



# Environmental Review COLORING BOOK

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Date Issued: October 1, 2015



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## Environmental Review for Subgrantees/Developers



### Introduction

Environmental Review is the examination of a project relative to the National Environmental Policy Act of 1969 (NEPA) and its related laws. NEPA was established to ensure environmental protection for federally funded projects.

HOME funded projects are subject to the provisions of NEPA [24 USC 432-14347] and the HUD regulations implementing NEPA [24 CFR Part 58]. Recipients of HOME funds are required to complete an environmental review prior to receiving environmental clearance from the Nebraska Department of Economic Development. The type of project a recipient is completing will determine the level of environmental review and the necessary documentation that will be required.

For every environmental review, three basic steps must be followed in order to correctly complete the review. These steps include:

- 1) Project Aggregation
- 2) Determination of Level of Review
- 3) Documentation

**Project Aggregation** - The recipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective. For housing projects this could include down payment and closing cost assistance, land acquisition, rehabilitation, new construction, infrastructure development, demolition, and any other appropriate activity that would be necessary to complete the HOME funded project.

**Determination of Level of Review** - The recipient must determine which level of environmental review is appropriate for the project in order to correctly complete the necessary documentation for the project. A Determination of Level of Review Form must be completed which provides a complete description of the project and the level of environmental review that will be completed.

**Documentation** - The recipient must complete the appropriate DED approved Environmental Review Packet and provide any other necessary information that is required to fully document the environmental review. This information is referred to as the Environmental Review Record (ERR). The ERR will vary in size. The project aggregation and the determination of level of review will help determine the appropriate ERR documentation.

This manual will explain the various Environmental Review (ER) procedures with the information organized by the **type of project**. Funds cannot be released on any project until the ER process is completed.

There will be 5 scenarios:

1. Planning, ER studies, inspections and testing. [Exempt subject to §58.6]
2. Down Payment Assistance. [Categorically Excluded Not Subject to §58.5]
3. Owner Occupied Rehabilitation – Tiered Review. [Categorically Excluded Subject to 58.5]
4. Acquisition/Rehabilitation (*multifamily*). [Categorically Excluded Subject to 58.5]
5. New Construction (*multifamily*). [NEPA Environmental Assessment]

The first step is to determine which section applies to your project. Please use the examples in each section to assist you in the identification of your activity and level of review. MFA form 1A-ER Level of Review Record Summary Sheet should be submitted, along with required documentation, to the MFA Environmental Review Officer.

The process begins with communication from the Housing Development program manager, and continues with: consultation with tribes and the State Historic Preservation Office, internal compilation of documents, review of developer documents, publication for comments, submission to HUD for approval, and final communication of environmental clearance.

The MFA Environmental Review Officer works with the developer to compile supporting documents. MFA must complete all intergovernmental consultation. The developer provides the following, if needed:

- Appraisal
- Certification of no change in land use and unit density
- Phase I Environmental Site Assessment
- Asbestos survey (as required under NEHAP AHERA standards)

- Lead-based Paint Assessment (to HUD LBP standards)
- Archeological survey
- Any other technical reports as indicated by the environmental review process

The Environmental Review Record (ERR) [see §58.38] must contain all of the environmental review worksheets, checklists, documents, public notices and written determinations or environmental findings required by Part 58 as evidence of the review, decision making and actions pertaining to a particular project. Include additional information such as, maps noting the project location in reference to an environmental impact source, studies, analyses and other documentation as appropriate.

Website consult: <https://www.hudexchange.info/environmental-review/> and MFA's web page at <http://www.housingnm.org/developers/environmental-review>



## **1 PLANNING, ER STUDIES, INSPECTIONS AND TESTING [Exempt subject to §58.6]**

The activities covered in this section will have no impact or no potential impact to the environment and are not associated with other activities that could have an impact on the environment. EXEMPT projects require the least amount of documentation and preparation. Once a project is classified as Exempt, no further environmental review is necessary but documentation of the determination must be maintained in the ERR file. There are no publication requirements for an Exempt project or component of an activity.

