

NEPA Environmental Procedures

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Statutory & Regulatory Structure

- National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508).
- HUD Regulations (24 CFR Part 58).
- NEPA-Related Laws and Authorities (List at 24 CFR 58.5).

<https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities/>

Environmental Review Regulations

24 CFR Part 58

- HUD's regulation allows local units of government to perform NEPA responsibilities with States reviewing in place of HUD
- Regulation titled "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities"
- Covered in Part I of the Applicants' Manual and Chapter 2 of the Recipients' Manual
- Compliance is a General Condition of all CDBG Awards

Who Is Responsible for the Environmental Review?

- Chief Elected Official (CEO)
 - Assumes responsibility for environmental review
 - Must sign the Finding of No Significant Impact (FONSI) and the Request for Release of Funds/Certification
 - Accepts the jurisdiction of the Federal Courts as the responsible entity in environmental matters for this certification

When should the Environmental Review start?

- Before making choice limiting actions, including acquisition and signing construction contracts
 - Must be able to reject the site
- Before commitment of funds – 24 CFR Part 58.22 (a)
 - Neither a recipient nor any participant, including private non-profit or for-profit entity, may commit federal funds before approval of the RROF
 - Neither a recipient nor any participant may commit non-HUD funds if the project has the potential to have an adverse impact or limit the choice of reasonable alternatives.

Importance of Early Start

- Begin environmental review process as soon as possible.
- Typical times required to complete review range from 1 to 120+ days.

Environmental Review Process High Level Overview

- Determine the Level of Environmental Review Required
- **Applies to the project as a whole not just CDBG funds**
- Create the Environmental Review Record
 - Must be Available to the Public at the local government
- Complete the Environmental Review and document compliance with the related Laws
- Publish Required Notices According to Level of Review

Environmental Review Process (cont.)

- Submit the Request for Release of Funds and supporting documentation to DCA
- DCA issues Release of Funds Letter “Removing Environmental Conditions”
- Maintain Documentation of Compliance (Including Mitigation) in the Environmental Review Record (ERR)

Levels of Environmental Review

- 24 CFR Part 58.34(a) Exempt
- 24 CFR Part 58.35 Categorically Excluded
 - Categorical exclusions SUBJECT to laws and authorities at 24 CFR Part 58.5
 - Categorical exclusions NOT subject to laws and authorities at 24 CFR Part 58.5
- 24 CFR Part 58.36 Environmental Assessment
- 24 CFR Part 58.37 Environmental Impact Statement

Levels of Environmental Review

§58.34 - EXEMPT	§58.35(b) CATEGORICALLY Excluded NOT Subject to §58.5
<ul style="list-style-type: none">• Environmental and other studies• Resource Identification• Development of plans and strategies• Information and financial services• Administrative and Management Activities• Public Services (i.e.: employment, crime, child-care, prevention, health, drug abuse, education, welfare, counseling, energy conservation, recreational needs)• Inspections and testing for hazards or defects• Purchase insurance and tools• Engineering or design costs• Technical assistance and training• Temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities to control or arrest the effects from disasters or imminent threats to public safety, including those resulting from physical deterioration.• Payments of principal /interest on loans or obligations guaranteed by HUD	<ul style="list-style-type: none">• Tenant-based rental assistance• Supportive services such as health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage, or utilities, assistance in gaining access to government benefits.• Operating costs including maintenance, furnishings, security, equipment, operation, supplies, utilities, staff training and recruitment.• Economic development activities including equipment purchase, inventory financing, interest subsidy, operating costs, and other expenses not associated with construction or expansion.• Activities to assist homeownership of existing dwelling units or units under construction, including closing costs and down-payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title.• Affordable housing pre-development costs: legal consulting, developer and other site-option costs, project financing, administrative costs for loan commitments, zoning approvals, and other activities which don't have a physical impact.• Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under §58, if: approval is by same the RE, and re-evaluation is not required, per §58.47

§58.35(a) - CATEGORICALLY Excluded Subject to §58.5

§58.36 - NEPA
Environmental Assessment

TYPES OF ACTIVITIES

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

- Replacement of water or sewer lines
- Reconstruction of curbs & sidewalks
- Repaving of streets

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

Single Family Housing Rehabilitation

- Unit density is not increased beyond 4 units,
- Project doesn't involve change in land use from residential to non-residential

Multifamily Housing Rehabilitation

- Unit density change is not more than 20%
- Project doesn't involve change in land use from residential to non-residential
- Rehabilitation cost is < 75% of the estimated cost of replacement after rehabilitation

Non-Residential Structures

- Facilities and improvements were in place and will not be changed in size or capacity by more than 20%;
- Activity does not involve change in land use from non-residential to commercial to industrial, or one industrial use to another;

Individual action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per 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 or disposed of will be retained for the same use.

