


Cross-Cutting Federal Requirements  
for the Tax Credit Assistance Program

Monte Franke, for MSHDA

### 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
<b>Multi-Family (5+ units)</b> New Construction	Environmental Assessment	Compliance Determination
Major Rehab (5+) >75% RC; 20%+ density; conv	Environmental Assessment	Compliance Determination
Minor Rehab/Acquis.	Excluded	Compliance Determination
<b>Single Family (1-4)</b> 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](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](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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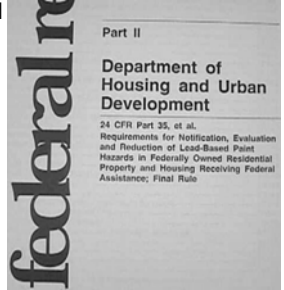


### Lead-Based Paint

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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

- Post-1977 housing
- Zero-bedroom units
- Housing exclusively for elderly/disabled
  - unless child under 6
- Certified LBP free
- LBP removed
- 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](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

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### Relocation

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

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### Notices

- Protects all legal occupants
- 1<sup>st</sup> 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](http://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](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 1<sup>st</sup> 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](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"> <li>• Change/exception to rules, policies, practices, &amp; services for PWDs                     <ul style="list-style-type: none"> <li>• E.g., assigned parking, pets</li> </ul> </li> <li>• Does not apply to owner-occupied &lt; 5 units</li> <li>• Not fundamental alteration</li> <li>• Not undue cost/admin burden</li> </ul>	<p><u>Reasonable modifications</u></p> <ul style="list-style-type: none"> <li>• Structural modifications to property for PWDs</li> <li>• Changes at occupant's expense                     <ul style="list-style-type: none"> <li>• Unless owner should have provided</li> </ul> </li> <li>• Must be removable after occupancy</li> </ul>
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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](http://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](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](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

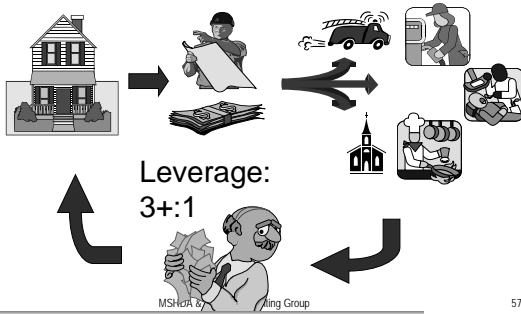
- HCDA68: Maximize economic benefit
- "It's the economy, stupid..."
  - Housing is only symptom of economic problem
  - Improvement without means to maintain
- Deconcentration
  - Choice & access to opportunities
- Capture the dollars, not just the unit
  - Section 3 as opportunity, not requirement
  - May require small business development

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### Beyond the Unit: Where the \$ Go



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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/olrwrpc.html>
- Forms:
  - <http://www.hud.gov/offices/olr/olrform.cfm>

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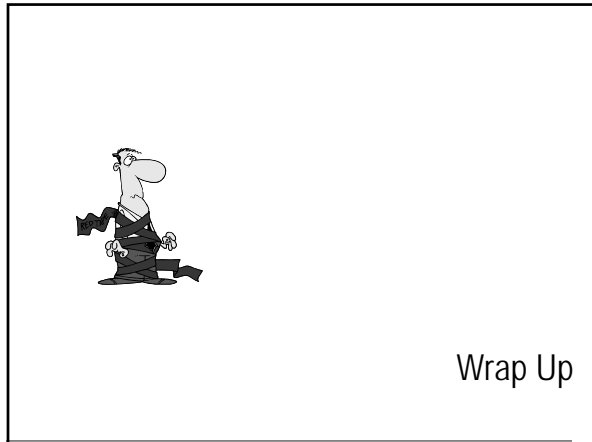
### Final Thoughts: Labor

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

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### 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 & 1<sup>st</sup> 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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### MSHDA Contacts

- TCAP
  - Steve Lathom, [lathoms@michigan.gov](mailto:lathoms@michigan.gov) 517-373-8853
  - Norm Harrod, [harrodh@michigan.gov](mailto:harrodh@michigan.gov) 517-335-2018
  - Chris Lagrand, [lagrandc@michigan.gov](mailto:lagrandc@michigan.gov) 517-241-2909
- Environmental review
  - Bruce Jeffries, [jeffriesb@michigan.gov](mailto:jeffriesb@michigan.gov) 517-335-0183
- Uniform Relation Act
  - Carolyn Cunningham, [cunninghamc@michigan.gov](mailto:cunninghamc@michigan.gov) 517-335-4661
- Section 504/Accessibility
  - Maryanne Vukonich, [vukonichm@michigan.gov](mailto:vukonichm@michigan.gov) 517-373-9478
- Davis-Bacon & Section 3
  - Tom Jones, [jones3@michigan.gov](mailto:jones3@michigan.gov) 517-373-8055

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### Final Comments

- Final Questions?
- MSHDA final comments

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