

CHAPTER II

ENVIRONMENTAL REVIEW

I. INTRODUCTION

All projects and related activities funded through CDBG are subject to the provisions of the National Environmental Policy Act of 1969, as amended (NEPA). The primary purpose of the laws and authorities governing the environmental process is to establish national policy, goals and procedures to protect, restore and enhance environmental quality. Programs funded or assisted by the State with Federal money must consider impacts on the environment and be consistent with Federal programs and policies. Careful selection of program activities that do not adversely affect the environment will minimize problems with the environmental review process.

Responsible Entities (RE), as defined by HUD, are required to follow the procedures for completing an environmental review as specified in 24 CFR 58. A familiarity with all the aspects of 24 CFR Part 58 should be attained. ***Every project requires some level of environmental review.*** The RE is responsible for evaluating what, if any, effects on the environment the project may have as well as what effect the environment can have on the project. Short term, cumulative and long term effects should be considered.

You are urged to visit the HUD website regularly to obtain the most current forms, interpretations of regulations, and guidance. <http://www.hud.gov/offices/cpd/environment/index.cfm>

PLEASE BE AWARE!!! CDBG funds cannot be obligated or expended for project activities until the environmental review process has been completed and the environmental contract conditions removed.

If you do not follow this procedure, Federal laws may require the ADECA to recapture from you any funds spent or obligated. The ADECA allows reasonable administrative costs to be incurred to satisfy start-up requirements outlined in the "Letter of Conditional Commitment." The cost of completing the environmental review process is one of those costs. Check with the ADECA for clarification of other reasonable costs.

II. TERMINOLOGY

Below is a list of terms and abbreviations that are used by HUD and ADECA in the CDBG program that relate to the environmental review process.

Activity – Action proposed by a Sub-recipient.

Area of Potential Effect (APE) – Geographic area(s) within which a project may directly or indirectly alter the characteristics of or the use of historic properties, if any exist. The APE is influenced by the scale and nature of the project and can have unique effects.

Certifying Officer – Chief elected official, usually the presiding Mayor or Commissioner, authorized to execute the Request for Release of Funds and Certification form, assumes the role of Responsible Federal Official under NEPA and related Federal laws and authorities, and accepts jurisdiction for the Federal Courts on behalf of the Responsible Entity in environmental matters.

Mitigation Measures – Measures to reduce potential impacts on the environment. Including but not limited to avoiding certain actions, limiting the magnitude or degree of an action and rectifying the impact through repair, rehabilitation and/or restoration of the affected environment.

Environmental Assessment (EA) – A concise public document that exhibits compliance with NEPA and provides evidence and analysis of a more complex review resulting in a determination of a Finding of No Significant Impact (FONSI), or a Finding of Significant Impact (FOSI).

Environmental Impact Statement (EIS) – The highest level of environmental review required when it has been determined that a project has the potential to significantly impact the human environment. Typically an EA has been completed and resulted in a FOSI therefore warranting an EIS. However, if significant impacts are anticipated or known of early on in the planning process, an EIS could be completed without completing the EA first.

Environmental Review Record (ERR) – A concise public record containing original documentation related to the environmental review, decision-making, and activities undertaken in a project. The ERR must be available to the public upon request at the RE location; County Courthouse or City offices. It is a legal document and the best and often only defense to prove compliance with applicable laws and regulations.

Human Environment – Natural and physical environment and its relationship with people.

Impacts –

- Direct – Impacts caused by the actions in a project which take place at the same time in the same location.
- Indirect – Secondary effects caused by the project actions occurring later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other impacts related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- Cumulative – Impacts resulting when effects of an action are added to or interact with other effects in a particular place, within a particular time. Cumulative impacts accumulate over time, from one or more sources, and can result in degradation of valuable resources. Cumulative impact analysis should focus on the combined effects and resulting environmental damage.

Notice of Removal of Grant Conditions (NRGC) – Official CDBG issuance of environmental review approval for a project. The release of funds is the State's response to an RE's submission of the Request for Release of Funds and Certification form (RROFC).

