

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

IMPORTANT: Applicants may expend funds for which they expect SHOP reimbursement to **acquire sites** prior to receipt of a HUD environmental review approval. However, the affiliate accepts all risk in the event that an environmental problem is uncovered after acquisition. **Site work cannot be started** (no dirt can be moved) before the environmental review is completed. In addition, applicants may not incur infrastructure improvement costs for which they expect SHOP reimbursement before receipt of HUD environmental review approval.

The HUD Environmental Review¹ process, required of all SHOP affiliates, is complicated. The process can take many weeks by the time all required information has been gathered and submitted to local authorities, public comment periods have expired, and formal approvals have been received. This guide is written for local nonprofits in an attempt to help identify the basics of the process and to get started on the review. This guide is intended to help explain the process, which is described in more detail in HUD's environmental guide (CPD-01-09). The HUD guide can be accessed at www.hudclips.org.

This guide is broken into two general scenarios: #1: Local Entity Serves as the Responsible Entity and #2: HUD Serves as the Responsible Entity. Each scenario has two more specific subsets (labeled A & B). Find the subset that applies to your situation, and then apply the described process to your unique situation.

The information in this guide is from Title 24 of the Code of Federal Regulations (CFR), Part 58, also known as 24 CFR 58. References to specific Sections will appear as follows: §58.35 of 24 CFR Part 58, which should be read to say Section 35 of Part 58 of Title 24 of the Code of Federal Regulations. You should refer to 24 CFR 58 itself if you have specific questions about the process. The document is available on the internet from the Government Printing Office site: (<http://www.hud.gov/offices/pih/ih/codetalk/onap/docs/24cfr58.pdf>).

We want to reiterate that this is not a substitution for the HUD guidelines; it is simply designed to put the process in a step-by-step format. We suggest that you carefully read the HUD guidelines first, and then refer to the part of this guide that applies to your project.

SCENARIO #1: LOCAL ENTITY SERVES AS RESPONSIBLE ENTITY

A Responsible Entity (RE) is any entity of government, which has jurisdiction over the area in which a project is located, and exercises authority over land use issues in that jurisdiction.

¹ HUD's website www.hud.gov/offices/cpd/environment/index.cfm is a good source of information about environmental review resources. They have posted all forms that you might need, links to environmental regulations, and staff lists that will help you find the appropriate HUD environmental review staff.

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

- A. Cases where the Responsible Entity is required to conduct an Environmental Review
1. Once the Responsible Entity determines that an environmental review is required, it prepares an Environmental Assessment (EA). The EA is based upon the Environmental Assessment and Compliance Findings for Related Laws, Form HUD-4128. There are times when the Responsible Entity will request that the SHOP affiliate/subrecipient complete the EA for their review and approval, so you should familiarize yourself with Form HUD-4128 which is included as part of this guide. This can involve several weeks of work, so it is important to coordinate with your Responsible Entity as soon as possible. Based on their EA, the Responsible Entity makes one of two determinations: Either the Responsible Entity makes a Finding of No Significant Impact (FONSI), or a finding of significant impact. If the Responsible Entity makes a FONSI determination, then the Responsible Entity must disseminate and/or publish a FONSI notice. This is described in Step 5 of this section. Steps 2, 3 and 4 of this subset deal with what happens if a finding of significant impact is made, so if this does not apply to your situation go to Step 5 of this subset.
 2. If a finding of significant impact is made, then the Responsible Entity must either prepare an Environmental Impact Statement (EIS), or utilize an EIS, which has already been prepared in reference to the site. If a Responsible Entity has to prepare an EIS it will have to disseminate or publish some notices including a Notice of Intent to prepare an EIS (NOI/EIS), and it **might** be required to hold public hearings. All this will take additional time.
 3. Once an EIS is prepared, it must be made available for comments, as outlined in §58.60 of 24 CFR 58. At the end of this comment period, the Responsible Entity prepares a Record of Decision (ROD). Once all of this has been accomplished and if the Responsible Entity finds the site(s) to be useable, the Notice of Intent to Request Release of Funds (NOI/RROF) is disseminated and/or published.
 4. The public comment period for a NOI/RROF lasts for seven days after its publication or for ten days after its mailing and posting [Skip Step 5 and go to Step 6].
 5. If the Responsible Entity makes a FONSI determination, they must disseminate/publish a FONSI. However, the Responsible Entity can combine this dissemination/publication with the dissemination/publication of a NOI/RROF. This is advantageous because the public comment period for a FONSI lasts for 15 days when published, or for 18 days when mailed and posted [the comment period can be longer in cases where extreme or extenuating circumstances exist]; while the NOI/RROF requires an additional 7-10 days (see step 4 for the details of this comment period). When the Responsible Entity releases a combined notice, its public comment period corresponds with the FONSI-required length of time. The Responsible Entity must, however, make it clear in their notice that the notice is satisfying two separate procedural requirements; and they should also ask the public to be specific in their comments as to which notice they are addressing (i.e. the FONSI or the NOI/RROF).

