

CDBG Environmental Review

Trainer Guide

[Notes to the Trainer are in italics.]

Welcome and Introductions: Welcome to the CDBG Environmental Review training. Trainer briefly introduces him/herself. Participants give their names, their positions and, if there are multiple agencies present, their agency and whether they represent an entitlement or a State CDBG grantee/subgrantee.

Purpose of the workshop:

The purpose of the workshop is to ensure that every participant:

- Is familiar with the applicable Federal requirements; and
- Understands the governing HUD regulations and procedures.

Ground Rules: Please--

- Turn off all cell phones and pagers or set them on vibrate.
- Step outside the training room to answer calls.
- No smoking in the training room. There will be breaks when you can smoke.
- Questions are fine at any time, but please keep them to the topic being discussed.

Discussion Questions: There is a set of questions for group discussion at the conclusion of the workshop.

Entitlement vs. State CDBG: *Summarize the two programs, emphasizing the flow from HUD to the eventual grantee/subgrantee.* For environmental reviews, it is important to note that the State serves HUD's role in the State and Small Cities program. Where there are examples of entitlement communities in this training, the actions taken by HUD would be taken by the State for a grantee funded under the State and Small Cities program.

This workshop focuses on the steps that must be taken to complete the Environmental Review process. We will emphasize the need to understand the process as well as the specialized terminology used in the process, to ensure that grantees complete the appropriate Environmental Review process before beginning other work on the project.

● Why Environmental Reviews are Important

[Slides 5-6]

Provide a brief explanation of the importance of environmental reviews as planning and decision making tools. In addition, identify that Part 58 becomes applicable to a project proposal when the RE receives an application for HUD assistance or at the time the recipient makes an initial indication of approval to use CDBG funds (e.g., Consolidated Plan, annual action plan)

● Regulations

[Slide 7]

40 CFR Part 1500-1508 (Regulations for Implementing the National Environmental Policy Act)

24 CFR Part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities)

[This is the primary regulation governing the Environmental Review process.]

Other regulations include:

24 CFR Part 51 (Environmental Criteria and Standards)

24 CFR Part 55 (Floodplain Management)

24 CFR Part 35 (Lead Based Paint Rule)

36 CFR Part 800 (Protection of Historic Properties)

[Note: We will not be covering Lead Based Paint specifically, since there is training available that addresses that issue specifically. Refer participants to <http://www.hud.gov/offices/lead/training/index.cfm> for more information on LBP training.]

● Levels of Environmental Review

[Slide 8]

[This is intended to introduce and provide an overview/context for the “Top Five...” to follow. Provide additional examples, as appropriate.]

1. Exempt (24 CFR Part 58.34)
2. Categorically Excluded, not subject to 58.5 (24 CFR Part 58.35(b))
3. Categorically Excluded, subject to 58.5 (24 CFR Part 58.35(a))
4. Environmental Assessment (24 CFR Part 58.36)
5. Environmental Impact Statement (24 CFR Part 58.37)

● Top Five Methods for Managing the Environmental Review Process in the CDBG Program (Or How to Ensure that Funds are not Obligated Prior to Completion of the Environmental Review)

[Slide 9]

The Environmental Review process requires that agencies assess the area proposed for a project to ensure that it meets Federally-defined requirements (and in some instances some additional state requirements).

1. Understand the process for Environmental Review BEFORE proposing a project

[Slide 10]

First, agencies should familiarize themselves with the requirements of the Environmental Review process. 24 CFR Part 58, which outlines the HUD environmental review process, as well as the National Environmental Policy Act (NEPA) and its implementing regulations, 40 CFR 1500-1508. Other Environmental Review regulations that are applicable include 24 CFR Parts 51 and 55.

Part 58 identifies units of local government, states or state recipients (for purposes of the State CDBG program) as the Responsible Entity (RE). REs assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of Federal law (§§ 58.4 and 58.10).

The certifying officer for the RE is the chief executive officer for the RE or its formal designee. The certifying officer is recognized as the “responsible Federal official” under NEPA and Part 58 (40 CFR 1508.13 and 24 CFR 58.13). To formally designate someone other than the chief executive officer as CO, HUD requires a

formal resolution by the unit of general local government or state. Within the State CDBG Program, states generally make the same requirement of their state recipients.