Project – Activity or group of activities designed to accomplish, in whole or in part, a specific objective; what must be done in order to meet the particular needs of beneficiaries.

Project Aggregation – Grouping together and evaluating all individual activities related on a geographical or functional basis or that are logical parts of a contemplated action, regardless of funding source.

Request for Release of Funds and Certification (RROFC) – ADECA Form ENV-RROFC, equivalent to Form HUD-7015.15 – Completed only if the project is determined to be either (1) Categorically Excluded Subject to 58.5 (CEST) and does not convert to exempt or (2) the project requires an EA to be completed.

Responsible Entity – A unit of general local government assuming environmental responsibility for a project proposed for or funded with CDBG assistance, including certification of the RROFC, with the assurance that any conditions, procedures, and requirements resulting from the environmental review are incorporated into project plans and successfully implemented.

Scope – The range of actions, alternatives, and impacts to be considered in an EA.

Statutory Checklist – A review to address environmental compliance required by other Federal laws, implementing regulations, Executive Orders, and for other HUD compliance requirements.

Sub-recipient – A State recognized non-profit entity, public water or sewer district, fire or ambulance district, or for-profit business or developer responsible for notifying the RE immediately if changes or alternatives are proposed in the project.

Tiering – Appropriate when evaluating a project in early stages of development or when site-specific analysis or mitigation is not currently feasible and a narrower or focused analysis is better done at a later date.

III. STEPS IN THE ENVIRONMENTAL REVIEW PROCESS

There are 5 basic steps in the environmental review process. They are 1) designate an Environmental Review Officer, 2) create the Environmental Review Record (ERR), 3) develop the project description, 4) determine the level of environmental review and 5) complete the procedures for the applicable level of environmental review. These steps are discussed in further detail below.

STEP 1: Designate the Environmental Review Officer (person responsible for preparing the environmental review)

The RE is always a unit of general local government who assumes responsibility for the environmental review, environmental decision-making, and all environmental actions. The RE must determine who has the knowledge, qualifications and experience necessary to assist in preparing the environmental documents. ***Remember, the RE is solely accountable should issues***

arise – choose the Environmental Review Officer wisely. The Environmental Review Officer may be an employee of the locality or may be contracted. If you decide to hire a consultant as your Environmental Review Officer, do this early and follow proper procurement procedures.

STEP 2: Create the Environmental Review Record (ERR) (24 CFR 58.38)

The RE must maintain a written record of the environmental review for the project and keep it available for public review at the RE address. The ERR must provide a comprehensive project description and evidence of the process from start to finish including but not limited to the following:

1. Complete, detailed project description including all activities proposed by all funding sources
2. Description of pre-existing environmental conditions of the project site and surround area
3. Completion of current CDBG environmental forms applicable to the required level of review
4. Acceptable support documentation; maps, web-based material, photos, documented site visits & phone calls, agency consultations, site plans, architectural/engineering reports, prior environmental studies, agency comments and clearances, etc...
5. Proof of compliance with the Statutory Checklist – DOCUMENTATION
6. Mitigation measures and proof of required implementation
7. Project and activity alternatives considered and the basis for the chosen alternative
8. Environmental notices
9. Evidence of opportunity for public involvement: application public hearing notices, minutes, sign-in sheets, postings, newspaper articles, etc...
10. Environmental determination (Finding) signed by the RE Certifying Officer
11. CDBG Request for Release of Funds and Certification (RROFC)
12. CDBG Notice of Removal of Grant Conditions (NRGC)

STEP 3: Develop the Project Description

The project description is critical in determining the level of environmental review required. Someone with no knowledge of the project should be able to clearly understand the scope, scale, nature and extent of the proposed project from the description. At a minimum the project description should contain the following:

1. All proposed project activities by all funding sources, described in detail
2. Entire project scope and all phases of the project from beginning to end
3. Exact project locations/areas, supported by a vicinity map
4. Color photographs, site plans, project plans, renderings and maps
5. Total project costs by all funding sources including in-kind activities
6. Existing environment on and around project site and how it is expected to change due to a project
7. Temporary impacts anticipated by construction activities and a timeline for construction

