Cross-Cutting Federal Requirements for the Tax Credit Assistance Program

Monte Franke, for MSHDA

Agenda

• Background on TCAP
• Environmental review
• Lead-based paint
• Relocation
• Accessibility & fair housing
• Section 3 & labor standards

Background

• Created by ARRA09
  – Labeled as HOME $, but follows Credit rules (occupancy, rents, term, etc.)
  – Only HOME state allocation formula & HOME environmental review
• $2.25B for Tax Credit projects
  – Eligible projects: awarded credits 2007-2009
  – Competitive process, following QAP
  – Not removed from eligible basis

Background

• Deadlines:
  – 75% committed in 1 year
  – 75% expended in 2 years
  – 100% expended in 3 years (2/16/12)
  – “Practical” deadline may be much tighter
• Key Federal requirements apply: fair housing, non-discrimination, labor standards, environment
• Awaiting HUD announcement of rules
  – Presumption: Fed Requirements similar to HOME

Environmental Review
Statutes & Requirements

- National Environmental Policy Act of 1969 (NEPA)
- Other Authorities (58.5)
  - Historic preservation
  - Floodplains
  - Wetlands
  - Sole source aquifers
  - Endangered species/plants
  - Air quality
  - Wild & scenic rivers
  - Farmland protection
  - HUD Part 51 environmental standards (e.g., noise)
  - Environmental justice
- Other Requirements (58.6)
  - Flood protection/insurance*
  - Coastal barrier (no funding)
  - Runway clear zone (notice)

Regulations

- NEPA Regulations: 40 CFR 1500-1508
- HUD environmental review regulations:
  - HUD reviews: 24 CFR Part 50
  - State/local gov’ts: 24 CFR Part 58
    - Responsible Entities (RE) – proximate level of gov’t
    - Approval authority:
      - HUD or
      - State for State CDBG or HOME SRs
    - In essence, 2 levels of governmental review
    - Applies to most HUD funds (& program income)

Key Terms/Acronyms

- National Environmental Policy Act (NEPA)
- Responsible Entity (RE)
- Compliance Determination (CD)
- Environmental Assessment (EA)
- Environmental Officer (EO)
- Phase 1 Environmental Site Assessment (ESA)
- Phase 2 Review: Recognized Environmental Conditions
- Environmental Impact Statement (EIS)
- Environmental Review Record (ERR)

Key Part 58 Clauses

- 58.5 Related laws & authorities
- 58.6 Other requirements
- 58.22 Limitations on actions pending clearance
- 58.34 Exempt
- 58.35 Categorical exclusions
- 58.36 Environmental assessments
- 58.38 Environmental Review Records (ERRs)
- 58.43-.45 Public notice & comment
- 58.70-.78 Release of funds

Terms & Acronyms, cont

- Project & Activity
- Aggregation
- Tiering
- Re-evaluation
- Finding of No Significant Impact (FONSI)
- Request for Release of Funds (RROF)
  - Notice of Intent (NOI/RROF)
  - Release of Funds (ROF) 7015.16

Key Part 58 Clauses

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Responsible Entity

- Assumption authority (58.4): HUD delegates to State/local government
  - Proximate level of gov’t
  - Required to act as RE if recipient; asked to act as RE if nonprofit recipient within jurisdiction
- Responsible for conducting the review, taking public comment, and issuing request to review authority
Timing of Review/Clearance

- Limitations on pre-clearance actions (58.22)
  - Can’t commit/expend Fed funds prior to clearance
  - Can’t commit/expend non-Fed funds if adverse impact or choice limiting action (including acquisition)
- Except exempt activities & converted to exempt (including options & relocation)
- Can make conditional commitments under HOME, see conditions in CPD-01-11 p. 10
- Projects in progress: stop work until clearance

