



Chapter 3: Environmental Review

Overview

All CDBG Grantees are required to comply with federal environment laws and regulations. These laws and regulations are contained in the National Environmental Policy Act (NEPA) of 1969 and HUD implementing regulations at 24 CFR Part 58 (rev. October 29, 2003). The executed grant agreement requires an environmental review to be completed in compliance with the regulations in 24 CFR Part 58 (Part 58) prior to the obligation, expenditure, or draw down of program funds. The environmental review, and applicable public notifications, becomes part of a written environmental review record to be maintained by Grantees. This record documents that CDBG funded and related activities are in compliance with NEPA under the regulatory requirements of Part 58, and other applicable federal laws, regulations, and executive orders. Additionally, the Grantee is responsible for compliance with the California Environmental Quality Act (CEQA).

The goal of Part 58 is to ensure that the NEPA requirements are met for all HUD assisted projects. Each project or activity must be compatible with existing environmental conditions where the project or activity is taking place, that projects do not adversely impact the environment as a whole, and that the users and beneficiaries of the project will be left with a safe, healthy, and enjoyable environment.

In basic terms, Grantees are required to determine the impact of the HUD-funded project or activity on the environment as well as the impact of the environment on the project. A number of environmental review procedures and checklists have been developed to assist Grantees in meeting these objectives.

Section 3.1 Responsibilities

Grantee Responsibilities

- Develop Environmental Review Record (ERR)
- Determine project scope and potential impacts of activities



- Determine if project is exempt, categorically excluded or whether an environmental assessment/impact statement is needed
- Publish findings in newspaper
- Hold public comment period
- Request Release of Funds (RROF) from HCD

State's Responsibilities

- Receive RROF
- Review for compliance with 24 CFR Part 58
- Hold for public comment period
- Release funds when comment period has ended,
- Monitor ERR to determine the appropriate level of review was performed and any identified environmental conditions are met

Applicable Regulations

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, and a myriad of other federal laws and regulations (some of which are enforced by state agencies) also may apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations and are cited in several of the chapter links to those requirements.

[40 CFR 1500-1508](#)
[24 CFR Part 58](#)

The Responsible Entity

Under Part 58, the term “Responsible Entity” Responsible Entity means the entity responsible for completing the environmental review. In the state CDBG Program, the local unit of government Grantee is the Responsible Entity. Therefore, these terms are used interchangeably with Grantee throughout this chapter and the appendices. The responsible entity must complete the environmental review process. Environmental review responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by the responsible entity, the Chief Elected Official (CEO) of the responsible entity agrees to assume the role of “responsible federal official” under the provisions of NEPA. This means that if someone brings



suit against the responsible entity in federal court on environmental grounds, the CEO will be named as the defendant. There may be financial implications associated with any lawsuit and, of course, any fines, judgments or settlements that may result.

NOTE: The Department accepts no responsibility or liability for the quality or accuracy of the local environmental review process. The Department's responsibility is to inform the Grantee of the proper procedural requirements of various environmental statutes, regulations, and executive orders and review that process.

Environmental Certifying Officer

Under Part 58, the Chief Elected Official (CEO) must assume the role of the Environmental Certifying Officer (ECO) or formally designate another person to do so. If the CEO does designate a staff person to serve as the ECO, this designation must be made by ordinance or signed resolution and placed in the Environmental Review Record. The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. Local officials should review the municipal liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. The responsibilities of the ECO include making findings and signing required certifications.

Other key points regarding the ECO designation include:

- The ECO must be a line officer of the responsible entity who is authorized to make decisions on behalf of the Grantee. For example, a town administrator can serve as an ECO. The ECO cannot be a consultant.
- This person does not need to be a technical expert but should be credible if it becomes necessary to defend whether the required procedures were followed and completed. Further, that resolution and/or mitigation of adverse effect, if any, are incorporated into and accounted for in the project implementation.
- The ECO is not necessarily the one who actually conducts the review and completes the applicable documentation in the ERR. That responsibility is frequently given to a staff person or consultant that is hired by the Grantee.

