



# Overview of Cross-cutting Requirements Part 1: Environmental Review and Fair Housing

**2019 CDBG-DR Problem Solving Clinic**

**Kansas City – Overland Park | July 30 – August 1,  
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# Speakers

- Paul Mohr, HUD Regional Environmental Officer
- Kelly Price, ICF



# Agenda

## **Environmental Reviews:**

### Session Objectives

- Importance of Environmental Reviews
- Tips for understanding post-disaster Environmental Laws
- Setting up Single-Family Rehab Tiered Review

## **Fair Housing:**

- Overview of fair housing and civil rights laws
- Discussion of hot topics related to CDBG-DR
  - Limited English Proficiency (LEP)
  - Reasonable Accommodation
  - Preferences



# Environmental Review and Disaster Recovery

Paul Mohr



# Environmental Review and Disaster Recovery (DR) Overview



# HUD's Environmental Regulations

- 24 CFR 50 – HUD Review  
Environmental review requirements for HUD staff
- 24 CFR 51 – HUD Standards  
Noise, Explosive or Flammable Hazards, Airport Hazards
- 24 CFR 55 – Floodplains & Wetlands
- 24 CFR 58 – State or Local Government Review  
Environmental review requirements for states or units of general local government (“Responsible Entity” / “RE”)



# What is an Environmental Review?

- Analysis of impacts of a project on the surrounding environment and vice versa
- Ensures HUD-funded projects provide decent, safe, and sanitary housing
- Protects the value of the federal investment
- Demonstrates compliance with 17 federal environmental laws & authorities
- Encourages public transparency & participation



# Best Practices

- Coordinate early with State or local gov't environmental agencies
- Become familiar with environmental guidance on HUD Exchange
- Hire consultants, if needed, to help prepare the Environmental Review Record (ERR)
- Use Secretary of the Interior (SOI) qualified person/staff to complete Section 106 reviews
- Adopt FEMA reviews, where applicable
- Prepare ERR using HUD “HEROS”



