

## Chapter 2 – Environmental Review

### Words to Know:

**24 CFR 58** – [Title 24 Part 58](#) of the Code of Federal Regulations provides instructions and guidance to recipients of HUD assistance on how to conduct the required environmental review process for CDBG and HOME funded projects.

**Choice-Limiting Actions** – Any activity or project that a Grantee undertakes, including committing or expending CDBG funds, that reduces or eliminates a Grantee’s opportunity to choose project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

**Environmental Assessment** – As established by [24 CFR Part 58.36](#), if a CDBG project is not exempt or categorically excluded under §§ 58.34 and 58.35, the local government responsible for the project must prepare an EA that complies with Title [24 Part 58 Subpart E](#).

**Environmental Certifying Officer** - The official of the Grantee/unit of local government receiving CDBG funds who is responsible for signing the statutory checklist and maintaining the Environmental Review Record.

**Environmental Review** – Steps and documentation required to analyze the effect a proposed project will have on the people, the natural, material, and social environment within a designated area. Please note that the term ER is not the same as the environmental checklist that is included in the UniApp for CDBG Housing applications, nor is this the same as the MEPA environmental checklist in CDBG Public Facility/Community Facility applications.

**Environmental Review Record** – Grantees that receive CDBG funding must create and maintain a well-organized written record of the environmental review they have undertaken for each CDBG project, as required by [24 CFR § 58.38](#). This includes the HUD required forms and all supporting documentation.

**Montana Environmental Policy Act** – The Montana Environmental Policy Act is established by §§ [75-1-101](#), MCA, et seq.

**National Environmental Policy Act** – The NEPA is established by [42 U.S.C. § 4321 et seq.](#)

**Responsible Entity** – As established by [24 CFR Part 58.2\(7\)](#), the term Responsible Entity generally means the recipient of CDBG funds that is responsible for comply with the environmental responsibilities.

**Statutory Checklist** - The HUD form and other necessary documentation that must be completed for a project that requires a CEST or EA level of environmental review.

**Subrecipient** – As established by [24 CFR Part 570.500\(c\)](#) the term subrecipient means “a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under § 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part.”

## Overview

CDBG funded projects may be subject to various environmental laws, including: (i) NEPA, [42 U.S.C. § 4321 et seq.](#); (ii) [Title 24 Part 58](#) of the CFR; (iii) the Council on Environmental Quality regulations in [40 CFR Parts 1500 through 1508.1 \(iv\)](#) the Montana Environmental Policy Act, §§ [75-1-101](#), et seq., MCA; and (v) applicable MEPA administrative rules. Grantees should consult with their attorneys to ensure compliance with these laws. This review is separate from the environmental checklist included in the application materials, which is intended only to help Grantees foresee any environmental concerns while the project is in preliminary or planning stages.

NEPA establishes national policies and procedures for protecting and enhancing environmental quality. Under NEPA, CDBG Grantees are responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact before taking any Choice-Limiting Actions. Choice-Limiting Actions are actions that prohibit the use of federal funds, including but not limited to acquisition of real property; leasing property; going out to bid for rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

Commerce cannot release funds for a CDBG funded project until the Grantee has completed the required level of environmental review and demonstrates that either no significant impact on the human environment is likely to occur, or that actions have been initiated that would mitigate any potential impacts.

NEPA specifies different levels of environmental review, based on the significance of potential impacts. The levels that can apply to CDBG projects are:

- Exempt from NEPA review
- Categorically Excluded not subject to 24 CFR Part 58.5
- Categorically Excluded but subject to 24 CFR Part 58.5
- Activities requiring an EA
- Activities requiring an Environmental Impact Statement

## Environmental Review Process

Title 24 Part 58, Subparts A-H, generally establish the environmental review process that applies to CDBG projects. See [24 CFR Part 58.30\(a\)](#). Additionally, NEPA [42 U.S.C. § 4321 et seq.](#) and related federal regulations found at 40 CFR Parts 1500 through 1508 also apply to CDBG projects, as well as state and local environmental laws. Further information on the Environmental Review process for CDBG projects can be found in this HUD [guidance](#).