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

6. The Responsible Entity receives all comments on the FONSI (if applicable) and the NOI/RROF, takes them into consideration, and prepares and signs the Request for Release of Funds (RROF). Once the RROF is complete, the Responsible Entity delivers it to you (the local non-profit).
7. The RROF, with a copy of the published or posted notice, should then be sent to HAC (which is technically the “recipient” of SHOP funds), who will sign it and forward it to the appropriate HUD regional or state office. The HUD office will hold the RROF for an additional 15-day comment period. At the end of that period, assuming there are no objections, HUD will approve the RROF.

Some local non-profits have been sending a copy of the RROF signed by the Responsible Entity directly to the HUD regional/state offices, and the HUD offices have been willing to start the 15-day clock upon receiving the copy of the RROF from the local non-profit (with the understanding that the original is on its way from HAC). In order to speed up this process, HAC suggests that you contact your HUD regional/state office and ask if they are willing to handle the RROF in this way. It might speed the process up by a week or more.

8. Once the HUD regional or state office approves the RROF, HAC will be notified. At that point we will let you know that environmental approval has been received for your project. Once you receive environmental approval, you are clear to use SHOP funds, provided you have complied with any specific conditions imposed by the Responsible Entity.
- B. Cases where activities are considered categorically excluded due to size (i.e., one to four building lots in an area)
1. Responsible Entity determines that the project is categorically excluded under §58.35(a)(4) and (5) of 24 CFR (Code of Federal Regulations) Part 58--which basically excludes one to four building lots developed on a given tract of land, and scattered sites on a project of five or more housing units when the sites are more than 2,000 feet apart and there are only one to four building lots on any one site. However, if you are developing more than four units on the site that are considered to be part of the same *subdivision*, these lots may not be categorically excluded.
 2. Projects, which are categorically excluded, are, however, required to comply with some environmental standards (known as related laws and authorities). These standards are cited in §58.5 of 24 CFR Part 58. The attached “Format for Categorically Excluded Projects” will help the Responsible Entity in its determination. The Responsible Entity will either complete a HUD Statutory Checklist or they will require you to complete the checklist and submit it to them. The checklist includes some items for which independent confirmation must be obtained. These items include determining the effect on historic properties and determining whether the property(s) are in a flood plain. HAC suggests you work closely with your Responsible Entity to get these confirmations as soon as possible. If the Responsible Entity

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

determines that compliance actions are required, then Step 3 is applicable. If the Responsible Entity does not require any compliance actions, then Step 3 does not apply and you should move to Step 4.

3. If the Responsible Entity finds that compliance actions are required which are significant enough to warrant publishing a notice, then the Responsible Entity is required to disseminate and/or publish a Notice Of Intent to Request Release of Funds (NOI/RROF) and allow a public comment period. The public comment period must last seven days if the NOI/RROF was published, and 10 days if it was disseminated but not published. The Responsible Entity would take any comments into consideration as it prepared the RROF, and would then send a completed RROF to HAC. HAC would sign it and forward it to the HUD regional/state office. The HUD office would wait an additional 15 days public comment period before approving the RROF. HUD then notifies HAC that the RROF has been approved, and we would notify you. At that point you would be clear to commit funds, provided you addressed any specific conditions imposed by the Responsible Entity.