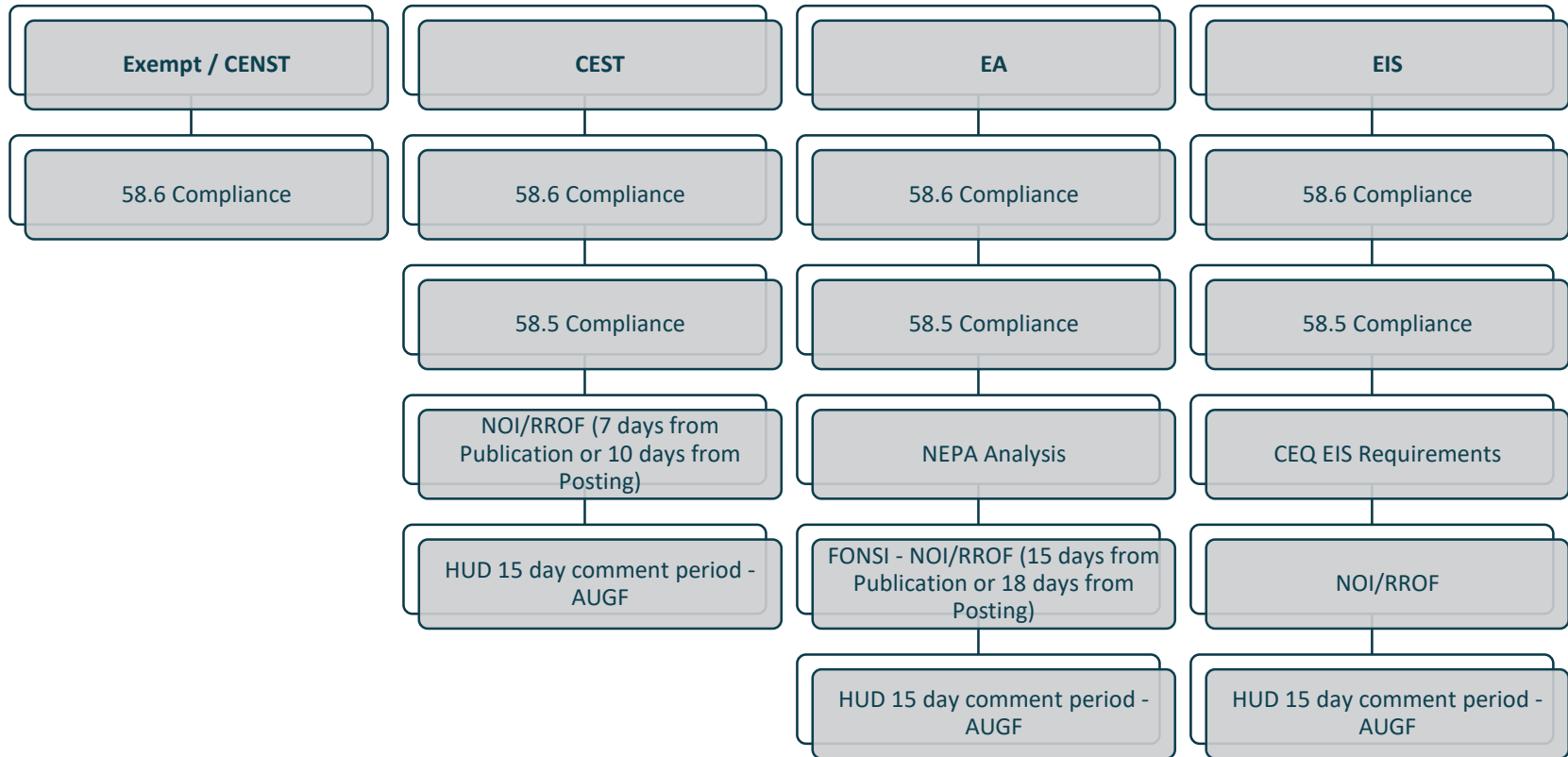


# “Environmental Review Record” (ERR)

- Written record of environmental decisionmaking
- Available to the public, courts, auditors – the “administrative record”
- Must be prepared & approved *before* actions are taken
- Let the ERR tell the story – project description, maps, photos, studies, consultation, support documentation, public notices, etc.



# Levels of Review



# Emergency and Disaster Provisions

- 24 CFR 58.34(a)(10) – For actions necessary to control the *immediate* impacts of emergency
- 24 CFR 58.33(b) – Allows for expedited public comment for EA-level activities – Saves 2 weeks
- HUD Guidance: Memo on Disasters & Imminent Threats



# Important - 24 CFR Part 58.22(a)

- Neither applicant nor partners in the project are allowed to commit or spend HUD or non-HUD funds on physical or choice-limiting actions, including acquiring property or entering into a contract, until the ER process is completed
- DON'T SPEND A DIME – until environmental review is complete and you have received approved “Request for Release of Funds” (form HUD-7015.16) when it's required
- *Don't take action before environmental approval!*



# Reimbursement Exception

- HUD guidance for reimbursement under disaster allocations for 2017 events
- Covers only privately-conducted rehab, demolition & reconstruction of single-family, multi-family, and non residential buildings – no public facilities or direct government actions
- Flood insurance is still required
- ERR will be conducted post commitment
- Limitations apply – See: Notice CPD-17-05



# Coordination with FEMA for CDBG-DR projects

When HUD/FEMA joint project funding ...

- HUD Responsible Entity can adopt FEMA review *if*
  - ✓ Scope of work has not changed
  - ✓ HUD funds cover the local cost share
  - ✓ Grantee “notifies” HUD with “Request for Release of Funds” – but without observing public comment periods
- See: HUD memo on adopting FEMA reviews ... & talk to your HUD & FEMA environmental representatives



# Tips for Environmental Laws and Authorities Post-Disaster





# Historic Preservation





# Section 106 - Programmatic Agreements (PAs)

- Legally binding agreement between state and federal agencies (including federally recognized tribes as appropriate) and REs
- Streamlines project review or mitigation through protocols
- Focus is on preserving historic resources



