

Choice Limiting

A choice limiting action is any activity that a grantee undertakes, including committing or expending HUD or non-HUD funds, that reduces or eliminates a grantee's opportunity to choose project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

Want to make sure your grant application is approved? Read through the policies below to help avoid any mistakes that would have a negative impact.



CHAPTER 15: ENVIRONMENTAL REVIEW

CHAPTER PURPOSE & CONTENTS

This chapter provides grantees with general information on environmental review. The chapter will provide an overview of the applicable regulations, responsibilities, guidance on classifying the activity and the appropriate level of review. Grantees must consult the regulations (cited within this chapter) and their HUD Environmental Representative for more detailed guidance than this chapter can provide.

SECTION TOPIC

15.1 Overview of Environmental Requirements

15.1 Overview of the Environmental Requirements

15.1.1 Background and Applicable Regulations

The purpose of the environmental review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

Grantees who receive CDBG funds are considered responsible entities and must complete an environmental review of all project activities prior to obligating CDBG funds. This requirement also applies to projects funded with CDBG generated program income.

The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58.

The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508 also apply. In addition, a myriad of other Federal and state laws and regulations (some of which are enforced by State agencies) also apply depending upon the type of project and the level of review required.

The following is a summary of applicable statutory and regulatory cites and other reference materials available from HUD:

Key Topics in This Section: Applicable environmental rules, Legal responsibilities, Triggering actions, Classifying the activity

Regulatory/Statutory Citations: 24 CFR Part 58, §570.604, 40 CFR Part 1500-1508

Other Reference Materials on This Topic HUD's Office of Environment and Energy:

<http://www.hud.gov/offices/cpd/environment/> , HUD's Environmental Review Requirements:

<http://www.hud.gov/offices/cpd/environment/review/> HUD's Frequently Asked Environmental

Questions and Answers: <http://www.hud.gov/offices/cpd/environment/library/>, CPD Notice 02-07

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15.1.2 The Responsible Entity & Official Designations

Under 24 CFR Part 58, the term “responsible entity” (RE) means the grantee receiving CDBG assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

In order to fulfill its obligations under 24 CFR Part 58, the RE should designate two responsible parties:

Certifying Officer: The responsible entity must designate a Certifying Officer -- the “responsible Federal official” -- to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.

Environmental Officer: The funding recipient should also designate an Environmental Officer. The Environmental Officer is responsible for conducting the environmental review including such tasks as: writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings.

15.1.3 Environmental Review Record

Each responsible entity must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review upon request.

The ERR shall contain all the environmental review documents, public notices (and proof of their publication), and written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, decision making and actions pertaining to a particular project. The document shall:

- Describe the project and each of the activities comprising the project, regardless of individual activity funding source; and

- Evaluate the effects of the project or the activities on the human environment;

- Document compliance with applicable statutes and authorities; and

- Record the written determinations and other review findings required by 24 CFR Part 58.

The ERR will vary in length and content depending upon the level of review required for the categories of activities.

Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

15.1.4 Actions Triggering Environmental Review and Limitations Pending Clearance

According to the NEPA (40 CFR 1500-1508) and Part 58, the responsible entity is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the grantee receives a release of funds.

Grantees may not spend either public or private funds (CDBG, other Federal or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.

Grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant's own funds, prior to obtaining environmental clearance.

For the purposes of the environmental review process, "commitment of funds" includes:

Execution of a legally binding agreement (such as a property purchase or construction contract);

Expenditure of CDBG funds;

Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and

Use of non-CDBG funds on actions that would be "choice limiting"--- e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

It is acceptable for grantees to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

15.1.5 Classifying the Activity and Conducting the Appropriate Level of Review

To begin the environmental review process, funding recipients must first determine the environmental classification of the project. The term "project" can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding

source, to be undertaken by the CDBG recipient, subrecipient, or a public or private entity in whole or in part to accomplish a specific objective.

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If various project activities have different classifications, the recipient must follow the review steps required for the most stringent classification.

The four environmental classifications are:

- Exempt Activities,
- Categorically Excluded Activities,
- Activities Requiring an Environment Assessment, or
- Activities Requiring an Environmental Impact Statement.

Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the recipient adequately addresses and analyzes the separate and combined impacts of a proposed project.

15.1.6 Exempt Activities

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review.

Listed below are examples which may be exempt from environmental review. For complete details refer to the environmental regulations.

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other Federal laws and authorities listed at Part 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5.

If a project is determined to be exempt the responsible entity is required to document in writing that the project is exempt and meets the conditions for exemption as spelled out in § 58.34.

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In addition to making a written determination of exemption, the RE must also determine whether any of the requirements of 24 CFR Part § 58.6 are applicable and address as appropriate.

The requirements at 24 CFR § 58.6 include the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.

15.1.7 Categorically Excluded Activities

Categorically Excluded Activities not Subject to 58.5

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to Section 58.5 compliance determinations.