Grantees must comply with all federal and Montana environmental requirements that apply. The typical steps Grantees must take to complete an environmental review include:

1. Determining the level of review required based on the scope of the entire project
2. Deciding who will complete the environmental review
3. Designating the ECO
4. Completing the appropriate statutory checklist and compile supporting documentation for the related laws and authorities
5. Submitting environmental information to Commerce for review and approval
6. Complying with public participation requirements, as applicable

## 7. Compiling and maintaining the ERR

### Determine the Level of Review Required Based on the Scope of the Entire Project

To determine the applicable level of review, the subrecipient must consider the project in its entirety and not just the portion of work covered by CDBG funds. Once Grantees have determined the level of review required based on the scope of the entire project, please contact your project specialist to confirm this determination. A breakdown of the activities that fall within exemptions and categorical exclusions can be found at [24 CFR Part 58.34](#) and [24 CFR Part 58.35\(a\) and \(b\)](#). The following are some common types of projects that fall within each review category:

- Exempt - [24 CFR Part 58.34\(a\)](#):
  - Administrative and management activities
  - Project planning and capacity building activities
  - Technical assistance and training
  - Environmental studies, engineering, and design activities
  - Certain public services
- Categorically Excluded, Not Subject to Part 58 – [24 CFR Part 58.5](#):
  - Housing:
    - Tenant-based rental assistance and supportive services
    - Down payment assistance programs
    - Pre-development activities
  - Economic Development:
    - Equipment purchases
    - Operating costs not associated with construction or expansion of operations
- Categorically Excluded, Subject to Part 58 – [24 CFR Part 58.5](#):
  - Housing:
    - Acquisition only

- Rehabilitation with minimal (<20%) change in unit density and no change in land use
  - New construction of four or fewer units on one lot, or five or more units on scattered sites
- Public Facilities and Community Facilities:
  - Acquisition and rehabilitation with minimal (<20%) change in scale, size, capacity, and no change in land use
- EA—see [24 CFR Part 58.40 through 58.47](#):
  - Demolition
  - New construction
  - Acquisition/rehabilitation that increases size or capacity by more than 20%
  - Any type of activity not specifically addressed under another level of review for all housing, public facility, community facility, and economic development projects
- Tiered Reviews:
  - Projects requiring a CEST or EA level review and are spread across multiple locations within a larger geographic area. See [24 CFR Part 58.15](#).
- EIS:
  - Any CEST or EA level review that results in a Finding of Significant Impact is required to also complete an EIS. See [24 CFR Part 58.37](#). This is unlikely, but Grantees should involve their Project Specialist in the environmental review process early and often.

## Decide Who Will Complete the Environmental Review

The requirements of an environmental review vary greatly from project to project. When deciding who will prepare the review, subrecipients should consider staff capacity and expertise. Would this role be more appropriate for a Grantee or a subrecipient? Does staff have the capacity and expertise to take on this level of work? Would it be more appropriate to hire a consultant? Remember that consultant fees are eligible costs under the CDBG

program, and it may be prudent to hire a consultant to complete an environmental review for complex projects.

## Designate the Environmental Certifying Officer

Grant recipients must adopt a resolution designating an ECO. As established by [24 CFR Part 58.2\(a\)\(2\)](#), the ECO must be “authorized to execute the Request for Release of Funds and Certification” and have the “legal capacity to carry out the responsibilities of § 58.13.” The ECO is responsible for signing the final documents and maintaining the ERR. See [24 CFR Part 58.13](#). The ECO can be, but is not required to be, the preparer of the environmental review. This person must be associated with the Grantee, either local government staff or an elected official, and should be capable of locating pertinent information and determinations provided as part of the environmental review. A sample resolution for designating the ECO can be found in the “Environmental Review” toolkit.