STEP 4: Determine the Level of Environmental Review

Every CDBG project requires an environmental review to be conducted. 24 CFR Part 58 provides guidance for conducting the environmental review. The level of effort needed to prepare a review and the depth of analysis should be proportional to the size and complexity of the proposed project. There are five levels of environmental review:

1. Exempt
2. Categorically Excluded Subject to (CEST)
3. Categorically Excluded Not Subject to (CENST)
4. Environmental Assessment (EA)
5. Environmental Impact Statement (EIS)

➤ **Exempt Activities (24 CFR 58.34)**

Except for the applicable requirements of §58.6, the RE does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

1. Environmental and other studies, resource identification and the development of plans and strategies;
2. Information and financial services;
3. Administrative and management activities;
4. Public services that will not have a physical impact or result in any physical changes, including but not limited to 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;
6. Purchase of insurance;
7. Purchase of tools;
8. Engineering or design costs;
9. Technical assistance and training;
10. 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;
11. Payment of principal and interest on loans made or obligations guaranteed by HUD;
12. Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

➤ **Categorically Excluded Subject to (24 CFR 58.35(a))**

If an activity is not determined to be Exempt, the RE must decide if it is Categorically Excluded Subject to 58.5. Categorically Excluded Subject to activities are those excluded from NEPA

requirements, but may be subject to review under other Federal laws and authorities listed in 24 CFR 58.5.

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 or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when the following conditions are met:
 - i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;
 - ii. In the case of multifamily residential buildings:
 - A. Unit density is not changed more than 20 percent;
 - B. The project does not involve changes in land use from residential to non-residential; and
 - C. The estimated cost of rehabilitation is less than 75 percent 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 percent; and
 - 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.
 - i. An individual action on up to four dwelling units 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 not 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) (see paragraph (a)(3)(i) of this section).
5. 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.
6. Combinations of the above activities.

➤ **Categorically Excluded Not Subject to (24 CFR 58.35(b))**

HUD has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5.

1. Tenant-based rental assistance;

2. Supportive 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 buydowns, and similar activities that result in the transfer of title.
6. Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, 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 §58.47.

➤ **Environmental Assessment (EA) (24 CFR 58.36)**

If a project is not Exempt or Categorically Excluded under 58.34 and 58.35, the RE must prepare an EA. (See 24 CFR 58.40 Preparing the Environmental Assessment, for more information) The purpose of the EA is to determine the significance of environmental effects of a project and to assess alternative means to achieve an RE's objectives.

➤ **Environmental Impact Statement (EIS) (24 CFR 58.37)**

An Environmental Impact Statement is the highest (most in-depth) level of review. It is typically required after the completion of an EA where the project is determined to have potentially significant impacts on the environment. An EIS is normally required for the following circumstances (58.37(b)(1),(2), & (3)):

1. The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
2. The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under §58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
3. The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new

development, only that portion of the increased capacity which is intended to serve new development should be counted.

STEP 5: Complete the Procedures for the Applicable Level of Environmental Review

Listed below are the basic procedural steps in completing the most common levels of environmental review. Forms that are listed are to be completed in their entirety. Contact the ADECA Environmental Officer if you have any questions or need assistance. A detailed procedure for completing each of the required levels of review can be found on ADECA's environmental webpage located at the address given below. Download the Environmental Review Guide and use the provided forms and documents.

<http://adeca.alabama.gov/Divisions/ced/cdp/Pages/Environmental.aspx>

➤ **Exempt Activities (58.34)**

1. Complete the Level of Review Determination Form (ENV-LRD)
2. Complete the Finding of Exemption Form (ENV-FOE)
3. Complete the 58.6 Other Requirements Form (ENV-ORC)
4. Submit the completed, original ENV-LRD form to ADECA and put a copy in the ERR along with the ENV-FOE and ENV-ORC forms

