

Top Five Methods for Managing the ER Process

Top Five Methods for Managing the Environmental Review Process in the CDBG Program (Or How to Ensure that Funds are Not Obligated Prior to Completion of the Environmental Review)



The Environmental Review process requires that agencies assess the area proposed for a project to ensure that it meets Federally-defined requirements (and in some instances some additional state requirements).

1. Understand the process for Environmental Review BEFORE proposing a project

First, agencies should familiarize themselves with the requirements of the Environmental Review process. 24 CFR 58, which outlines the HUD environmental review process, as well as the National Environmental Policy Act (NEPA) and its implementing regulations, 40 CFR 1500-1508. Other Environmental Review regulations that are applicable include 24 CFR Parts 51 and 55.

Part 58 identifies units of local government, states or state recipients (for purposes of the State CDBG program) as the Responsible Entity (RE). RE's assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of Federal law (§§ 58.4 and 58.10). The certifying officer for the RE is the "responsible Federal official" (§ 58.13).

Project funds may not be committed or spent by the recipient nor any project participant until the Environmental Review process has been completed. This prohibition also extends to non-HUD funds if the commitment or expenditure of those funds would have an adverse environmental impact or limit the choices of reasonable alternatives afforded to the RE (§ 58.22).

All related project activities must be grouped together and evaluated in a single environmental review document, regardless of the funding source (§ 58.32). This includes multi-year projects as well.

After becoming familiar with the requirements for Environmental Review, recipients (i.e., units of local government, states or state recipients for the purposes of the State CDBG programs) should consider conducting a preliminary review of potential environmental factors that may delay the program before applying for the grant. For

CDBG Entitlement communities, this means a preliminary review of potential environmental factors when scheduling projects on the Consolidated Plan.

This initial examination is no more than a “common sense” review of the environmental factors that potentially may impact the scheduling of projects. For example, if the project might require involvement by the Army Corps of Engineers and you know that there will be a delay in obtaining Army Corps services, schedule the project with enough lead time to obtain such services. Similarly, if the project is located in an area where there have been environmental issues in the past, you should factor in the time to resolve those issues as part of the project planning and implementation process.

2. Understand the types of environmental issues that could delay a project

Conducting the Environmental Review may involve examining compliance with a number of Federal laws and authorities (§ 58.5) for their potential relevance to a project. These include:

- Coastal Zone Management
- Floodplain Management (24 CFR 55)
- Historic Preservation (36 CFR 800)
- Noise Abatement (24 CFR 51, Subpart B)
- Hazardous Operations (24 CFR 51, Subpart C)
- Airport Hazards (24 CFR 51, Subpart D)
- Protection of Wetlands
- Toxic Chemicals and Radioactive Materials [24 CFR 58.5(i)(2)]
- Endangered Species
- Sole Source Aquifers
- Farmlands Protection
- Environmental Justice

In addition, the Environmental Review document will need to examine a number of other environmental factors if, for example, new construction or converting a property to another use is proposed, including:

- Unique Natural Features and Areas
- Site Suitability, Access and Compatibility with Surrounding Development
- Soil Stability, Erosion and Drainage
- Nuisances and Hazards (Natural and Built)
- Water Supply/Sanitary Sewers
- Solid Waste Disposal
- Schools, Parks, Recreation and Social Services
- Emergency Health Care, Fire and Police Services

- Commercial/Retail and Transportation

3. **Understand when activities may be considered Exempt or Categorically Excluded**

Every activity or project will require some level of review, documented in writing. This becomes the Environmental Review Record (ERR) (§ 58.38). However, some projects may be Exempt Activities and others may be designated as Categorically Excluded Activities.

Exempt Activities (§ 58.34) are specifically exempt from the requirements of the National Environmental Policy Act of 1969 (NEPA) and the Federal laws listed in §58.5, as they have no physical impact or result in no physical change on the environment. These activities include:

- Administration of the CDBG grant;
- Environmental studies or assessments;
- Project planning and management; and
- Engineering design.

Funds for these activities may be used after the responsible entity (RE) has documented, in writing, its determination that each activity or project is Exempt [sec. 58.34(b)], and all parties execute the CDBG grant agreement.

