fund years, the names of officials who performed the reviews, any mitigation actions required, the dates the reviews were signed, and the dates the letters were sent to the housing agencies approving use of the funds. The Greensboro Office also did not maintain a list of responsible entities that HUD determined would or would not perform environmental reviews on its behalf.

Three of the Field Offices Either Did Not Have or Had Inadequate Standard Operating Procedures

The Columbia, Kansas City, and Greensboro field offices did not have standard operating procedures that complied with 24 CFR Part 50. Standard operating procedures are written field office procedures for conducting environmental reviews of capital funds. The Columbia Office did not develop its own in-house standard operating procedures. Instead, according to the Columbia Office's Public Housing Director, the Columbia Office relied on the policies and procedures in 24 CFR Parts 50 and 58 and the 2009 Public and Indian Housing field office environmental review guidance. However, these criteria do not provide the detailed steps to be taken to ensure compliance. The Kansas City Office's procedures directed its staff to use information on the questionnaire provided by the housing agency's executive director to satisfy the requirements and to complete part A of the environmental assessment and compliance findings for the related laws form by marking "not applicable" to most compliance factors listed

at 24 CFR 50.4. The questionnaire addressed only 3 of the 14 compliance factors and directed the staff to “not recreate the wheel” but, rather, “use historical data from previous reviews as much as possible.” The procedures also directed the staff that if the question related to historical preservation was answered “no” by the housing agencies, no further action would be required. The Greensboro Office’s approved procedures were dated April 10, 2009, but the staff followed unapproved procedures, dated May 27, 2009. Neither of the procedures met the requirements of 24 CFR Part 50.

The Five Field Offices Did Not Ensure That Funds Transferred to a Public Housing Agency Operating Account Met Environmental Requirements Before They Were Used

The field offices did not ensure that public housing agencies met environmental requirements before operating funds were used. This condition occurred because field office staff generally believed there was no requirement or guidance requiring them to question how the agencies used operating funds. However, Public and Indian Housing field office environmental review guidance¹⁴ states that housing agencies should provide a description of operating costs to either 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.

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. If the funds transferred to the operating accounts are to be used for capital improvements, either Public and Indian Housing or the responsible entity must review the expenditures to ensure that a proper level of environmental review is performed. Operating costs, such as maintenance, security, operations, 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.

Responsibilities for Each Program Area Were Not Clearly Defined

Regulations at 24 CFR 50.10 reflect a shared responsibility among Community Planning and Development and other program areas for the implementation of environmental requirements. While Community Planning and Development has an overall departmental responsibility for policies and procedures that implement NEPA and the related laws and authorities, the regulations also place the responsibility on the Assistant Secretaries to ensure implementation of the environmental requirements for each of their program areas. Public and Indian Housing stated on several occasions that implementation and compliance monitoring were delegated to Community Planning and Development in accordance with Federal Register Notice 38853.¹⁵ However, according to the Notice’s summary, its purpose was for the Assistant Secretary for Community Planning and Development to redelegate to the Deputy Assistant Secretaries and

¹⁴ Section 5, Program Requirements – Capital Fund Program (Special Note)

¹⁵ Re-delegation of Authority to the Deputy Assistant Secretaries in the Office of Community Planning and Development, Volume 77, Number 126, dated June 29, 2012

other specified HUD officials all powers and authorities necessary to carry out Community Planning and Development programs except those powers and authorities specifically excluded. Public and Indian Housing also interpreted Federal Register Notice 31972¹⁶ as placing the responsibility for implementation and compliance solely on Community Planning and Development. The Notice's summary appears to update, clarify, and consolidate into one notice the authority delegated by the HUD Secretary to the Assistant Secretary for Community Planning and Development, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs those program (the Neighborhood Stabilization Program, Community Development Block Grant Disaster Recovery grants, and homeless assistance programs) authorities under Community Planning and Development delegations. Neither of the Notices delegated authority for Community Planning and Development to conduct compliance monitoring of other program area environmental reviews.

Each program area except Community Planning and Development had its own program environmental clearance officer,¹⁷ whose purpose was to ensure that his or her respective program area met environmental requirements. However, none of the program areas had provided current program environmental clearance officers official job descriptions detailing their roles and responsibilities related to the position. In addition, each program environmental clearance officer held another official job title, which included responsibilities unrelated to oversight of the environmental process. For example, the Public Housing program environmental clearance officer performed other duties related to her official title of program analyst, which had nothing to do with environmental activities, and recently took on additional duties unrelated to environmental activities. She stated that her new responsibilities made it difficult to handle the responsibilities related to environmental activities and she did not want to monitor compliance with environmental requirements.

Assistant Secretaries did not clearly outline their program environmental clearance officers' roles and responsibilities.

Although the current Housing program environmental clearance officer's official title was management analyst, she was also responsible for environmental clearance officer duties. She stated that since she took over the environmental clearance officer duties in July 2013, there had been no changes to the environmental review process within Housing. The former Housing program environmental clearance officer's official job description stated that the environmental clearance officer was responsible for implementing Housing's environmental procedures. Each program area should develop a formal job description for its program environmental clearance officer.

¹⁶ Consolidated Delegation of Authority for the Office of Community Planning and Development, Volume 77, Number 104, dated May 30, 2012

¹⁷ The Office of Environment and Energy serves as the departmental environmental clearance officer.

The Office of Native American Programs and Community Planning and Development developed monitoring, training, and reporting processes for their program areas to reduce the risk of noncompliance. The Office of Native American Programs' Director of Grants Evaluation stated that her office was responsible for monitoring and training field office staff, responsible entities, and Indian housing agencies. Public Housing, on the other hand, stated that it was not responsible for monitoring and training. However, both the Office of Native American Programs and Public Housing are directed by the Assistant Secretary for Public and Indian Housing and have the same responsibilities for monitoring, training, and reporting. Similarly, Housing depended on the Office of Environment and Energy to ensure that its programs met environmental compliance requirements. The requirements¹⁸ state that the environmental review is a process for complying with NEPA and other laws and authorities and that HUD must comply with all environmental requirements, guidelines, and statutory obligations. Each program Assistant Secretary is responsible for ensuring that his or her program meets these requirements. Community Planning and Development has no authority over other program areas to require their grantees to comply with requirements or take actions against them if they do not.

To demonstrate this lack of clarity, the Acting Assistant Secretary for Public and Indian Housing, in response to the management decisions on the Boston Office audit report, recommended concurring and closing the recommendations by referring the issues to the Office of Environment and Energy for implementation of corrective actions. However, the Director of the Office of Environment and Energy stated that Community Planning and Development did not agree with Public and Indian Housing's proposed actions. The Director did not believe that the Office of Environment and Energy was responsible for all monitoring of responsible entities because each Assistant Secretary has a responsibility under the requirements of 24 CFR 50.10(a). Further, the Director of the Office of Environment and Energy stated that Public and Indian Housing was responsible for monitoring and training those responsible for environmental compliance. In addition, Community Planning and Development's Deputy Assistant Secretary for Grant Programs, who oversees the Office of Environment and Energy, stated that the core disagreement with Public and Indian Housing was over who is responsible for implementing and monitoring and who is responsible for paying for it. Public and Indian Housing did not want to acknowledge its responsibility for implementing and ensuring compliance with environmental requirements.

The lack of clarity regarding responsibilities must be resolved to ensure proper implementation and oversight of compliance with environmental requirements. Public and Indian Housing agreed that HUD needed to revisit the delegation of authority because there was disagreement across the program areas on the intent of the requirements and the delegation of responsibilities. In addition, Community Planning and Development stated that there had been discussions among the program areas regarding the delegation of authority published in the Federal Register notices and agreed that responsibilities needed to be clarified because other program areas interpreted the notices to mean that Community Planning and Development had full responsibility for monitoring compliance. HUD needs to clarify each Assistant Secretary's responsibilities. If HUD determines that all responsibility for compliance and training lies with the Office of Environment

¹⁸ 24 CFR 50.2(a) and 50.4 and 24 CFR 58.5 and 58.30(a)

and Energy, a realignment that places that office under the Deputy Secretary's office could be beneficial. The realignment would provide the Office of Environment and Energy with the ability to implement an integrated approach to policy development, program delivery, technical assistance, training, monitoring, and evaluation and could significantly enhance HUD's overall ability to address environmental compliance across program areas.

Public Housing Did Not Understand Requirements or Did Not Consider Compliance To Be a Priority

Some Public Housing field office management and staff personnel either did not understand environmental compliance requirements or did not consider compliance to be a priority. For example, one field office staff member stated that 24 CFR Part 50 environmental reviews worked better than 24 CFR Part 58 reviews for the field office but the field office had too much other work and could not spend a lot of time on environmental reviews. Further, some Public Housing field office staff members believed that public housing agencies generally should not be required to meet the environmental requirements because all of their Capital Fund grant activities are either routine, preventive, or deferred maintenance. These staff members did not understand the difference between maintenance and repairs, renovation, and modernization improvements regarding environmental compliance. Also, many Public Housing staff members believed that the definition of "maintenance" under public housing program guidance was the same as the definition of "maintenance" for environmental reviews. However, the guidance on categorizing an activity as maintenance for environmental compliance provides its own definition and is not meant to define maintenance for other program area purposes. For example, many Public Housing staff members believed that a roof replacement constituted maintenance and did not require an in-depth environmental review. However, a roof replacement under environmental guidance is considered an activity that prolongs the building's useful life and is subject to environmental compliance.

According to guidance¹⁹ issued by the Office of Environment and Energy, maintenance keeps a building in good order and in ordinary, efficient operating condition and includes such activities as trimming trees and shrubs, fixing gutters or floors, replacing broken windows, fixing leaks, or replacing kitchen appliances that are not attached to the building. Repairs and improvements add to the value of the building, appreciably prolong its useful life, or adapt it to new uses and include such activities as installing roofs; windows; or heating, ventilation, and air conditioning systems.

To further demonstrate Public Housing's lack of concern with compliance, in response to our audit report on the Boston field office, Public Housing stated that it did not believe the public housing agencies should repay ineligible costs. Public Housing believed that if the agencies had to repay the ineligible costs, it would likely harm local partnerships between the agencies and the responsible entities. Therefore, following the issuance of the report, Public and Indian Housing's former Assistant Secretary sent a memorandum, dated April 29, 2014, to the Inspector General, requesting that his office consider this matter before the release of any additional audits on

¹⁹ Guidance for Categorizing an Activity as Maintenance for Compliance With HUD's Environmental Regulations, 24 CFR Parts 50 and 58, dated March 28, 2006

environmental concerns identified with Public Housing field offices, public housing agencies, and the responsible entities.