Tenant based rental assistance;

Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local State and Federal government services and services;

Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;

Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and

Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

To complete environmental requirements for Categorically Excluded projects not Subject to 24 CFR Part § 58.5, the responsible entity must take the following steps:

Make a finding of Categorical Exclusion not Subject to § 58.5 and put in the ERR.

The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded not subject to § 58.5. When these kinds of activities are undertaken, the RE does not have to issue a public notice or submit a request for release of funds (RROF) to HUD.

In order to document the finding of categorical exclusion not subject to §58.5. The RE must cite the applicable subsection of § 58.35(b), identify and describe the specific activity or activities, and provide information about the estimated amount of CDBG or other funds to be used.

Carry out any applicable requirements of 24 CFR Part § 58.6 and document the ERR as appropriate.

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The RE must determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are: the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.

Categorically Excluded Activities Subject to 58.5

The list of categorically excluded activities is found at 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 58.5.

The following are categorically excluded activities subject to 58.5:

Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.

Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.

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

For residential properties with one to four units:

The density is not increased beyond four units;

The land use is not changed; and

If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.

For multi-family residential buildings (with more than four units):

Unit density is not changed more than 20 percent;

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

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

For non-residential structures including commercial, industrial and public buildings:

The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.

An individual action on up to four-family dwelling where there is a maximum of four units on any one site. "*Individual action*" refers to new construction, development, demolition, acquisition, disposition or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;

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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;

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.

Combinations of the above activities.

The ERR must contain a written determination of the RE's finding that a given activity or program is categorically excluded subject to § 58.5. This determination should:

Include a description of the project (including all the related activities, even though HOME funds may not be used for all of them);

Cite the applicable subsection of § 58.35(a);

Provide the total estimated project cost; and

Provide written documentation as to whether or not there were any circumstances which required compliance with any of the Federal laws and authorities cited in §58.5.

The RE must use the HUD recommended Statutory Checklist, or an equivalent format, to document its environmental findings. (Contact the HUD Environmental Representative for a copy of the most current version of the checklist and instructions for its completion.)

The RE's documentation must support its determinations related to compliance with the Federal laws and authorities cited in §58.5, including correspondence with the applicable agencies having jurisdiction over the various areas on the checklist.

Upon completion of the checklist, the RE will make one of three environmental findings:

The project converts to exempt [§ 58.34(a)(12)];

The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or

The unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required.

If upon completing the Statutory Checklist, the RE determines compliance is required for one or more of the Federal laws and authorities listed in § 58.5, then the RE must publish or post a public notification known as the Notice of Intent to Request Release of Funds (NOI/RROF).

After the seven-day comment period has elapsed, the responsible entity must prepare the Request for Release of Funds (RROF) and Environmental Certification. The Environmental Certification certifies that the RE is in compliance with all the environmental review requirements. The RROF and Certification must be signed by the Certifying Officer and submitted to HUD. The RE must receive the release of funds from HUD before proceeding forward with the project.

15.1.8 Activities Requiring an Environmental Assessment

Activities which are neither exempt nor categorically excluded (under either category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD and with the environmental requirements of other applicable Federal laws.

The responsible entity must take the following steps to complete environmental requirements for projects requiring an environmental assessment:

Complete the Modified Format II: Environmental Assessment form completely. The responsible entity must ensure that reliable documentation sources are cited for every item on this assessment checklist. The grantee's HUD Environmental Representative can provide detailed guidance on the Modified Format II, including appropriate documentation for each area of the checklists.

Once the Format II has been completed, including consultation with applicable agencies and persons, the grantee must make a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and any comments have been addressed appropriately. The Responsible Entity must select one of the following two findings/determinations:

The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or

The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement. Both the finding and the environmental assessment must be signed by your environmental certifying officer and included in the ERR.

In most instances, the environmental assessment will result in a finding that the project is not an action that significantly affects the quality of the environment and, therefore, does not require an environmental impact statement. If this is the case, the responsible entity must complete the following:

Publish and distribute a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).

The RROF and Environmental Certification must be submitted to HUD no sooner than 16 days after publishing the combined/concurrent notice. The Certification must be signed by the Certifying Officer of the jurisdiction.

HUD must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, HUD will send back a signed Release of Funds and the project may proceed.

If the environmental assessment will result in a finding that the project will significantly affect the environment and, therefore, requires an environmental impact statement, the grantee should contact its HUD Environmental Representative for guidance.

15.1.9 Environmental Impact Statement

An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G, and 40 CFR 1500-1508).

An EIS may be required when:

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The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact.

A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.

Preparation of an EIS is mandatory if the project meets any of these requirements below:

Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds.

Any project to remove, destroy, convert or substantially rehabilitate at least 2,500 existing housing units.

Any project to construct, install or provide sites for at least 2,500 housing units.

Any project to provide water and sewer capacity for at least 2,500 housing units.

Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

EISs are very rare under the CDBG program. Contact your HUD Environmental Officer if there is any indication an EIS may be necessary.

*Please see next page with more information from Office of the Secretary, HUD