## Complete the Appropriate Statutory Checklist

The steps involved in completing the statutory checklists vary depending on the project and level of review required. Suggested formats and blank forms for each level of review can be found on [HUD Exchange](#) and step-by-step guidance for completing the statutory checklists can be found in the “Environmental Review” toolkit.

## Submit to Commerce for Review and Approval

The completed statutory checklist (available on [HUD Exchange](#)) and supporting documentation must be submitted to Commerce for review and approval. For CEST and EA level reviews, this should include a draft Finding of No Significant Impact and Request for Release of Funds, and a proposed timeline of the public participation process. Documents can be sent directly to the project specialist or through the [File Transfer Service](#). Commerce will evaluate the review to ensure all required documentation is included, each section of the statutory checklist is complete, and all questions are answered sufficiently.

For Exempt and CENST level reviews, Commerce will issue the appropriate approval to complete the review process. For CEST and EA level reviews, Commerce will review the proposed timeline and draft FONSI/RROF. Once approved, the FONSI/RROF can be signed, and the public participation process can begin.

## Comply with Public Participation Requirements as Applicable

If a project cannot reach a FONSI, an EIS may be necessary. See [24 CFR § 58.37](#). Please contact Commerce for any project that may need an EIS.

For CEST and EA level reviews with a FONSI, separate public comment and objection periods must be held after completing the statutory checklist. The steps and related forms for completing these notification periods are included in the “Environmental Review” toolkit. CEST projects are required to complete a 7-calendar day public comment period, followed by a 15-calendar day objection period. EA projects are required to complete a 15-calendar day public comment period, followed by a 15-calendar day objection period. Comment periods begin the day following publication and distribution. If a comment or objection period is set to end on a holiday, it must end on the following calendar day.

Grantees must maintain records of all comments received during the public comment period, and responses to all comments as part of the ERR. Any feedback obtained during the objection period will be provided by Commerce and must also be documented as part of the ERR. Once the grantee has completed all required public comment periods, they must submit the Request for Release of Funds ([HUD-Form 7015.15](#)). The Project Specialist will help the Grantee complete the RROF form. If there are no objections or public comments needing addressing, Commerce will issue the Authority to Use Grant Funds ([HUD-Form 7015.16](#)).



<b>CEST – Categorically Excluded, Subject To § 58.5 – NOI/RROF</b>	
1. Date of notice publication/distribution:	
2. Start date of public comment period:	7-day comment period
3. End date of public comment period: <b>Minimum 7 calendar days past line 2.</b>	
4. Date Grantee can RROF from Commerce or HUD as applicable: <b>Add one day to line three.</b>	
5. RROF Transmittal date:	
6. Start date of objection period: Add one day to line five.	15-day objection period
7. End date of objection period: Minimum 15 calendar days past line six.	
8. Date Commerce or HUD issues AUGF:	
Environmental Review is complete! Maintain records for the ERR.	

<b>Environmental Assessment – FONSI/NOI/RROF</b>	
1. Date of notice publication/distribution:	
2. Start date of public comment period:	15-day comment period
3. End date of public comment period: Minimum 15 calendar days past line two.	
4. Date Grantee can RROF from Commerce or HUD as applicable: Add one day to line three.	
5. RROF Transmittal date:	
6. Start date of objection period: Add one day to line five.	15-day objection period
7. End date of objection period: Minimum 15 calendar days past line six.	
8. Date Commerce or HUD issues AUGF:	
Environmental Review is complete! Maintain records for the ERR.	



## Compile the ERR

The ERR provides evidence of the review process from start to finish and must be maintained by the CDBG Grantee. See [24 CFR Part 58.38](#). The ERR should include:

- the resolution authorizing the ECO
- the completed statutory checklist
- all supporting documentation associated with the checklist
- proof of publication for any public notices
- if applicable, all public comments received and their corresponding responses

The ERR must be made available for public review upon request. It is the responsibility of the ECO to maintain these records for a minimum of five years after project completion.

Commerce will ensure that the ERR on file with the grantee is complete as part of the project close-out process. The ERR also must be made available for public review.