

## **Introduction**

Every project undertaken with state CDBG funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 CFR Part 58. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any CDBG funds can be accessed for program-eligible activities. In addition, no work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds. In other words, environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. A violation of this requirement may jeopardize federal funding to this project, and disallow all costs that were incurred before the completion of the Environmental Review.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

Laws and regulations which contain environmental provisions with which the state must comply include:

Noise	Historic Properties	Coastal Zones
Environmental Justice	Floodplains	Wetlands
Manmade Hazards	Water Quality	Air Quality
Endangered Species	Farmland Protection	

All state CDBG-funded projects and activities must have documentation that they are in compliance with NEPA and all other environmental requirements. The purpose of this Section is to provide guidance necessary to prepare the Environmental Review Record (ERR) as required by NEPA and related laws. The ERR serves as a tool to measure the environmental consequences of all state CDBG-funded projects and activities.

## **Timetable for Reviews**

Each project is unique as to the amount of time it will take to complete the ERR. Many factors contribute to this timetable. For example, a project that is not eligible for National Register and takes place outside the floodplain will require a shorter amount of time to complete the ERR. A project that is located in a wetland or is in an area of noise concern will require a longer amount of time to complete the ERR. Additionally, studies, professional services, replenishment of inventory, down-payment assistance may take only days to complete, where the new construction of an apartment complex or the rehabilitation of single-family housing may take up to four or five months to complete. Please check with the state's environmental officer to determine how long the chosen project may take to receive environmental clearance.

## State of Louisiana Responsibilities

The State of Louisiana has five (5) primary responsibilities related to the environmental review process:

- To ensure that no CDBG grant funds (except those that are admin or planning requests) are released until the grantee has fully and properly certified that all environmental review requirements have been satisfied;
- To ensure that the release of CDBG funds occurs after the proper environmental certification has been submitted to the State; the required comment period has expired without negative comment or objection; and other basic grant requirements have been satisfied. **NOTE: The release of funds does not constitute program approval, but is an acceptance that all environmental requirements have been satisfied.**
- To ensure that if subsequent information results in a determination that the certification or procedures were improper, the State will withhold further project funding until these findings are resolved. The additional information may require the grantee to redo its environmental review and conduct a second public comment period. This will require recertification to the State and a revision to the ERR;
- To ensure that monitoring requirements are met, including an examination of the grantee's environmental review process and ERR;
- To ensure that the grantee is provided with guidance and technical assistance and guidance for its environmental review process and ERR.

## Grantee Responsibilities

Each CDBG grantee has five (5) basic environmental responsibilities related to the environmental review process:

- Grantees must determine what type of environmental review is appropriate to each of their specific projects/activities. Projects/activities may be EXEMPT, CATEGORICALLY EXCLUDED, SUBJECT TO THE LAWS OF 58.5 or CATEGORICALLY EXCLUDED, NOT SUBJECT TO THE LAWS of 58.5. Any activity that does not fit into one of these three categories will require an ENVIRONMENTAL ASSESSMENT in order to assess what possible environmental impacts may be involved.
- Grantees must establish and maintain an Environmental Review Record. This ERR must contain all documentation related to determinations, findings, public notices, consultation and coordination, certifications and approvals involved in the environmental review process.
- Grantees must provide for a period of public comment related to grantee environmental findings and the intent to request CDBG funding for all affected activities.

- Grantees must comply with NEPA as well as other related Federal law authorities. This compliance responsibility remains for the entire life of the program.
- Grantees must properly certify its environmental findings and records to the State of Louisiana before the initial environmental review process is considered complete. This certification process also serves as a request for the release of CDBG activity funds.

### **Initial Environmental Review Procedure**

There are several initial steps that the grantee should take to begin the environmental review process. These steps are important because they will help guide the grantee in the approach to this process, and help the grantee to avoid needless mistakes and time delays.

The grantee should begin its environmental review as soon as it receives its copy of the executed grant agreement from the State of Louisiana, although the grantee may choose to begin the process at the time a project/activity is accepted by the State. It is vital that grantees start the process as soon as possible since some of the environmental review processes may become lengthy and perhaps complex.