### **1. Examples of Exempt Projects**

1. Environmental studies for HOME or other federal projects (542(c)) and other studies
2. Information and financial services
3. Administration 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. Inspection and testing of properties for hazards or defects
6. The payment of principal and interest on a loan
7. Engineering and design incurred for an eligible activity
8. Purchase of insurance or tools
9. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protections, 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

### **Required Forms**

- 0-ER Project Abstract
- 1-Determination-Exempt

- 7-Compliance Checklist 58.6
- Data to support determination, i.e., cost estimates for work to be done

#### Publications/Notices

No publications are required and no RROF need be submitted. MFA does not issue an exemption for automatically exempt components of an activity or for administration activities, only for the activity itself. The ERR process is complete when MFA notifies Recipient that the Determination of Exemption is completed.

#### Approximate Timeline

When a project is determined to be Automatically Exempt, form completion is the only time involved.

#### Website Consult:

<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-cent-format/>



## 2 DOWN PAYMENT ASSISTANCE – TIERED REVIEW [Categorically Excluded Not Subject to §58.5]

A tiered environmental review takes place in two or more stages. Tiered reviews must be based on a project description that includes properly aggregated project activities. The broad review must be completed to address the environmental factors available at that time. Aggregated activities must require the same level of environmental review. The tiering plan for completing site specific environmental reviews must be maintained in the ERR. In some cases, the RE must publish public notices for the tier activities in the jurisdictions where the projects are located. A RROF may be completed based on the broad review. However, required site specific review must be completed properly to avoid non-compliance with Section 58.22, which can result in regulatory violations or program sanctions.

### Determination of Level of Review

HOME Down-Payment Assistance funds are used to provide down-payment funding through financing for homebuyer programs, with payment for the borrower. All assisted units are already built or under construction, and therefore fall into Categorically Excluded Not Subject to §58.5.

For HOME Down Payment Assistance, the Environmental Review Officer prepares the overall Determination of Categorical Exclusion Not Subject to §58.5, with the sample §58.6 Compliance Checklist attached, and has it executed by the Certifying Environmental Officer. These forms are retained in the Program Year binder.

### Required Forms

Each loan file must contain a completed *6-DPA SFD Environmental Review Checklist 58-6*, completed and signed by the loan officer. MFA staff will review and authorized staff will sign.

- 6-DPA SFD Environmental Review Checklist 58-6
- Data to support determination, i.e., map showing location of property

Website consult:

<https://www.hudexchange.info/environmental-review/orientation-to-environmental-reviews/>

### 3 OWNER OCCUPIED REHABILITATION - TIERED REVIEW [CATEGORICALLY EXCLUDED SUBJECT TO 58.5]



HOME Rehabilitation Reservation funds are used to complete substantial rehabilitation on scattered-site residential single-family owner-occupied homes, where unit density is not changed, the land use is not changed, and the footprint is not increased in a floodplain or wetland. All units are therefore Categorically Excluded Subject to 58.5.

For the HOME Rehabilitation Reservation Program, the Rehab Program Manager prepares the overall several county geographic area reviews prior to the beginning of the program year. As sites are identified, rehab agencies complete the site-specific documents and provide to the Rehab Program Manager for approval.

Determination of Categorical Exclusion Subject to §58.5 (CEST) for Activities Listed at 24 CFR §58.35(a)

For HOME Rehab, the determination of CEST applies to the list of activities at §58.35(a) shown below. MFA believes, except in extraordinary circumstances, no environmental assessment or environmental impact statement is required. The applicable activity is:

- 58.35(a) (3). Rehabilitation of buildings and improvements when the following conditions are met:
  - 58.35(a) (3) (i.)In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

The rehab agency must comply with statutory laws and authorities cited in §58.5 by using the form *20-Tier II Site-specific checklist ER Rehab*.

- If activities are found not to require compliance with any authority under §58.5 (such as mitigation measures, additional studies, conditions or further consultation) then the project can convert to exempt pursuant to §58.34(a) (12).
- MFA must comply with the requirements of the form listed above related to Flood Disaster Protection; restriction on HUD assistance for a project located in Coastal

Barrier Resource Areas; and, buyer notifications required if a HUD assisted project is located in a Runway Clear Zone or Clear Zone.

