



MEMO

September 3, 2010

To: All HOME Grant Administrators

From: Coralee Holloway, Director, THDA Community Programs

Re: Clarification and Update of Environmental Review Procedures

New procedures often lead to hesitation and confusion for all participating parties. We at THDA have received several Environmental Reviews using the new format we now require, and it has become evident that some further clarification and guidance is needed so that administrators can successfully complete their obligations under environmental review. After discussion with Community Programs staff in a recent Environmental Review meeting, we have created the following notes about issues and problems we have encountered during Environmental Reviews for HOME. We hope these notes will help you as you work your way through the new forms and requirements. Note that each issue cited here has a related discussion and solution. These notes contain new or clarified requirements for each issue listed. Please read them carefully. As always, please contact your housing specialist, Barry Havens, or me with any questions you may have about this information. Remember, there has been no change in the regulations. However, we have been informed by HUD that new standards of documentation are required and that we must follow them.

There has been confusion regarding “formal consultation with an outside agency” which led to the reversing of the A/B designation in the body of Chapter 3 for the 2009-2010 Manual. This has been fixed. Please refer to the new Chapter 3 available on the THDA website.

Designation A: This is similar to the old “no Impact” designation. It means that the project will not have a negative impact on the environment, or the environment will not have a negative impact on the project. You, in analyzing the project make this determination using the HUD guidelines and the information on the HUD web site. For example, you by looking at the map determine that there is no railroad within 3,000. feet of the project. You document this by submitting a map showing the project site and the

distance to the railroad over that is over 3,000 feet. You could also document this with a map that shows no railroads in the county, or with a letter from an appropriate source. You cannot just say “no railroads”

Designation B: This indicates that the project may have a negative impact on the environment, or the environment may have a negative impact on the project and formal consultation with an authority is required. You have determined this by looking at the guidelines and found that the location of the project falls within the screening guidelines. For example the project site is within 3000 feet of a railroad. You now have to do the noise calculation to see if there is a negative impact or not. If there is a negative impact, then further consultation is required to determine if it can be mitigated.

If you are using a tiered strategy you will be submitting environmental information in two steps:

1. The first submission will be the ER-4 form with the A or B determination made for the Compliance Factors that can be determined without knowing the specific site of the project.
2. The second submission will be the ER-4 submitted with the A or B determination for the site specific Compliance Factors pertaining to the specific site.

The ER is only complete when *all* Compliance Factors have been determined to be A or B for each specific site.

Issue: **Federal money must not be committed to an individual project until the site has been cleared environmentally.**

The Release of Funds for the project does not complete the ER and does not relieve administrators from the responsibility of completing Site Specific checklists with supporting documentation *prior to the approval of expenditure of any Federal funds*. Be advised that there is no Memorandum of Understanding between THDA and the State Historic Planning Office (SHPO) exempting properties less than 50 years old. Documentation of the Section 106 review must be completed before HOME funds are committed to the project.

Site-Specific checklist clearance and supporting documentation are being submitted to THDA after funds are committed, contract signed, and work commenced. From this point forward, all site specific checklists and related documentation must be submitted to and approved by THDA before grant funds may be committed to a project. This means that you must submit the ER before you sign the rehabilitation contract with the homeowner. Although this is an additional step that will now be required after the initial Release of Funds in a Tiered Strategy ERR, this new requirement is designed to protect everyone from the consequences of non-compliance with Environmental Review regulations.

Issue: Site-Specific checklists created before July 1, 2010 and sent to THDA after July 1, 2010 do not contain adequate documentation for noise.

All site-specific, or tiered strategy, checklists submitted to THDA must contain noise calculations or maps showing that the site is cleared, even if the checklist is from a grant pre-dating 2010. We hope this will eliminate any confusion about what needs to be done, when, and for which grant.

Issue: A Tiered Strategy ER-4 form has been prepared using the incorrect A/B designation.

A new ER-4 must be prepared and signed by the elected official. THDA will begin counting the required comment period from the day ERR packet was received at THDA if this is the only document requiring correction or replacement, and if the new ER-4 form is received before the comment period ends.

Issue: What is correct floodplain documentation?

Floodplain must be cleared for each specific site; a blanket clearance is not acceptable. Floodplain maps must be submitted for each project site showing panel number and location of the property.

Issue: How is Farmland Protection clearance documented?

Administrators are self-certifying clearance without adequate citations. Many rural communities about farmland and confusion can arise. At a minimum, administrators should verify that a proposed small town or urban site is in an incorporated area and/or cite to the NRCS Farmland Protection procedures in TN page: http://www.tn.nrcs.usda.gov/technical/soils/FPPA_kit.pdf. For all unincorporated areas, please send a map from NRCS, with site location marked, or letter from NRCS or local Department of Agriculture official.

Issue: How is Explosive Hazard clearance documented?

Blanket clearance by local officials, especially of a large area, does not account for specific hazards cited by HUD in their guidelines. Become familiar with identified hazards and acceptable distances from them. Document distances from known hazards using accurate mapping and submit the maps with your ERR or second tier document (site-specific checklist). When in doubt, use the calculator on the HUD website.

Issue: Using A&B from the ER-4 designations on additional ERR paperwork.

Use of the A/B designations outside the ER-4 form can result in faulty documentation. Use plain language and ordinary checkboxes wherever possible to describe choices for the clearance you are requesting. Once the official has selected the appropriate choice, you make the determination about whether the answer is A or B on the ER-4. This approach is more comprehensive and

gives a better picture of the process to the official signing your document. It also eliminates confusion within the ERR document for anyone reviewing it.

Issue: Which category of determination on the ER-4 (on back) is checked and when?

The ER-4 is used for projects that can be Categorical Excluded. If you are using a Tiered Strategy, you will have to check the second box under Determination because you have not cleared your sites for all statutes, regulations or executive orders. You will have to publish a NOI/RROF and obtain a Release of Funds from THDA as the Responsible Entity.

If you have identified all of your sites (formerly a site specific strategy), and have completed the ER-4 with supporting documentation that allows you mark all statutes, regulations and executive orders "A", then your project converts to Exempt. It is not necessary to publish a Notice.

If your project does not meet the requirements to be categorically excluded, then it will be necessary to complete an environmental assessment and publish a combined notice RROF/FONSI.

For each statute, regulation, and executive order listed on the ER-4, there is a website address shown on the form where you can obtain more information and examples of acceptable documentation. When in doubt, begin by reading the regulations at 24 CFR Part 58. If after all that you are still confused, do not hesitate to contact us.

We hope this has been helpful to you and look forward to working with each of you on the new environmental reviews.