HUD's Failure To Meet Environmental Compliance Could Have Placed the Public and the Environment at Risk

HUD's lack of adequate implementation and oversight of compliance with environmental requirements may have increased the risk to the health and safety of public housing residents, housing, and community developments and may have failed to prevent or eliminate damage to the environment. HUD was required to analyze the environmental effects, including human health, economic, and social effects of actions affecting low-income and minority communities.²⁰ Further, all property proposed for use in HUD programs must be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances when a hazard could affect the health and safety of occupants or conflict with the intended use of the property.²¹

HUD must pay particular attention to any proposed site on or near such areas as dumps, landfills, industrial sites, or other locations that contain hazardous waste.

The following examples illustrate what happens when environmental issues are not properly identified or addressed. These examples emphasize the need to ensure that HUD's environmental review process is functioning properly.

Public Housing Allowed the Development of Housing Units on a Former Municipal Landfill

In the early 1960s, the Newark, DE, Housing Authority purchased a site and constructed an affordable residential housing development, which it operated from 1967 until January of 2008. The Environmental Protection Agency identified a public health concern at the site in 1983. Despite the health concern, the Authority continued to operate the housing units until 2007 when HUD authorized the Authority to vacate the property. After the site was vacated, the Authority attempted to sell the property, which was listed as a certified brownfield,²² at an auction in March 2008. However, no bid was submitted.

Since it was unable to sell the property, in October 2008, the Authority entered into a voluntary cleanup program agreement to demolish the existing buildings and remediate contamination of the site. The Authority planned to build 56 units once the cleanup was completed. On December 6, 2006, HUD's Philadelphia Public Housing Director approved the environmental review for disposition of the property. The environmental review had a condition that HUD's approval for disposition did not mean that it was committing to future development or other use of the property. Despite the condition, the Authority proceeded

²⁰ Executive Order 12898, issued February 11, 1994

²¹ 24 CFR 50.3(i)(1)-(3)

²² Brownfield sites are defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

with planning, designing, and obtaining local government approval for redevelopment without HUD performing another environmental review. Rather than disapproving the redevelopment plan, HUD's Philadelphia Public Housing field office performed an environmental review after the fact in April 2014. However, its review was incomplete and did not adequately address all of the environmental compliance factors. Further, possible alternatives to ensure the best possible uses of the property, such as location of the buildings, were not considered. As a result, the Authority was developing a property that had been documented as a former wastewater treatment facility and municipal landfill with soil contamination that included semivolatile organic compounds, polychlorinated biphenyls (PCB),²³ and lead. In addition, the site had elevated methane²⁴ concentrations that exceeded environmental standards. To address the potential human health risks the landfill could cause, the Authority was required by the State of Delaware to

- Install and operate foundation vents on each building for the methane gas;
- Continuously inspect the site to ensure the integrity of the remediation; and
- Record an environmental covenant that prohibits digging, excavating, constructing, or any other land-disturbing activity and provides that no groundwater may be withdrawn from any well on the property.

The Authority was proceeding with its planned development and anticipated moving in residents in the fall of 2015.

Public Housing Was Aware That Residents Were Living in a Contaminated Public Housing Development

Altgeld Gardens, also called "The Toxic Doughnut," is a 1945 public housing development located in an industrial area on Chicago's far south side near many manufacturing plants, former steel mills, waste dumps, landfills, and the polluted Little Calumet River. The known toxins and pollutants affecting the Altgeld Gardens area include arsenic, mercury, ammonia gas, lead, PCBs, polycyclic aromatic hydrocarbons (PAH),²⁵ and heavy metals. This contamination included PCBs that had been dumped in a storage yard on the Altgeld Gardens property that were not found to be a hazard until the mid-1980s. In 2003, residents at Altgeld Gardens won a lawsuit against the Chicago Housing Authority because the Authority failed to provide a safe and healthy environment for residents. The Environmental Protection Agency and the Authority cleaned up the identified PCBs once the hazard became known. This

²³ PCBs are man-made organic chemicals known as chlorinated hydrocarbons. PCBs were manufactured in the United States until banned in 1979. PCBs were used in hundreds of industrial and commercial applications, including electrical and hydraulic equipment. PCBs have been shown to cause cancer, as well as a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system.

²⁴ Methane is produced by decay and decomposition of organic matter in oxygen-poor conditions. Under certain conditions, the mixture of air and methane can be flammable or explosive.

²⁵ PAHs are a group of chemicals that are formed during the incomplete burning of coal, oil, gas, wood, garbage, or other organic substances, such as tobacco. There are more than 100 different PAHs. They are found throughout the environment in the air, water, and soil. Studies show that individuals exposed by breathing or skin contact for long periods to mixtures that contain PAHs and other compounds can develop cancer.

cleanup focused on those areas with the highest levels of contamination and those that were the most dangerous, such as areas with identified PCBs. However, according to a HUD regional environmental officer, the Environmental Protection Agency stated there is a very good possibility that additional environmental issues with PCBs still exist on the property. Further, according to the regional environmental officer, an overall review of the entire site for environmental clearance would be the best solution to ensure that the property is cleared and free of hazards. A complete environmental site assessment would produce a clear picture of the property and show all contaminated locations.

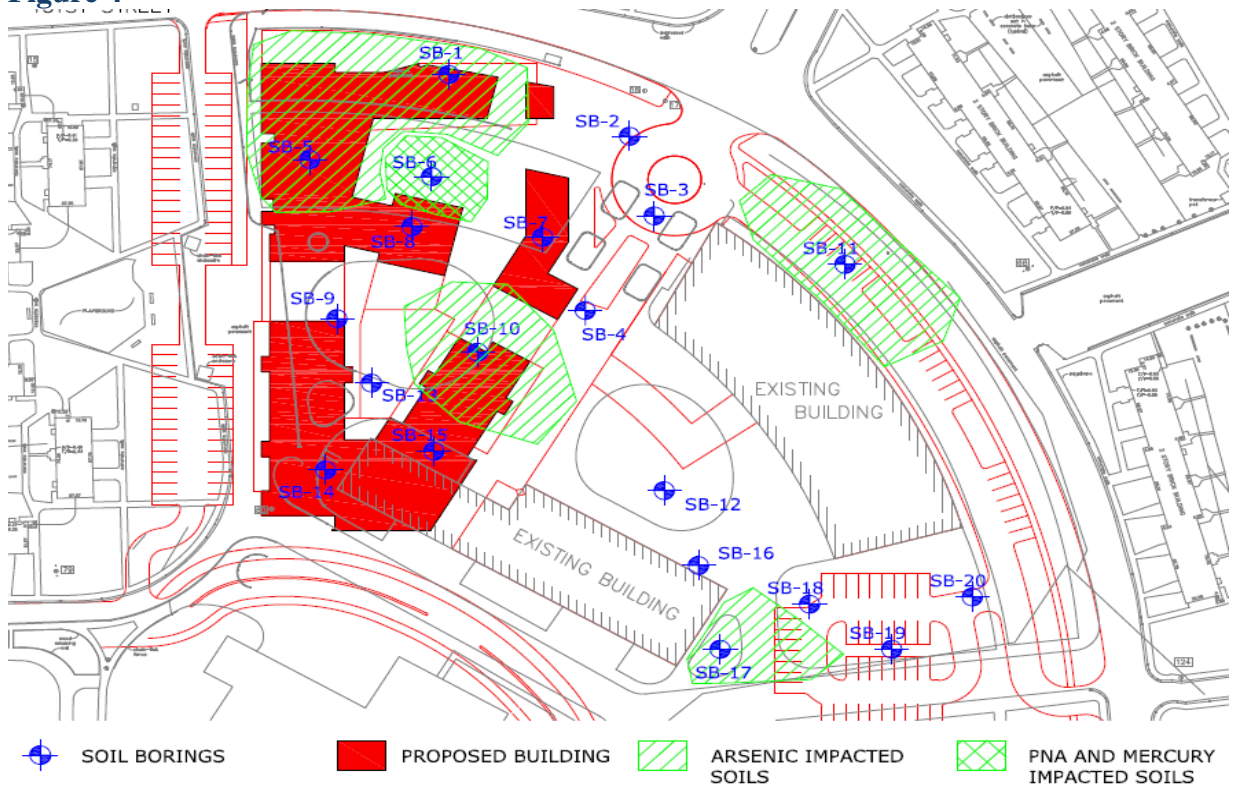
After the settlement in 2003, the Authority planned to move the residents out of Altgeld Gardens and demolish the development. However, because the property was historic, it was subject to Section 106 of the National Historic Preservation Act of 1966, which requires consideration of preservation alternatives and a public process for decision making. Thus, the Authority decided to renovate the property without moving the residents. The property consists of more than 190 acres and more than 3,000 residents. It includes its own schools, onsite social services, and medical facilities.

Since there had not been a complete phase I or II environmental site assessment²⁶ of the property, HUD performed the reviews in segments as the Authority renovated the property. By performing the reviews in segments, HUD's Public Housing field office avoided a requirement that the Office of Environment and Energy's regional environmental officer review and approve the environmental record when 200 or more units are renovated.

As part of the renovations, the Authority planned to build a childcare center and an office-community building. However, as shown in a November 2010 site map (see figure 4), a phase II environmental site assessment identified arsenic and mercury hazards in the soil. The map identifies the planned project site, but it shows only a small portion of the property.

²⁶ A phase I site assessment is a review of environmental records maintained by the property owner and regulatory agencies that shows the past and current uses of the site and inspection of the site by an environmental professional. The review concludes with a report that identifies existing and potential sources of contamination on the property and determines whether a further investigation is required. A phase II site assessment is conducted if a phase I assessment identifies potential contamination of the site and includes sampling and laboratory analysis to confirm the presence of hazardous materials. A phase II assessment determines whether a remedial work plan is required to address contamination on a property.

