

SECTION IV. ENVIRONMENTAL REVIEW

Before **any** CDBG funds can be obligated, expended, or drawn down from the State, the grantee must complete an environmental review for his/her project **and** have received a Release of Funds (ROF) letter from the Department, indicating that the environmental review requirements have been met. All documentation related to this process constitutes the Environmental Review Record (**ERR**).

For projects funded with a **HOUSING REHABILITATION revolving loan**, the grantee may complete a generic environmental review. As site specific locations of the homes to be rehabilitated and/or the businesses to be assisted are not usually known at the time of grant application, a Site Specific Environmental Clearance Checklist (**Exhibit IV-E**), is required PRIOR to obligating CDBG funds.

For projects funded with an **ECONOMIC DEVELOPMENT revolving loan**, the grantee may obtain the generic environmental review documentation which would be used as a source reference for the actual environmental reviews required for each project. The generic environmental review, known as a reference source for economic development projects, can be used in completing the project specific reviews.

NOTE: For projects that contain the **acquisition of either land or structures**, it is now permissible to enter into an **"option to buy"** agreement **prior** to the completion of the appropriate environmental review. The Grantee should utilize its non-federal revenue sources for the earnest deposit if one is required. **IN ORDER TO AVOID THE ISSUE OF OBLIGATING FEDERAL FUNDS PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW, THE "OPTION" MUST CONTAIN THE PROVISION/CLAUSE THAT THE "OPTION" IS CONTINGENT UPON THE SUCCESSFUL COMPLETION OF THE ENVIRONMENTAL REVIEW.**

IT IS STRONGLY ENCOURAGED BY THE STATE THAT THE GRANTEE, PRIOR TO SIGNING AN "OPTION", CONDUCT A PRELIMINARY "WALK THROUGH" OF THE SITE OR FACILITY, FOR THE PURPOSE OF DETERMINING THE LIKELIHOOD FOR THE NEED FOR ANY ENVIRONMENTAL MITIGATION THAT MAY BE NECESSARY AS A RESULT OF THE FINDING OF THE REVIEW. THE COST OF MITIGATION MAY BE UNAFFORDABLE GIVEN EXISTING REVENUES FOR THE PROJECT.

Designation of a Certifying Official

For each project, the grantee will need to identify and designate a **certifying official** who will sign the environmental review on behalf of the grantee. HUD prefers that the certifying official be a local government elected official or senior staff member (city manager, county planning director, etc.). Document the designation of the certifying official in the Environmental Review Record (ERR).

Determining Which Level of Environmental Review Is Appropriate for Your Project

To determine the extent of the environmental review required for each project, the Department follows the rules laid out in the Code of Federal Regulations (CFR). The CFR is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government (in this case, Housing and Urban Development). There are four basic categories of environmental review. These categories correspond to the varying scope, complexity and anticipated environmental disturbances associated with different types of CDBG (and HOME) projects.

The four categories of environmental review are:

- Exempt Activities
- Categorical Excluded Activities Not Subject to CFR 58.5
- Categorically Excluded Activities Subject to CFR 58.5 requiring the Statutory Checklist
- Environmental Assessment for Activities Subject to CFR 58.5

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A. EXEMPT ACTIVITIES

Activities considered "exempt" from environmental review requirements of NEPA and other related federal environmental laws include:

- Information and financial services
- Administrative and management activities
- Environmental and other studies, resource identification, and the development of plans and strategies
- Most engineering and design costs associated with eligible projects
- Inspections and testing of properties for hazards or defects
- Project planning
- Purchase of insurance
- Purchase of tools
- Technical assistance and training
- Interim assistance to arrest the effects of an imminent threat or physical deterioration in which the assistance does not alter environmental conditions.
- Public services that will not have a physical impact or result in any physical changes (e.g., employment, child care, health, education, counseling, welfare)
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration
- Per HUD guidance, economic development projects which are non-physical / non-altering projects (such as solely operating expenses and inventory purchases) will normally be exempt.

For any project activity determined by the certifying official to be exempt, the applicant should prepare **EXHIBIT IV-A**. Submit this form to the state and retain a copy for your project file.

B. CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO CFR 58.5

Activities considered "Categorically Excluded Not Subject to CFR 58.5" include:

- Tenant-based rental assistance
- Supportive services (involving payments in the form of subsidies, e.g., health care, housing services, permanent housing placement, day care, Nutritional services, Short-term payments for rent/mortgage/utility costs, Assistance in gaining access to local, State, and federal government benefits and services)
- Operating costs (e.g., Maintenance, Security, Operation, Utilities, furnishings, Equipment, Supplies, Staff training and recruitment, Other incidental costs)
- Economic development activities (e.g., Equipment purchase, Inventory financing, Interest subsidy, Operating expenses, 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, including, Closing costs, Down payment assistance, Interest buy downs, Similar activities that result in the transfer of title
- Affordable housing pre-development costs including,
 - Legal 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
 - Consulting 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
 - Developer 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
 - 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

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- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under 24 CFR Part 58 if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR Part 58.47.

For any project activity determined by the certifying official to be Categorically Excluded Not Subject to CRF 58.5, the applicant should prepare **EXHIBIT IV-B**. This form must be submitted to the state to obtain a Release of Funds (ROF) letter before any funds can be drawn down. Retain a copy for your project file.