Categorically Excluded Activities (§ 58.35) are those excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA), but may be subject to other Federal laws. There are two classifications of Categorically Excluded activities:

Categorically Excluded Activities Required to be Reviewed Under the Related Federal Laws and Authorities [§ 58.35 (a)]. Such activities include:

- Acquisition, repair, improvements, reconstruction or rehabilitation of public facilities/infrastructure and improvements (other than buildings), when facilities/improvements will have the same use without changes in size or capacity of more than 20 percent;
- Projects to remove barriers restricting mobility and accessibility to elderly and handicapped persons;
- Rehabilitation of residential buildings (with one to four units), when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;
- Rehabilitation of multifamily residential buildings when the 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 costs of replacement after rehabilitation;

- For non-residential structures (including commercial, industrial and public buildings), the facilities and improvements are in place and will not change in size or capacity by more than 20 percent, and the activity does not involve a change in land use;
- An individual action on up to four dwelling units, where there is a maximum of four units on any one site;
- 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 existing structures, or acquisition of vacant land, provided that the structure or land acquired or disposed of will retain the same use; and
- Combinations of the above activities.

Categorically Excluded Activities Not Subject to be Reviewed Under the Related Federal Laws and Authorities [§ 58.35(b)]. Such activities include:

- Tenant-based rental assistance;
- Supportive services, such as health care, housing services, permanent housing placement, day care services, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state and Federal government benefits and services;
- Operating costs, including maintenance, security, operations, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs; [Note that many of these activities are typically ineligible for funding under the CDBG program.]
- Economic development activities, including 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 (with foundation work complete), including closing costs, downpayment assistance, interest buy-downs, and similar activities that result in the transfer of title;
- Affordable housing pre-development costs, including 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 that do not have a physical impact; and
- Approval of supplemental assistance (including insurance or guarantee), to a project previously approved under Part 58, if the approval is made by the same responsible entity that conducted the environmental review of the

original project and re-evaluation of the environmental findings is not required under sec. 58.47.

Funds for these activities may be used after the responsible entity (RE) has documented, in writing, its determination that each activity or project is Exempt [sec. 58.34(b)], and all parties execute the CDBG grant agreement.

4. Understand what procedures must be followed

Different procedures exist for Environmental Reviews, depending on the category the project is in: Exempt or Categorically Excluded Activities Not Subject to 24 CFR 58.5, Categorically Excluded (and subject to related Federal laws and authorities), Activities Subject to an Environmental Assessment, and Activities Subject to an Environmental Impact Statement.

HUD Field Environmental Officers have developed recommended formats for all levels of environmental review completed according to Part 58. The RE must use the current HUD-recommended format, or equivalent formats (Sec. 58.38) (RE's may develop environmental review formats themselves, but the content of those formats must be equivalent to the HUD recommended formats)

Many states have developed their own forms and procedures for the State CDBG program which are to be used for Environmental Reviews.

In general, be sure you understand which forms are required in your jurisdiction (by either HUD or state) and what procedures must be followed.

■ **Exempt Activities or Categorically Excluded Activities Not Subject to 24 CFR 58.5**
At minimum, a written description of the activities and citation of the applicable section of Part 58 must be placed in the Environmental Review Record (ERR). HUD has provided the Categorical Exclusion Suggested Format for Activities Not Subject to 24 CFR 58.5 for documentation. (Review the Suggested Format). No further review nor approval from HUD or the state is required. In addition, RE's must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable.

■ **Categorically Excluded Activities Subject to 24 CFR 58.5**
For activities deemed Categorically Excluded but SUBJECT TO other related Federal laws and authorities HUD has provided the Categorical Exclusion Suggested Format for Activities Subject to 24 CFR 58.5 for documentation (Statutory Checklist). (Review the Suggested Format)

Upon completion of the review, make one of the following findings:

- The project converts to Exempt [Sec. 58.34(a)(12)];
- The project cannot convert to Exempt and requires issuing a Notice of Intent to Request Release of Funds and obtaining HUD approval; or
- The unusual circumstances of the project may result in a significant environmental impact and requires preparation of an Environmental Assessment according to 24 CFR 58, Subpart E.

In addition, RE's must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable.