Project funds may not be committed or spent by the recipient nor any project participant until the Environmental Review process has been completed. This prohibition also extends to non-HUD funds if the commitment or expenditure of those funds would have an adverse environmental impact or limit the choices of reasonable alternatives afforded to the RE (§ 58.22). Adverse environmental impacts would include, for example, demolition, dredging, filling, excavation. Limiting the choice of reasonable alternatives would include real property acquisition, leasing, rehabilitation, demolition, related site improvements, relocating building or structures, conversion of land or building/structures, etc.

After becoming familiar with the requirements for Environmental Review, recipients (i.e., units of local government, states or state recipients for the purposes of the State CDBG program should consider conducting a preliminary review of potential environmental factors that may delay the program before applying for the grant. For CDBG Entitlement communities, this means a preliminary review of potential environmental factors when scheduling projects on the Consolidated Plan.

This initial examination is no more than a “common sense” review of the environmental factors that potentially may impact the scheduling of projects. For example, if the project might require involvement by the Army Corps of Engineers and you know that there will be a delay in obtaining Army Corps services, schedule the project with enough lead time to obtain such services. Similarly, if the project is located in an area where there have been environmental issues in the past, you should factor in the time to resolve those issues as part of the project planning and implementation process.

Project Aggregation (grouping “like” activities) may be necessary. Conditions under which project aggregation would occur include:

- Activities are in a concentrated area
- Activities are within unspecified sites
- Multi-year activities
- Special HUD initiatives

Sec. 58.32 Project aggregation:

- By project aggregation, we mean that responsible entities must group together and evaluate as a single project all of the individual activities that are

related. They may be related geographically or functionally or are logical parts of a group of contemplated actions.

- Related activities are ones that:
 - Automatically trigger other actions
 - Cannot or will not proceed unless other actions are taken beforehand or at the same time
 - Are mutually dependent parts of a larger activity/action
- In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.
- The purpose of project aggregation is to group together related activities so that the responsible entity can:
 - (1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).
 - (2) Consider reasonable alternative courses of action.
 - (3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
 - (4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.
- Multi-year project aggregation.

Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

Re-evaluation of environmental findings (Sec. 58.47)

The RE must re-evaluate its environmental findings to determine if they are still valid, when:

- The recipient proposes substantial changes in the nature, magnitude or extent of the project, e.g., adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, e.g., concealed or unexpected conditions are discovered during the implementation of the project, or activity which is proposed to be continued
- The recipient proposed the selection of an alternative not in the original finding

Whether or not the environmental findings have changed, the RE must issue another public notice (publish or post/mail) and get HUD approval, as necessary (i.e., a notice was required previously on the RE's environmental finding.) If the environmental findings have changed, the RE must issue a public notice and get HUD approval, e.g., compliance with a Federal law or authority is invoked).

2. Understand the types of environmental issues that could delay a project

[Slide 17]

Conducting the Environmental Review may involve examining compliance with a number of Federal laws and authorities (Sec. 58.5) for their potential relevance to a project. These include:

- Coastal Zone Management
- Floodplain Management (24 CFR 55)
- Historic Preservation (36 CFR 800)
- Noise Abatement (24 CFR 51, Subpart B)
- Hazardous Operations (24 CFR 51, Subpart C)
- Airport Hazards (24 CFR 51, Subpart D)
- Protection of Wetlands
- Toxic Chemicals and Radioactive Materials (Sec. 58.5(i)(2))
- Endangered Species
- Sole Source Aquifers

- Farmlands Protection
- Wild and Scenic Rivers
- Air Quality
- Environmental Justice

[Trainer Option: Elicit the top 3-4 responses from the participants, and then reveal the full list on a flip chart prepared ahead of time.]

