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(f) *Section 50.3(h)*. Notwithstanding the other paragraphs of this section, the decision point for grant programs in which HUD approval of funding for an applicant's program must occur before the applicant's selection of properties for use in its program is: HUD approval of specific properties.

(g) *Stewart B. McKinney Homeless Assistance Act Programs*. Where the recipients are nonprofit organizations or governmental entities with special or limited purpose powers, the decision point is: HUD project approval.

(h) *Programs not specifically covered in this section*. Consult with the AS/CPD for decision points.

## Subpart D—General Policy: Environmental Review Procedures

### §50.18 General.

HUD may, from time to time, complete programmatic reviews that further avoid the necessity of complying with the laws and authorities in §50.4 on a property-by-property basis.

### §50.19 Categorical exclusions not subject to the Federal laws and authorities cited in §50.4.

(a) *General*. The activities and related approvals of policy documents listed in paragraphs (b) and (c) of this section are not subject to the individual compliance requirements of the Federal laws and authorities cited in §50.4, unless otherwise indicated below. These activities and approvals of policy documents are also categorically excluded from the EA required by NEPA except in extraordinary circumstances (§50.20(b)). HUD approval or implementation of these categories of activities and policy documents does not require environmental review, because they do not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at §50.4.

(b) *Activities*. (1) Environmental and other studies, resource identification and the development of plans and strategies.

(2) Information and financial advisory services.

(3) Administrative and management expenses.

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.

(5) Inspections and testing of properties for hazards or defects.

(6) Purchase of insurance.

(7) Purchase of tools.

(8) Engineering or design costs.

(9) Technical assistance and training.

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

(11) Tenant-based rental assistance.

(12) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of equipment, compliance with §50.4(b)(1) is required.

(14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with §50.4(b)(1) is required.

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that result in the transfer of title.

(16) Housing pre-development costs including legal, consulting, developer and other costs related to site options, project financing, administrative costs

and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(17) HUD's insurance of one-to-four family mortgages under the Direct Endorsement program, the insurance of one-to-four family mortgages under the Lender Insurance program, and HUD's guarantee of loans for one-to-four family dwellings under the Direct Guarantee procedure for the Indian Housing loan guarantee program, without any HUD review or approval before the completion of construction or rehabilitation and the loan closing; and HUD's acceptance for insurance of loans insured under Title I of the National Housing Act; however, compliance with §§ 50.4(b)(1) and (c)(1) and 24 CFR 51.303(a)(3) is required.

(18) HUD's endorsement of one-to-four family mortgage insurance for proposed construction under Improved Area processing; however, the Appraiser/Review Appraiser Checksheet (Form HUD–54891) must be completed.

(19) Activities of the Government National Mortgage Association under Title III of the National Housing Act (12 U.S.C. 1716 *et seq.*).

(20) Activities under the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*).

(21) Refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with § 50.4(b)(1) is required.

(22) Approval of the sale of a HUD-held mortgage.

(23) Approval of the foreclosure sale of a property with a HUD-held mortgage; however, appropriate restrictions will be imposed to protect historic properties.

(24) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a) is required.

(c) *Approval of policy documents.* (1) Approval of rules and notices proposed for publication in the FEDERAL REGISTER or other policy documents that do not:

(i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction; or

(ii) Establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

(2) Approval of policy documents that amend an existing document where the existing document as a whole would not fall within an exclusion in this paragraph (c) but the amendment by itself would do so;

(3) Approval of policy documents that set out fair housing or nondiscrimination standards or enforcement procedures or provide for assistance in promoting or enforcing fair housing or nondiscrimination;

(4) Approval of handbooks, notices and other documents that provide operating instructions and procedures in connection with activities under a FEDERAL REGISTER document that has previously been subject to a required environmental review.

(5) Approval of a Notice of Funding Availability (NOFA) that provides funding under, and does not alter any environmental requirements of, a regulation or program guideline that was previously published in the FEDERAL REGISTER, provided that

(i) The NOFA specifically refers to the environmental review provisions of the regulation or guideline; or

(ii) The regulation or guideline contains no environmental review provisions because it concerns only activities listed in paragraph (b) of this section.

(6) Statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost limits, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for

or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites.

[61 FR 50916, Sept. 27, 1996, as amended at 62 FR 15802, Apr. 2, 1997; 63 FR 48990, Sept. 11, 1998; 68 FR 56127, Sept. 29, 2003]

### § 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) The following actions, activities and programs are categorically excluded from the NEPA requirements of this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders and HUD standards cited in § 50.4, where appropriate. Form HUD–4128 shall be used to document compliance. Where the responsible official determines that any item identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements of NEPA shall apply (see paragraph (b) of this section).

(1) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

(2) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size nor capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(3)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(3)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(2)(i) of this section).

(4) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(5) Purchased or refinanced housing and medical facilities under section 223(f) of the National Housing Act (12 U.S.C. 1715n).

(6) Mortgage prepayments or plans of action (including incentives) under 24 CFR part 248.

(b) For categorical exclusions having the potential for significant impact because of extraordinary circumstances, HUD must prepare an EA in accordance with subpart E. If it is evident without preparing an EA that an EIS is required pursuant to § 50.42, HUD should proceed directly to the preparation of an EIS in accordance with subpart F.

[61 FR 50916, Sept. 27, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

### § 50.21 Aggregation.

Activities which are geographically related and are logical parts of a composite of contemplated HUD projects shall be evaluated together.