➤ **Categorically Excluded NOT Subject to (CENST) (58.35(b))**

1. Complete the Level of Review Determination Form (ENV-LRD)
2. Complete the Categorically Excluded Not Subject to Form (ENV-CENST)
3. Complete the 58.6 Other Requirements Form (ENV-ORC)
4. Submit the completed, original ENV-LRD form to ADECA and put a copy in the ERR along with the ENV-CENST and ENV-ORC forms

➤ **Categorically Excluded Subject to (CEST) (58.35(a))**

1. Complete the Level of Review Determination Form (ENV-LRD)
2. Complete the Categorically Excluded Subject to Form (ENV-CEST)
3. Complete the 58.6 Other Requirements Form (ENV-ORC)
4.
 - If you answered **"No"** to all of the Federal laws and authorities listed on the Statutory Checklist, your project converts to Exempt status. Submit the completed, original ENV-LRD form to ADECA and put a copy in the ERR long with the ENV-CEST and ENV-ORC forms and **skip** steps 5-7
 - If you answered **"Yes"** to at least one of the Federal laws and authorities listed on the Statutory Checklist, Post/Publish Notice of Intent to Request Release of Funds (NOI/RROF) and **continue on** to steps 5-7
5. Distribute the NOI/RROF to appropriate State and Federal agencies and to individuals and groups that may be interested in the project

6. Address any written comments received in response to this notice and file in the Environmental Review Record. Please notify the ADECA Environmental Officer if adverse comments received from the public cannot be adequately resolved locally
7. Complete and submit the original ENV-LRD form and Request for Release of Funds and Certification Form (ENV-RROFC) along with copies of the NOI/RROF and Affidavit of Publication/Posting (Be sure to keep a copy of the ENV-RROFC form in the ERR)

➤ **Environmental Assessment (EA) (58.36)**

1. Complete the Level of Review Determination Form (ENV-LRD)
2. Complete the Environmental Assessment Form (ENV-HUDEA)
3. Complete the 58.6 Other Requirements Form (ENV-ORC)
4. Post/Publish Notice of Intent to Request Release of Funds and the Finding of No Significant Impact (NOIRROF/FONSI)
5. Submit the completed original ENV-LRD form and Request for Release of Funds and Certification Form (ENV-RROFC) along with copies of the NOIRROF/FONSI and Affidavit of Publication/Posting

➤ **Floodplain/Wetland Notices**

During the course of completing the Environmental Review it may become necessary to PUBLISH floodplain/wetland notices which are steps in the 8-Step Process. The Early Notice must be published in a local newspaper and observe an additional fifteen (15) day public comment period. The Final Notice must be published in a local newspaper and observe an additional seven (7) day public comment period.

IV. REFERENCES

To view the laws and regulations, visit the HUD website on Environmental Laws.

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

For compliance with environmental regulations for Alabama, visit HUD's Environmental Guidance for Alabama.

<http://www.hud.gov/local/shared/working/r4/environment/guidanceal.cfm?state=al>

Environmental Policy:

- The National Environmental Policy Act of 1969, as amended, P.L. 91 - 190.
- Implementing Regulations 24 CFR Part 58 and 40 CFR Part 1500—1508
- The Housing and Community Development Act of 1974, as amended~ P. L. 97 - 35.
- Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991 (May 24, 1977).

Historical Properties:

- The National Historical Preservation Act of 1966, P.L. 89 - 665.
- The Archaeological and Historical Data Preservation Act of 1974, P.L. 93 - 291.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971, Implementing Regulations: 36 CFR Part 800.

Flood Plain Management and Wetland Protection:

- Flood Disaster Protection Act of 1973, P.L. 93 - 234.
- Executive Order 11990, Protection of the Wetlands, May 24, 1977.
- Executive Order 11988, Flood Plain Management, May 24, 1977.

Coastal Zone Management:

- Coastal Zone Management Act of 1972, P.L. 92 - 583, as amended in 1976, P.L. 94 - 370.
- Coastal Barriers Resources Act of 1982, P.L. 97 - 348.