# FEMA Prototype PA

- FEMA PA template can be used to create statewide FEMA PA (i.e., state-by-state)
- Endorsed by Advisory Council on Historic Preservation (2013)
- Embodies input from Tribes, SHPOs & State Agencies
- Saves significant time in negotiating PA from scratch
- FEMA PA allows other federal agencies and Responsible Entities to sign on



# HUD Addendum to the FEMA PA

- HUD Addendum is the vehicle for HUD REs (States and units of general local government) to utilize the FEMA PA
- No additional responsibility on FEMA's part
- Currently includes New York, New Jersey, Colorado, Oklahoma, South Carolina, West Virginia, Louisiana & Florida



# How To sign on to HUD Addendum

- *See:* DR Programmatic Agreement Database (HUD Exchange)
- Follow process outlined in database's "Protocols" by State
- Requires Secretary of the Interior (SOI) Qualified staff
- Simple annual reporting requirement

Contact Nancy Boone – 202-402-5718, [Nancy.E.Boone@hud.gov](mailto:Nancy.E.Boone@hud.gov)



# Flood Insurance



# Flood Insurance

- FEMA National Flood Insurance Program (NFIP) insurance required if building is located in Special Flood Hazard Area, SFHA (“100 year floodplain”)
- Required by statute: Flood Disaster Protection Act of 1973, when HUD assistance used to acquire, repair, improve, or construct a building in SFHA
  - Also required for insurable contents
- Flood insurance is separate from Floodplain Management – so will apply in many cases where 8-Step process may not be applicable



# Flood Insurance

- By statute, flood insurance can extend beyond project completion
  - ✓ For loans: coverage must continue for term of the loan
  - ✓ For grants: coverage for life of the building irrespective of transfer of ownership
- Limits of NFIP coverage: \$250,000 for 1-4 family residential, and \$500,000 for multi-family or nonresidential structures
- HUD recommends purchase for all insurable structures, but it is only required for those in SFHA (100 year)
- Equipment purchase \$5,000 or more, must also be insured



# “One Bite” Rule

- HUD/State cannot offer Federal disaster assistance for a person’s property for construction activities, where the person previously received Federal disaster assistance and failed to maintain the flood insurance (24 CFR 58.6(b))
- Translation = Failure to maintain flood insurance after using Federal disaster assistance jeopardizes Federal assistance following subsequent disasters





# Floodplain Management and Wetlands



# E.O. 11988 - Floodplain Management

Purpose: “to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.”



# Floodplain Management

- Flooding is the most common disaster
- FEMA Flood Insurance Rate Maps (FIRM) only look at historical data available at the time of mapping, and do not take into consideration climate change, sea-level rise, growth in impervious surface, or any other trends!
- HUD's Floodplain Management regulation at 24 CFR Part 55 looks at avoidance, minimizing impacts and providing public notice



# Floodplain Management - 24 CFR Part 55

- Applies to physical actions in 100-year, or critical actions\* in 500-year floodplains:
  - ✓ Rehab if  $\geq 50\%$  value before rehab (“substantial improvement”)
  - ✓ Building new construction/reconstruction
  - ✓ Roads
  - ✓ Pipelines
  - ✓ Anything except minor clearing and grubbing

\*“Critical actions”: hospitals, nursing homes, police and fire stations...

\* See 55.2(b)(2) for definition



# Prohibited Actions under 55.1(c)

- Any non-functionally dependent use in a Floodway
- Critical Action, or new construction of non-critical action, in Coastal High Hazard Area (V Zone)
- Repair or reconstruction of non-Critical Action that was not designed consistent with 55.1(c)(3)



# Preliminary Flood Map Data

- EO 11988 and 24 CFR Part 55 require “best available information,” which includes preliminary Flood Insurance Rate Maps (FIRMs) and Advisory Base Flood Elevations (ABFEs)
- These preliminary maps shall be used – where the flood elevations are *higher* than existing FIRM – i.e., must use more protective maps



