

source aquifers, environmental justice, environmental standards, and others.

The current provision at § 58.34(a)(12) allows an exemption for any categorical exclusion listed in § 58.35(a), provided that there are no circumstances that require compliance with any other federal laws and authorities cited in § 58.5. A recipient does not have to submit an environmental certification and request for the release of funds, and no further approval from HUD or the state is needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under § 58.34. The conversion to exempt status does not remove the need to comply with the other requirements at § 58.6 “as applicable.”

*Comment:* The final rule should clarify the phrase “except in extraordinary circumstances” as used in proposed § 58.22(b).

*HUD Response:* The final rule makes no change to the proposed rule on this matter. The phrase “except in extraordinary circumstances” is taken from CEQ regulations (40 CFR 1508.4) and is already defined at § 58.2(a)(3) of the current regulations. The term means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are: (1) Actions

that are unique or without precedent; (2) actions that are substantially similar to those that normally require an EIS; (3) actions that are likely to alter existing HUD policy or HUD mandates; or (4) actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

*Comment:* Regarding § 582.230(b), the restrictions on a recipient and others limiting proposed acquisition for a project under Shelter Plus Care until HUD approves the recipient’s environmental certification of compliance and request for the release of funds would totally restrict a housing authority’s ability to move forward with a project. The commenter asserted that this will defeat HUD’s stated desires to achieve a speedy start-up in Shelter Plus Care projects, will discourage the housing authority’s partners from participating in such endeavors, and is an unwarranted incursion into their rights to perform standard business activities.

*HUD Response:* The final rule makes no change to the proposed rule in response to this comment. It appears that the commenter incorrectly construed the provision. The added language makes conforming amendments to the Shelter Plus Care program regulations, which do not currently adequately reflect the applicability of part 58 procedures (see § 58.1(b)(3)). Also, the Shelter Plus Care

program is designed to link rental assistance to supportive services for hard-to-serve homeless persons with disabilities. The current regulation excludes tenant-based rental assistance from any environmental review. Other eligible activities may be subject to reviews. Moreover, the restriction on the recipient, project “partners” and their contractors’ undertaking or committing funds for acquisition and development actions does not apply to undertakings or commitments of non-federal funds for a development by a party before the party applies to the Shelter Plus Care recipient for federal funds for the project. Where a third party has begun a project in good faith as a private project, the recipient is not precluded from considering a later application for federal assistance for the project, but must advise the third party applicant to cease further choice-limiting actions on the project until the environmental review is completed.

#### IV. List of HUD Programs Covered by 24 CFR Part 58

For ready reference and convenience of the reader, the below list indicates the HUD programs that are covered by 24 CFR part 58 by program name, program regulation, program office, and OMB number found in the Catalog of Federal Domestic Assistance. This list is not exhaustive as other programs may be added in the future. The final rule at § 58.1(b) includes the references to the statutory authorization of assumption of HUD environmental responsibilities by state, local, and tribal governments.

| OMB number   | Name of program   | Regulation citation                                       | Program office       |
|--------------|---|---|----------------------|
| 14.188 ..... | Housing Finance Agencies Risk Sharing Project.                                | 24 CFR part 266 .....                                     | Housing <sup>1</sup> |
| 14.218 ..... | Community Development Block Grants/Entitlement Grants.                        | 24 CFR part 570 .....                                     | CPD <sup>2</sup>     |
| 14.219 ..... | Community Development Block Grants/Small Cities Program.                      | 24 CFR part 570 .....                                     | CPD                  |
| 14.225 ..... | Community Development Block Grants/Special Purpose Grants/Insular Areas.      | 24 CFR part 570 .....                                     | CPD                  |
| 14.228 ..... | Community Development Block Grants/State Program.                             | 24 CFR part 570 .....                                     | CPD                  |
| 14.231 ..... | Emergency Shelter Grants Program .....  | 24 CFR part 576 .....                                     | CPD                  |
| 14.235 ..... | Supportive Housing Program .....  | 24 CFR part 583 .....                                     | CPD                  |
| 14.238 ..... | Shelter Plus Care .....   | 24 CFR part 582 .....                                     | CPD                  |
| 14.239 ..... | HOME Investment Partnerships Program  | 24 CFR part 92 .....                                      | CPD                  |
| 14.241 ..... | Housing Opportunities for Persons with AIDS.                                  | 24 CFR part 574 .....                                     | CPD                  |
| 14.246 ..... | Economic Development Initiative Grants ..                                     | CFR: N.A. [NOFA <sup>3</sup> references 24 CFR part 570]. | CPD                  |
| 14.246 ..... | Brownfield Economic Development Initiative Grants.                            | CFR: N.A. [NOFA references 24 CFR part 570].              | CPD                  |
| 14.246 ..... | Economic Development Initiative—Special Projects (Congressionally earmarked). | .....   | COD                  |
| 14.247 ..... | Self-Help Homeownership Opportunity Program.                                  | NOFA .....  | CPD                  |