- MFA must publish a NOI/RROF and submit the certified RROF to HUD, **unless the project can convert to exempt**, then a NOI/RROF and certified RROF are not required.

RE must document the determination in writing (Determination Form) and the documentation must be maintained in the ERR.

#### Required Forms

- 0-ER Project Abstract
- 20-Tier II Site-specific checklist ER Rehab
- Data to support determination

#### Website Consult

[http://www.housingnm.org/community\\_development/owner-occupied-rehab](http://www.housingnm.org/community_development/owner-occupied-rehab)



#### **4 ACQUISITION/REHABILITATION (MULTIFAMILY) [Categorically Excluded Subject to 58.5]**

##### Categorically Excluded Projects Downgraded to Exempt

Multi-Family Acquisition/Rehabilitation projects have the potential to be Categorically Excluded if:

- unit density is not increased more than 20%,
- 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.

Projects that do not meet this criteria require an Environmental Assessment.

A project may be downgraded from Categorically Excluded to Exempt if there are no circumstances that require compliance with federal laws. This is the case if all boxes in the form 9-MFA Statutory Checklist 58.5 are checked in the “A” column.

Publications/Notices (if converted to Exempt)

The process begins with communication from the Housing Development program manager, and continues with consultation with tribes and the State Historic Preservation Office, internal compilation of documents, review of developer documents, publication for comments, submission to HUD for approval, and final communication of environmental clearance. Refer to the flowchart on the next page.

The MFA Environmental Review Officer works with the developer to compile supporting documents. MFA must complete all intergovernmental consultation. The developer provides the following:

- 0-ER Project Abstract
- 7-Compliance Checklist 58.6

- 9-MFA Statutory Checklist 58.5 (see Appendices with examples)
- Data to support determination
- Certification of no change in land use and unit density
- Statement that estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation
- Phase I Environmental Site Assessment
- If applicable, asbestos survey (as required under NEHAP AHERA standards)
- If applicable, lead-based Paint Assessment (to HUD LBP standards)
- If applicable, archeological survey
- Any other technical reports as indicated by the environmental review process

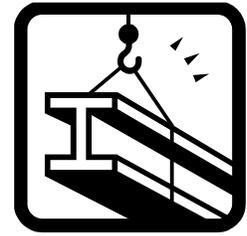
### Process for Projects

Recipient must submit the required information to MFA. We will review and subsequently notify the Recipient whether the project is converted to Exempt or if further action is necessary. Determining the level of environmental review should be completed before developing the 58.5 checklist. **Tribal consultation should take place before SHPO clearance. Tribal letters will be sent only by MFA.** Resources, including links, are available in the Appendix for Chapter 4 or the websites listed below.

### Website consult

<http://www.housingnm.org/developers/environmental-review>

<https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/>



## 5 NEW CONSTRUCTION (*MULTIFAMILY*) [Environmental Assessment]

A project classified as an ENVIRONMENTAL ASSESSMENT (EA) requires a significant amount of documentation and the ERR process will take 45 - 84 days to complete. Any project that is not categorized as Exempt or Categorically Excluded will require an Environmental Assessment. In general, projects that require an EA are those that involve new construction, changes in land use, and major reconstruction or expansion of existing facilities (generally above a 20% increase). At the conclusion of the EA process, the Recipient may determine that the project requires an Environmental Impact Statement (EIS). If it is evident before preparing an EA that an EIS is required, the Recipient should contact MFA.

Environmental Review Determination, Public Notice, and HUD Approval

When MFA, as the Responsible Entity, completes documentation of compliance where required for projects it must publish and/or post a Notice of Intent to Request Release of Funds (NOI/RROF)[58.22 & 58.70]. This Notice must allow for a public comment period of at least 7 calendar days if published or 10 calendar days before submission of the Request for Release of Funds (RROF) to HUD (7015.15, and instructions). All public comments must be considered and included in the ERR.

MFA submits the RROF (7015.15) to HUD, along with a copy of the affidavit of publication for the NOI/RROF. HUD then has 15 days for the public to object to the project/activity before they can issue an Authority to Use Grant Funds (AUGF) (7015.16).

