



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Field CPD Directors
Field Environmental Officers
Field CPD Representatives
SHOP Recipients and Local Affiliates

Notice: CPD-01-09

Issued: May 21, 2001
Expired: May 21, 2003

Cross References: Notices CPD 98-10
and CPD 99-8

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Field CPD Directors
Field Environmental Officers
Field CPD Representatives
SHOP Recipients and Local Affiliates

Notice CPD 01-09

Issued: May 21, 2001
Expires: May 21, 2003

Cross References: Notices CPD 98-10
and CPD 99-8

Subject: Modified Environmental Processing for Self-Help Homeownership
Opportunity Program (SHOP) Fiscal Year 2001 Legislative Change

A. Purpose

This notice implements Section 202 of the American Homeownership and Economic Opportunity Act of 2000 (AHEO) (Pub. L. 106-569, 114 Stat. 2944, approved December 27, 2000) which permits reimbursement of organizations, consortia and affiliates under the Self-Help Homeownership Opportunity Program (SHOP) for their acquisition of land prior to approval of environmental review. Also, this notice extends the provisions of Notice CPD 98-10. To the extent that the provisions of CPD 98-10 are inconsistent with this notice, the provisions of this notice shall govern.

B. Background

Section 202 of AHEO amends Section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (HOPEA) (42 U.S.C. 12805 note) to provide that eligible expenses under the SHOP program include:

"(A) Land acquisition.--Acquiring land (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such review to acquire land."

As in previous years, SHOP environmental reviews are carried out under HUD's implementing regulations in 24 CFR part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." In the event a responsible entity declines to assume responsibility for the review, HUD will perform the environmental review under 24 CFR part 50 and complete form HUD 4128, "Environmental Assessment and Compliance Findings for the Related Laws."

C. Policy

Generally, the acquisition of land is considered an activity that limits the choice of reasonable alternatives. Under § 58.22(a), a recipient may not commit either HUD funds or its own funds for land acquisition prior to: (i) HUD's approval of the recipient's Request for Release of Funds and Certification (RROF/C), form HUD 7015.15; or (ii) the Responsible Entity's finding of exemption (§ 58.71(c)). The AHEO amendment regarding reimbursement of land acquisition costs overrides this general prohibition with respect to organizations, consortia and affiliates under the SHOP program, by allowing them to advance nongrant funds for purposes of land acquisition prior to completion of the environmental review. **(The AHEO amendment is limited to the SHOP program. All other forms of HUD assistance continue to have the more restrictive policy.)**

1. The commitment or expenditure of non-HUD funds: Organizations, consortia, and affiliates may advance nongrant funds for purposes of land acquisition before: (i) HUD approval of form HUD 7015.15 (or form HUD 4128, if applicable), or (ii) the Responsible Entity's finding of exemption (§ 58.71(c)); and may receive reimbursement from SHOP upon completion of the environmental review and HUD approval of form 7015.15 (or form HUD 4128, if applicable) or upon notification from the Responsible Entity that it has determined that the acquisition is exempt. This policy applies to environmental reviews conducted on properties acquired with nongrant funds by organizations, consortia, or affiliates that receive FY 2001 SHOP funds and subsequent SHOP funding. This policy does not apply retroactively to permit reimbursement from previous SHOP grants for properties acquired with nongrant funds.

HUD is not required to reimburse land acquisition costs of an organization, consortium, or affiliate if the environmental review determines that the land is not

environmentally suitable for the development of housing or is in non-compliance with environmental authorities. **The organization, consortium, or affiliate that advances funds for property acquisition does so at its own risk regarding the outcome of the environmental review.**

2. The commitment or expenditure of HUD Funds: Organizations, consortia, or affiliates may not commit or expend SHOP funds for land acquisition prior to: (i) completion of the environmental review and HUD's approval of form HUD 7015.15 (or form HUD 4128, if applicable), or (ii) the Responsible Entity's finding of exemption (§ 58.71(c)). SHOP funds may be used to reimburse an organization, consortium, or affiliate for a property acquired with nongrant funds only upon completion of the environmental review and HUD approval of form 7015.15 (or form HUD 4128, if applicable) or upon notification from the Responsible Entity that it has determined that the acquisition is exempt.

3. Responsible Entity's Finding of Exemption (§ 58.71(c)): Section 58.34(a)(12) and (b) allows an exemption for any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5. Organizations, consortia, or affiliates do not have to submit form HUD 7015.15, and no further approval from HUD is needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section. For example, if there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5, then an exemption finding can be made for "individual actions" (§ 58.35(a)(4)) on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site. Also, notwithstanding any exemptions, the responsible entity reviews the proposed individual action for compliance with § 58.6.

4. Errata: The provisions of Notice CPD 98-10 unintentionally omitted a reference to the applicability of HUD policy for "Noise Abatement and Control" stated in 24 CFR part 51. For new construction which is to occur in high noise areas (i.e., exceeding 65 decibels), grantees shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR part 51.

In addition, the reprint of Notice CPD 98-10 incorrectly had included the out-of-date form HUD-7015.15 (9/92) rather than the current form HUD-7015.15 (2/98) published in the original Notice CPD 98-10. The current edition of form HUD 7015.15 (2/98) is to be used and is available also on the HUD website: <http://www.hud.gov/cpd/cpdenvir.html>.