### **Project Aggregation**

The term “project” means an activity or a group of integrally related activities designed to accomplish, in whole or in part, a specific goal.

The term “activity” means an action that a grantee takes on as part of an assisted project, regardless of whether its costs is borne by CDBG assistance or is an eligible expense under the program. For the purpose of environmental review requirements, an activity may be funded in whole or in part by federal funds, or not funded with federal funds, but nonetheless has been made a part of the project as contained within the funding application. Activities make up the project.

Aggregating (grouping) activities allows the grantee to consider the combined environmental effect of a project. Aggregation will lessen the number of Environmental Review Records that a grantee must complete.

A recipient must group together and evaluate as a single project all individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions. For example, the aggregation of several activities carried out in one distinct neighborhood, such as housing rehabilitation, demolition, street, paving and construction of a water line would be grouped together as one project.

### **Limitations on Activities Pending Clearance**

Neither the grantee nor any participant (including public or private non-profits or for-profit entities or any of their contractors) may commit HUD/CDBG funds on any activity or any project until the State has approved the grantee's Request for Release of Funds.

In addition, neither the grantee nor any participant may commit non-HUD/CDBG funds or any activity or any project that would have an adverse environmental impact or limit the choice of reasonable alternatives until the State has approved the grantee's Request for Release of Funds.

An option agreement on a proposed site or property is allowable before the completion of the environmental review as this option does not limit the choice of reasonable alternatives. The option is only allowed on real property and the amount of the option is not reimbursable by CDBG.

HUD/CDBG funds may be committed for relocation assistance before the approval of the grantee's Request for Release of Funds, provided the relocation assistance is required by 24 CFR part 42.

### **Grantee Certifying Officer**

When a grantee accepts CDBG funding, the grantee agrees to assume the legal responsibility as the "Responsible Official" as defined by NEPA. The local chief official is required to serve as the environmental "Certifying Officer" and to accept full responsibility for the completeness and accuracy of the reviews. This environmental duty may not be delegated, although consultants' staff and/or state resources may provide technical assistance to support local efforts.

The grantee's Certifying Officer has three principal responsibilities:

- To represent the grantee on environmental matters, and be subject to the jurisdiction of the Federal courts if the grantee becomes involved in environmental litigation;
- To ensure that all environmental, procedural and record requirements are fully and properly satisfied.
- To ensure and/or perform all necessary coordination functions required for environmental reviews. This includes consultation with all appropriate agencies directly concerned with environmental issues or having environmental responsibilities associated with the grantee's project. The Certifying Officer must also ensure the public comment process is carried out appropriately.

## **Establishing an Environmental Review Record**

Grantees are required to create and maintain an Environmental Review Record (ERR). Grantees may contract with an environmental consulting firm to do the work and create the record. However, the grantee is responsible for all material in the ERR. This ERR must contain a concise description of the grantee's project/activity and a record of all relevant documentation pertaining to the environmental review process and results. Grantees should start to establish this record as soon as the activity is approved as an undertaking.

## **Determining the Level of the Environmental Review**

Project activities will fall into one of four (4) types of environmental review categories:

- Exempt activities;
- Categorically Excluded activities;
- Environmental Assessment (EA) activities;
- Environmental Impact Statement (EIS) activities.

Each of these categories involves a progressively more detailed and more complex process of requirements and procedures. It is important to determine the appropriate level of review at the beginning of the project/activity.

The description of the acceptable types of activities for each level of review is clear and concise. For example, if the Responsible Entity (the Parish) looks at the types of allowable activities for the "Exempt" level of review and that activity is not listed, then the Parish would progress to the next level of review and so on.

- **Exempt Activities [24 CFR part 58.34(a)]**

Activities that are exempt are not subject to NEPA laws and regulations. An environmental review must be completed for all exempt activities; however, it is a desk review and can be completed quickly. There are certain activities that can be pulled and exempted from a more complicated project. Exempt activities are mainly planning activities and are reimbursable even if the rest of the project does not move to fruition.