In addition, during the Environmental Review document will need to examine a number of other environmental factors, if for example, new construction or converting a property to another use is proposed, including:

- Unique Natural Features and Areas
- Site Suitability, Access and Compatibility with Surrounding Development
- Soil Stability, Erosion and Drainage
- Nuisances and Hazards (Natural and Built)
- Water Supply/Sanitary Sewers
- Solid Waste Disposal
- Schools, Parks, Recreation and Social Services
- Emergency Health Care, Fire and Police Services
- Commercial/Retail and Transportation

*[Trainer Option: Elicit the top 3-4 responses from the participants, then reveal the full list on a flip chart prepared ahead of time. **Note: These factors would be considered ONLY in the case of an Environmental Assessment level of review.]*

[Depending on timing, this may be a good place for the 10-minute break. Alternatively, we could break after #3 below.]

3. Understand when activities may be considered Exempt or Categorically Excluded

[Slide 18]

[Less emphasis on naming each and every Exemption or Categorical Exclusion --- give some examples and give the citation of where to find the complete list. More emphasis on the big picture -- levels of environmental review. It should be made clear that there is a suggested format for all of these levels of review.]

Every project will require some level of review. However, some projects may be Exempt Activities and others may be designated as Categorically Excluded Activities.

Exempt Activities are specifically exempt from the requirements of the National Environmental Policy Act of 1969 (NEPA) and the Federal laws listed in §58.5, as they have no physical impact or result in no physical change on the environment. These activities include:

- Administration of the CDBG grant;
- Environmental studies or assessments;
- Project planning and management;
- Public services;
- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Technical assistance and training;
- Assistance for improvements to arrest or control imminent threats to public safety, provided it will not alter environmental conditions and is limited to doing only what is necessary to control or arrest the effects from disasters or imminent threats;
- Payment of principal and interest on loans made or obligations guaranteed by HUD; and
- Engineering design.

Funds for these activities may be used after the responsible entity (RE) has documented, in writing, its determination that each activity or project is Exempt [sec. 58.34(b)], and all parties execute the CDBG grant agreement.

Categorically Excluded Activities (§ 58.35). are those excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA), but may be subject to other Federal laws. There are two classifications of Categorically Excluded activities:

Categorically Excluded Activities Not Subject to be Reviewed Under the Related Federal Laws and Authorities [§ 58.35(b)]. Such activities include:

- Tenant-based rental assistance;
- Supportive services, such as health care, housing services, permanent housing placement, day care services, nutritional services, short-term

payments for rent/mortgage/utility costs, and assistance in gaining access to local, state and Federal government benefits and services;

- Operating costs, including maintenance, security, operations, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs; [Note that many of these activities are typically ineligible for funding under the CDBG program.]
- Economic development activities, including 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 with foundation work complete, including closing costs, down payment assistance, interest buy-downs, and similar activities that result in the transfer of title; and
- 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 that do not have a physical impact.
- Approval of supplemental assistance (including insurance or guarantee), to a project previously approved under Part 58, if the approval is made by the same responsible entity that conducted the environmental review of the original project and re-evaluation of the environmental findings is not required under sec. 58.47.

Funds for these activities may be used after the responsible entity (RE) has documented, in writing, its determination that each activity or project is Exempt [sec. 58.34(b)], and all parties execute the CDBG grant agreement.

Categorically Excluded Activities Required to be Reviewed Under the Related Federal Laws and Authorities [§ 58.35 (a)]. Such activities include:

- Acquisition, repair, improvements, reconstruction or rehabilitation of public facilities/infrastructure and improvements (other than buildings), when facilities/improvements will have the same use without changes in size or capacity of more than 20 percent;
- Projects to remove barriers restricting mobility and accessibility to elderly and handicapped persons;
- Rehabilitation of residential buildings (with one to four units), when 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;

- Rehabilitation of multifamily residential buildings when the 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 costs of replacement after rehabilitation;
- For non-residential structures (including commercial, industrial and public buildings), the facilities and improvements are in place and will not change in size or capacity by more than 20 percent, and the activity does not involve a change in land use;
- An individual action on up to four dwelling units, where there is a maximum of four units on any one site;
- 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 existing structures, or acquisition of vacant land, provided that the structure or land acquired or disposed of will retain the same use; and
- Combinations of the above activities.

Funds for these activities may be committed and spent after the responsible entity (RE) has completed a Statutory Checklist and, if required, issued a public notice and received HUD approval. Of course, the CDBG grant agreement must have been executed by all parties.