The Steps

1. Determine project & level of review; scoping
2. Initiate contacts w/ outside sources (e.g. SHPO)
3. Collect data
4. Complete applicable review format/checklist
5. Make environmental determination or FONSI/FOSI
6. Publish or disseminate public notices when applicable
7. Submit RROF & Certification form to HUD (if appl.)
8. Commit funds/start on receipt of 7015.16

Determining the Level of Review

- Identify & scope the project:
  - Define the project (activities), project site & area of impact
  - Aggregation & tiering
  - Scoping: determine issues to be examined
- Determine level of review required:
  1. Exempt: none
  2. Categorically excluded, not subject to 58.5: 58.6 CD
  3. Categorically excluded, subject to 58.5:  CD
  4. Subject to NEPA: EA, maybe EIS

Environmental Review

<table>
<thead>
<tr>
<th>Project Action</th>
<th>NEPA</th>
<th>Other Authorities</th>
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<tbody>
<tr>
<td>Multi-Family (5+ units)</td>
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<tr>
<td>New Construction</td>
<td>Environmental Assessment</td>
<td>Compliance Determination</td>
</tr>
<tr>
<td>Major Rehab (5+)</td>
<td>Environmental Assessment</td>
<td>Compliance Determination</td>
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<tr>
<td>Minor Rehab/Acquis.</td>
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<td>Single Family (1-4)</td>
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<tr>
<td>New Construction</td>
<td>Environmental Assessment</td>
<td>Compliance Determination</td>
</tr>
<tr>
<td>New Construction</td>
<td>Excluded</td>
<td>Compliance Determination</td>
</tr>
</tbody>
</table>

Release of Funds

- Comment period remains open minimum 15 days after receipt or date in notice if longer
- Release of funds (ROF) issued (HUD 7015.16) after 15 days, unless basis for disapproval:
  - Objection to validity of certification (within 15 days)
    - Not executed by RE Certifying Officer, not made FONSI/FOSI, or omitted a required step
    - Committed or expended funds prior to release
  - RE Certification incomplete or inaccurate

HUD Guidance/Reference

- Review:
  http://www.hud.gov/offices/cpd/environment/review/
- Technical guidance:
  http://www.hud.gov/offices/cpd/environment/review/guidance/index.cfm
- Handbook 1390.2: Envir. Assessment Guide for Housing Projects (HUDclips)
- Envir. Review Guide for CDBG Program (1986 “Green Book”)
MSHDA Guidance

- Phase 1 ESAs:
- Other submission requirements:

Final Thoughts: Environmental Review

- State can't commit or expend TCAP or non-HUD project funds until approval
- If not previously reviewed
  - May have to stop work
  - Probably will need to submit Phase 1 ESA
- Don't take "limiting actions" prior to clearance
  - Purchase of property & other actions after application and prior to approval: can preclude Fed funding, including TCAP

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Lead-Based Paint

HUD Regulation

- Residential LBP Hazard Reduction Act of 1992 (Title X)
- 24 CFR Part 35
  - Pre-1978 housing receiving HUD or other Fed. assistance
  - Effective 9/15/00
  - Amended 6/21/04

Exemptions: 24 CFR 35.115

- Post-1977 housing
- Zero-bedroom units
- Housing exclusively for elderly/disabled
  - unless child under 6
- Certified LBP free
- LBP removed
- Unoccupied for demo
- Nonresidential part of property
- Rehab/maint. not disturb paint surfaces
- Emergency action
- Under 100 days occ.

Part 35 Applies When...