Exempt activities are as follows:

1. Environmental and other studies, resource identification and development of plans and strategies [58.34(a)(1)]. Examples include appraisals, archaeological surveys, wetland delineation and the like.
2. Information and Financial Services [58.34(a)(2)];
3. Administration and management activities [58.34(a)(3)]. Examples include salaries and consultant costs.

4. Public Services [58.34(a)(4)]. Examples include services that do not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
5. Inspections and Testing of Properties for Hazards or Defects [58.34(a)(5)]. Examples include inspections and testing of properties for lead-based paint or asbestos.
6. Purchase of Insurance [58.34(a)(6)]. Examples may include flood insurance.
7. Purchase of Tools [58.34(a)(7)]. Examples include payment of reasonable and eligible tool purchases. However, this does not include equipment purchases.
8. Engineering and/or Design Costs [58.34(a)(8)]. Examples include architectural design.
9. Technical Assistance and Training [58.34(a)(9)].
10. Assistance for temporary or permanent improvement that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disaster, imminent threats or physical deterioration. [58.34(a)(10)]. This category has a very narrow window of use and can only be used immediately after a disaster.
11. Principal and Interest Payments [58.34(a)(11)]. This category is for loans made or obligations guaranteed by HUD.
12. Other Exempt Activities (58.34(a)(12)]. This category may be used if an activity is Categorically Excluded, Subject to the Laws of 58.5 provided there were no statutory compliance issues that need to be addressed. An example includes a rehabilitation that does not occur in a wetlands or a floodplain and is not eligible for listing in the National Register. The activity “converts” from the higher level of review to “exempt”.

### **Procedure for Exempt Activities**

The following steps will be followed after the grantee determines that the project/activity falls into one of the EXEMPT categories (1-11) listed above:

- Prepare and submit the executed “*Certification of Exemption for HUD-funded Projects*” (**attachment 1**) to the State. This certification must include a clear description of the activity, the location of the activity and the amount of monies to be exempted. The certification must be signed by the parish’s certifying officer, such as the parish president.

- The State will prepare a “*Notice of Acceptance of Exemption*” that will be sent to the grantee to indicate that this grant condition has been satisfied.
- The grantee may begin to obligate or incur the costs, as listed on the “*Certification of Exemption*” and request payment of these funds.

For the EXEMPT category (12), the statutory checklist and all supporting documentation must be submitted to the State for review and approval. Upon approval, the State will send the grantee the “*Notice of Acceptance of Exemption*” and the grantee may incur costs.

- **Categorically Excluded Activities 24 CFR part 58.35**

Any project/activity that is categorically excluded does not need to address the requirements of NEPA.

These projects/activities fall into one of two separate categories:

- **Categorically Excluded Activities Subject to the Laws of 58.5 [24 CFR part 58.35(a)]**

The following activities are categorically excluded under NEPA, but are subject to 24 CFR part 58:

1. 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 and/or capacity by more than 20% [24 CFR 58.35(a)(1)]. For example, replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets fall into this category.
2. Special projects directed to the removal of material and/or architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons [24 CFR 58.35(a)(2)].
3. Rehabilitation of buildings and improvements only when all of the following conditions are met:
  - i. In the case of residential buildings with one to four units:
    - A. The density is not increased beyond four units;
    - B. The land use is not changed;
    - C. The foot print of the building is not increased in a floodplain or in a wetland.
  - ii. In the case of multifamily residential buildings:
    - A. The unit density is not changed by more than 20%;
    - B. The project does not involve changes in land use from residential to non-residential;

- C. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation.
- iii. In the case of non-residential structures, including commercial, industrial and public buildings:
- A. The facilities and improvements are in place and will not be changed in size or capacity by more than 20%;
- B. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial or from one industrial use to another.
4. Individual Actions
- i. An individual action on a one-to-four family unit dwelling where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
- ii. 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 no more than four housing units on any one site;
- iii. Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use with one-to-four units. (a)(3)(i) addresses this
5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided the structure or land acquired or disposed of, or financed will be retained for the same use.
6. Any combinations of the above activities.