4. Understand what procedures must be followed

[Slide 20]

Different procedures exist for Environmental Reviews, depending on the category the project is in: Exempt or Categorically Excluded Activities Not Subject to 24 CFR 58.5, Categorically Excluded (and subject to related Federal laws and authorities), Activities Subject to an Environmental Assessment, and Activities Subject to an Environmental Impact Statement.

HUD Field Environmental Officers have developed recommended formats for all levels of environmental review completed according to Part 58. The RE must use the current HUD-recommended format, or equivalent formats (Sec. 58.38) (REs may develop environmental review formats themselves, but the content of those formats must be equivalent to the HUD recommended formats)

Many states have developed their own forms and procedures for the State CDBG program which are to be used for the Environmental Reviews.

In general, be sure you understand which form is required in your jurisdiction (by either HUD or the state) and what procedures must be followed.

- **Exempt Activities or Categorically Excluded Activities Not Subject to 24 CFR 58.5**

At minimum, a written description of the activities and citation of the applicable section of Part 58 must be documented and approved and placed in the Environmental Review Record (ERR). HUD has provided the Categorical Exclusion Suggested Format for Activities Not Subject to 24 CFR 58.5 for documentation. No further review is required. In addition, RE's must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable (§ 58.6).

[Review the Suggested Format document. Note: this format ensures compliance with the authorities of 58.6 – EVERY activity must comply with 58.6. It is suggested that this form is in every environmental review record – i.e. it supplements the Statutory Checklist and Environmental Assessment.]

- **Categorically Excluded Activities Subject to 24 CFR 58.5**

For activities deemed Categorically Excluded but SUBJECT TO other related Federal laws and authorities HUD has provided the Categorical Exclusion Suggested Format for Activities Subject to 24 CFR 58.5 for documentation. (Statutory Worksheet and Instructions)

Upon completion of the review, make one of the following findings:

- The project converts to Exempt [Sec. 58.34(a)(12)];
- The project cannot convert to Exempt and requires issuing a Notice of Intent to Request Release of Funds and obtaining HUD approval; or
- The unusual circumstances of the project may result in a significant environmental impact and requires preparation of an Environmental Assessment according to 24 CFR 58, Subpart E.

[Details of the Notice of Intent to Request Release of Funds will be discussed in the section on "Understanding the Release of Funds Process.]

In addition, REs must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or

provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable (§ 58.6).

[Review the Suggested Format document. When going through the Statutory Checklist or EA, please remind the audience that the environmental review is more than checking a box . . . the form should reference the source documentation (for instance, the Flood Map panel number) and the Environmental Review Record should contain a copy of the source documentation (i.e., maps). The responsible entity needs to include documentation for every Statutory Checklist item and environmental factor being evaluated.]

- **Environmental Assessment**

Activities subject to the Environmental Assessment must document compliance with NEPA and the related Federal laws and authorities listed in sec. 58.5

The following procedure should be followed:

1. Determine the existing conditions, describe the character, features and resources of the project area, and identify the trends that are likely to continue in the absence of the project.
2. Complete the HUD recommended format or equivalent format. State recipients should use the format recommended by their state.
3. Evaluate the effects of the project or the activities on the human environment.
4. Address alternatives to the preferred course of action, including no action and other alternatives considered but rejected.
5. Based on the review, make one of the following findings:
 - A Finding of No Significant Impact (FONSI); or
 - A Finding of Significant Impact.

There must be documentation that is credible, traceable, and supportive of the environmental findings.

6. If the review results in a Finding of No Significant Impact, a FONSI notice must be issued (published in a newspaper of general circulation or posted/mailed) and also distributed to interested parties, local news

media, appropriate local, state and Federal agencies, and to the Regional Office of the Environmental Protection Agency (EPA) and the HUD field office. The day after the notice is issued, a public comment period begins and must remain open for a minimum of 15 calendar days, if the notice is published in a newspaper of general circulation in the affected community; or a minimum of 18 calendar days if the FONSI notice is posted (e.g., displayed in public buildings, at the project site) or mailed.

[Details of the Notice of Intent to Request Release of Funds will be discussed in the section on "Understanding the Release of Funds Process.]