# Elevation Requirements

- CDBG-DR requires new construction and substantial improvement of structures to be at least +2 feet above 100-year floodplain (“BFE +2”)
- Substantial improvement is any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the structure’s market value before damage
- Elevation requirements do not apply to structures listed on the National Register of Historical Places or State Inventory of Historic Places
- “Critical facilities” (hospitals, nursing homes, police & fire stations) require elevation at least +3 feet above base flood elevation (“BFE +3”)





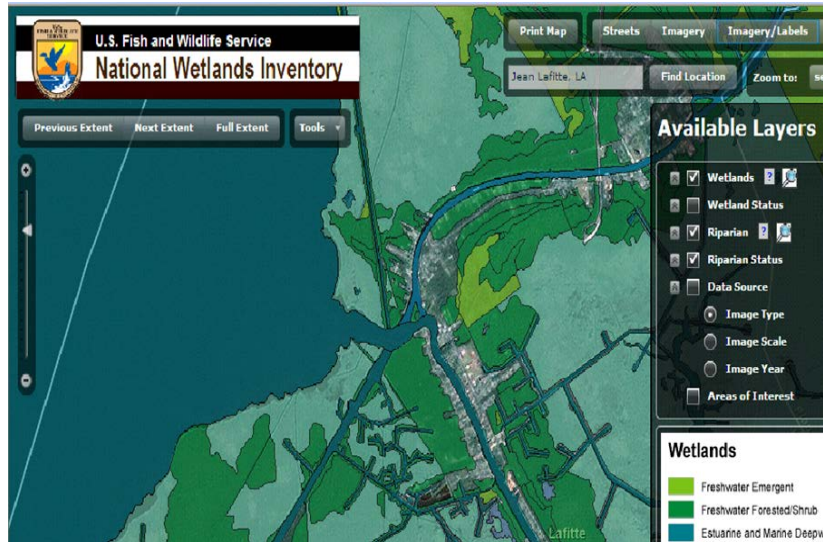
# E.O. 11990 – Protection of Wetlands

Purpose: “to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative[.]”





# National Wetlands Inventory Map



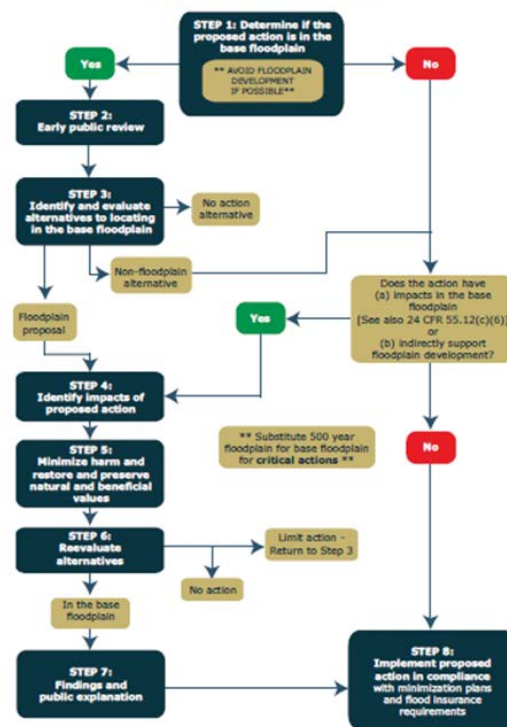
- NWI maps are to be used for primary screening
- Projects require wetlands evaluation any time filling, drainage, impounding, or other “new construction” activities occur



# “8-Step” Process – 24 CFR Part 55.20

- Allows for aggregated review of single-family rehab on countywide basis for floodplains – talk to HUD!
- Does NOT allow for countywide analysis for multifamily or non-residential – these require individual 8-step process
- Floodplain notices can be combined with wetlands but not for aggregated reviews
- Multiple locations can share 8-step public notices

8- Step Decision-Making Process for Executive Order 11988



# Endangered Species



# Endangered Species Act (ESA)

- ESA jointly administered by US Fish and Wildlife Service and National Marine Fisheries Service (“the Services”)
- Work with the Services as soon as possible to:
  - ✓ Identify endangered and threatened species & critical habitats in area
  - ✓ Develop plan to avoid potential impacts to protected species & their habitats
- Example activities that can impact species: beach re-nourishment, debris removal, tree removal, boardwalk and pier replacements, bank stabilization, bridge and culvert replacements