- Pre 1978 residential structures
  - Exemptions
- When Federal assistance or disposition
  - Some applications to State programs
- When LBP Hazards are present
- Whether or not children are present
  - May be specific requirements if children under 6 or children with EIBLL present
Typical Housing Activities

- **Rehab:** Rule Subpart J (35.900)
  - Standards: Fed rehab assistance (worksheet)
- **Acquisition (e.g., DPA):** Subpart K (35.1000)
  - Visual assessment, pt stabilization, clearance
- **Rental Assistance:** Subpart M (35.1200)
  - HHs w/ child < 6, visual asmt, pt stab, clearance

Evaluation Required

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<tr>
<td>Acquisition</td>
<td>Visual assessment</td>
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<td>Rehabs &lt; $5,000</td>
<td>Test or assume LBP - disturbed surfaces only</td>
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<tr>
<td>Rehabs &gt;$5,000</td>
<td>Risk assessment</td>
</tr>
</tbody>
</table>

Risk Assessments

- Done by MDCH-certified risk assessor
- Evaluation of unit/site for LBP hazards, incl:
  - Defective surfaces
  - Surfaces to be disturbed by rehab
  - Friction & impact surfaces
  - Lead dust
  - Soils

Occupancy Disclosure (35.88)

- To all tenants & buyers
- Pamphlet
- Disclosure of known LBP or LBP hazards
- Statement in contract
- Opportunity to test
  - 24 CFR 35 and 40 CFR 745

Renovation Disclosure

- New 40 CFR 745.81(b)
  - New pamphlet to owners’ occupants: “Renovate Right”
  - Replaces “Protect Your Family from Lead” beginning 12/22/08
  - All private or public renovation
- Download/order:
  - Order: NLIC 1-800-424-LEAD

Relocation

- URA not applicable, but…
  - might be triggered by rehab source (incl. TCAP)
- Temporary relocation required unless:
  - no LBP disturbance or exterior only
  - work within 8 hrs
  - done in 5 days w/containment, daily cleanup, access to key living areas (kitchen/baths)
- Elderly can waive relocation
  - See waiver form
LBP Rehab Standards

<table>
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<tr>
<th>Fed Rehab Funds per Unit</th>
<th>$5,000 or less</th>
<th>$5,001 - $25,000</th>
<th>$25,001 +</th>
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<td>Risk Assessment</td>
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<tr>
<td>Interim Controls</td>
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<tr>
<td>Abatement</td>
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<td>✓</td>
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</tr>
<tr>
<td>Clearance</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

* except below de minimus levels
** or presume LBP

Clearance (35.1340)

- EPA Certified Inspector or Risk Assessor
  - When hazard reduction activities are complete and debris removed
- Consists of:
  - Visual Assessment
  - Dust samples (lab analysis)
  - Report

Records (35.175)

- Copies of each notice, evaluation, clearance for 3 years (or more if program requires)
  - HOME requires 5 years (92.508(c))
  - CDBG 4 years (570.502)
- If ongoing maintenance/re-evaluation, 3 years beyond maintenance period

Ongoing Maintenance

- Occupant disclosure
- Annual visual assessment (35.1355):
  - Deteriorated paint, failed LBPH controls
- Paint stabilization using Safe Work Practices
  - De minimus standards
- Worksite clearance

Final Thoughts: LBP

- If pre-1978 & not exempt:
  - Probably need to do risk assessment
  - Need to disclose to all current/future occupants
  - If hazards, likely to abate (maybe interim controls)
  - If occupied, relocate during LBPHCs
  - Clearance documents absence of lead dust
  - Ongoing maintenance required
  - Keep records

Relocation
Relocation

• URA & Section 104(d) HCDA74
  – Notices
  – Advisory services
  – Financial assistance

Notices

• Protects all legal occupants
• 1st notice: don’t panic, don’t move
  – Initiation of negotiations: application v. intent
• Interim move-ins: notice of ineligibility
• Notice of displacement/non-displacement
• Benefits notice
• Notice to owner-occ seller; waiver of benefits
  – ADDI exempted

Financial assistance

• Temporary relocation: for rehab or LBPH control: must be less than 1 year
• Permanent relocation:
  – Advisory services
  – Moving & related expenses
  – Replacement housing payment
• Economic displacement

Other Compliance Issues:

• Some over-income or “ineligible” occupants may need to be relocated
• Budgeting relocation costs
  – Jurisdiction needs tenant income surveys
• Records