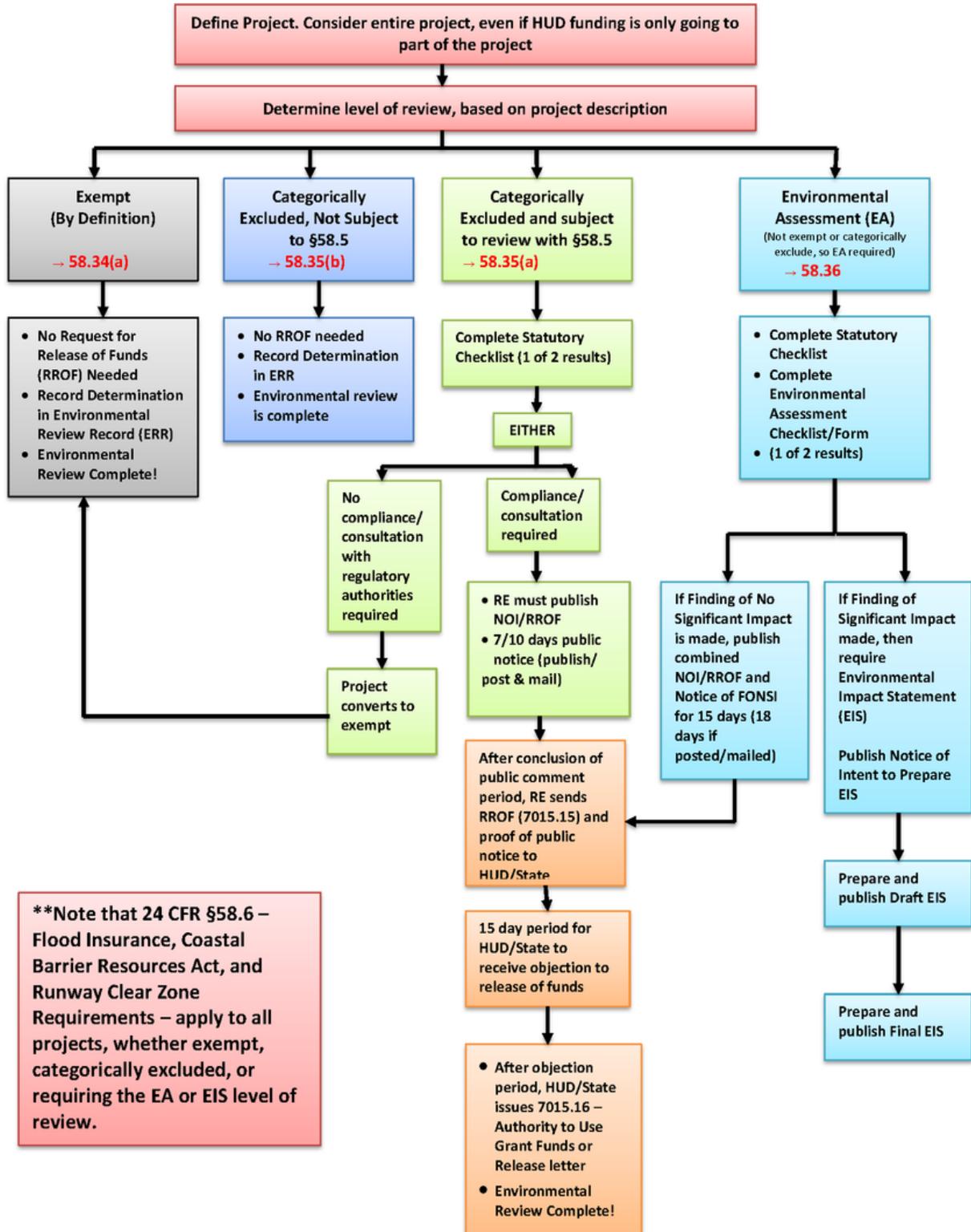


NOTE: If the Grantee chooses to use a subrecipient to complete its community development project, the subrecipient or another agency or entity participating in the project may hire a consultant to complete the environmental review. While that subrecipient or consultant may assist in performing the review and preparing documentation, it is still the responsibility of the Grantee to assign an ECO to perform all of the above duties. A subrecipient may never sign off on behalf of a Grantee for any environmental review form.

The flowchart below provides an overview of the environmental review process.



Environmental Review Process (To Be Conducted by Responsible Entity)





Section 3.2 Triggers & Advice to Start Environmental Review

Actions Triggering Environmental Review and Limitations Pending Clearance

All HUD-assisted projects and activities must have some level of environmental compliance review completed for them. Compliance with the Part 58 requirements is initiated with the submission of an application from the Grantee for CDBG funds.

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. If prohibited activities are undertaken after submission of an application, but prior to completing the environmental review and, if applicable, receiving environmental review approval from the state (a.k.a. environmental clearance), the applicant is at risk for the denial of CDBG assistance and permanently disqualifying the property of receiving all future federal funding. Furthermore, a violation could result in financial sanctions. The reason is that these actions interfere with the Grantee's and the state's ability to comply with NEPA and Part 58. If prohibited actions have occurred prior to environmental clearance, then it is very likely that environmental impacts may have occurred in violation of the federal laws and authorities and the standard review procedures that ensure compliance.

NOTE: Do not be confused by the language of environmental review procedures, even exempt activities cannot be undertaken until HUD environmental review criteria are checked and they have been formally determined to be exempt.

There are certain kinds of activities that may be undertaken requiring minimal effort to fulfill Part 58 compliance requirements. For example, planning, engineering, and testing activities do not impact the natural environment and do not require completing the 58.5 statutory checklist or requesting a release of funds. Therefore, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards) or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions requires only completing either the Exempt or Categorically Excluded Not Subject To 58.5 review. Because these types of reviews do not require requesting a release of funds, environmental compliance reviews for these types of activities may be completed early on, and even prior to the Grantee's execution of a grant agreement with the state.



Limitations Pending Environmental Clearance

According to the NEPA 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 from the state. This means that the Grantee 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. In other words, 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). Until the Grantee has completed the environmental review process, these same restrictions apply to all subrecipients, as well.

[24 CFR §58.22](#)

NOTE: If any CDBG or federal funds will ultimately be used in a project, environmental review process must be observed even if the initial activities are funded by private or local sources. Start the environmental review process before expending any funds from any source or making any choice limiting decisions about the project.

It is the responsibility of the Grantee to ensure subrecipients and any other entity participating in this project or activity (developers, homeowners, etc.) adhere to these restrictions.

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 (e.g., hiring a consultant to prepare a preliminary design and engineering specifications or a Phase I Environmental Site Assessment);
- Use of any 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.” This also includes the bidding on any work.



It is acceptable for Grantees to execute legal agreements that do not financially bind the Grantee prior to completion of the environmental review process and receiving HCD approval. A non-financially binding agreement contains stipulations that ensure the subrecipient 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. It is also acceptable to execute an option agreement for the acquisition of property when the following requirements are met:

- The option agreement is subject to a determination by the Grantee on the desirability of the property for the project as a result of the completion of the environmental review in accordance with Part 58; and
- The cost of the option is a nominal portion of the purchase price.