If no objections are received by HUD, the AUGF will be issued to MFA. MFA will inform the subgrantee that we received approval from HUD and that they may begin to obligate and draw down the released funds in accordance with MFA policies and procedures.

Required Public Notices

If the RE has concluded its review of the assessment and determined there is a Finding of No Significant Impact, then the sub-grantee must comply with the following procedures for posting/publishing notices informing the public of the FONSI and the Notice of Intent to Request Release of Funds (NOI/RROF) from MFA.

These notices may be posted or published separately or in a combined notice. A combined

notice is preferred. If a decision is made to post or publish notices separately, then the NOI/RROF cannot be posted or published until one day after the last day of the public comment period for the FONSI notice.

A combined notice which merges the FONSI and RROF is encouraged for Environmental Assessments. This is simplest, fastest, and least costly method. If this format is used, the sub-grantee should use the format shown in this guide. This notice, which must be released for public review and comment, shall:

- A. Be posted or published in accordance with Sections 58.43, 58.45, and 58.70; and
- B. At a minimum, be distributed to local news media, individuals and groups interested in the project, and appropriate local, state and federal agencies.
- C. This Notice must allow for the ERR to be open for public comment for a period of at least 15 calendar days if published or 18 calendar days if posted.
- D. All comments based on the public notice process must be considered and made part of the ERR.
- E. If any comments require a revision to the RROF/FONSI, follow the process in this guide called Re-evaluation of Environmental Assessments and other Environmental Findings, below.

### **Step 3: Complete the Environmental Assessment:**

If a project is neither exempt nor categorically excluded from review, the Recipient must prepare an Environmental Assessment using the Environmental Checklist, Format II and a Statutory Checklist for the entire project. Note that the project includes all activities, no matter what the funding source.

The Environmental Checklist, Format II, is found in the Appendix. For assistance, the Recipient should contact its CDBG Program Representative or CDBG Compliance Manager at (404) 679-3174.

When completing the environmental assessment, the Recipient should review the following essential points:

1. Complete one assessment for the entire project, including all component activities no matter what the source of funds.
2. Document how each item on the checklist was considered, including how determinations of "not applicable" were made. Documentation should include the person(s) contacted, the date of contact, and/or the authority/report being used as documentation. DCA has a technical assistance guide for documentation sources.
3. Consider and discuss all alternatives to the project, including different locations, and the "no build alternative".
4. Consider and discuss any possible mitigation measures to minimize or alleviate any possible negative effects.

5. Anticipate any possible citizen or public interest group objections and include an assessment of their concerns.
6. Coordinate the assessment with all agencies responsible for environmental compliance, such as Georgia Department of Natural Resources, U.S. Fish and Wildlife Service, etc.

➤ **Step 4: Public Notice: Finding of No Significant Effect and Intent to Request Release of Funds (Concurrent Notice)**

If the assessment indicates that the project will have no significant effect on the quality of the human environment, the Recipient should:

1. Have the Certifying Officer sign the "Finding of No Significant Impact",
2. Publish a "Concurrent Notice" in a local newspaper of general circulation. All environmental notices may be published either in the legal or non-legal section of the paper.

The Concurrent Notice is a notice to the public that the Recipient has conducted an environmental review and found that the project will have no significant environmental effects and intends to request from DCA release of funds. The public is given at least 15 days to comment before the Recipient requests release of funds. There is a provision for 30 days public comment and/or a Public Hearing for projects that are expected to generate local controversy.

A sample "Concurrent Notice" is found in the Appendix. Pay special attention to including the proper dates (comment periods) and the other required information that must be added to the Notice by the Recipient prior to publication.

3. Send copies of the "Concurrent Notice" to the following:

Georgia Department of Community Affairs  
Attention: Rick Huber  
60 Executive Park South  
Atlanta, Georgia 30329-2231

The Recipient should document its ERR that the Notice has been sent to the above.