Combinations of the above activities

Activities not exempt or categorically excluded under §58.34 and §58.35

It is usually new construction of five (5) or more homes, and conversion from one type of land use to another.

Environmental Assessment

- Use current forms on DCA Website
- Cite Authoritative Sources of Info
 - See HUD tool
(<https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities>)
- Describe mitigation measure for any identified negative impacts
- Evaluate all alternatives
- Certifying Officer must sign FONSI

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB No. 2506-0087
(exp. 08/31/2023)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s) <input type="text"/>	2. HUD/State Identification Number Grant # or Pending Year <input type="text"/>	3. Recipient Identification Number (optional) <input type="text"/>
4. OMB Catalog Number(s) 14.228	5. Name and address of responsible entity <input type="text"/>	
6. For information about this request, contact (name & phone number) <input type="text"/>	7. Name and address of recipient (if different than responsible entity) <input type="text"/>	
8. HUD or State Agency and office unit to receive request <input type="text"/>	9. Program Activity(ies)/Project Name(s) <input type="text"/>	
	10. Location (Street address, city, county, State) <input type="text"/>	

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following

11. Program Activity/Project Description

Enough description that a HUD auditor or member of the general public would be able to understand the basics of the project. We do NOT need information on what CDBG is, this should be about the project.

Give us a list of the activities, and a few sentence summary of the project. This should not be a generic set of sentences for the type of project, but a description to the particular project. What is the problem you are trying to solve.

The description should include where work and beneficiaries are located, including street/neighborhood names or similar. How many people are being helped. Add other pertinent details.

HUD's Project Description Instructions

Describe in writing the following information:

- Overall objective of the project
- List of all activities
- List of all funding sources (both HUD and non-HUD)
- Time frame of project (max of five years)
- Provide maps showing clearly defined site project boundaries
 - Project boundaries are not limited to the site owned/controlled by recipient/sub-recipient

Tiered Reviews

- Used when the addresses are unknown at the time of award
- Tier 1 (**Broad Level**) Environmental Reviews:
 - Includes Public Notice and RROF
 - Clear **as many of the statutes as possible** without knowing the addresses
 - Ex: Sole Source Aquifers, Coastal, etc..
- Tier 2 (**Site Specific**) Environmental Reviews
 - Use once addresses are know
 - Checklist **includes only remaining statutes**
 - Ex: Floodplain, Historic Preservation, etc.

Environmental Impact Statement (EIS)

- Most CDBG projects do not trigger
- Contact DCA immediately for assistance

Compliance Factors

- Air Quality
- Airport Hazards
- Coastal Barrier Resources
- Coastal Zone Management
- Endangered Species
- Explosives and Flammable Facilities
- Farmlands Protection
- Flood Insurance
- Floodplain Management
- Historic Preservation (includes Tribal consultation)
- Noise Abatement and Control
- Site Contamination
- Sole Source Aquifers
- Wetlands Protection
- Wild and Scenic Rivers
- Environmental Justice

Compliance Factor Documentation

- HUD's Laws and Authorities Web Page
<https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>
- We advise you to use the partner worksheets from HUD
- Each factor must have documentation, including the items like Sole Source Aquifers that do not apply to Georgia
- A map or report from a qualified expert or the appropriate government agency is the most common documentation
- Fish and Wildlife online Endangered Species tool: <https://ecos.fws.gov/ipac/>

HUD Worksheets

- HUD entitlements are now required to use the: HUD Environmental Review Online System (HEROS)
- States are not on the system, but they provide worksheets that mirror the HEROS system at: <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>
- Under each category there is a Worksheet for the topic. Two sheets, one for reviews completed by the recipient and a Partner Worksheet if completed by a third party (grant administrator).
- DCA strongly advises making these worksheets part of your Environmental Review Record – they might be required in the future

Environmental Notices – Local Comment Period

- Publish in local newspaper of general circulation.
 - Legal or non-legal section
- Notice of Intent to Request Release of Funds (NOI): 7 days
- FONSI and NOI (Concurrent Notice): 15 days
- Notice includes an additional 15 days for public objection of RROF to DCA.
 - Begins the day after DCA receives the RROF.