The use of option contracts and conditional contracts prior to completing an environmental review in acquisitions of existing single family and multifamily properties was clarified in a memo issued by HUD on August 26, 2011. A conditional contract for the purchase of property is a legal agreement between the potential buyer of a real estate property and the owner of the property. The conditional contract includes conditions that must be met for the obligation to purchase to become binding. Conditional contracts can be used in more limited circumstances than option contracts. As already mentioned, conditional contracts are allowed only for residential property acquisition.

[HUD Memo:
Conditional Contracts
and Environmental
Review](#)

Additionally, for single family properties (one to four units), the purchase contract must include the appropriate language for a conditional contract; and

- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the Grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the Grantee has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be in an amount of \$1,000 or less.

Finally, for multi-family properties:

- The structure may not be located in a Special Flood Hazard Area (100-year floodplain or certain activities in the 500-year floodplain);



- The purchase contract must include the appropriate language for a conditional contract found in the August 26, 2011 HUD memo on Conditional Contracts;
- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the Grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the Grantee has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be a nominal amount of three percent of the purchase price or less.

Expenditures for Exempt Activities

Expenditures for activities that are exempt from NEPA per Part 58.34 (i.e., general administration, environmental review, planning, engineering and design work, etc.) may be incurred after the date of the conditional grant award letter. The exempt activities must be documented as such in the environmental review record. Grantees must submit a letter to the State requesting approval to begin incurring such expenses prior to executing the Standard Agreement. Upon receiving State approval, Grantees may begin incurring costs for these activities.

[24 CFR §58.34](#)

NOTE: Grantees should be aware that they are proceeding at their own risk, and that CDBG expenditures will not be reimbursed until after the CDBG Standard Agreement has been executed and all special conditions have been cleared.

Section 3.3 Classifying Activities and Conducting the Review

To begin the environmental review process, the responsible entity must first determine the environmental classification of each activity in the project. A complete and accurate project description is needed, or the project may be noncompliant with Part 58 and related federal laws and authorities. A complete and accurate project description ensures that the responsible entity is performing the correct level of NEPA review. The project description must include all elements of the project whether funded with or without HUD funds. The description shall include a project



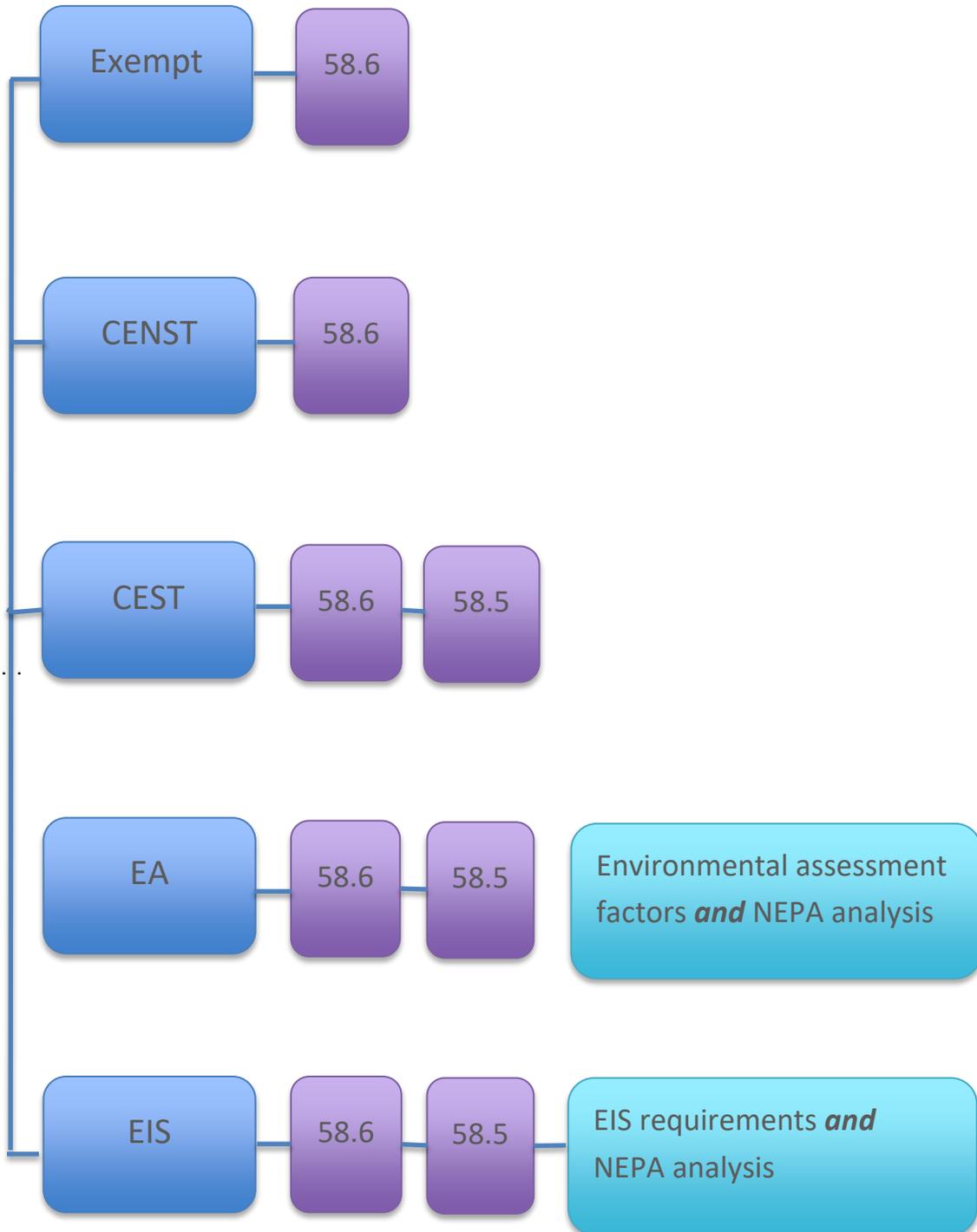
budget as well as a narrative of how the project will impact the environment, neighborhood, and project residents.