Figure 4

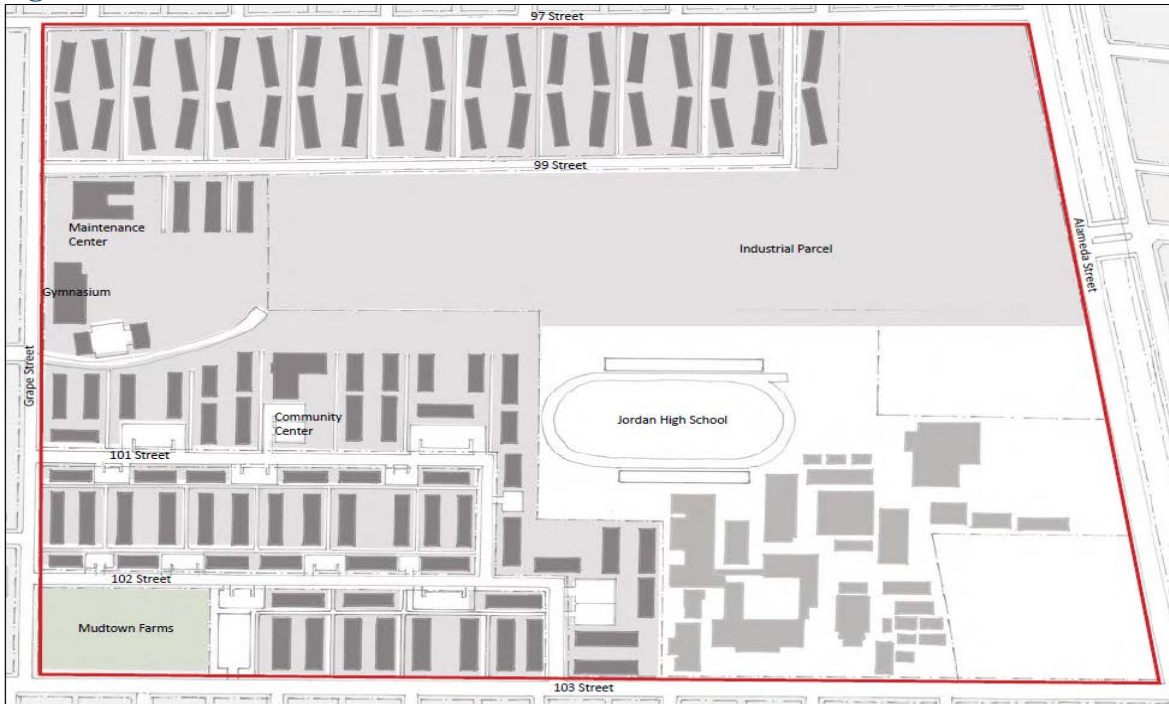


Before HUD approved the environmental review in December 2011, the Authority developed a remediation plan with the State of Illinois Environmental Protection Agency to clean up the site. However, the remediation had not occurred, and the project had not been developed. The Authority planned to address the remediation agreement when it redeveloped and rehabilitated the buildings located on the contaminated site. In the meantime, residents continue to be subjected to potential harm from the contaminated site.

A Housing Authority Planned a Redevelopment Housing Project on Recently Acquired Contaminated Property

Jordan Downs Housing is a 700-unit public housing apartment complex, consisting of dilapidated two-story buildings in Los Angeles, CA, that is owned and managed by the Housing Authority of the City of Los Angeles. The Authority proposed a \$1 billion project to redevelop the Jordan Downs housing project, to include building 1,800 new homes, stores, and a park (see figures 5 and 6).

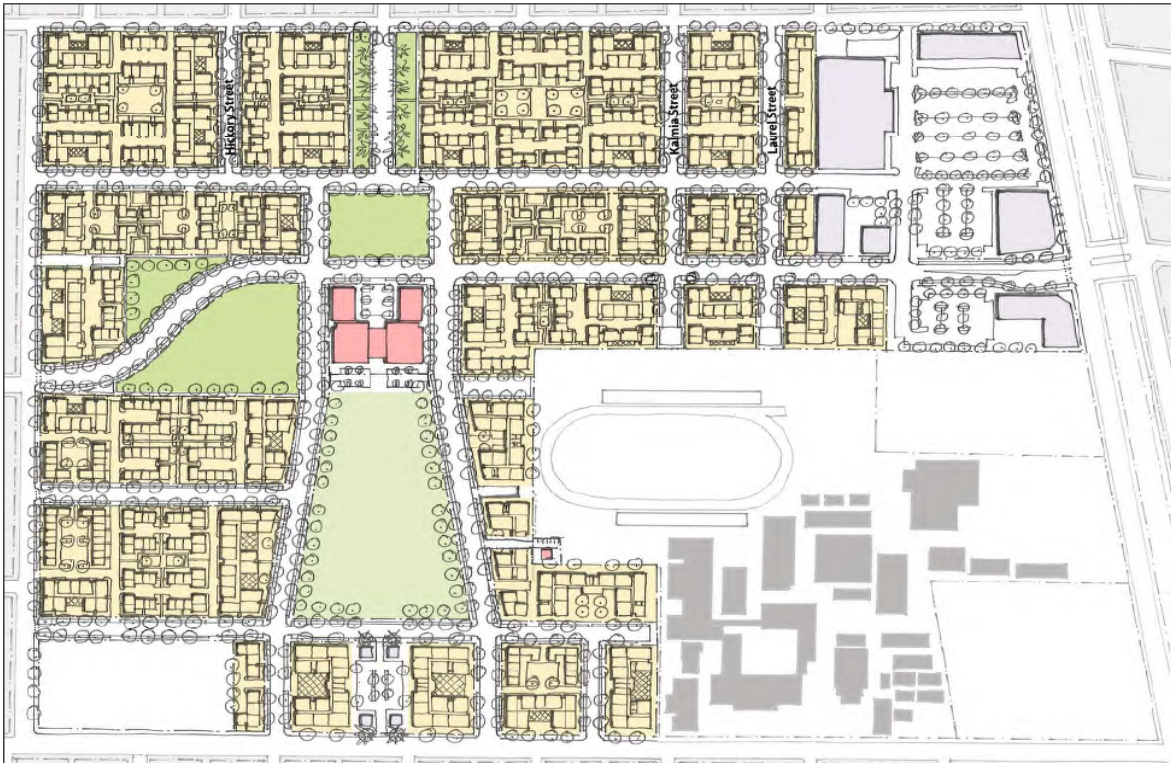
Figure 5



Jordan Downs Capacity Study
September 05, 2013

EXISTING CONDITIONS
700 Total Units

Figure 6



Jordan Downs Capacity Study
September 05, 2013

FULL BUILDOUT
1375 New Units

In January, 2007, the Authority and the City obtained an appraisal of a 21-acre property, called the factory site, next to Jordan Downs for the expanded redevelopment. The appraisal disclosed that there were known environmental contaminants on the site. However, the appraiser—citing a lack of expertise in environmental issues—valued the property at \$31.2 million under the assumption that the site was free of contaminants. The appraiser also concluded that the highest and best use of the site was for industrial development. Despite the information provided by the appraiser, in March 2008, the Authority purchased the site on an “as is” basis with full disclosure that the property had known environmental contaminants. Further, the Authority agreed to hold the investor harmless for any hazardous materials at the site. The Authority entered into a voluntary agreement with the State of California to clean up the purchased factory site to the State’s satisfaction.

The Authority did not perform environmental due diligence before it purchased the property, knowing that it was environmentally contaminated. It purchased the property using about \$15.5 million in administrative fees earned from its Section 8 special allocation program and \$15.7 million in proceeds from a Federal National Mortgage Association line of credit.

A phase II environmental site assessment was not completed until April 2010, 2 years after the Authority purchased the property. The assessment revealed PCBs, metals such as lead and arsenic, and extractable petroleum hydrocarbons that exceeded acceptable levels (see figures 7 and 8).

Figure 7

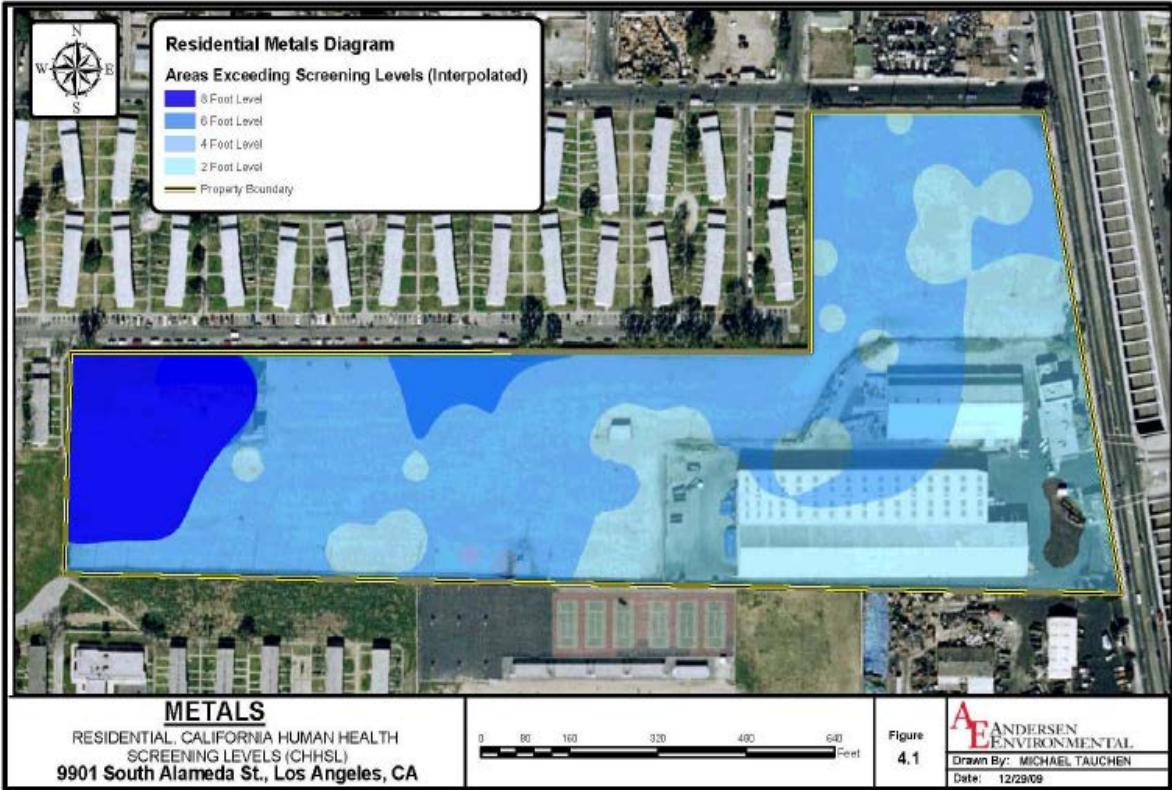
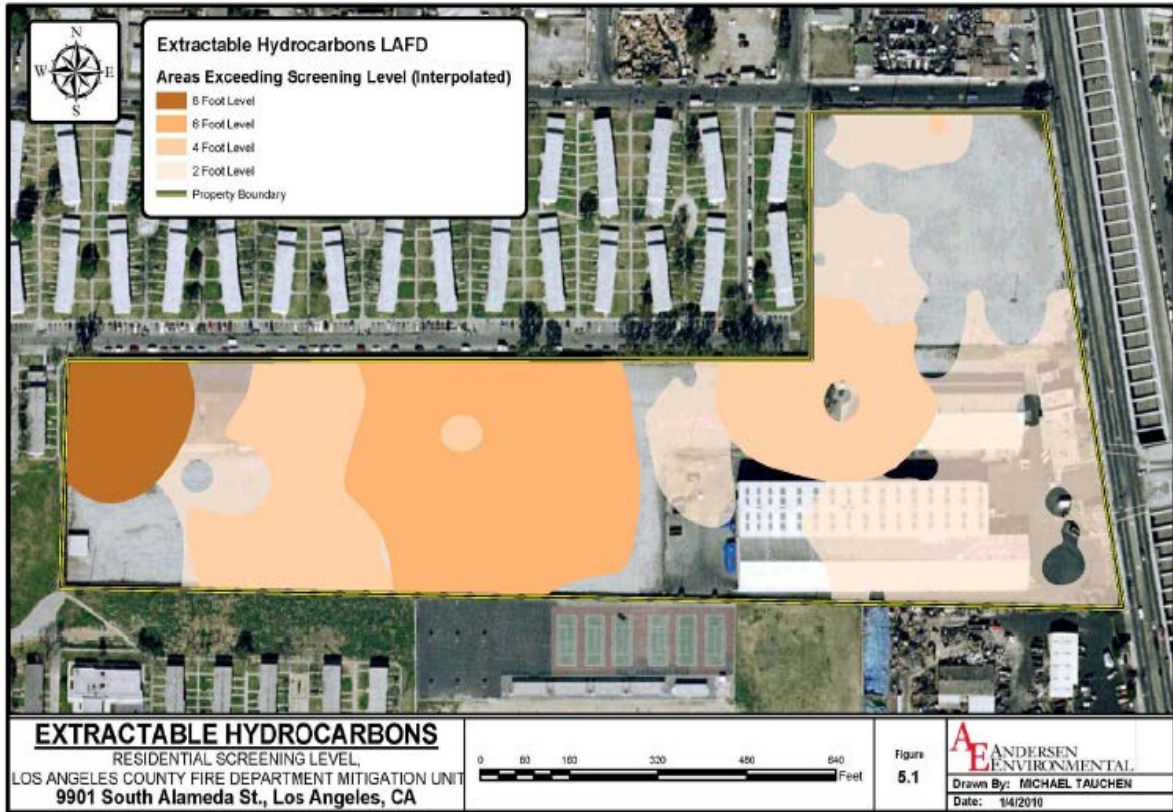