4. No sooner than 16 days after publication, upon expiration of the 15 day local comment period, and after acting on any local comments received, the Recipient should submit to DCA a signed Request for Release of Funds and Certifications (RROF/Certifications) form with a copy of the published Notice. The RROF must be properly completed and signed by the Certifying Officer of the Recipient. DCA cannot approve the RROF/Certifications before 15 calendar days have elapsed from the time of its receipt or from the time specified in the Notice, whichever is later. This time period is to allow DCA to consider any public objections. (See 24 CFR 58.75 in the Appendix for

permissible bases for objections.)

If no public objections are received, and upon expiration of the period for objections to the Release of Funds, DCA will issue a letter releasing the funds for the activity and clearing the environmental general condition.

## **Floodplain and Wetland Compliance Requirements**

If any activity is proposed to take place in a designated 100-year floodplain or a wetland area, the Recipient must do the following prior to completing the environmental review:

1. Provide early notice and information to the public and interested parties so they can comment. Publish "Notice of Early Public Review". It must be published at least 15 days prior to the "Concurrent Notice", in the same manner as the "Concurrent Notice", and sent to the same agencies and groups, as well as the Federal Emergency Management Agency (FEMA). (3003 Chamblee-Tucker Rd, Atlanta, Ga. 30341 Telephone: (770) 220-5224)
2. Identify and evaluate practical alternatives, and possible adverse impacts. Use the Environmental Assessment Checklist to document this step.
3. Where avoidance of floodplains or wetlands cannot be achieved, design the project so as to minimize effect to or from floodplain or wetlands.
4. Prepare and circulate a "Notice of Explanation" that there is no practicable alternative to locating an action in or affecting a floodplain or wetland. The same audience and means of distribution used in #1 above should be used for this finding. This second notice can be published at the same time as the "Concurrent Notice" concerning environmental review.

Copies of the two required notices are found in the Appendix.

## **Additional Wetland Compliance Requirements**

All Recipients must also comply with Executive Order 11990 and Section 404 of the Clean Water Act which pertain to protection of wetland areas.

Executive Order 11990 is a public notification, planning, and review process similar to the process described for floodplain compliance. (Notice of Early Public Review and Notice of Explanation.) As part of that process, if a wetland must be affected, a Section 404 Permit from the Army Corps of Engineers may be required.

If required, the Section 404 Permit must be obtained prior to publication to the Notice of Explanation.

Each step must be documented in your ERR and completed prior to publication of the Concurrent Notice or FONSI.

The initial step is to determine if your project is located in a wetland area. This is best done by consulting wetland maps that are available through the U.S. Fish and Wildlife Service for most of Georgia. Contact the Georgia Geologic Survey, Room 400, 19 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334. Telephone: (404) 656-3214. If a map is not available,

contact the Federal Fish and Wildlife Service, (404) 331-3580.

If the activity is located in a wetland area, a mitigation plan to deal with possible adverse effects may be required by the Corps of Engineers as part of the Section 404 permit.

### **Historic Preservation (Section 106) Compliance**

All CDBG grants no matter what the project are subject to compliance with Section 106 of the National Historic Preservation Act and the Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

The Advisory Council web site has additional information about the regulation at <http://www.achp.gov/work106.html>.

### **Housing Activities Compliance with Section 106**

During 1997, DCA entered into a Programmatic Agreement with the State Historic Preservation Division and the Advisory Council on Historic Preservation. This Agreement changes the way historic preservation compliance works for housing related projects and is applicable to **all** housing activities. Contact DCA's Environmental Compliance Officer for a copy of the Programmatic Agreement.

### **Public Facility Compliance with Section 106**

Prior to funding, each public facility application was reviewed by the Historic Preservation Division (HPD) at the Georgia Department of National Resources (DNR). The purpose of the review is to identify properties which might be eligible for the National Register of Historic Places and which might be affected by the project.

If eligible properties are affected, the Historic Preservation regulations must be followed as part of the environmental review process

Compliance with Section 106 regulations must be completed <b>prior</b> to publication of the environmental public notice(s).
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Special Conditions related to historic preservation concerns and compliance may be placed on grants identified by the HPD. These conditions must be cleared before funds are obligated for construction.