# Tiering



# What is Tiering?

- Used when all project sites not known at inception – e.g., single-family rehab
- Objective = eliminate repetitive discussions of the same issues, and focus on the actual issues ripe for decision at each level of environmental review
- Tiered review has two stages:
  - ✓ A broad-level review
  - ✓ Subsequent site-specific reviews



# Two Stages of Review

- Tier 1 - Broad-level review:
  - ✓ Evaluates & resolves the laws that can be fully addressed, given the project description
  - ✓ Establishes the written strategy to be followed for site-specific reviews
- Tier 2 - Site-specific reviews:
  - ✓ As individual sites become known, evaluates the remaining laws, based on the policies established in the broad-level review

Together, broad-level review + all site-specific reviews comprise a complete ERR (along with Request for Release of Funds, public notices)



# Broad Level Review





# Project Description

Project description must define...

- All contemplated activities
- All proposed funding sources
- Maximum number of units/properties
- Average cost per unit
- Geographic range (e.g., neighborhood, city, county or parish)
- “Expiration date” (maximum 5 years)



# Related Laws and Authorities

Evaluate each of the 17 environmental laws and authorities (under 58.5 and 58.6) and either...

- ✓ Resolve at the broad level

OR

- ✓ Define the written protocol (policy, standard, process) to achieve compliance at site-specific level



# Compliance at Broad-Level (Tier 1)

- Resolution of a specific law depends on the project activities and geography

## *Examples*

Project is located in county with no Coastal Zones or Coastal Barriers =

- Tier 1 compliance met with Coastal Zone Management Act & Coastal Barrier Resources Act

Project is single-family rehab & will not allow new construction or ground disturbance =

- Tier 1 compliance met with Wetlands Protection (E.O. 11990/Part 55)



# Tiering Environmental Assessments (EAs)

- In addition to laws and authorities at 58.5 and 58.6, EA must complete a more thorough NEPA review and consider all EA factors and analysis (cumulative impact, alternatives, etc.)
- Like all EAs, tiered EAs must include a Finding Of No Significant Impact (FONSI) prior to Request for Release of Funds
  - ✓ Protocols must be specific and detailed to ensure there will not be significant impact on environment



# Request for Release of Funds (RROF) Process

- Public Notice should identify the issues/laws being tiered to site-specific review
  - ✓ Use plain language to communicate with public
  - ✓ Sample notice available on HUD Exchange:  
<https://www.hudexchange.info/resource/5160/sample-notice-of-intent-to-request-release-of-funds-for-tiered-reviews/>
- Must complete RROF process at broad level
  - ✓ But do not commit funds to individual sites until site-specific review has been completed



# Site-Specific Reviews



# Site-Specific Reviews (Tier 2)

- Complete site-specific reviews as individual sites are identified
- Determine and document compliance with all required laws and authorities that were not already resolved
  - ✓ Follow protocols defined at broad level to concentrate on the pertinent issues
- If site-specific activity does not conform to limits established at broad level, separate review is required
- Site-specific reviews need to be completed prior to starting work or signing contracts with homeowners



# Recordkeeping

- Environmental review record is not complete without both broad-level and site-specific reviews
  - ✓ Site-specific reviews must identify corresponding broad-level review
  - ✓ Create your own site-specific format
  - ✓ Both Tier 1 and Tier 2 reviews should be filed together
  - ✓ Compliance must be documented – including maps, consultation letters, checklists
- Avoid monitoring findings – make sure records are complete and supported!