Figure 8



The Authority violated requirements²⁷ when it committed funds to the project before HUD's approval of the environmental review request for release of funds and certification. The environmental review was not completed until March 2014, and the responsible entity did not submit the request for release of funds and certification to HUD for approval until after July 2, 2014. Further, a report by HUD's Real Estate Assessment Center noted that, given the issues identified, the Authority's redevelopment of Jordan Downs presented significant risks to HUD.

Complications with the factory site had caused delays and increased the potential predevelopment costs²⁸ to a level that far exceeded the Authority's available non-HUD funding resources. The Authority's budget noted that at least \$15 million would be required to remediate or mitigate the contamination. In addition, the budget indicated that the Authority would use Federal and State funding sources to pay for the remediation. Despite mounting cleanup costs, the Authority continued to move forward with the redevelopment project. In March 2014, HUD denied the Authority's request for a \$30 million Choice

²⁷ 24 CFR 58.22(a)

²⁸ Predevelopment costs include environmental remediation, structure demolition, litigation, debt service, master developer, and other predevelopment expenses.

Neighborhood Initiative Implementation Grant. However, HUD reserved authority for 70 rental assistance demonstration units at Jordan Downs. The Authority applied to secure the rental assistance demonstration allocation to finance a component of the first phase of the redevelopment plan. HUD should strongly reconsider its funding commitment related to the Jordan Downs redevelopment and deny further HUD funding.

Housing Failed To Complete an Environmental Review Before a Nursing Home Expansion

An owner of a nursing home with a Federal Housing Administration-insured loan expanded its facility and acquired adjacent land for the expansion without Housing’s knowledge or authorization and without a 24 CFR Part 50 environmental review. Housing should have completed the environmental review before the owner expanded the facility, including acquiring the additional land, to ensure that environmental requirements were met and that no contaminants existed that could affect the health and safety of the residents. A Housing official stated that had the owner properly notified HUD of plans to expand the facility, including acquiring the adjacent land, Housing would have performed an environmental review. She further stated that when Housing learned of the expansion as part of a Section 223(a)(7) refinancing loan application, it required the environmental review to be completed before approving the firm commitment. Upon closing for the loan, a new regulatory agreement was recorded. The Housing official also stated that in the future, Housing will provide additional training on environmental requirements for its staff and guidance to property owners to minimize the possibility of future occurrences.

Community Planning and Development’s Monitoring Determined That the State of Texas Failed To Perform a Required Process

During a compliance monitoring, the Office of Environment and Energy found that the State of Texas failed to perform the required floodplain management analysis for an emergency shelter.

To address corrective actions, Community Planning and Development required the State to review all of its projects funded with disaster recovery funds to determine whether other projects failed to meet the floodplain management analysis. The State’s review

HUD’s monitoring can be effective to ensure environmental compliance.

found that it failed to perform the required environmental review “eight-step process”²⁹ for 19 “critical action” projects before it released Community Planning and Development funds. A critical action³⁰ is any activity for which even a slight chance of flooding would be too great because such flooding might result in loss of life, injury to persons, or damage to property. It includes activities that create, maintain, or extend the useful life of structures or facilities that provide essential and irreplaceable emergency services that may become lost or inoperative during flood and storm events, such as emergency operations centers. In addition, the regulations³¹ prohibit the use of HUD funds

²⁹ 24 CFR 55.20 – “Eight-step process” is the common name for the decision-making process for compliance with floodplain management, including public notices and an examination of practicable alternatives.

³⁰ 24 CFR 55.2(b)(2)(i)

³¹ 24 CFR 55.1(c) and 55.2(b)(2)(ii)

to build in floodways³² or coastal high-hazard areas.³³ Eleven of the nineteen critical action projects were fire stations, which are often used as emergency shelters during a disaster. One fire station in Tiki Island, TX, was built 6 feet below the 100-year flood plain in a coastal high-hazard area that is subject to high-velocity waters from hurricanes and tsunamis. Community Planning and Development requested that the State repay almost \$700,000 for the Tiki Island fire station, but the State resisted. The remaining eight critical action projects were police stations, community centers, or city offices. Further, construction had already started or was complete on 11 of the 19 projects. As a result, the State could not raise the projects to required elevations.

Community Planning and Development's monitoring of the State's compliance with environmental requirements prevented the remaining eight projects from being developed in violation of the floodplain management requirements.

The Five Public Housing Field Offices Spent Almost \$405 Million Without Proper or Adequately Documented Environmental Reviews

Three³⁴ of our five reports on Public Housing field offices—Boston, MA, Kansas City, KS, and Detroit, MI—identified that these field offices did not ensure compliance with environmental requirements of 24 CFR Part 58, resulting in more than \$140 million in questioned costs that must be repaid or supported. Of this amount, public housing agencies spent more than \$6.8 million before an environmental review was completed. The regulations³⁵ state that a recipient may not commit HUD assistance for any activity or project until the responsible entity has documented its environmental determination and HUD has approved the recipient's request for release of funds and certification. If a project or activity is exempt or is categorically excluded not subject to 24 CFR 58.5, a request for release of funds and certification is not required, and the recipient may begin the activity immediately after the responsible entity has documented this determination as required.

In addition, under 24 CFR Part 50, which directs HUD to be the responsible party to carry out the policies of NEPA and other laws and authorities, three of the five field offices—Kansas City, KS, Greensboro, NC, and Columbia, SC—allowed public housing agencies to spend more than \$264 million without a properly completed environmental review by the respective Public Housing field offices. Since HUD failed to follow environmental requirements at 24 CFR Part 50, we did not recommend that the housing agencies repay these funds (see appendix C for a summary of the funding reported in the five previous reports).

³² Regulations at 24 CFR 55.2(b)(2)(ii)(4) define floodways as that portion of the floodplain that is effective in carrying flow where the flood hazard is generally the greatest and water depths and velocities are the highest.

³³ Regulations at 24 CFR 55.2(b)(1) define coastal high-hazard area as the area subject to high-velocity waters, including but not limited to hurricane wave wash or tsunamis.

³⁴ The Boston and Detroit environmental reviews were performed under 24 CFR Part 58. All of the Greensboro and Columbia reviews were performed by HUD under 24 CFR Part 50. Kansas City reviews were both 24 CFR Parts 58 and 50.

³⁵ 24 CFR 58.22(a) and (b)

Conclusion

HUD did not clearly define program area responsibilities, and Public Housing did not understand requirements or did not consider compliance to be a priority. As a result, HUD may have increased the risk to the health and safety of the public and failed to prevent or eliminate damage to the environment, and five Public Housing field offices allowed public housing agencies to spend almost \$405 million for activities that either did not have required environmental reviews or had reviews that were not adequately supported. For fiscal years 2013 through 2015, HUD provided almost \$5.3 billion in Capital Fund grants to public housing agencies across the Nation. If HUD does not correct the systemic conditions noted in the previous five reports, it cannot ensure that public housing agencies will spend their Capital Fund grants in compliance with environmental regulations. HUD should establish an independent program office that is responsible for overall departmental compliance, clarify the roles and responsibilities of the Assistant Secretaries, properly train its staff and others on environmental compliance requirements, and implement other actions to correct the deficiencies identified.

Recommendations

We recommend that the Deputy Secretary of the U.S. Department of Housing and Urban Development

- 1A. Ensure that HUD follows and complies with 24 CFR Part 50, Protection and Enhancement of Environmental Quality, and provides adequate oversight to ensure compliance with 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.
- 1B. Establish an independent program office, the director of which is assigned the overall departmental responsibility for environmental policies and procedures as well as the supervisory and enforcement authority to ensure compliance by all HUD program offices and grantees.
- 1C. Clarify the delegation of authority issued in the Federal Register related to environmental responsibility and the implementation of requirements.

If an independent program office is not established, the Deputy Secretary should ensure that the Assistant Secretaries for Housing, Public and Indian Housing, and Community Planning and Development

- 1D. Establish an agreement that clearly outlines each program office's responsibilities for oversight of environmental requirements and resource supplements.
- 1E. Adopt a quality control monitoring program that includes a review of all program area field offices as required by Executive Order 11514.
- 1F. Develop and implement a monitoring program that all program area field offices can use to monitor grantees and responsible entities under 24 CFR Part 58.
- 1G. Develop training programs that meet the needs of all program areas, including 24 CFR Parts 50 and 58.