As was stated in Scenario #1, Subset A, Step 7, some local non-profits have been sending a copy of the RROF signed by the Responsible Entity directly to the HUD regional/state offices, and the HUD offices have been willing to start the 15-day clock upon receiving the copy of the RROF from the local non-profit (with the understanding that the original is on its way from HAC). In order to speed up this process, HAC suggests that you contact your HUD regional/state office and ask if they are willing to handle the RROF in this way. It might speed the process up by a week or more.

4. If a RROF is not required, the Responsible Entity issues a letter to you on their letterhead, which lists the site(s) that have been reviewed and found categorically excluded. In addition, the letter should explain that the Responsible Entity has determined that the related laws and authorities cited in §58.5 do not apply and therefore the Responsible Entity has converted the site(s) status to Exempt. A sample Responsible Entity categorical exclusion letter is attached. This is the final environmental step for these projects. The environmental clearance for the site(s) referenced in the Responsible Entity letter goes into effect on the day that the letter is dated, and as of that date you are clear to commit funds, provided you have complied with any specific conditions imposed by the Responsible Entity.

SCENARIO #2: HUD SERVES AS RESPONSIBLE ENTITY

Typically, this scenario only happens when a local entity is unwilling to take on the responsibility of an Environmental Review.

- A. Cases where HUD is required to conduct an Environmental Review
 1. Once the HUD regional or state office determines that an environmental review is required, it will prepare an Environmental Assessment (EA). This can take several weeks. The HUD office will probably ask you to assist them in gathering some of the

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

information required for the EA, and they will probably also work with an entity of state, regional or local government to gather some information. HAC suggests contacting the HUD office early in the process to learn how you can help move the process along.

2. After completing an EA, the HUD office will do one of four things. They will 1) approve the project site(s), 2) approve the site(s) with special conditions, 3) request additional information before they make a decision, or 4) disapprove the site(s). If HUD requires more information, they will make a decision after receiving the additional materials.
 3. The HUD regional/state office will provide a letter to you, which will detail their findings. If the HUD office approves the site(s), then you are authorized to commit funds as of the date of that letter, provided you have complied with any special conditions imposed by HUD. HUD is not required to publish notices for public comment, and therefore is potentially able to approve your site(s) more quickly.
- B. Cases where activities are considered categorically excluded due to size (i.e., one to four building lots in an area)
1. The process is very similar to Subset A of Scenario #1 above. HUD determines that your projects are categorically excluded under §50.19 of 24 CFR (Code of Federal Regulations) Part 50--which basically excludes one to four building lots developed on a given tract of land, and scattered sites on a project of five or more housing units when the sites are more than 2,000 feet apart and there are only one to four building lots on any one site. However, if you are developing more than four units on the site that are considered to be part of the same *subdivision*, these lots may not be categorically excluded. The HUD office then moves on to verifying compliance with the related laws and authorities, since these still apply to categorically excluded projects.
 2. The HUD regional or state office will probably work through some branch of local, regional, or state government to do the legwork that requires an impartial third party, and will probably ask you to do a good bit of legwork as well. As with the Responsible Entity in Subset B of Scenario #1, the HUD regional/state office will need verification that all relevant aspects of your project are in compliance with the related laws and authorities cited in §58.5 of 24 CFR Part 50.

Once the HUD office completes its review, they will make one of four determinations. HUD will either: (1) approve the project site(s); (2) approve the site(s) with special conditions; (3) request additional information before making a decision; or (4) disapprove the site(s). If HUD requires more information, they will make a decision after receiving the additional materials. HAC suggests that you begin conversations with your HUD office as soon as possible regarding how you can assist them in moving this process along.

3. The HUD office crafts a letter to you stating one of the four findings mentioned in Step #2. If HUD does not require additional information, the letter will let you know that

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

HUD has completed their environmental review and either approves the use of the mentioned site(s) in the SHOP-funded project, approves the site with specific conditions, or disapproves of the site. If HUD finds it necessary to attach specific conditions to the approval of the property/properties, it will detail those conditions in this letter. If HUD approves your site and you have addressed any specific conditions, you can start committing funds as of the date of the letter or as of the date specified by HUD in the letter. The HUD regional/state office is not required to publish or wait for a public notification period to expire.