This section discusses the types of classifications and the steps required for each classification to ensure compliance with the applicable requirements. The environmental regulations at Part 58.32 require the responsible entity to “...group together and evaluate as a single project all individual activities which are related geographically or functionally,” whether or not HUD-assistance will be used to fund all the project activities or just some of the project activities. This section will focus upon the five environmental classifications that are recognized under the CDBG program:

- Exempt activities;
- Categorically excluded activities not subject to 24 CFR 58.5 and – related federal laws and authorities (CENST);
- Categorically excluded activities subject to 24 CFR 58.5 and – related federal laws and authorities (CEST);
- Activities requiring an environment assessment (EA); or
- Activities requiring an environmental impact statement (EIS).

The level of environmental review will be dictated by whichever project activity that requires the higher level of review. For example, if one activity in a project requires an environmental assessment then the entire project must be assessed at this level of review.

In addition, all levels require compliance with 24 CFR 58.6. Regardless of whether the level of review is determined to be exempt, categorically excluded, or an environmental assessment, these “other requirements” must also be documented for compliance.





3.3.1. 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 at Part 58.34(a)(1) through (12).

[24 CFR §58.34
\(a\) \(1\) through
\(12\)](#)

[Part 58 Exempt
or CENST Review
Format](#)

- 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 (does not include the initial project activity – only future year payments of P&I); and
- Any of the categorically excluded activities subject to section 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 section 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to section 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. The responsible entity must complete the form titled Environmental Review for Activity/Project that is Exempt or Categorically Excluded Not Subject for all but the last bullet in the list above. The form must be signed by the ECO and a copy sent to HCD for review.

NOTE: The last group of exempt activities in the list above actually is another classification that converts to Exempt. These activities are Categorically Excluded Subject to (CEST) Section 58.5. The responsible entity should use the form discussed in that category below to document the determination that they are exempt.

The ado does *not* have to complete the Notice of Intent to Request Release of Funds (NOI/RROF) for Exempt activities or CEST that convert to Exempt. The environmental review for Exempt activities is complete when the form is completed.

Exempt Activities review process:

- Complete Determination of Level of Environmental Review
- Complete Part 58 Exempt or CENST Review Format and attach supporting documentation
- Certifying Officer signs all forms
- If activity is Exempt no further review is required and no public noticing or RROF

3.3.2. Categorically Excluded Not Subject to Section 58.5 (CENST) Activities

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

[24 CFR §58.35\(b\)](#)

- 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.
- Approval of supplemental assistance to a project previously approved under Part 58, if the approval was made by the same Responsible Entity that conducted the environmental review on the original project AND re-evaluation of the findings is not required under Part 58.47. See the section later in the chapter on re-evaluation of previously cleared projects for further guidance.

To complete environmental requirements for CENST activities, the responsible entity must make a finding that the activities qualify under that category by completing the form titled Environmental Review for Activity/Project that Categorically Excluded Not Subject to Section 58.5. The form must be signed by the ECO and a copy sent to HCD for review.

[Part 58 Exempt
or CENST Review
Format](#)

The Responsible Entity does *not* have to complete a Notice of Intent to Request Release of Funds (NOI/RROF). The environmental review for CENST activities is complete.

CENST review process:

- Complete Determination of Level of Environmental Review
- Complete Part 58 Exempt or CENST Review Format and attach supporting documentation
- Certifying Officer signs all forms
- If activity is CENST no further review is required and no public noticing or RROF

3.3.3. Categorically Excluded Subject to Section 58.5 (CEST) Activities

The list of categorically excluded activities is found at 24 CFR 58.35 of the environmental regulations. While the activities listed in section 58.35(a) are categorically excluded from National Environmental Protection Act

[24 CFR §58.35\(a\)](#)



(NEPA) requirements, the Grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in section 58.5.

The following are categorically excluded activities subject to section 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, and
 - The land use is not changed.
 - 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. The units can be four one-unit buildings or one four-unit building or any combination in between;
- 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.

To complete environmental requirements for CEST projects, the responsible entity must take the following steps:

1. Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.
 - It is highly desirable to avoid floodplains and wetlands when undertaking project activities. However, when this cannot be avoided, specific 8-Step review procedures contained in 24 CFR Part 55 (Floodplain Management and Wetlands Protection) must be completed. Since development in these areas is clearly an environmental issue, the effects of these actions must be clearly articulated in one of the decision processes described in §§ 55.12(a)(3) and 55.20, whichever process is applicable. (See the Projects in Floodplains and Wetlands section.)
 - If the project is located in the floodplain or proposes construction in a wetland, the Responsible Entity must provide written documentation of the decision process in the ERR. See the section, "Projects in Floodplains and Wetlands" later in this chapter for more information.
2. Complete the form Environmental Review for Activity/Project that is Categorically Excluded Subject to (CEST) Section 58.5. This form includes the statutory checklist and helps to comply with the other (non-NEPA) federal laws.