# Environmental Impact Statements



# Environmental Impact Statement (EIS)



Public Participation



# Resources



# Resources

- HUD Environmental Website at HUD Exchange:  
<https://www.hudexchange.info/programs/environmental-review/>  
Tribal Directory Assessment Tool, Section 106 Programmatic Agreement Database, Noise Calculator, Separation Distance Calculator, other Related Laws & Authorities
- DR and Environment:  
<https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment/>
- HUD Environmental Contacts:  
<https://www.hudexchange.info/environmental-review/hud-environmental-staff-contacts/>
- Part 58 Basics Webinar:  
<https://youtu.be/ytkzT4HvXQY> and Slides:  
[https://www.hudexchange.info/onecpd/assets/File/Part58ReviewWebinar\\_Slides.pdf](https://www.hudexchange.info/onecpd/assets/File/Part58ReviewWebinar_Slides.pdf)
- WISER (on-demand training modules):  
<https://www.hudexchange.info/trainings/wiser/>



# Resources

- Disasters & Imminent Threats Memo:  
<https://www.hudexchange.info/resources/documents/Environmental-Review-Exemptions-Disasters-Imminent-Threats.pdf>
- CPD 15-07 - Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants:  
<https://www.hudexchange.info/resources/documents/Notice-CPD-15-07-Guidance-for-Charging-Pre-Application-Costs.pdf>
- HUD memo on adopting FEMA reviews:  
<https://www.hudexchange.info/resources/documents/AdoptionFEMAOtherFederalEnvironmentalReviewProcessingSandy.pdf>
- FEMA/HUD – Environmental Checklist:  
[https://www.fema.gov/media-library-data/1411485492585-6338cb32b06a7074edfef418429de5c9/Template\\_Env\\_Checklist.pdf](https://www.fema.gov/media-library-data/1411485492585-6338cb32b06a7074edfef418429de5c9/Template_Env_Checklist.pdf)
- Tiering Guidance:  
<https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/>



# Fair Housing and Civil Rights for CDBG-DR Grantees: HOT TOPICS



# Fair Housing and Civil Rights Laws

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (the “Fair Housing Act”)
- Section 109 of the Housing and Community Development Act of 1974
- Section 504 of the Rehabilitation Act of 1973
- Titles II and III of the Americans with Disabilities Act of 1990
- Age Discrimination Act of 1975





# Hot Topic #1:

## Limited English Proficiency (LEP)

- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin, in programs or activities receiving federal financial assistance
- HUD's Title VI regulations prohibit recipients from using criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin
- In *Lau v. Nichols* (1974), the Supreme Court ruled that the failure of the San Francisco school district to take reasonable steps to provide non-English speaking students of Chinese origin with a meaningful opportunity to participate in federally funded educational programs is a form of national origin discrimination prohibited by Title VI





# Limited English Proficiency (LEP)

## Who is LEP?

- Protected individuals include:
  - Persons with limited English proficiency:
    - Persons who, as a result of national origin, have a limited ability to read, write, speak, or understand English
  - May be citizens or non-citizens

## Who must comply with LEP obligations?

- All programs and operations of entities that receive federal financial assistance, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements
- Subrecipients must also comply (i.e. when federal funds are passed through a recipient to a sub-recipient)



# Limited English Proficiency

- Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities for LEP persons, such as:
  - ✓ Complete a Four Factor Analysis
  - ✓ Develop a Language Assistance Plan
  - ✓ Engage in Targeted Outreach



# Limited English Proficiency (LEP)

## Four-Factor Analysis

1. Number or proportion of LEP persons in the community to be served or likely to be encountered by the program or recipient
2. Frequency with which LEP persons come into contact with the program, activity or service
3. Nature and importance of the service, information, program and/or activity
4. Recipient's financial and human resources, and the costs of language service options



# Limited English Proficiency (LEP)

## Language Assistance Plan (LAP):

- A recipient's plan for providing language assistance to the LEP population it serves

## Suggested components of a LAP:

- Identify LEP persons needing language assistance and the specific assistance that they need
- Identify the points and types of contact the agency and staff may have with LEP persons
- Identify ways in which language assistance will be provided
- Outreach effectively to the LEP community
- Training staff



# Limited English Proficiency (LEP)

Suggested components of a LAP (continued):

- Determine which documents and informational materials are vital and translating these
- Provide interpreters or interpretation services
  - do not rely on family members
- Develop community resources, partnerships and other relationships to help provide language services
- Make provisions for monitoring and updating the LAP
  - including seeking input from LEP beneficiaries and communities on how it is working and on what other actions should be taken