- 1H. Develop and implement reporting requirements, which ensure that written records are maintained and the appropriate headquarters personnel are notified of environmental concerns.
- 1I. Ensure that each program area has a dedicated program environmental clearance officer with an official job description that outlines his or her roles and responsibilities as required by 24 CFR Part 50.

We recommend that the General Deputy Assistant Secretary for Public and Indian Housing

- 1J. Require all Public and Indian Housing field offices to review and implement the internal control requirements in Public and Indian Housing's field office environmental review guidance.
- 1K. Develop and implement standard operating procedures to ensure that all Public and Indian Housing field offices perform environmental reviews that comply with 24 CFR Parts 50 and 58.
- 1L. Issue guidance to all Public and Indian Housing field offices to ensure that operating funds are reviewed for environmental compliance with 24 CFR 990.116.

Scope and Methodology

We conducted our audit between April 2012 and December 2014 at various HUD Offices of Housing, Public and Indian Housing, and Community Planning and Development in Washington, DC, Boston, MA, Kansas City, KS, Columbia, SC, Greensboro, NC, and Detroit, MI, and our offices in Albuquerque, NM, and Houston, TX. Our audit originally 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. We expanded the scope as necessary to determine the impacts of environmental concerns at various sites.

To accomplish our objective, we performed the following:

- Reviewed applicable public laws and executive orders that provide the requirements for environmental compliance;
- Reviewed Federal regulations and Federal Register notices related to the environmental review process;
- Reviewed HUD's handbooks and guidance on environmental compliance;
- Reviewed various HUD job descriptions related to environmental oversight;
- Conducted interviews with staff from the Offices of Housing, Public Housing, Native American Programs, Grant Programs, Environment and Energy, and Lead Hazard Control and Healthy Homes;
- Analyzed Public and Indian Housing's, Community Planning and Development's, and Housing's environmental review processes;
- Reviewed the organizational charts of various HUD offices to determine the chain of command for environmental decisions;
- Analyzed environmental monitoring programs developed by the Offices of Environment and Energy and Native American Programs;
- Reviewed written reports related to environmental concerns issued to management;
- Analyzed HUD program areas' communications and responses to the development and implementation of environmental guidance, policies, and procedures;
- Obtained financial information on Capital Fund grants for the 2009 Recovery Act and 2011, 2012, and 2014 Capital Fund grants; and
- Observed the Office of Environment and Energy's Region 6 training program for environmental review processes and meeting the requirements of 24 CFR Part 58.

Based on our risk assessment, we selected 5 of 46 Public Housing field offices—Boston, Kansas City, Columbia, Greensboro, and Detroit—using information that we obtained on 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 objective:

- Controls to ensure that public laws, executive orders, and regulations are properly implemented by all program areas responsible for the environmental review process, including
 - Controls to ensure that each program area monitors its respective offices for environmental compliance,
 - Controls to ensure that each program area receives adequate training on the environmental review process, and
 - Controls to ensure that each program area implements a system for reporting environmental concerns to the appropriate headquarters office for adequate resolution.

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:

- HUD did not adequately implement or provide adequate oversight to ensure compliance with environmental requirements (finding).

Followup on Prior Audits

Office of Public Housing, Boston, MA, Public Housing Capital Fund and American Recovery and Reinvestment Act of 2009 Environmental Reviews, 2014-FW-0001

All of the report recommendations, 1A through 1L, were open at the time of this report. The recommendations include requiring three housing agencies to (1) repay HUD, for transmission to the U.S. Treasury, more than \$4.8 million and provide support for or repay more than \$34 million in 2009 Recovery Act funds and (2) provide support for or repay HUD more than \$46 million in Public Housing Capital Fund grant funds. The report also recommended that the Director of the Boston Office of Public Housing take available actions against three housing agencies and their responsible entities. The full report can be found at the following link:

<http://www.hudoig.gov/sites/default/files/documents/2014-FW-0001.pdf>

On March 17, 2015, OIG agreed with HUD's proposed revised management decisions for all of the report recommendations. The final action target date for completing the corrective actions is October 1, 2016.

Office of Public Housing, Kansas City, KS, Public Housing Capital Fund and American Recovery and Reinvestment Act of 2009 Environmental Reviews, 2014-FW-0002

All of the report recommendations, 1A through 1I, were open at the time of this report. The recommendations include requiring two housing agencies to repay HUD, for transmission to the U.S. Treasury, more than \$1 million and support or repay almost \$19 million. The report also recommended that the Director of the Kansas City Office of Public Housing take available actions against two housing agencies and their responsible entities. The full report can be found at the following link:

http://www.hudoig.gov/sites/default/files/documents/2014-FW-0002_0.pdf

On March 17, 2015, OIG agreed with HUD's proposed revised management decisions for all of the report recommendations. The final action target date for completing the corrective actions is October 1, 2016.

Office of Public Housing, Greensboro, NC, Public Housing Capital Fund and American Recovery and Reinvestment Act of 2009 Environmental Reviews, 2014-FW-0004

The following recommendation was still open at the time of this report:

1A. The Director of the Greensboro Office of Public Housing implement policies and procedures to ensure that the housing agencies follow public notification requirements set forth in either 24 CFR Part 58 or 24 CFR Part 50.

On December 11, 2014, the Director of the Greensboro Office of Public Housing agreed to implement policies and procedures to ensure that housing agencies follow public notification requirements. Final actions have not been completed. The full report can be found at the following link:

<http://www.hudoig.gov/sites/default/files/documents/2014-FW-0004.pdf>

Office of Public Housing, Detroit, MI, Public Housing Capital Fund and American Recovery and Reinvestment Act of 2009 Environmental Reviews, 2014-FW-0005

All of the report recommendations, 1A through 1M, were open at the time of this report. The recommendations include requiring three housing commissions to repay HUD, for transmission to the U.S. Treasury, almost \$1 million and support or repay more than \$33 million. The report also recommended that the Director of the Detroit Office of Public Housing take available actions against the three housing commissions and their responsible entities. The full report can be found at the following link:

<http://www.hudoig.gov/sites/default/files/documents/2014-FW-0005.pdf>

On March 17, 2015, OIG agreed with HUD's proposed revised management decisions for all of the report recommendations. The final action target date for completing the corrective actions is October 1, 2016.

Appendixes

Appendix A

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments



OFFICE OF THE DEPUTY SECRETARY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

May 22, 2015

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

FROM: Nani A. Coloretti, Deputy Secretary, SS

SUBJECT: HUD Comments on the Office of Inspector General Draft Audit Report "Offices of Housing, Public and Indian Housing, and Community Planning and Development, Washington DC – Implementation of and Compliance With Environmental Requirements"

Thank you for the opportunity to comment on the draft findings and recommendations contained in the above-referenced audit report of the Office of Inspector General (OIG), which you provided on March 16, 2015. The U.S. Department of Housing and Urban Development (HUD or Department) is committed to ensuring full and effective compliance with all statutory requirements, and the Department welcomes the partnership with OIG to ensure effective implementation of and compliance with federal environmental requirements. The Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD) and Housing reviewed the draft report.

Comment 1

The Department concurs with all of the recommendations outlined in the draft report, with the exception that the Department does not favor the establishment of an independent environmental office, and looks forward to developing appropriate management decisions, in partnership with OIG and commensurate with available resources, to ensure satisfactory implementation. Also of note, the above-referenced audit mostly reflects the findings of earlier audits that OIG conducted at five PIH field offices.¹

Comment 2

Additionally, based on feedback from the three program offices, the Department seeks to clarify some factual inaccuracies contained in the draft, as well as conclusions that appear, based on the data presented in the report, to be unsupported. With respect to the latter, we would welcome your additional insights but, barring presentation of further data, respectfully request that you revise those particular conclusions.

For ease of reference, set out below are the relevant pages and titles of the corresponding sections that contain the draft report language that the Department disputes, either because it-

¹ The five PIH field offices included Boston, Massachusetts (Audit Report 2014-FW-0001); Kansas City, Kansas (Audit Report 2014-FW-0002); Columbia, South Carolina (Audit Report 2014-FW-0003); Greensboro, North Carolina (Audit Report 2014-FW-0004); and Detroit, Michigan (Audit Report 2014-FW-0005).

inaccurately states the relevant facts or otherwise constitutes a misstatement. By referencing the section titles as crafted by OIG, the Department does not intend to suggest agreement with the stated conclusion.

Pages 3-4: “Background and Objective”

Comment 3

In the draft audit report, OIG states that “. . . the Offices of Housing and Public Housing² had not developed processes to ensure adequate implementation and oversight of compliance with environmental requirements. Rather, they depended primarily on Community Planning and Development’s Office of Environment and Energy to meet their programs’ requirements.” (Pages 3-4) The Department does not dispute that the program offices have relied heavily on the subject matter experts in the Office of Environment and Energy (OEE) to ensure compliance with environmental requirements. Indeed, in light of limited resources appropriated for this purpose and the structure of environmental staff in these offices, cross-office collaboration should be encouraged as a sensible and efficient way to achieve oversight and compliance objectives.

Comment 4

That said, the regulatory requirements and other authorities that govern compliance with environmental requirements admittedly lack clarity and undoubtedly have contributed to the underdeveloped processes that exist in Housing and Public Housing. Under 24 CFR § 50.10(b), which sets forth basic environmental responsibility, the Assistant Secretary for CPD “is assigned the overall Departmental responsibility for environmental policies and procedures for compliance with NEPA [National Environmental Policy Act] and the related laws and authorities.” However, under 24 CFR § 50.10(a), it is also “the responsibility of all Assistant Secretaries . . . to assure that the requirements of this part are implemented.” The seemingly overlapping responsibilities, in the absence of further clarifying guidance, have resulted in challenges with respect to HUD’s compliance strategy.

Comment 5

While each program office has primary responsibility for ensuring compliance with the regulations of its programs, that work overlaps with the work of OEE, which has primary responsibility for departmental oversight of environmental requirements. For example, PIH’s Office of Native American Programs (ONAP) has monitored Indian tribes and tribally designated housing entities for environmental compliance; and OEE’s Regional Environmental Officers are often actively involved in this monitoring process and serve as subject matter experts for ONAP. The Department acknowledges that the regulatory scheme has led to some confusion among the program offices regarding respective responsibilities, but the program offices are endeavoring in good faith, under constrained resources, to ensure compliance with the environmental requirements across a myriad of programs.

