


Cross-Cutting Federal Requirements
for the Tax Credit Assistance Program

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Agenda

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

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TCAP

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

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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

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Environmental Review

Statutes & Requirements

- National Environmental Policy Act of 1969 (NEPA)
- Other Requirements (58.6)
 - Flood protection/ insurance*
 - Coastal barrier (no funding)
 - Runway clear zone (notice)
- 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

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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)

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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)

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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

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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

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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

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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

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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

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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

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Environmental Review

Project Action	NEPA	Other Authorities
Multi-Family (5+ units) New Construction	Environmental Assessment	Compliance Determination
Major Rehab (5+) >75% RC, 20%+ density, conv	Environmental Assessment	Compliance Determination
Minor Rehab/Acquis.	Excluded	Compliance Determination
Single Family (1-4) Density > 4 un; land use change; wetland/floodplain footprint change	Environmental Assessment	Compliance Determination
Density < 5 un; no land use change; wetland/floodplain footprint	Excluded	Compliance Determination

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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

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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")

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MSHDA Guidance


- Phase 1 ESAs:
http://michigan.gov/documents/mshda/mshda_li_ca_13_tab_d_esa_183862_7.pdf
- Other submission requirements:
http://michigan.gov/documents/mshda/mshda_li_ca_13b_tab_d_nepa_rvw_chklst_271152_7.pdf

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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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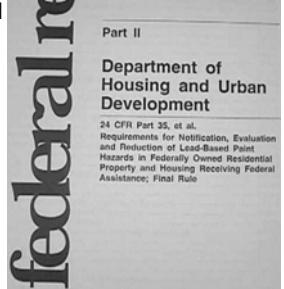
Lead-Based Paint

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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



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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

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Exemptions: 24 CFR 35.115



<ul style="list-style-type: none"> Post-1977 housing Zero-bedroom units Housing exclusively for elderly/disabled <ul style="list-style-type: none"> unless child under 6 Certified LBP free LBP removed 	<ul style="list-style-type: none"> Unoccupied for demo Nonresidential part of property Rehab/maint. not disturb paint surfaces Emergency action Under 100 days occ.
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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

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Evaluation Required

Acquisition	Visual assessment
Rehab < \$5,000	Test or assume LBP - disturbed surfaces only
Rehab > \$5,000	Risk assessment

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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

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Occupancy Disclosure (35.88)


- To all tenants & buyers
- Pamphlet
 - <http://www.hud.gov/offices/lead/enforcement/index.cfm>
- Disclosure of known LBP or LBP hazards
- Statement in contract
- Opportunity to test
 - 24 CFR 35 and 40 CFR 745



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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:
 - http://www.centerforhealthyhousing.org/Renovate_Right_Pamphlet_EPA.pdf Order: NLIC 1-800-424-LEAD



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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



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LBP Rehab Standards

Fed Rehab Funds per Unit	\$5,000 or less	\$5,001 - \$25,000	\$25,001 +
Safe Work Practices *	✓	✓	✓
Test Disturbed Surfaces **	✓	✓	✓
Risk Assessment		✓	✓
Interim Controls		✓	Exterior
Abatement		✓	✓
Clearance	Worksite	None	None

* except below de minimus levels

** or presume LBP

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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



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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



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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

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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

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Relocation

Relocation

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

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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

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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

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Other Compliance Issues:

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

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Resources:

- 49 CFR Part 24
- www.hud.gov/relocation
- All the Right Moves (Community Connections)
- Handbook 1378 – in process of updating
- MSHDA guidance:
http://michigan.gov/documents/mshda/mshda_li_ca_27_tab_r_ura_gen_info_guide_notic_183883_7.pdf

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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

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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)

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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

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Section 504 Requirements

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

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504 & Rehabilitation

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

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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"+

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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.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm>
 - http://www.ahfc.state.ak.us/Graphics/Communications_Images/wheelchair-symbol.jpg
- The issue of legal residency

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Program Accessibility Standards

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

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Reasonable Accommodations & Modifications

<p><u>Reasonable accommodations</u></p> <ul style="list-style-type: none"> • Change/exception to rules, policies, practices, & services for PWDs <ul style="list-style-type: none"> • E.g., assigned parking, pets • Does not apply to owner-occupied < 5 units • Not fundamental alteration • Not undue cost/admin burden 	<p><u>Reasonable modifications</u></p> <ul style="list-style-type: none"> • Structural modifications to property for PWDs • Changes at occupant's expense <ul style="list-style-type: none"> • Unless owner should have provided • Must be removable after occupancy
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References


- Section 504: 24 CFR Part 8
- Fair Housing: 24 CFR 100.200+
- www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/index.cfm
- MSHDA fair housing: http://michigan.gov/documents/mshda/mshda_li_ca_25_tab_p_afhmp_183881_7.pdf
- MSHDA applies UFAS via design standards http://michigan.gov/documents/mshda/mf_standards_of_design_180012_7.pdf

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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"

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Section 3 & Labor Standards

Labor Standards

- Section 3
- Davis-Bacon
- Equal Employment Opportunity

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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

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Beyond the Unit: Where the \$ Go

The diagram illustrates the concept of leverage in housing. It starts with a house icon on the left. An arrow points to a person holding a document, representing a unit. From there, multiple arrows branch out to various community services: a school, a church, a person working at a computer, and a person working at a desk. A large arrow loops back from these services to the house icon, indicating that the investment in the unit generates additional economic activity. The text "Leverage: 3+:1" is prominently displayed in the center.

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Section 3 Regulation

- 24 CFR Part 135
 - <http://www.hud.gov/fhe/fhesect3.html>
 - 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

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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

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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

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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

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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:
 - <http://www.gpo.gov/davisbacon/allstates.html>
 - Click on Michigan; find county

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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

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Contracts/Reporting/Recordkeeping

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

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Key References

- Making Davis-Bacon Work (contractors)
 - <http://www.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf>
- Contractors Guide: Hdbk 1344.1
 - <http://www.hud.gov/olr/olwrcp.html>
- Forms:
 - <http://www.hud.gov/offices/olr/olrform.cfm>

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Final Thoughts: Labor

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

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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

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- Uniform Relation Act
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- Section 504/Accessibility
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- Davis-Bacon & Section 3
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Final Comments

- Final Questions?
- MSHDA final comments

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