Water Quality and Sole Source Aquifers:

- The Safe Drinking Water Act of 1974, P.L. 93 - 523, as amended by the Safe Drinking Water Amendments of 1977, P.L. 95 - 190 and by further amendments in 1979, P.L. 97 - 163.

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Wildlife:

- The fish and Wildlife Coordination Act of 1958, P.L. 85 - 264, as amended by the Act of 1965, P.L. 89 - 72.

Endangered Species:

- The Endangered Species Act of 1973, P.L. 93 - 205, as amended by the Endangered Species Amendment Act of 1978, P.L. 95 - 632.

Wild and Scenic Rivers:

- The Wild and Scenic Rivers Act of 1968, P.L. 90-542, as amended by P.L. 92-560 in 1972; P.L. 92 - 279 in 1974; P.L. 93 - 621 and P.L. 94 - 199 in 1975; P.L. 94 - 486 in 1976; P.L. 95 - 625 in 1978; and P.L. 96 - 87 in 1979.

Noise:

- 24 CFR 51, Environmental Criteria and Standards, Subpart B, Noise Abatement Control.

Farmland Protection:

- The Farmlands Protection Policy Act of 1981, 7 CFR, Part 658 Farmland Protection Policy.

Man-Made Hazard:

- Environmental Criteria and Standards, 24 CFR Part 51 C, Subpart C Citing of HUD - assisted projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature.

Navigable Waters:

- The Federal Water Pollution Control Act Amendments of 1972, P.L. 92 - 500, as amended by the Clean Water Act of 1977, P. L. 95 - 217; 40 CFR Part 230, Navigable Waters; 33 CFR Part 322 - 329.

Air Quality:

- The Clean Air Act Amendment of 1970, P.L. 91 - 606, as amended by the Clean Air Act Amendment of 1977, P.L. 95 - 95 and P.L. 95 - 190; 40 CFR Parts 50 and 51.

Solid Waste Management:

- The Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976, P.L. 94 - 850 and P.L. 95 - 850 and P.L. 95 - 609 of 1978; 40 CFR, Part 421, Guidelines for the Land Disposal of Solid Wastes.

Contact the ADECA Environmental Officer about the references not listed as exhibits in the Management and Implementation Manual.

V. SUB-RECIPIENT RESPONSIBILITIES

Your environmental responsibilities have legal and financial ramifications. As part of your assurances, your Chief Executive Officer has agreed to assume the role of Responsible Federal Official under the provisions of the National Environmental Policy Act (Section 102) and 24 CFR Part 58, Sec. 58.13, Environmental Review Procedures. This means that if someone brings suit against your program in Federal court on environmental grounds, the Chief Executive Officer will be named as the responsible party. He/she ensures all environmental review requirements are met and executes required certifications. The Chief Executive Officer does not actually conduct the review; therefore, he/she must designate someone to complete the Environmental Review Record on behalf of the city/county.

The “Letter of Conditional Commitment” requires the Environmental Review to be completed as a start-up requirement. All conditions must be met within the date specified in the letter or the CDBG funds may be awarded to another community. (Refer to the Letter of Conditional Commitment for details.)

VI. REPORTING

Submit all required documents to the ADECA Environmental Specialist no later than the date specified in the Letter of Conditional Commitment and as required by the environmental review process.

VII. COMMON PROBLEMS/DEFICIENCIES

1. NEPA Environmental Assessment does not contain an adequate discussion of alternatives to the proposed project.
2. Assessment procedures or the timing of the assessment result in project delays.
3. Project funds are obligated or expended prior to release of funds.
4. Public notices do not contain all required information or are out of date.
5. An Environmental Review Record was not established or lacks required materials.
6. The timing of public notices and/or Request for Release of Funds is incorrect.
7. Notices are not sent to State, Federal agencies, Regional Planning Commissions, and other interested parties.
8. Field observation is the only source of documentation or authority in the assessment.
9. NEPA Environmental Assessment was not signed by the certifying officer.
10. The Environmental Review Record did not include documentation explaining recipient's determination of Exemption or Categorical Exclusion.
11. The NEPA Environmental Assessment did not show a definite source of documentation to support finding.