[Part 58 Categorically Excluded Subject To Review Form](#)



- Seek a concurrence letter from the [California Office of Historic Preservation](#), which serves as the State Historic Preservation Office (SHPO). Grantees should submit a request for consultation for a concurrence on whether the activity (or activities) have an effect on historic preservation. The SHPO has 30 days for comments. Respond to these comments as required and file all correspondence and evidence of response in your ERR. Be sure reliable sources are cited on each line of the checklist. All historic property reviews must be done prior to the responsible entity making a final determination of environmental status.
- NEPA requires consultation with federally recognized tribal entities. Refer to HUD’s CPD Notice 12-006 for more information.

[Consulting with CA SHPO under Section 106](#)
[Section 106 Submission Checklist](#)
[Guide to Working with Non-Federally Recognized Tribes Under Section 106](#)

[Sample Tribal Consultation Letter](#)
[CPD Notice 12-006](#)
[When to Consult with Tribes Under Section 106](#)

NOTE: Although grantees are not required to consult with non-federally recognized tribes, everyone is entitled to participate in the section 106 process. Therefore, grantees are encouraged to invite non-federally recognized tribes to consult as additional consulting parties if they have a demonstrated interest in the project.

3. The CEST form also documents when CEST activities can convert to Exempt status. As described above, the activities converting to Exempt status do not require publishing of the NOI or a RROF to complete the environmental certification. The form must be signed by the ECO and a copy sent to HCD for review. For activities converting to Exempt status, the environmental review is complete.
4. For those projects that cannot convert to exempt, publish and distribute the Notice of Intent to Request a Release of Funds (NOI/RROF). The Notice informs the public that the Grantee will accept written comments on the findings of its ERR and of the Grantee’s intention to request release of

[Sample Notice of Intent to Request Release of Funds](#)



- funds from the state. At least seven (7) calendar days after the date of publication must be allowed for public comment. The notice also says that HCD will receive objections for at least 15 days following receipt of the Grantee’s request for release of funds.
5. The NOI/RROF must be published in a daily newspaper of general circulation in the affected community. For example, the Fresno Bee is such a daily newspaper serving many communities in the Central Valley. The Grantee may also be required to publish in non-English newspapers based on their Language Access Plan.
 6. The Responsible Entity must also send a copy of the notice (NOI/RROF) to interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities) and appropriate tribal/local/state/federal

[Appendix 3-1: Environmental Contacts](#)

NOTE: All time periods for notices shall be counted in calendar days. The first day of a time period begins on the day following the publication of the notice. Do NOT count the day the notice is published.

- agencies and to the regional offices of the Environmental Protection Agencies and the HUD Field Office. See Appendix 3-1 for the list of Environmental Contacts.
7. After the seven-day comment period has elapsed and the Responsible Entity has addressed any comments received, the ECO must submit the following to HCD:
 - Signed CEST form including all attachments;
 - Publishers Affidavit of the Notice of Intent to Request Release of Funds (NOI/RROF) or “tear sheet” (which can be digital), and;
 - Request for Release of Funds and Certification - HUD Form 7015.15.
 8. The environmental review of CEST activities is complete. However, activities cannot be undertaken until HCD issues an authorization of approval. HCD will issue an Authority to Use Grant Funds - HUD Form 7015.16.

[Request for Release of Funds \(HUD Form 7015.15\)](#)

[Authority to Use Grant Funds \(HUD Form 7015.16\)](#)



CEST review process:

- Complete Determination of Level of Environmental Review
- Complete Part 58 Environmental Review - Format for Activities Categorically Excluded under 58.35(a) (CEST) and attach supporting documentation
- Complete Request for Release of Funds and Certification
- Certifying Officer signs all forms
- Publish and/or post notices

3.3.4. Projects in Floodplains and Wetlands (24 CFR Part 55)

When a project meets one or more of the following criteria, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990 and 24 CFR Part 55:

[24 CFR Part 55](#)

- The project is in the 100-year floodplain (Zones A or V mapped by FEMA, or best available information);
- The project is a “critical action” in a 500-year floodplain. A critical action is any activity where even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that (1) produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials; (2) provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events; or (3) are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (e.g., hospitals, nursing homes, etc.). For more details, refer to 24 CFR Part 55; or
- The project proposes construction in a wetland.

There are two decision-making processes identified in Part 55 concerning floodplains. They are the 8-step process (Sec. 55.20) and the 5-step process (Sec. 55.12(a)(3)). The 8-step process will apply unless a project falls under the allowed criteria for using the simplified 5-step decision making process, which are the following:

[HUD 8-Step Decision Making Process Flowchart](#)

Appendix 3-2: 5-Step Decision Making Process Flowchart

- Disposition of multifamily and single family (1-4 unit) properties (Sec. 55.12(a)(1)).



- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) (Sec. 55.12.(a)(3))
 - Number of units is not increased more than 20%;
 - Does not involve conversion from non-residential to residential; and
 - Does not meet definition of “substantial improvement” (Sec. 55.2(b)(10)(i)(A)(2)).
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) (Sec. 55.12(a)(4))
 - Does not meet the threshold of “substantial improvement” (i.e., the cost equals or exceeds 50% of the market value before damage occurred); and
 - The structure footprint and paved area is not increased more than 10%.
- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places or on a State Inventory of Historic Places. (“Substantial improvement” does not apply to historic properties, Sec. 55.2(b)(10)(ii)(B)).

The Grantee must document in writing which process is applicable and each step of the applicable process.

The HUD document *Procedures for Making Determinations on Floodplain and Wetland Management* contains an explanation of the 8-Step decision process. When the 5-Step decision process is permissible for floodplains, only Steps 1, 4 through 6, and 8 are applicable.

The 8-Step Process

Step One: Floodplain Determination. Determine if the project is located in a base (100-year) floodplain. A floodplain refers to any land area susceptible to being inundated from any source of flooding including those which can be flooded from small and often dry water course.