### **Procedures for Categorically Excluded Activities Subject to 58.5**

The following steps will be followed once the grantee determines that the project/activity falls within one or more of the CATEGORICALLY EXCLUDED Subject to 58.5 categories:

- Prepare and submit the executed *Certification of Categorical Exclusion – (Subject to 58.5) (attachment 2)*. This certification must include a clear description of the activity, the location of the activity and the amount of monies to be categorically excluded. The certification must be signed by the parish’s certifying officer, such as the parish president.
- Prepare and submit the executed *Statutory Checklist for Categorical Excluded Project Only (attachment 3)*. This will require that the grantee consult with the appropriate local, state and federal agencies that have or might have an environmental interest in the project/activity. The grantee must show consultation through letters or other forms of communication. All letters and responses becomes part of the ERR and must be available

for public review. **NOTE: A Site-Specific Checklist must be completed for each housing unit when a parish chooses to do housing rehabilitation.**

- If the grantee learns through this consultation process that it must comply with environmental provisions of other Federal environmental laws or regulations, the grantee must document the project/activity that is affected; the nature of required compliance; and how the grantee has or will meet such compliance requirements.
- The grantee must then prepare a “*Notice of Intent to Request a Release of Funds*” (NOI/RROF) (**attachment 4**). This Notice must be prepared according to guidelines listed in this attachment. The Notice must be published in the State newspaper (The Advocate), as well as the State newspaper for the parish where the project/activity is located. The Notice must be distributed to interested individuals and groups, as well as to appropriate local, state and federal agencies.
- If there is no general circulation newspaper in the grantee’s community, the Notice must be prominently displayed at the local Post Office and displayed in other public buildings within the project area.
- The notice should run a minimum of seven (7) days in the newspaper or a minimum of ten (10) days if posted and mailed.

If there are no adverse comments during this public comment period, the grantee must send a copy of the “*Request for Release of Funds*” (**attachment 5**) as well as a newspaper copy of the *NOI/RROF* that shows the date of publication.

The State will hold this Request for a minimum of 15 days to allow for the opportunity for further public comment. If there are no adverse public comments, the State will send the grantee the “*Notice of Release of Funds*” (**attachment 6**). However, this notice may not be sent until the grantee has satisfied all program requirements.

Once the grantee has received the *Notice of Release of Funds*, the grantee may begin to obligate or incur costs and request payment of funds.

NOTE: If the grantee has a program, such as owner-occupied rehabilitation, where individual properties have not yet been identified, the Grantee should include a notice in the *Request for Release of Funds* that a Statutory Checklist will be prepared as soon as individual sites are identified

- **Categorically Excluded Activities Not Subject to 24 CFR part 58.5 [(24 CFR part 58.35(b))]**

The following activities are Categorically Excluded under NEPA and are not subject to 24 CFR part 58.5 rules and regulations:

1. Tenant-based rental assistance

2. Support services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State and Federal government benefits and services;
3. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
4. 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;
5. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction including closing costs and down payment assistance, interest buy downs and similar activities that result in the transfer of title;
6. Affordable housing predevelopment 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 which do not have a physical impact;
7. Approval of supplemental assistance (including insurance or guarantee) to a project/activity previously approved under this part, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Section 58.47.

#### **Procedures for Categorically Excluded Activities Not Subject to 58.5**

- Prepare and submit the executed “*Certification of Categorical Exclusion (Not Subject to 58.5)*” (**attachment 7**) to the State. This certification must include a clear description of the activity, the location of the activity and the amount of monies to be categorically excluded. The certification must be signed by the parish’s certifying officer, such as the parish president.
- The State will prepare a “*Notice of Acceptance of Categorical Exclusion*” that will be sent to the grantee to indicate that this grant condition has been satisfied.
- The grantee may begin to obligate or incur the costs, as listed on the “*Certification of Categorical Exclusion*” and request payment of these funds.