# Limited English Proficiency (LEP)

## LEP Best Practices in Response to a Disaster:

- Update four-factor analysis and LAP in response to a disaster
  - Do early in the process in order to ensure adequate citizen participation:
    - Translate the Action Plan into appropriate languages
    - Provide appropriate interpreters at public hearings
    - Outreach to LEP groups to encourage participation in disaster recovery process



# Limited English Proficiency (LEP)

## Best Practices (continued):

- Translate vital documents and make available on disaster recovery website
  - Action plans, substantial amendments, performance reports
  - Program benefits and restrictions
  - Application process
  - Notification of benefits or denials
  - Marketing materials
  - Complaint process/Appeal rights
- Publicize language rights in disaster recovery website, flyers, posters and/or citizen notices



# Limited English Proficiency (LEP)

## Safe Harbors for Written Translation

Size of language group	Recommended provision of written language assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required

There are no safe harbors for oral interpretation





# Hot Topic #2:

## Reasonable Accommodation

- A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces
- In federally-assisted housing, reasonable accommodations include requests for structural modifications to a unit or public use or common area
- The recipient must make and pay for the reasonable accommodation
  - Example: addition of a ramp, grab bar



# Reasonable Accommodation

## **Individualized case-by-case analysis of requests is necessary**

- There must be an identifiable relationship or nexus between the requested accommodation and the individual's disability
- Example:
  - A wheelchair user whose home is required to be elevated requests an elevator or lift to get from the ground to the dwelling unit.
- CDBG-DR grantees must make exceptions to the maximum amount of assistance available to a beneficiary when necessary to comply with federal accessibility standards or to make a reasonable accommodation for a person with disabilities.



# Reasonable Accommodation

*When can additional documentation be required?*

- Documentation **may be** necessary to evaluate a reasonable accommodation request – case-by-case analysis
  - Disability is obvious or otherwise known, and need for requested accommodation is readily apparent or known: ***no further information is required***
  - Disability is known but the need for the accommodation is not readily apparent or known: ***provider may request only information that is necessary to evaluate disability-related need.***



# Reasonable Accommodation

- If neither the disability nor the disability-related need is obvious may request information that:
  - *(1) is necessary to verify that person meets the definition of an individual with a disability*
  - *(2) describes the needed accommodation*
  - *(3) shows relationship between the two*
- All documentation must be kept confidential



# Reasonable Accommodation

- HUD recipients must grant the request unless it is not reasonable – i.e.,
  - if it would impose an undue financial and administrative burden on the housing provider or
  - fundamentally alter the nature of the provider's operations
- HUD recipients are still required to provide any other reasonable accommodation up to the point that would not result in an undue financial and administrative burden and/or constitute a fundamental alteration of the program
- Interactive Process: Identification of an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. Note: An individual with a disability is in the best position to know what accommodations will meet his or her disability-related need
- A HUD recipient may also deny a request for a reasonable accommodation if there is no disability-related need for the accommodation



# Hot Topic #3:

## Preferences

- Some CDBG-DR grantees have chosen to adopt preferences in their housing programs. For example, preferences for:
  - Elderly
  - Disabled
  - Families with Children
  - Low and Moderate-Income Families



# Preferences

- A grantee may only adopt or implement a preference in accordance with non-discrimination and equal opportunity requirements
- *Example:* A grantee wishes to adopt a preference in its housing programs for families with children under the age of 5 due to concerns regarding the consequences young children may experience as a result of prolonged exposure to mold. However, such a preference would discriminate against other families with children, in violation of the Fair Housing Act





# Preferences

- However, a preference could be permitted for individuals whose health or safety could be jeopardized by prolonged exposure to mold due to their current health conditions or the amount of mold present in their dwelling
- Preference must address legitimate health and safety concerns and must be based on objective public health information



Thank you! Questions?

Paul Mohr ([Paul.F.Mohr@hud.gov](mailto:Paul.F.Mohr@hud.gov))

Kelly Price ([Kelly.Price@icf.com](mailto:Kelly.Price@icf.com))