Resources:

• 49 CFR Part 24
• www.hud.gov/relocation
• All the Right Moves (Community Connections)
• Handbook 1378 – in process of updating

Final Thoughts: Relocation

• If working with occupied properties:
  – Remember the 1st notice
  – Tenant income/rent survey
  – Estimate full relocation costs in budget
  – Calculations: new URA, remember 104(d) for LI
  – If raising rents, remember economic displacement
  – If homebuyer, remember seller waiver (exc ADDI)
  – If you haven’t done it before, consult specialist, get All the Right Moves
Accessibility Statutes

- Rehabilitation Act (1973) Section 504
  - No “qualified individual with disabilities” excluded from or denied participation in federally assisted program/activity
- Fair Housing Amendments Act (1988)
  - (Amended Civil Rights Act of 1968)
  - Disability is prohibited basis of discrimination
  - Accessibility standards for new projects
- Americans with Disabilities Act (1998)
  - Title II: equal opportunity to benefit from State/local programs (not just Federal)

Fair Housing Act Standards

- New construction rental 4+ units; for-sale 5+ units
  - Public & common use areas
  - Passageways
  - Ground floor & elevator accessible units (4+ units)
    - Accessible route
    - Accessible switches
    - Grab bar reinforcements
    - Maneuverable kitchens/baths
  - Rules/policies: reasonable accommodations; allow reasonable modifications

Section 504 Requirements

- New construction:
  - Multi-family rental 5+ units
  - Requirements (in addition to Fair Housing requirements)
    - 5% physically impaired
    - 2% sensory impaired

504 & Rehabilitation

- Substantial Rehabilitation:
  - 15+ units &
  - > 75% of replacement cost
  - Requirements
    - 5% physically impaired
    - 2% sensory impaired
  - Other rehab: “to the maximum extent feasible”

Other Standards

- Program Accessibility
  - Non-discrimination
  - Outreach for acc units
  - Waiting list/priority for acc units
  - Reasonable accommodation
  - Information dissemination
  - Offices/activity locations accessible
- Visitability – to maximum extent feasible
  - 1 accessible route
  - Interior doors 32"+
Fair Housing

- Fair housing
  - Advertising
  - Intake: written tenant selection policy
  - Maintenance of waiting lists
- Accessible units:
  - If accessible units, reserved for HHs with accessibility needs
  - If special needs units, follow special needs marketing plan
- Fair/Equal Housing Opportunity & Accessibility logos must be displayed on any advertisements:
  - http://www.afr.state.ak.us/Graphics/Communications_Images/wheelchair-symbol.jpg
- The issue of legal residency

Program Accessibility Standards

- Non-discrimination
- Advertising logos
- Offices/activity locations accessible
- Outreach for acc units
- Waiting list/priority for acc units
- Reasonable accommodations & modifications

Reasonable Accommodations & Modifications

Reasonable accommodations
- Change/exception to rules, policies, practices, & services for PWDs
  - E.g., assigned parking, pets
- Does not apply to owner-occupied < 5 units
- Not fundamental alteration
- Not undue cost/admin burden

Reasonable modifications
- Structural modifications to property for PWDs
- Changes at occupant’s expense
  - Unless owner should have provided
  - Must be removable after occupancy

References

- Section 504: 24 CFR Part 8
- Fair Housing: 24 CFR 100.200+
- www.hud.gov/offices/cpd/affordablehousing/lawsandreg/fedreq/index.cfm

Final Thoughts: Accessibility & FH

- Hire an architect that knows 504 & UFAS
- Make sure they address 5%/2% if applicable
- Make your offices, application process fully accessible
- Hire a manager with fair housing experience
- Remember “reasonable accommodations”
Labor Standards