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

Sample Letter from Responsible Entity
Declaring Categorical Exclusion from NEPA Requirements

(Date)

(SHOP Affiliate Name)

(Address)

RE: Environmental Review for SHOP-funded project

Dear (SHOP Affiliate Contact):

As the designated Responsible Entity for the proposed SHOP-funded project, I have reviewed the following properties pursuant to HUD environmental review requirements that apply to HUD Special Projects in accordance with §305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, as implemented in 24 CFR part 58.

The legal locations of the properties falling under this review are:

From the review, I have determined that in accordance with §58.35(a)(4) and (5) of 24 CFR Part 58, the above listed properties are Categorically Excluded from the environmental assessment requirements of the National Environmental Policy Act. In addition, as I have found that none of the related Federal environmental laws and authorities cited in §58.5 applies to these properties, I have converted their environmental status to Exempt in accordance with §58.34(a)(12).

As Exempt properties, a Request for Release of Funds (RROF), and the publication of the Notice of Funding of No Significant Impact (FONSI), the Notice of Intent to Request Release of Funds (NOI/RROF) or combined FONSI and NOI/RROF are not required.

Sincerely,

Name of RE Contact

Title

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

SAMPLE
Combined Notice of Finding of No Significant Impact
and of
Intent to Request Release of Funds

(Date of Publication)
(Certifying Officer's name)
(Certifying Officer's Address)
(Certifying Officer's Telephone Number)

TO ALL INTEREST AGENCIES, GROUPS, AND PERSONS:

On or about (date of the end of the comment period), the (name of Responsible Entity) will authorize (name of the recipient) to submit a request to the U.S. Department of Housing and Urban Development (HUD) to release Federal funds under the Self-Help Homeownership Opportunity Program (SHOP), authorized under Section 11 of the Housing Opportunity Program Extension Act of 1996 (P.L. 104-120) for the following project:

(project, title, or name)

(purpose/nature of project)

(identify project by address or major streets, city, county, and state)

(estimate cost of project)

(project summary)

FINDING OF NO SIGNIFICANT IMPACT

An environmental review for this project has been made by (name of Responsible Entity) and is available for public examination and copying at the offices of (name of subrecipient including address) and at (name of Responsible Entity), at the above address. Based on this review, (name of Responsible Entity) has determined that a request for release of funds will not significantly affect the quality of the human environmental and hence, an environmental impact statement will not be understaken under the National Environmental Policy Act of 1969 (P.L. 91-910).

The reasons for the decision not to prepare an environmental impact statement area as follows:

1. Development of new lots will benefit the low-income residents of (name of locality).
2. By providing infrastructure support, housing costs will remain affordable to low-income residents.

**HOUSING ASSISTANCE COUNCIL
SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM (SHOP)
HUD ENVIRONMENTAL REVIEW PROCESS GUIDE**

3. (insert any additional mitigating factors)

PUBLIC COMMENTS ON FINDING

All interested agencies, groups, or persons disagreeing with these decisions are invited to submit written comments for consideration by (ending date of comment period). All comments must clearly specify to which decision they object: (1) Finding of No Significant Impact, or (2) Request for Release of Funds. All comments so received will be considered by (name of Responsible Entity) prior to its taking any administrative action or (name of recipient) requesting release of funds on the date listed immediately above.

RELEASE OF GRANT FUNDS

(Name of recipient) will undertake the project described above with funds from the U.S. Department of Housing and Urban Development (HUD) under the Self-Help Homeownership Opportunity Program (SHOP). (Name of Responsible Entity) consents to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision making, and action and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, (name of subrecipient) may use SHOP funds, and HUD will have satisfied its responsibilities under the National Environmental Policy Act of 1969 and other environmental responsibilities listed in 24 CFR Part 58. HUD will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases:

- a. Certification was not in fact executed by the chief execution officer or other officer of (name of Responsible Entity)
- b. (Name of Responsible Entity)'s environmental review record for the project indicated omission of a required decision finding or step applicable to the environmental review process, or
- c. Another Federal agency as submitted written comments pursuant to Section 309 of the Clean Air Act of Section 201(c) of NEPA

Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58), may be addressed to the U.S. Department of Housing and Urban Development (HUD), (address of HUD office with jurisdiction). Objections to the release of funds on bases other than these stated above will not be considered and objections received after 15 days from the date of release of the funds listed above will not be considered by HUD.