A more extensive review may be required if a grantee determines that a project/activity identified above may have a significant environmental effect or if there are extraordinary circumstances or conditions.

There may also need to be a reevaluation or amendment or complete re-do of the categorical exclusion assessment if the grantee substantially changes its project/activity in nature, magnitude or extent, including new activities not anticipated in the original project scope and/or cost estimates. Additionally, new circumstances and environmental conditions that may affect the project would necessitate a reevaluation of the ERR, especially if these conditions have a bearing on its impact, such as concealed or unexpected conditions discovered before or during project implementation.

- **Environmental Assessment**

If the project/activity does not fall in either the “exempt” or “categorically excluded” categories, the grantee will have to undertake an ENVIRONMENTAL ASSESSMENT. An Environmental Assessment (EA) enables the grantee to determine the degree of significant impact that an activity (by itself or in combination with other activities) may have on the environment.

The EA permits all interested parties, including policy agencies, community groups and individuals to examine the environmental data developed and to comment on the environmental impact findings and course of action determined by the grantee.

### **Initiating the Environmental Assessment**

The statutory checklist (SC) (**attachment 8**) and the environmental assessment (EA) checklist (**attachment 9**) are the two primary documents that must be completed by the grantee or his consultant. Grantees must coordinate efforts with all appropriate local, state and federal agencies that may have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project/activity. All sections of these documents must be completed. Additionally, proof of publication of public notice and the “Request for Release of Funds” are part of the ERR that must be done.

Grantees must document the above coordination/consultation and make this part of the ERR. Such documentation is normally in the form of written correspondence. However, appropriate websites are becoming increasingly popular as an acceptable form of consultation.

Grantees must have all supporting data for analyses and findings (for example, maps, surveys, charts, tables, technical opinions) contained in the ERR.

Grantees must conclude the Environmental Assessment by indicating the appropriate finding at the end of the process and document this on the EA checklist.

Grantees must make a recommendation of the appropriate assessment finding at the end of the process and document this on the EA checklist.

- A Finding of No Significant Impact (FONSI) means that the project is not an action that will result in a significant impact on the quality of the human environment; or

- A Finding of Significant Impact (FOSI) means that the project is an action that may significantly affect the quality of the human environment.

If a grantee's EA results in a FONSI determination, then the grantee may proceed as indicated below:

### **Required Public Notices**

If the grantee concludes its assessment with a FONSI, then posting/publishing notices informing the public of the FONSI and the "Notice of Intent to Request Release of Funds" (NOI/RROF) from the State.

These notices are often posted/published as a combined notice which merges the FONSI and the RROF (**attachment 10**). These notices must be distributed to local news media, individuals and groups interested in the project and appropriate local, state and federal agencies. The notice must allow public review and comment to the ERR for at least 15 days if published or 18 days if posted. All comments based on the public notice process must be considered and made a part of the ERR. If these comments require a revision to the FONSI/RROF, then the project/activity must be re-evaluated accordingly.

### **Certification Procedures**

The grantee must follow the steps below after the Environmental Assessment and the public notice requirements are complete:

- Complete and submit the *Request for Release of Funds (7015.15)* (**attachment 11**);
- Submit a copy of the published public notice (if published in a newspaper) or a copy of the public notice, plus a list of all places the notices were posted, as well as the dates it was posted (if posted);
- The State must allow for a 15-day public objection period (beginning with the receipt of the public notice and 7015.15) prior to taking any further actions.
- If no comments are received during this period, the State will send the Grantee a "*Notice of Release of Funds*" (7015.16). However, the Notice will not be sent until the grantee has satisfied all program requirements.
- Once this Notice is received, the grantee may begin to request payment of these release funds.

**NOTE: All projects/activities require compliance with 24 CFR part 58.6 (attachment 12).**

**NOTE: All projects/activities that take place in Flood Zone A or V require compliance with 24 CFR Part 55 (attachment 13), including the 8-step floodplain management process.**