C. CATEGORICALLY EXCLUDED ACTIVITIES SUBJECT TO CFR 58.5 REQUIRING THE STATUTORY CHECKLIST

Activities considered “Categorically Excluded Subject to CFR 58.5” include projects involving rehabilitation, reconstruction, and/or replacement of an existing facility or infrastructure which would cause only **minimal** change in use, size, or capacity (less than 20%). These activities are categorically excluded from NEPA requirements, but remain subject to other related environmental laws.

- 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 (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets)
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons
- Rehabilitation of buildings and improvements when the following conditions are met:
 - 1 to 4 unit building for residential use, when density is not increased beyond 4 units; land use is not changed; and the footprint of the building is not increased in a floodplain or in a wetland area
 - Multifamily residential buildings, when:
 - 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 cost of replacement after rehabilitation
 - Non-residential structures, including commercial, industrial, and public buildings, when:
 - Facilities and improvement 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, such as from non-residential to residential, commercial to industrial, or from one industrial use to another
- An individual action (non-rehabilitation) on up to 4 dwelling units where there are maximum 4 units on any one site. The units can be 4 one-unit buildings or 1 four-unit building or any combination in between
- An individual action (non-rehabilitation) on a project of 5 or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than 4 housing units on any one site
- Acquisition (including leasing) or disposition of, or equity loans on, an existing structure
- Acquisition (including leasing) of vacant land provided the structure or land acquired, financed, or disposed of will be retained for the same use
- Combinations of the above activities

For **housing rehabilitation** projects, the grantee may develop a generic environmental review and will probably arrive at a finding of categorical exclusion, i.e., no federal laws have been triggered at this point. **This determination requires the publication of a Notice of Intent to Request Release of Funds (NOI/RROF - Exhibit IV-C.4) and must be supplemented by the completion of a Site Specific Checklist (Exhibit IV-E) to see if any federal laws are triggered.** The grantee or sub grantee is required to complete **Exhibit IV-E** prior to the initial reimbursement request for CDBG funds. The completion and submission of **EXHIBIT IV-E** verifies that the grantee or sub grantee has completed the environmental review for the activity for which it is seeking to apply CDBG funds.

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For **OED Revolving Loan Fund Projects only**, per HUD guidance, if certain activities (such as construction) **are or can** proceed independent of the CDBG funds, (such as for working capital) as long as CDBG funds **are not** going into the stated activity, the environment reviews for such projects may be defined as more narrow in scope (including only the CDBG activities and other activities not proceeding).

For Categorically Excluded Activities, the grantee must prepare a Statutory Checklist (**EXHIBIT IV-C**). To assist grantees in completing the Statutory Checklist, the Department has prepared Statutory Checklist Instructions (**EXHIBIT IV-C.1**) which provide regulatory background and contact information for all consulting agencies.

In preparing and compiling the Statutory Checklist, the grantee is urged to attach any and all documentation (letters, e-mails, floodplain maps, etc.) used to arrive at the findings in the Checklist and reference these documents in the area marked "Reference to Notes Providing Documentation Sources & Correspondence." This would include making reference to phone conversations with local government sources (such as a planning or building departments). In referencing phone conversations, please indicate who you spoke with and when the conversation occurred.

Once all sections of the Statutory Checklist are completed, the certifying official must make a determination on whether any of the applicable laws and authorities cited were "triggered". If any laws or authorities were triggered, a publication of a Notice of Intent to Request Release of Funds (**EXHIBIT IV-C.4**) may be required.

If none of the applicable laws and authorities were triggered in the course of the environmental review (as is the case in most instances), the certifying official signs and submits the Statutory Checklist (along with all accompanying documentation) to the Department. A copy should be retained and placed in the grantee ERR.

D. ENVIRONMENTAL ASSESSMENT FOR ACTIVITIES SUBJECT TO CFR 58.5

Projects involving new construction or extensive rehabilitation that will substantially increase the size and capacity of a facility will require the completion of an Environmental Assessment (**EXHIBIT IV-D**). To assist grantees in completing the Environmental Assessment, refer to the Environmental Assessment Instructions (**EXHIBIT IV-D.1**) and the Statutory Checklist Instructions (**EXHIBIT IV-C.1**) which provide regulatory background and contact information for all consulting agencies.

In preparing and compiling the Environmental Assessment, the grantee is urged to attach any and all documentation (letters, e-mails, floodplain maps, etc.) used to arrive at the findings in the Assessment and reference these documents in the area marked "Source of Documentation." This would include making reference to phone conversations with local government sources (such as a planning or building departments). In referencing phone conversations, please indicate who you spoke with and when the conversation occurred.

Once all sections of the Environmental Assessment are completed, the certifying official must make a determination on whether any of the applicable laws and authorities cited were "triggered". Ideally, the grantee will make a Finding of No Significant Impact. **All grantees completing an Environmental Assessment must publish a Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds (FONSI/RROF - EXHIBIT IV-D.2).**

If the certifying official makes a determination that there is a Finding of Significant Impact, s/he should immediately contact the state project monitor for further instructions. The program monitor will work with the grantee directly to decide a course of action for fulfillment of the environmental requirements.

State Monitoring

Environmental standards monitoring question can be found in **Section X (State CDBG Monitoring)** of this guidebook. The section specifically details the items to be addressed when the state field representative monitors your CDBG project.