- Section 3
- Davis-Bacon
- Equal Employment Opportunity

Section 3

- HCDA68: Maximize economic benefit
- "It's the economy, stupid…"
  - Housing is only symptom of economic problem
  - Improvement without means to maintain
- Deconcentration
  - Choice & access to opportunities
- Capture the dollars, not just the unit
  - Section 3 as opportunity, not requirement
  - May require small business development

Beyond the Unit: Where the $ Go

Leverage:

3+:1

Section 3 Regulation

- 24 CFR Part 135
  - Jobs to Section 3 residents
  - Purchases from Section 3 businesses
- Thresholds: rehab/construction
  - Recipient: HUD assistance > $200,000
  - Contractors: above & contract > $100,000
- Recipients/subrecipients must:
  - Notify residents/contractors
  - Facilitate training
  - Assist/cooperate with HUD compliance

Labor Statutes

- Davis-Bacon Act of 1931 (and Related Acts)
- Contract Work Hours & Safety Standards Act of 1962
  - Payment of overtime for > 40 hrs/wk; 1.5 times
  - Contracts over $100,000
- Copeland Act of 1934
  - Prohibits kickback of wages
  - Requires certified weekly payroll report for DB
  - Regulates payroll deductions

Regulations

- DOL: 29 CFR
  - Part 1: Determination of prevailing wages
  - Part 3: Copeland Act
  - Part 5: Labor standards provisions for contracts
  - Part 6: DOL Administrative Law Judges
  - Part 7: DOL Administrative Review Board
Thresholds

- Davis-Bacon Act threshold is $2,000
- CDBG (8) & HOME (12): # of units
- Assume $2,000 threshold, so likely applies to all TCAP projects

Wage Rates

- Wage decisions, given by county
- Use for estimating
- Wage determination effective at the start of construction disbursement
- May have to adjust contract if modifications occurred
- Where to find:
  - Click on Michigan; find county

Important Notes on Wage Rates

- Applicable wages:
  - If 4 floors or fewer, use "Residential" decisions
  - If 5 or more floors, use "Building" decisions
  - If residential units in basement level, count as floor
- Mixed use: might be multiple decisions or use highest
- Not the same as State prevailing wages
  - Different wage levels & overtime rules
- But state minimum wage ($7.40) does apply
- Limited apprentice & trainee exceptions
- Requires weekly payment

Contracts/Reporting/Recordkeeping

- Required in contracts/subcontracts
- Weekly payroll submissions
- Recordkeeping: 3 yrs all payroll records

Key References

- Making Davis-Bacon Work (contractors)
- Contractors Guide: Hdbk 1344.1
- Forms:
  - http://www.hud.gov/offices/olr/olrform.cfm

Final Thoughts: Labor

- Make sure contractor is aware
- Update cost estimates / contingencies
- Put appropriate clauses in contracts for
  - Section 3
  - Davis-Bacon
Wrap Up

Next Steps

- Go back and make sure that:
  - You have site control until environmental clearance
  - If pre-78 housing, get LBP risk assessment
  - If occupied, do tenant survey & 1st notice
  - 504 units (& FHAA if new) are in the design
  - Property manager understands FH & RA
  - Contractor able to comply with Section 3 & Davis-Bacon
  - Your budget include costs of compliance with all the OFRs
- Stay tuned for HUD guidelines

MSHDA Contacts

- TCAP
  - Steve Lathom, lathomr@michigan.gov 517-373-8853
  - Norm Harrod, harrodn@michigan.gov 517-335-2018
  - Chris Lagrand, lagrandc@michigan.gov 517-241-2909
- Environmental review
  - Bruce Jeffries, jeffriesb@michigan.gov 517-335-0183
- Uniform Relation Act
  - Carolyn Cunningham, cunninghamc@michigan.gov 517-335-4661
- Section 504/Accessibiility
  - Marianne Vulichnich, vulichnichm@michigan.gov 517-373-9478
- Davis-Bacon & Section 3
  - Tom Jones, jonesm@msn.com 517-373-8055

Final Comments

- Final Questions?
- MSHDA final comments