Pages 5-28: “HUD Did Not Adequately Implement or Provide Adequate Oversight To Ensure Compliance With Environmental Requirements”

² In keeping with the language used by the OIG, when discussing both the Office of Public Housing and the Office of Native American Programs, we use the term Public and Indian Housing or PIH. When discussing only the Office of Public Housing, we use the term Public Housing. When discussing only the Office of Native American Programs, we use the term ONAP.

Comment 6

While HUD believes that, as a general matter, it has complied with relevant statutory and regulatory requirements, it welcomes OIG's perspective on how to improve compliance with environmental regulations. HUD's program offices are committed to working in collaboration to improve implementation and oversight to ensure compliance with environmental requirements. For example, PIH and OEE are undertaking a comprehensive mapping process for all PIH programs to lay out the environmental review process with clear identification of roles and responsibilities for all parties involved in the process. This mapping process will lead to the development of Departmental guidance (Handbooks and Notices) on environmental compliance for PIH programs.

Pages 6-7: "Housing and Public Housing Did Not Adequately Monitor Responsible Entities"

Comment 7

OIG maintains that "Housing and Public Housing did not adequately monitor their responsible entities to ensure compliance with environmental requirements." (Page 6) While the Department shares OIG's concerns regarding Responsible Entities³ compliance with environmental requirements, the program offices do not always have the authority to impose corrective actions or sanctions. Specifically, while HUD has responsibility under the relevant regulations to monitor the environmental activities of Responsible Entities that are program recipients and has the authority to direct the correction of deficiencies, the Department's authority is more circumscribed with respect to Responsible Entities that are not program recipients. For a state or local government (which is not a HUD-funded entity for purposes of the environmental requirements) that performs the environmental review of a local Public Housing Agency project (which is HUD-funded), HUD has no remedies available in program regulations to mandate that the Responsible Entity correct any environmental deficiencies and there is no agreement or contract between the Responsible Entity and HUD through which the Department otherwise might compel corrective action. For example, Public Housing would have no sanction authority for a Responsible Entity that incorrectly certified a review of a Public Housing Agency project, except to require more monitoring or training, reject the use of the Responsible Entity to conduct future environmental reviews based on performance, or suspend or terminate the Responsible Entity's assumption of environmental review responsibility.⁴

Comment 8

Moreover, even if the program offices were obliged to undertake more aggressive oversight of the Responsible Entities and had authority to do so, their capacity to do so is limited. Currently, OEE uses a risk assessment tool to rate the over 1,200 entitlement communities that it actively monitors. It also monitors approximately 100 Responsible Entities (not including the non-entitlement community Responsible Entities under Public Housing's program) each year. In the absence of significant additional resources, neither OEE nor Housing or Public Housing is able to increase these monitoring activities appreciably. However, HUD will strive to provide reasonable assurance that environmental compliance requirements are being met.

Comment 9

³ "Responsible Entities" are defined at 24 CFR §58.2(a)(7). Their responsibilities are set out in §58.4. What entity qualifies as a responsible entity is program-specific; however, generally speaking, responsible entities are states and units of general local government with land use responsibility that assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 (NEPA) and other provisions of law that further the purposes of NEPA.

⁴ See 24 CFR § 58.77(d)(i)-(iv).

Page 8: “Housing and Public Housing Did Not Provide Training”

Comment 3

OIG maintains that “Housing and Public Housing did not provide training to their staff, grantees, or responsible entities on how to comply with environmental requirements.” (Page 8) Public Housing relied primarily on OEE for training, and, in a climate of very limited resources and in the interest of maximizing efficiency, that sort of cross-training seems appropriate and reasonable. Housing also relies on OEE for training on cross-cutting requirements, and works to collaborate with OEE on that training. In addition, Housing provided significant training on compliance with environmental requirements, principally program-specific requirements, to HUD staff, contractors, and lenders.

Comment 10

Comment 11

OEE-Sponsored Training. OEE offers comprehensive environmental training, but, as OIG notes, the office is restricted in the amount of training it can provide due to limited resources. In FY 2014, OEE conducted 64 formal trainings and trained over 2,495 individuals (550 HUD staff and 1,945 grantees, tribes, and consultants). OEE works directly with program offices to deliver specific training. In addition, OEE web-based training is available to all HUD staff on the Department’s intranet, and CPD is devoting approximately \$1.5 million in OneCPD⁵ resources to develop an online Learning Management System (LMS) to supplement in-person training. LMS is designed in a modular format that allows users to review the material linearly as a course of study or to search for specific concepts as a refresher or job aid. The Department anticipates that LMS will be deployed in the winter of this year on HUD’s website to all grantees and partners.

Comment 12

PIH-Sponsored Training. Much of Public Housing’s environmental training in the field has been performed by OEE’s Regional Environmental Officers in an effort to ensure consistency of environmental reviews at the regional level. However, on March 11, 2009, PIH presented an environmental review training via live broadcast to all PIH field offices and PIH headquarters staff. HUD has provided OIG with documentation to support this training. In addition, in September 2014, 10 PIH staff participated in a 3-day training course presented by OEE. OEE will continue to include PHAs and PIH staff in each of their regional trainings during FY 2015, and PIH and OEE are collaborating on the delivery of comprehensive Part 58 training targeted to grantees in three of the field offices which were the subject of OIG’s recent regional environmental review audits, namely Boston, Detroit, and Kansas City. The training workshop conducted in those cities will be used as a model for future training in other locations throughout the country targeting PHAs, Responsible Entities, and field office staff.

Comment 10

Housing-Sponsored Training. The Department disagrees with OIG’s conclusion that Housing did not provide training to its staff, grantees, or Responsible Entities. During the audit period of March 1, 2009 to September 30, 2012, Housing provided training regarding its environmental requirements, including (1) training on the site selection and environmental review process for the Section 202 and 811 programs (September 2009 and August 2011); (2)

⁵ “OneCPD” is a comprehensive demand-response, flexible model for delivering technical assistance to HUD customers. CPD used its OneCPD funds to develop a core curriculum for environmental reviews. OneCPD has recently been expanded to Community Compass, which brings together technical assistance investments from across HUD program offices, including but not limited to CPD, Housing, and PIH.

OEE Field Environmental Training Conference (September 2009); and (3) new employee orientation training (December 2009 and June 2012) that incorporated discussion of Housing’s environmental responsibilities. HUD has provided OIG with documentation to support these trainings. In addition, for several years before and after the OIG audit period, Housing provided numerous program-specific trainings, including trainings on the environmental review process, site contamination investigation, general contamination analysis and radon policy, the environmental requirements under the Multifamily Accelerated Processing Guide, as well as additional new employee orientation trainings. These trainings have included HUD staff, contractors, and lenders. HUD submitted documentation in support of these trainings to OIG. Recently, Housing has been working with OEE to facilitate better Housing staff attendance at OEE Part 50 trainings and to develop program-specific environmental trainings.

Pages 15-16: “Public Housing Did Not Understand Requirements or Did Not Consider Compliance To Be a Priority”

Comment 13

OIG concludes in its draft report that Public Housing did not understand the environmental requirements or did not prioritize compliance with those requirements and, as support for that finding, the draft report states: “To further demonstrate Public Housing’s lack of concern with compliance, in response to our audit report on the Boston field office, Public Housing stated that it did not believe the public housing agencies should repay ineligible costs.” (Page 16) This statement inaccurately describes PIH’s position. PIH has taken the position that repayment of ineligible costs should not be the *sole* remedy for all cases where an environmental review was inadequately performed. For example, it may be appropriate for a grantee to receive additional training as the “sanction” when the Responsible Entity did not conduct the reviews in accordance with requirements, rather than require repayment of funds. Additional remedies could include verification or a re-review and remediation. Far from evidencing a lack of commitment, PIH’s position reflects an enforcement approach that levies sanctions based upon the extent and circumstances for non-compliance and whether harm has occurred. Similarly, CPD does not always require repayment when funds are committed before certification. Instead, CPD considers factors such as whether there is unmitigated adverse environmental impact and the grantee’s compliance track record. HUD believes this approach should be followed even for activities that violate a statutory or regulatory provision.

Comment 14

Pages 27-28: Recommendations

Comment 1

The Department is committed to ensuring full and effective compliance with statutory requirements and, toward that end, appreciates the recommendations by OIG to ensure the effective implementation of and compliance with environmental requirements. With one caveat (the Department does not favor the establishment of an independent environmental program office), the Department concurs with all other OIG’s recommendations. We look forward to working with OIG to develop appropriate management decisions to implement the recommendations, to the extent feasible given the Department’s existing resources.

OIG Evaluation of Auditee Comments

Comment 1 We acknowledge that HUD has chosen not to establish an independent environmental office but to implement the alternative recommendations provided in the report. We will work with HUD during the management decision process to resolve the recommendations.

Comment 2 HUD stated that the audit mostly reflected findings of earlier audits that the OIG conducted at five Public and Indian Housing field offices. The five field office audits included Boston, MA, Kansas City, KS, Columbia, SC, Greensboro, NC, and Detroit, MI.

We disagree with this statement. The finding in the audit reflects information obtained from each of the programs reviewed. For example, the finding section related to monitoring of responsible entities discusses issues found with both Housing and Public Housing. In addition, it provides best practices found within the Office of Native American Programs and Community Planning and Development. Each section of the report reflects a similar format. We included a brief analysis of our findings from the five Public and Indian Housing field office reports to show the systemic noncompliance issues identified in our reviews and to repeat the importance of ensuring that the objective of NEPA to promote or eliminate the potential harm to citizens and the environment is met throughout all of the programs. In addition, in the five Public and Indian Housing reports, we stated that we would include recommendations in the nationwide report to address systemic conditions and causes that we found in those audits.

Comment 3 HUD stated that Housing and Public Housing relied heavily on the Office of Environment and Energy to ensure that its programs complied with environmental requirements. It further stated that in light of limited resources appropriated for the purpose of ensuring adequate implementation and oversight of compliance and due to the structure of the subject-matter experts being located within the Office of Environment and Energy, cross-office collaboration is a sensible and an efficient way to achieve the necessary oversight and compliance objectives.

HUD further stated that Housing and Public Housing relied primarily on the Office of Environment and Energy for their programs' training and that in a climate of very limited resources and in the interest of maximizing efficiency, this sort of cross-training also seemed appropriate and reasonable.

We do not dispute that cross-office collaboration is a sensible and efficient way to operate; however, our review found that Housing and Public Housing did not provide any cross-office collaboration resources but placed all of the responsibility on the Office of Environment and Energy. Since HUD mentions the availability of very limited resources, it should take into account that the Office of Environment and Energy is funded solely from Community Planning and Development's budget

to implement the environmental requirements for Community Planning and Development programs. A cross-office collaboration should include the provision of resources from Housing and Public Housing if they rely on the Office of Environment and Energy to meet their programs' responsibilities and provide training.