[Procedures for Making Determinations on Floodplain and Wetland Management](#)

- The maps identified below are published by the Federal Emergency Management Agency (FEMA). Check the following maps to determine if the project is located within a floodplain:
 - Flood Hazard Boundary Map; and/or



- Flood Insurance Rate Map (both can be found here: <https://msc.fema.gov/portal>).
- If the community has been identified as flood-prone by FEMA, a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
- If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
 - U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team;
 - Local Soil Conservation Service District;
 - Floodplain Information Reports;
 - USGS Flood-prone Area;
 - Topographic Quadrangle maps; or
 - State and local maps and records of flooding.
- Use floodplain maps to make this decision and record date in the ERR

Step Two: Early Public Review. Executive Order (E.O.) 11988 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the floodplain. Involve the public in the decision-making process as follows:

Publish the Floodplains and Wetlands Early Public Notice in the non-legal section of the newspaper of general circulation in the area to make the public aware of the intent. The Grantee may also be required to publish in non-English newspapers based on their Language Access Plan. Refer to Sec. 55.20(a) for the minimum information that must be given in the notice. See page one of the HUD Sample Notices for Activities in 100-year Floodplain and Wetland. The Floodplains and Wetlands Early Public Notice must be published (it cannot be posted).

[HUD Sample Notices for
Activities in 100-year
Floodplain
And Wetland](#)

- The notice must provide a complete description of the proposed action.
- The notice must allow at least a 15-day comment period for public comments.



Step Three: Identify and Evaluate Alternate Locations. Determine if there is a practical alternative. This determination requires the responsible entity to consider whether the base floodplain can be avoided:

- Through alternative siting;
- Through alternative action that performs the intended function but would minimize harm to/within the floodplain; or
- By taking no action.

Step Four: Identify Impacts of Proposed Project. Regardless of whether the location is located within a floodplain or outside a floodplain, both the direct and indirect potential impacts must be identified and reviewed.

If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

Step Five: Identify Methods to Restore and Preserve Potential Harm to Floodplains and Wetlands Area. If the proposed project has identifiable impacts (as identified in Step 4), the floodplains and wetlands must be restored and preserved.

- The concept of minimization applies to harm.
- The concept of restoration and preservation applies only in floodplain values.

Methods to be used to perform these actions are discussed in Step 6.

Step Six: Re-evaluate Alternatives. At this stage, the proposed project needs to be re-evaluated, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve floodplain values.

- If the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain sites practicable.
- If the proposed project is outside the floodplain but has impacts that cannot be minimized, the recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.
- If neither is acceptable, the alternative is no action.



The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain. The comparison should emphasize floodplain values and a site out of the floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

Step Seven: Publish the Floodplains and Wetlands Notice of Explanation.

If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain, the Grantee must publish the Floodplains and Wetlands Notice of Explanation in the non-legal section of a local newspaper of general circulation. The Grantee may also be required to publish in non-English newspapers based on their Language Access Plan. Refer to sec. 55.20(a) and (g) for the minimum information that must be given in the notice. See page two of the HUD Sample Notices for Activities in 100-year Floodplain and Wetland.

[HUD Sample Notices for Activities in 100-year Floodplain And Wetland](#)

- The Floodplains and Wetlands Notice of Explanation (described previously) may **not** be posted.
- It should be noted that when a project triggers the E.O. 11988 “Eight Step Process,” the Notice of Early Public Review should be published first and the minimum 15-day comment period elapsed **before** the Grantee can publish the Floodplains and Wetlands Notice of Explanation.
- The Floodplains and Wetlands Notice of Explanation can be published simultaneously with the 24 CFR Part 58 required Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).
- Any written comments received in response to the above required notice must be addressed and filed in the ERR.
- Document compliance with E.O. 11988/11990 by using the sample documentation memorandum provided.
- File all documentation and responses relating to the above described procedures in the ERR.

[Sample Documentation of 8-Step Process](#)



Step Eight: Implement the Proposed Project. Implement the project with appropriate mitigation.

NOTE: If directional boring or drilling beneath a wetland is anticipated, please consult with HCD prior to undertaking the Eight-Step Process. HUD issued guidance in 2011 that exempts directional boring/drilling beneath wetlands from the Eight-Step Process provided that certain conditions are met. As stated previously, when the 5-Step decision process is required, only Steps 1, 4 through 6, and 8 are applicable.

3.3.5. Activities Requiring an Environmental Assessment (EA)

Activities which are neither Exempt, CENST, nor CEST will require an Environmental Assessment (EA) documenting compliance with NEPA and with the environmental requirements of other federal laws. These activities generally include major rehabilitation, most new construction, reconstruction, or demolition, any change in land use, or whenever no exemption or exclusion applies. There is no specific regulatory listing of activities that require an EA but if no categorical exclusion applies, an EA is required by default. Generally, new construction, reconstruction, demolition, major rehab, or anything involving a change in land use will require an EA.

[24 CFR §58.40 - §58.45](#)

The Responsible Entity must be aware that if a project consists of several activities that by themselves would fall under various levels as outlined above, the responsible entity must aggregate the review and conduct an environmental assessment on the entire project if one of the activities triggers an EA.

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

1. Complete the Determination of Environmental Assessment form. The responsible entity must ensure that reliable documentation sources are cited for every item on the compliance documentation checklist.
2. Like CEST, complete the statutory checklist, including historic preservation and floodplain/wetlands requirements within the form.