■ Environmental Assessment

Activities subject to the Environmental Assessment must document compliance with NEPA and the related Federal laws and authorities listed in sec. 58.5

The following procedure should be followed:

1. Determine the existing conditions, describe the character, features and resources of the project area, and identify the trends that are likely to continue in the absence of the project.
2. Complete the HUD recommended format or equivalent format. State recipients should use the format recommended by their state.
3. Evaluate the effects of the project or the activities on the human environment.
4. Address alternatives to the preferred course of action, including no action and other alternatives considered but rejected.
3. Based on the review, make one of the following findings:
 - A Finding of No Significant Impact (FONSI); or
 - A Finding of Significant Impact.
4. If the review results in a Finding of No Significant Impact, a FONSI notice must be issued (published in a newspaper of general circulation or posted/mailed) and also distributed to interested parties, local news media, appropriate local, state and Federal agencies, and to the Regional Office of the Environmental Protection Agency (EPA) and the HUD field office. The day after the notice is issued, a public comment period begins and must remain open for a minimum of 15 calendar days, if the notice is published in a newspaper of general

circulation in the affected community; or a minimum of 18 calendar days if the FONSI notice is posted (e.g., displayed in public buildings) or mailed..

5. If the review results in a Finding of Significant Impact, an Environmental Impact Statement (EIS) will be required.

In addition, RE's must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable.

The RE may adopt an EA that was prepared by another entity, but only after the RE makes an independent evaluation of the information to ensure it meets the requirements of Part 58 and NEPA, and takes responsibility for its scope and content.

■ **Environmental Impact Statement**

Review 40 CFR 1500-1508 for the required format for an EIS. Responsible Entities should also refer to 24 CFR 58, Subpart G for guidance.

The grantee can adopt an EIS that was prepared by another agency, if it was prepared in accordance with Federal regulations. Alternatively, the grantee may prepare its own EIS. Copies of the Draft EIS and the Final EIS must be provided to EPA Headquarters and Regional Offices, and to any interested party. A copy of the Final EIS must be provided to the state, HUD Field Office and HUD Headquarters library.

5. Understand the Release of Funds Process

Prior to requesting release of funds, the RE must issue a Notice of Intent to Request Release of Funds (NOI-RROF) whenever the activity or project is categorically excluded SUBJECT TO sec. 58.5 and cannot convert to exempt, or when an Environmental Assessment (EA) and Environmental Impact Statement (EIS) has been prepared. If the NOI-RROF is published in a newspaper of general circulation, the public comment period is a minimum of 7 calendar days, and a minimum of 10 calendar days if it is posted/mailed. The comment period begins the day after the notice appears in the newspaper or is posted/mailed.

For Environmental Assessments, the NOI-RROF may be combined with the FONSI Notice so that the two comment periods run concurrently. If the FONSI and NOI-RROF Notices are combined, the public comment period is a minimum of 15 calendar days when published in a newspaper, or a minimum of 18 calendar days when posted/mailed. The combined Notice must clearly indicate that it is intended to meet

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two separate notification requirements, and advise the public they must specify whether their comments apply to the NOI-RROF or FONSI.

In addition to publishing or posting/mailing the Notice(s), the RE must also distribute them to interested parties, local news media, appropriate local, state and Federal agencies, and to the Regional Office of the Environmental Protection Agency (EPA) and the HUD field office (Sec. 58.43)

Submit a copy of the public notification with the signed Release for Release of Funds and Certification (HUD form 7015.15) to HUD or the state. HUD will accept faxed copies of the RROF and notification to begin the 15 day objection period. However, HUD must receive the originals before it will release funds. State recipients should check to see if there is a similar policy for the state.

HUD or the state will not approve the RROF before 15 calendar days have elapsed from the time of receipt of the RROF and the certification, or from the time specified in the published Notice, whichever is later. (HUD form 7015.16, Authority to Use Grant Funds).

Prior to committing or expending funds, or undertaking any activities (other than Exempt Activities or Categorically Exempt Activities Not Subject to Review under the related Federal laws and regulations), approval of the RROF MUST be received. This requires coordination between project participants and the RE approving officials to confirm final approval before beginning work on the project.

Occasionally, grantees have erroneously begun work prior to approval of the RROF. When the project is monitored subsequently by HUD, a finding may be issued that the grantee was not in compliance with the Environmental Review process. In such an instance, appropriate actions may be taken by HUD, which may include disallowance of HUD funding.