Waiting Period Details

- All Waiting period days must be full 24 hour periods
- The day of publication **DOES NOT COUNT** toward the waiting period
- The DCA public comment period does not start until the day after receipt of the RROF
- Each part of the process must be separate, no overlapping days

Example Fastest Concurrent Notice and RROF

- Day 1: Concurrent Notice Published
- Day 2-16: 15 day comment period
- Day 17: RROF signed and dated by certifying official, emailed to and received by DCA. DCA comment period does not start on the day we receive it.
- Day 18-32: State 15 day comment period
- Day 33: RROF letter prepared by DCA
- Weekends and any delay usually increases this by a few days
- **If you have the time, allow for slightly more than 15 days. If you use the minimum and the newspaper runs it a day late you will have to re-publish.**

Local Period – Objections

- Basis for Objections
 - Anything
- Local Government must consider comments
 - If you get a comment you must respond
 - Acknowledge and respond in writing
- Tell DCA about any comments and include your response

Items to send when Requesting Release of Funds

- RROF Form, or similar for other level of review
 - HUD wants an actual description not just the budget line item
 - Make sure to select the appropriate EIS check box on page 2
 - Must be signed and dated after the end of the public comment period by Certifying Official
- All Newspaper Notices (Concurrent in most cases, and Floodplain/Wetlands if necessary) – Scans or actual notices, make sure the date of the paper (not just in the notice) is visible.
- HPD clearance letter unless it is not subject to 58.5
- Proof of Tribal Consultation signed by a certifying officer of the local government if subject to 58.5 and the activity requires it.
- If you received an objection or comment, include it and your response.
- New from 2023: ***If the project is a building or Multi-Family residential, provide Phase I results***

Required Items for your Application

- Applicant forms listed in the manual and available on our web site:
 - DCA 9 Environmental Review Information
 - DCA 9A Historic Preservation Environmental Review Form
 - DCA 9B When to Consult With Tribes Under Section 106
 - Proof of tribal consultation Generally this should be a scan of the letters, any responses, and a memo letting us know that the others did not respond during the review period.
 - Letters should be signed by the Chief Local Official, or if he can not because of a conflict of interest or some other reason, by the next highest certifying official.
- Floodplain and Wetland Maps
- Any other environmental review paperwork from stages that are complete when submitted.

Environmental Review Optional Advice for RROFs

- A memo listing items sent in with the RROF and items previously sent to DCA will make it faster and easier to review. Without this, if some items are in the application we probably won't know until you tell us.
- If you are an experienced administrator, grouping paperwork with the RROF instead of each item separately will make it easier for anything that is not bonus point related.
- For new administrators feel free to call or email me to make sure time periods are good.

Objections to DCA

- Basis for Objections
 - RROF not signed by Certifying Officer
 - Omission of a required decision, finding, or step applicable to the environmental process
 - Committed funds prior to release of funds

Important Tips

- Change of scope in project (Grant Amendments) might require additional review.
- **DON'T SPEND A DIME** – until your ER is complete and you have received Release of Funds from DCA
 - Exception for Admin and Design Costs
- When in doubt – contact DCA/CDBG staff!

Current Issues

- Everything must be complete, including the response from Historic Preservation before you publish the FONSI/Concurrent Notice
- The Environmental Review lasts 5 years from release date. If construction is still taking place, you must stop and perform a completely new review
- Any Historic Preservation condition stops a conversion to Exempt
- Incidental Floodplain and Wetlands – Do 8 Step, or Deed Restrict
- Tribal Consultation should be Government to Government, Signed by CEO
- Hazardous Waste: Check 300' radius. Phase one last 1 year, 180 days to 1 year an update is required
- **For Buildings or Multi-Family residential with 5 or more units, provide Phase I results with the RROF.**

Application Requirements & Bonus Points

- Tribal Consultation must be completed by the Application Deadline, April 1, 2024
- If you complete the process and have a Release of Funds by Friday June 29, 2024 your application will receive 5 bonus points

Resources

- <https://www.hudexchange.info/environmental-review/orientation-to-environmental-reviews/>
- <https://egis.hud.gov/tadat/>
- <https://www.hudexchange.info/environmental-review/federal-related-laws-and-authorities/>
- <https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal-laws-and-authorities-worksheets/>
- <http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp>
- <https://nepassisttool.epa.gov/nepassist/nepamap.aspx>

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Send Environmental documents to [**cdbg.biz@dca.ga.gov**](mailto:cdbg.biz@dca.ga.gov)