[Part 58 Environmental Assessment Form](#)



3. Like CEST activities, seek a concurrence letter from the California Office of Historic Preservation (OHP), which serves as the State Historic Preservation Office (SHPO). Grantees must submit a hard copy request via certified mail or some other track-able mail option. Upon receipt of a submittal, OHP reviewers look for the information suggested in the checklist we've provided and will respond within 30 days. If any required information is not included in the submittal, the assigned OHP reviewer will contact the agency (or applicant) and request this information. The 30-day review clock resets each time OHP makes a request for additional information.

[California SHPO Section 106 Review Checklist](#)

[Consulting with CA SHPO under Section 106](#)

4. As with CEST activities, NEPA requires consultation with tribal entities. Refer to HUD's CPD Notice 12-006 for more information on NEPA requirements.

[Sample Tribal Consultation Letter](#)

[CPD Notice 12-006](#)

5. The final step in the process involves making a determination as to whether the project will or will not have a significant impact on the environment.

[When to Consult with Tribes Under Section 106](#)

This can be done once the review has been completed and all 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 (EIS). Both the finding and the EA must be signed by your ECO and included in the ERR. See section below on EA Result: Finding Significant Impact & EIS.

EA Result: Finding of No Significant Impact (FONSI)

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 human environment and, therefore, does not require an environmental impact statement. If this is the case, the responsible entity must complete the following:



1. Provide public notice called the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) from the HCD.

[Sample Combined Notice \(FONSI/RROF\)](#)

- The FONSI and NOI/RROF must be published in a newspaper of daily general circulation that covers the project service area. For example, the Fresno Bee is such a daily newspaper serving many communities in the Central Valley.
- The notice must also be distributed to interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities) and appropriate local/state/federal agencies. See Appendix 3-1 for the list of Environmental Contacts.
- Provide a 15-day period for comments on the Combined Notice.

Appendix 3-1:
Environmental Contacts

2. After the 15-day comment period has elapsed and the Responsible Entity has addressed any comments received, the ECO must submit the following to HCD:

- Signed Determination of Environmental Assessment form including all attachments;
- Publishers Affidavit of the Combined Notice or “tear sheet” (which can be digital), and
- Request for Release of Funds and Certification - HUD Form 7015.15.

[Request for Release of Funds \(HUD Form 7015.15\)](#)

3. The EA review process is complete. However, activities cannot be undertaken until HCD issues an authorization of approval. HCD must allow an additional 15-day comment

[Authority to Use Grant Funds \(HUD Form 7015.16\)](#)

NOTE: It is very important to remember the EA process requires two separate 15-day review periods. A 15-day period for comment to the Responsible Entity and, after HCD has received the RROF, an additional 15-day period for comment to HCD. The HCD 15-day comment period does not commence until the date HCD receives the notice, or the date specified in the published notice, whichever is later. Call or email HCD to verify dates on the combined notice before publishing.



period. If no comments are received, HCD will issue an Authority to Use Grant Funds - HUD Form 7015.16.

EA Result: Finding Significant Impact & Environmental Impact Statement (EIS)

An Environmental Impact Statement (EIS) is required when a project is determined to have a potentially significant impact on the environment. Some examples of projects that require an EIS are as follows:

[24 CFR §58.37](#)

- Construction of new limited access highway.
- Construction or installation or demolition/removal or substantial rehabilitation of 2,500 or more housing units.
- Construction of, hospitals or facilities containing a total of 2,500 or more beds.
- Water or sewer project providing capacity to support 2,500 or more additional housing units.
- Project results in unacceptable noise levels (65 or 75 decibels, depending on site use).

Consult with HCD if an EIS is anticipated or results from an EA.

Section 3.4 Environmental Review Record (ERR)

Each Responsible Entity (Grantee) must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative costs and tenant-based rental assistance. This written record or file is called the Environmental Review Record (ERR) and must be available for public review. Environmental Review Records maintained electronically must be in compliance with the requirements of Part 58.38 which states: “The responsible entity must maintain a written record of the environmental review undertaken... for each project. This document will be designated the ‘Environmental Review Record’ (ERR)...” Electronically maintained ERRs must remain available for public review and monitoring in accordance with Part 58.35 (i.e., an individual, organization or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee’s computer or a private network).

[24 CFR §58.38](#)

NOTE: While HCD CDBG staff may not require a hard copy to be submitted for review, the original hard copy document should be retained in the local government’s files.



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

- ✓ Describe the project and each of the related activities comprising the project, regardless of individual activity funding source;
- ✓ 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 Part 58.

The ERR must contain the following documents and parts as applicable:

- ✓ Level of Environment Review
- ✓ Finding – Exempt activity, CENST 58.5, CEST 58.5
- ✓ Section 106 SHPO documentation and letter of concurrence
- ✓ Tribal coordination letters
- ✓ Statutory checklist
- ✓ Early Floodplain Wetland Notice
- ✓ Final Floodplain Wetland Notice
- ✓ Environmental Assessment
- ✓ Copies of all maps, graphs and studies pertaining to the project and/or project site and ER
- ✓ Copies of all correspondence pertaining to the project and/or project site
- ✓ Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds
- ✓ Request for Release of Funds and Certification and Authority to Use Grant Funds

The ERR will vary in length and content depending upon the level of review required for the categories of proposed activities. Public comments, concerns and appropriate resolution by the recipient with regard to public notices that have been issued by the Grantee are extremely important and must be fully documented in the ERR. Keep in mind that, on the average, an EA for a project usually takes at least 90 days to complete.

Grantees must carry out and document completion of the prescribed procedures for compliance with NEPA. Depending on the complexity of the project, these procedures can be time-consuming. Jurisdictions might consider the option of hiring (through proper



procurement methods) a consultant or consulting firm that specializes in environmental reviews.