Comment 4 HUD stated that regulatory requirements and other authorities that govern compliance with environmental requirements admittedly lack clarity and undoubtedly have contributed to the underdeveloped processes that exist in Housing and Public Housing. HUD referenced 24 CFR 50.10(b), which states that the Assistant Secretary for Community Planning and Development is assigned overall departmental responsibility for environmental regulations, while 24 CFR 50.10(a) states that it is the responsibility of all Assistant Secretaries to assure that environmental regulations are implemented. HUD also stated that the seemingly overlapping responsibilities, in the absence of further clarifying guidance, have resulted in challenges with respect to HUD's compliance strategy.

HUD further stated that while each program office has primary responsibility for ensuring compliance with the regulations of its programs, that work overlaps with the work of the Office of Environment and Energy, which has primary responsibility for departmental oversight of environmental requirements.

We agree that the overlapping responsibilities, in the absence of further clarifying guidance, contributed to HUD's inability to comply with requirements. To address this condition, we made recommendations that HUD take certain actions, including establishing an agreement that clearly outlines each program office's responsibilities for oversight of environmental requirements and resource supplements.

We appreciate HUD's acknowledgment that each program office has primary responsibility for ensuring implementation and compliance with the environmental regulations, compared to the previous position it held that all environmental oversight was the responsibility of the Office of Environment and Energy.

Comment 5 HUD acknowledged that the regulatory scheme led to some confusion among the program offices regarding respective responsibilities but that the program offices are endeavoring in good faith, under constrained resources, to ensure compliance with the environmental requirements. HUD provided an example of how the Office of Native American Programs monitors its Indian tribes and tribally designated housing entities for environmental compliance but seeks assistance from the subject-matter experts in the Office of Environment and Energy when necessary.

Although HUD acknowledged that each program office is responsible for implementation and compliance with the environmental requirements, we repeat

that Housing and Public Housing did not have a monitoring program in place and depended on the Office of Environment and Energy to meet their programs' requirements. It would seem reasonable that Housing and Public Housing could implement programs similar to that of the Office of Native American Programs, whereby they would also perform their own monitoring reviews with assistance from the Office of Environment and Energy.

Comment 6 We acknowledge that HUD is taking steps to improve the Public and Indian Housing environmental review process. However, Housing should also improve its process.

Comment 7 HUD stated that it only has responsibility under the relevant regulations to monitor the environmental activities of responsible entities that are recipients of HUD funding and the authority to direct correction of deficiencies related to these same funds. HUD further stated that its authority is more circumscribed with respect to responsible entities that are not the program recipient, such as public housing agencies. HUD stated that it does not have remedies available in program regulations to mandate that the responsible entities correct any environmental deficiencies and there are no agreements or contracts between the responsible entities and HUD that HUD could use to compel such corrective actions. HUD stated that its only recourse is to require more monitoring or training, reject the use of the responsible entity to conduct future environmental reviews based on the responsible entity's performance, or suspend or terminate a responsible entity's assumption of environmental review responsibility.

We disagree that HUD does not have any authority to direct correction of deficiencies found in environmental reviews performed by responsible entities for program recipients. As stated in 24 CFR 58.72(c), in cases in which HUD has approved a certification and request for release of funds but subsequently learns that the recipient violated section 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD must impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found. For poorly performing responsible entities, HUD could suspend or terminate them and perform the reviews under 24 CFR Part 50.

Comment 8 HUD stated that even if the program offices were obliged to undertake more aggressive oversight of the responsible entities and had authority to do so, their capacity is limited. HUD further stated that the Office of Environment and Energy used a risk assessment tool to rate more than 1,200 entitlement communities that it actively monitors in addition to approximately 100 responsible entities that are not entitlement communities each year.

We acknowledge that the Office of Environment and Energy recently incorporated the other programs into its risk assessment due to our audit. However, given that

the Office of Native American Programs monitored its grantees, Housing and Public Housing could also monitor their grantees if they devoted the resources.

Comment 9 HUD stated that in the absence of significant additional resources, neither the Office of Environment and Energy nor Housing and Public Housing are able to increase these monitoring activities appreciably. HUD further stated that it will strive to provide reasonable assurance that environmental compliance requirements are met.

We understand that resources are a valuable commodity; however, HUD has a fiduciary duty to provide the resources necessary to ensure that environmental requirements are met and that NEPA's objective is achieved.

Comment 10 HUD disagreed with our conclusion that Housing did not provide training to its staff, grantees, or responsible entities. HUD further stated that Housing provided significant training on compliance with environmental requirements, principally program-specific requirements, to HUD staff, contractors, and lenders. Specifically, Housing had provided during the audit period of March 1, 2009, to September 30, 2012, trainings on the site selection and environment process for Sections 202 and 811 programs and new employee orientation training. Housing also noted an Office of Environment and Energy Field Environmental Training Conference that was attended by Housing. HUD stated that it had provided supporting documentation to OIG.

HUD provided a list of trainings and some PowerPoint presentations that Housing performed. However, the training provided during our audit period was limited to two trainings on the environmental review process for Sections 202 and 811 programs and two trainings for new employee orientation. The documentation for both types of training provided to us was limited and did not include any type of sign-in or attendance sheets to show who or how many people attended. In addition, the Office of Environment and Energy Field Environmental Training Conference that Housing attended did not have documentation showing what topics were included in the training. Further, we question whether a new employee orientation would provide the needed detailed training that the environmental review process entails. We revised the finding to show that Housing provided limited training.

Comment 11 HUD stated that the Office of Environment and Energy offers comprehensive environmental training but is restricted in the amount of training it can provide due to limited resources. HUD stated that in fiscal year 2014, the Office of Environment and Energy conducted 64 formal trainings and trained 550 HUD staff, and 1,945 grantees, tribes, and consultants. Further, the Office of Environment and Energy works directly with program offices to deliver specific training and provides Web-based training that is available to all HUD staff. In addition, Community Planning and Development is devoting approximately \$1.5

million to develop an online Learning Management System to supplement in-person training. HUD anticipates that the system will be deployed in the winter of this year on HUD's Web site to all grantees and partners.

We acknowledge that the Office of Environment and Energy has provided training and that it was restricted in the amount of training provided due to limited resources it received from the Community Planning and Development program office. We further acknowledge that in fiscal year 2014, the Office of Environment and Energy conducted more than 64 formal trainings that included HUD staff, grantees, tribes, and consultants; however, this training was after our audit period.

Comment 12 HUD stated that while most of Public Housing's environmental training was performed by the Office of Environment and Energy, Public and Indian Housing presented an environmental review training via live broadcast on March 11, 2009, to all Public and Indian Housing field offices and headquarters staff. HUD further stated that it provided us with documentation to support this training. In addition, HUD stated that in September 2014, 10 PIH staff participated in a 3-day training course presented by the Office of Environment and Energy.

HUD also stated that the Office of Environment and Energy will continue to include public housing agencies and Public and Indian Housing staff in each of their regional trainings during fiscal year 2015, and Public and Indian Housing and the Office of Environment and Energy are collaborating on the delivery of comprehensive Part 58 training targeted to grantees in three of the field offices which were the subject of OIG's recent regional environmental review audits, namely Boston, Detroit, and Kansas City. The training workshop conducted in those cities will be used as a model for future training in other locations throughout the country targeting public housing agencies, responsible entities, and field office staff.

The March 11, 2009, and September 2014 training HUD noted is outside our audit period, and we only reviewed training provided during our audit period. The documentation HUD provided for the March 2009 training included a screen shot of a webcast training available to HUD personnel, titled PIH Environmental Review Training; however, HUD did not provide information regarding who had taken the training. We are encouraged that HUD plans to provide training to public housing agencies, its staff, and grantees.

Comment 13 HUD commented that we inaccurately described Public and Indian Housing's position regarding repayment of ineligible costs. HUD stated that Public and Indian Housing has taken the position that repayment of ineligible costs should not be the sole remedy for all cases when an environmental review was inadequately performed. HUD believes that it may be just as appropriate for a grantee to receive additional training as the "sanction" when environmental reviews were not

performed in accordance with requirements, rather than require the repayment of funds. HUD stated that Public and Indian Housing's position reflects an enforcement approach that levies sanctions based upon the extent and circumstances for noncompliance and whether harm has occurred.

We disagree that there are other sanctions available when ineligible costs have occurred due to a regulatory violation. According to 24 CFR 58.22, neither a recipient nor any participant in the development process may commit HUD assistance, even if a project is exempt or categorically excluded, until the environmental review has been completed and signed by the responsible entity. Federal regulations at 2 CFR 200.31 define disallowed costs to mean those charges to a Federal award that are determined to be unallowable in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award. Further, 2 CFR 215.73 states any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government.

HUD set a precedent in response to a previous OIG audit recommendation. The former Assistant Secretary for Public and Indian Housing concurred that Recovery Act funds spent on construction activities were ineligible because the housing agency obligated and spent the funds before the environmental clearance had been completed. The former Assistant Secretary required the housing agency to repay the ineligible amount.

Comment 14 HUD commented in regard to repayment of ineligible funds that Community Planning and Development does not always require repayment when funds are committed before certification. Instead, Community Planning and Development will consider such factors as whether there is an unmitigated adverse environmental impact and the grantee's compliance record. HUD believes it should follow this approach for activities that violate a statutory or regulatory provision.

While Community Planning and Development may have the ability to offer alternatives, OIG auditors are directed by 2 CFR 200.516, which states that the auditor must report as audit findings in a schedule of findings and questioned costs material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. Further, 2 CFR 200.84 defines a questioned cost as a cost that is questioned by the auditor because of an audit finding, which resulted from a violation of a statute, regulation, or the terms and conditions of a Federal award. Finally, HUD's ability to offer alternatives is limited. For example, Public Law 112-55, Department of Housing and Urban Development 2012 Appropriations Act, dated November 18, 2011, identified sections that do not allow the HUD Secretary to provide a waiver related to fair housing, nondiscrimination, labor standards, and the environment.