Section 3.5 Other Environmental Review Approaches

Tiered Reviews

Tiering is a specialized form of conducting environmental reviews and is not appropriate for all activities, funding sources, or Grantees. However, using tiered reviews may increase efficiency when at the planning level the Responsible Entity does not yet fully know the specific timing, location, or environmental impacts. For HUD environmental reviews, tiering may be appropriate when the Responsible Entity is evaluating a collection of projects that would fund the same or very similar activities repeatedly within a defined local geographic area and timeframe but where the specific sites are not yet known. Some examples include housing rehabilitation or homebuyer programs in a specific community or a redevelopment project with repeated activities such as sidewalk improvements in low- and moderate-income areas. In such instances, the Responsible Entity:

[HUD Tiered Environmental Reviews](#)

1. Completes a Tier 1 up-front programmatic completion of the environmental review form, often the Environmental Review for CEST form that identifies potential applicable compliance areas. Include strategy for addressing other law/authorities at the site-specific level.
2. Performs Tier 2 review when specific properties/sites are identified providing the address-specific review criteria. The Responsible Entity may use the checklist from the Broad Level Review Form to re-visit all compliance areas that were not cleared during the Tier 1 review.

[Broad Level Tiered Review Form \(CEST Format\)](#)

Using this process, Grantees can publish a NOI/RROF and receive a Release of Funds based on the Tier 1 programmatic information. The site-specific compliance review (Tier 2) for each individual address must then be completed prior to incurring hard costs for that property.

[Sample Notice of Intent to Request Release of Funds for Tiered Reviews](#)

Together the broad-level Tier 1 and site-specific Tier 2 reviews are a complete Environmental Review Record good for up to 5 years.



Re-Evaluation of Previously Cleared Projects

Anytime there is a change to a project, it must be re-evaluated. Those changes can include:

- A change in project location
- Adding additional funding to a project
- Expanding the scope of a project
- A major disaster or other unexpected event on the project site
- A change in potential project ownership
- A major construction delay has occurred that pushes back completion for a number of years

The purpose of the Responsible Entity’s re-evaluation is to determine if the environmental level of review has stayed the same or changed. It will be important to evaluate the change to see if it still fits within the parameters of your original level of review. The level of review is tied to the type of activity you are accomplishing. The level of Reviews are:

- [Exempt](#)
- [Categorically Excluded Not Subject to the Related Laws and Authorities](#) (CENST)
- [Categorically Excluded Subject to the Related Laws and Authorities](#) (CEST)
- [Environmental Assessment](#) (EA)

A change in your level of review will require you to complete a new environmental evaluation of the changed project and more than likely go back out for public review.

| Previous Level of Review | Current Level of Review | Public review required | Public review Notice to publish | Environmental Review Document |
|--------------------------|-------------------------|------------------------|---------------------------------|-------------------------------|
| Exempt | CENST | No | n/a | Memo to the file |
| CENST | CEST | Yes | NOI | Statutory Checklist |
| CEST | EA | Yes | NOI/RROF | Environmental Assessment |

If your level of review does not change, no public review is required but you must still update your ERR.

Updates to the ERR:



- If the level of review remains the same, update the statutory checklist or EA:
 - Adding a description of the change
 - Adding additional documentation as it relates to the change by going through each of the review criteria.
 - Completing the form in appendix 3-3
 - Submitting the form and documentation to you HCD project manager via the eCivis system
- If the level of review has changed, complete either the statutory checklist or EA:
 - Adding a description of the change
 - Completing the form in appendix 3-3
 - Completing a new environmental review
 - Publishing public review notices
 - Requesting release of funds

Appendix 3-3: Re-Evaluation of Environmental Review

Using Prior Reviews:

The age of the environmental review acceptable to HCD depends on the nature of the project, generally 3 to 5 years. Please contact HCD for guidance if using an environmental review that has already been conducted.

Another Agency is Involved

When another federal or state agency has funds in the project, it will frequently conduct its own environmental review process. The Grantee is free to use that agency's review to compile its own record. In fact, it makes some sense to avoid unnecessary duplication of effort. However, other federal agencies do not always cover all of the same environmental requirements as HUD. The Grantee is reminded that:

- Use of another agency's documentation does not avoid or minimize its own responsibilities for fulfilling the compliance reviews for CDBG.

Before making a finding based on another agency's review, the Responsible Entity should check the review carefully against the requirements referenced in this chapter, to ensure that the scope of work is the same and contents are sufficiently inclusive to allow the Grantee to meet its responsibilities. There are HUD-specific review criteria that are not performed by other federal agencies. If that review falls short in certain areas, it can be supplemented by the Grantee to meet its requirements.



Remember, the Grantee cannot simply substitute another agency's hearing and comment process for the notice requirements referenced here. The Grantee must check that the public comment process and review requirements fulfil the format prescribed in this implementation guide.

If possible, it is encouraged that the Grantee combines the comment process for funds from the same federal agency (HOME and CDBG, for example).

Please contact HCD for additional guidance on combining notices with other agencies.

Section 3.6 California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) is a California state statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

CEQA applies to activities defined by CEQA as projects and undertaken by a public agency or a private activity which must receive some discretionary approval. Undertaking CEQA is the responsibility of the local agency providing land use approval for a project, not the responsibility of HCD. HCD reviews NEPA and verifies that CEQA was completed at the local level.

Section 3.7 Other Environmental Review Resources

HUD and other federal agencies provide a number of resources and tools to assist in preparing an environmental rule.

[Environmental Review Resources and Tools](#)