Appendix B

Public Housing Field Offices and the Number of Public Housing Agencies in Their Jurisdictions

Region	Number of public housing agencies in region	Field office OIG reviewed	Number of public housing agencies under field office jurisdiction	Number of public housing agencies reviewed
1	170	Boston	219	3
2	164			
3	170			
4	796	Greensboro-Columbia	126 - 43	126 - 41
5	534	Detroit	129	3
6	703			
7	346	Kansas City	228	11
8	119			
9	74			
10	58			
Totals	3,134		745	184

Appendix C

Funds Spent Without a Proper Environmental Review

Field office	Grant amount ³⁶	Ineligible 1/	Unsupported 2/	Expended 3/	Excluded 4/
Boston	\$ 85,642,077	\$ 4,882,983	\$ 80,759,094		
Detroit	35,076,863	877,360	33,829,239		\$ 370,264
Kansas City	27,401,572	1,039,797	18,970,236	\$ 7,391,539	
Columbia	76,494,705			76,494,705	
Greensboro	180,725,889			180,725,889	
Totals	\$ 405,341,106	\$ 6,800,140	\$ 133,558,569	\$ 264,612,133	\$ 370,264
Total grant amount less excluded 4/: \$404,970,842					

- 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. These ineligible costs were due to a violation of 24 CFR 58.22.
- 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. These unsupported costs were due to a violation of 24 CFR 58.38.
- 3/ Expended costs are those costs that could not be charged as ineligible or unsupported by the auditor but that the auditor believes did not meet Federal requirements. These costs were due to violations of 24 CFR Part 50 as HUD failed to follow environmental review requirements when it performed the environmental reviews for the housing agencies.
- 4/ Excluded costs are those costs that had been forfeited due to another OIG issue separate from this audit (\$40,383) or funds that had not been obligated or spent by the housing agency and were considered eligible funds at the time of the audit since an environmental review could be properly completed before the deadline for obligation of the funds (\$329,881).

³⁶ Grant amount includes the 2009 Recovery Act and 2011 and 2012 capital funds.

Appendix D

Criteria

National Environmental Policy Act of 1969	
NEPA	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 this policy, set forth in NEPA, 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.
Executive orders	
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.”
Executive Order 12898	Section 1-101, Agency Responsibilities , states that to the greatest extent practicable and permitted by law and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.
Federal Register	
Notice 31972, Volume 77, Number 104, dated May 30, 2012	Section A, Authority Delegated , states, “Except as provided in Section B, the Secretary of HUD delegates to the Assistant Secretary for Community Planning and Development, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs the authority of the Secretary with respect to the programs and matters listed below in this

	<p>Section A. Only the Assistant Secretary is delegated the authority to issue or waive regulations.”</p> <p>21. Overall departmental responsibility for compliance with NEPA and the related laws and authorities cited in 24 CFR 50.4, including (with regard to the Assistant Secretary for Community Planning and Development) the authority to issue and to waive or approve exceptions or establish criteria for exceptions from provisions of 24 CFR Parts 50, 51, 55, and 58.</p>
<p>Notice 38853, Volume 77, Number 126, dated June 29, 2012</p>	<p>Section A.1, General Redelelegation of Authority-Deputy Assistant Secretary for Grant Programs, states that except for those authorities specifically excluded, the Assistant Secretary redelegates to the Deputy Assistant Secretary for Grant Programs all powers and authorities of the Assistant Secretary necessary to carry out the following CPD programs and matters:</p> <p>h. Environment - overall departmental responsibility for compliance with NEPA and the related laws and authorities cited in 24 CFR 50.4.</p>
<p>Protection and enhancement of environmental quality</p>	
<p>24 CFR Part 50</p>	<p>Section 50.2(a) states, “The definitions for most of the key terms or phrases contained in this part appear in 40 CFR Part 1508 and in the authorities cited in [section] 50.4,” to include the following definitions:</p> <ul style="list-style-type: none"> • Environmental review means a process for complying with NEPA (through an environmental assessment or environmental impact statement) or with the laws and authorities cited in section 50.4. • HUD approving official means the HUD official authorized to make the approval decision for any proposed policy or project subject to this part. • Project means an activity or a group of integrally related activities undertaken directly by HUD or proposed for HUD assistance or insurance. <p>Section 50.3(i)(1) states, “It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.”</p> <p>Section 50.3(i)(2) states, “HUD environmental review of multifamily and non-residential properties shall include</p>

	<p>evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards listed in paragraph (i)(1) of this section.”</p> <p>Section 50.3(i)(3) states, “Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes.”</p> <p>Section 50.4 states, “HUD and/or applicants must comply, where applicable, with all environmental requirements, guidelines and statutory obligations under the following authorities and HUD standards:”</p> <ul style="list-style-type: none"> • Historic properties; • Flood insurance, floodplain management, and wetland protection; • Coastal areas protection and management; • Water quality and sole-source aquifers; • Endangered species; • Wild and scenic rivers; • Air quality; • Solid waste management; • Farmlands protection; • Noise abatement and control; • Explosive and flammable operations; • Airport hazards (clear zones and accident potential zones); and • Environmental justice. <p>Section 50.10(a) states, “It is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to assure that the requirements of this part are implemented.”</p> <p>Section 50.22 states that an environmental management and monitoring program must be established before project approval when it is deemed necessary by the HUD approving official. The program must be part of the approval document.</p>
Floodplain management	
24 CFR Part 55	Section 55.1(c) states that except with respect to actions listed in section 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994, with respect to

	<ul style="list-style-type: none"> • Any action, other than a functionally dependent use, located in a floodway; • Any critical action located in a coastal high-hazard area; or • Any noncritical action located in a coastal high-hazard area unless the action is designed for location in a coastal high-hazard area or is a functionally dependent use. <p>Section 55.2(b)(1) states, “<i>Coastal high hazard area</i> means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis.”</p> <p>Section 55.2(b)(2)(i) states, “<i>Critical action</i> means any activity for which even a slight change of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures of facilities that</p> <ul style="list-style-type: none"> • Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas).” <p>Section 55.2(b)(2)(ii) states that critical actions must not be approved in floodways or coastal high-hazard areas.</p> <p>Section 55.2(b)(2)(ii)(4) states that floodway means that portion of the floodplain that is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest.</p> <p>Section 55.20, Subpart C, states that the decision-making process for compliance with floodplain management contains eight steps, including public notices and an examination of practicable alternatives.</p>
Environmental review procedures for entities assuming HUD environmental responsibilities	
24 CFR Part 58	Section 58.2(a)(7)(ii)(B) states 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.

Section 58.5 states 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 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.

Section 58.6 states 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 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).

Section 58.22(a) states that neither a recipient nor a participant in the development process may commit HUD assistance under a program listed in section 58.1(b) on an activity or project until HUD has approved the recipient’s request for release of funds and the related certification from the responsible entity. In addition, until the request for release of funds and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in section 58.1(b) if

	<p>the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.</p> <p>Section 58.22(b) states that if a project or activity is exempt under section 58.34 or is categorically excluded under section 58.35(b), no request for release of funds and certification is required, and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in sections 58.34(b) and 58.35(d) but the recipient must comply with applicable requirements under section 58.6.</p> <p>Section 58.30(a) states that “the environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part.”</p> <p>Section 58.38 states 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.</p> <p>Section 58.38(a) states that the environmental review record must contain all of the environmental review documents, public notices, and written determinations or environmental findings required by this part as evidence of review, decision making, and actions pertaining to a particular project of a recipient. The document must</p> <ul style="list-style-type: none"> • Describe the project and the activities that the recipient has determined to be part of the project; • Evaluate the effects of the project or the activities on the human environment; • Document compliance with applicable statutes and authorities, in particular those cited in sections 58.5 and 58.6; and • Record the written determinations and other review findings required by this part. <p>Section 58.38(b) states 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</p>
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	<p>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.</p> <p>Section 58.77(d) states that at least once every 3 years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If, through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of environmental deficiencies, HUD may take one or more of the following actions:</p> <ul style="list-style-type: none"> • In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently; • HUD may require attendance by staff of the responsible entity at HUD-sponsored or -approved training; • HUD may refuse to accept the certifications of environmental compliance on future grants; • HUD may suspend or terminate the responsible entity’s assumption of the environmental review responsibility; or • HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.
The Public Housing Operating Fund program	
24 CFR Part 990	Subpart A, section 990.116 , states, “The environmental review procedures of the National Environmental Policy Act of 1969 (NEPA) (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.”
Public and Indian Housing-Office of Field Operations guidance	
Field office environmental review guidance	Section 5, Program Requirements – Capital Fund Program (Special Note: Use of Capital Funds for Operating Costs) , states that public housing agencies wishing to spend capital funds on operating costs have been permitted to do so by reporting the amount of funds “transferred” to

	<p>operating costs on budget line item 1406 and drawing the funds down to the general ledger after budget approval. Public Housing staff should be aware that some public housing agencies are spending 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.</p> <p>Section 6, Role of the Field Office – Internal Controls, states that at a minimum, Public Housing must maintain the following:</p> <ul style="list-style-type: none"> • A list of responsible entities that HUD has determined will or will not perform the environmental review on behalf of HUD. This list will be an important document for determining which public housing agencies will need to submit the clearance documents. • A list of requests for release of funds and certifications that have been received and for which clearance has been provided. • A list of environmental reviews that have been conducted by Public Housing for each program requiring environmental clearance. • Separate environmental clearance files for each public housing agency.
<p>Guidance for categorizing an activity as maintenance for compliance with HUD’s environmental regulations at 24 CFR Parts 50 and 58</p>	
<p>Memorandum from the Office of Environment and Energy Director, dated March 28, 2006</p>	<p>This memorandum clarifies the difference between maintenance and repair for compliance with HUD’s environmental regulations at 24 CFR Parts 50 and 58. Environmental reviews for repair activities are more extensive, requiring compliance with related Federal environmental laws in sections 50.4 and 58.5, including the National Historic Preservation Act of 1966. In contrast, maintenance activities do not require compliance with Federal environmental laws. Distinguishing between maintenance and repair activities requires careful examination. Unless the activity meets the definition of maintenance provided below, the activity should be considered a repair or improvement, and the environmental review will require compliance with the related Federal environmental laws at sections 50.4 and 58.5. Unlike repair and improvements, maintenance activities do not</p>

	<p>materially add to the value of the building, appreciably prolong its useful life, or adapt it to new uses.</p> <p>Definition – Maintenance activities are</p> <ol style="list-style-type: none">(1) Cleaning activities;(2) Protective or preventive measures to keep a building, its systems, and its grounds in working order; or(3) Replacement of appliances or objects that are <i>not</i> fixtures or part of the building. A fixture is an object that is physically attached to the building and cannot be removed without damage to the building and includes systems designed for occupant comfort and safety such as heating, ventilation, and air conditioning; electrical or mechanical systems; sanitation; fire suppression; and plumbing. Fixtures also include but are not limited to kitchen cabinets, built-in shelves, toilets, light fixtures, staircases, crown molding, sinks, and bathtubs.
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