7. If the review results in a Finding of Significant Impact, an Environmental Impact Statement (EIS) will be required.

[Emphasize that an EIS is a rare occurrence.]

In addition, REs must address, in writing, whether or not the requirements of the Flood Disaster Protection Act, Coastal Barrier Resources Act, and/or provision of 24 CFR 51.303(a)(3) (disclosure for the sale or purchase of an existing property within a Runway Clear Zone or Clear Zone) were applicable.

The RE may adopt an EA that was prepared by another entity, but only after the RE makes an independent evaluation of the information to ensure it meets the requirements of Part 58 and NEPA, and takes responsibility for its scope and content.

- **Environmental Impact Statement**

Review 40 CFR 1500-1508 for the required format for an EIS. Responsible Entities should also refer to 24 CFR 58, Subpart G for guidance.

The grantee can adopt an EIS that was prepared by another agency, if it was prepared in accordance with Federal regulations. Alternatively, the grantee may prepare its own EIS. Copies of the Draft EIS and the Final EIS must be provided to EPA Headquarters and Regional Offices, and to any interested party. A copy of the Final EIS must be provided to the state, HUD Field Office and HUD Headquarters library.

5. Understand the Release of Funds Process

[Slide 25]

Prior to requesting release of funds, the RE must post/mail or publish a Notice of Intent to Request Release of Funds (NOI-RROF) whenever the activity or project is categorically excluded SUBJECT TO sec. 58.5 and cannot convert to exempt, or when an Environmental Assessment (EA) and Environmental Impact Statement (EIS) has been prepared. If the NOI-RROF is published in a newspaper of general circulation, the public comment period is a minimum of 7 calendar days, and a minimum of 10 calendar days if it is posted/mailed. The comment period begins the day after the notice appears in the newspaper or is posted/mailed.

[Note: If the Notice(s) are published, they only need to appear in the newspaper once. The RE does not need to publish the notice every day of the comment period.]

For Environmental Assessments, the NOI-RROF may be combined with the FONSI Notice so that the two comment periods run concurrently. If the FONSI and NOI-RROF Notices are combined, the public comment period is a minimum of 15 calendar days when published in a newspaper, or a minimum of 18 calendar days when posted/mailed. The combined Notice must clearly indicate that it is intended to meet two separate notification requirements, and advise the public they must specify whether their comments apply to the NOI-RROF or FONSI.

Comments received by the RE must be addressed and, when necessary, resolved prior to signing the Request for Release of Funds and Certification (7015.15) and submitting the request to the HUD Field Office or state.

In addition to publishing or posting/mailing the Notice(s), the RE must also distribute them to interested parties, local news media, appropriate local, state and Federal agencies, and to the Regional Office of the Environmental Protection Agency (EPA) and the HUD field office (Sec. 58.43)

Recipients must submit a copy of the public notification with the signed Release for Release of Funds and Certification (HUD form 7015.15) to HUD or the state. HUD will accept faxed copies of the RROF and notification in order to begin the 15 day objection period. However, HUD must receive the original documents before it will release funds. State recipients should check to see if there is a similar policy for the state.

HUD or the state will not approve the RROF before 15 calendar days have elapsed from the time of receipt of the RROF and the certification, or from the time specified in the published Notice, whichever is later. (HUD form 7015.16, Authority to Use

Grant Funds). In the public notification process, the RE is responsible for addressing comments related to the content and substance of the Environmental Review, while HUD or the state is responsible for address objections on the basis of procedural noncompliance (Sec. 58.75)

Prior to committing or expending funds, or undertaking any activities (other than Exempt Activities or Categorically Excluded Activities Not Subject to Review under the related Federal laws and regulations), approval of the RROF MUST be received. This requires coordination between project participants and the RE approving officials to confirm final approval before beginning work on the project.

Occasionally, grantees have erroneously begun work prior to approval of the RROF. When the project is monitored subsequently by HUD, a finding may be issued that the grantee was not in compliance with the Environmental Review process. In such an instance, appropriate actions may be taken by HUD, which may include disallowance of HUD funding.

● **Conducting the Review (flow chart)**

[Slide 28; see next page; this will also be a handout.]

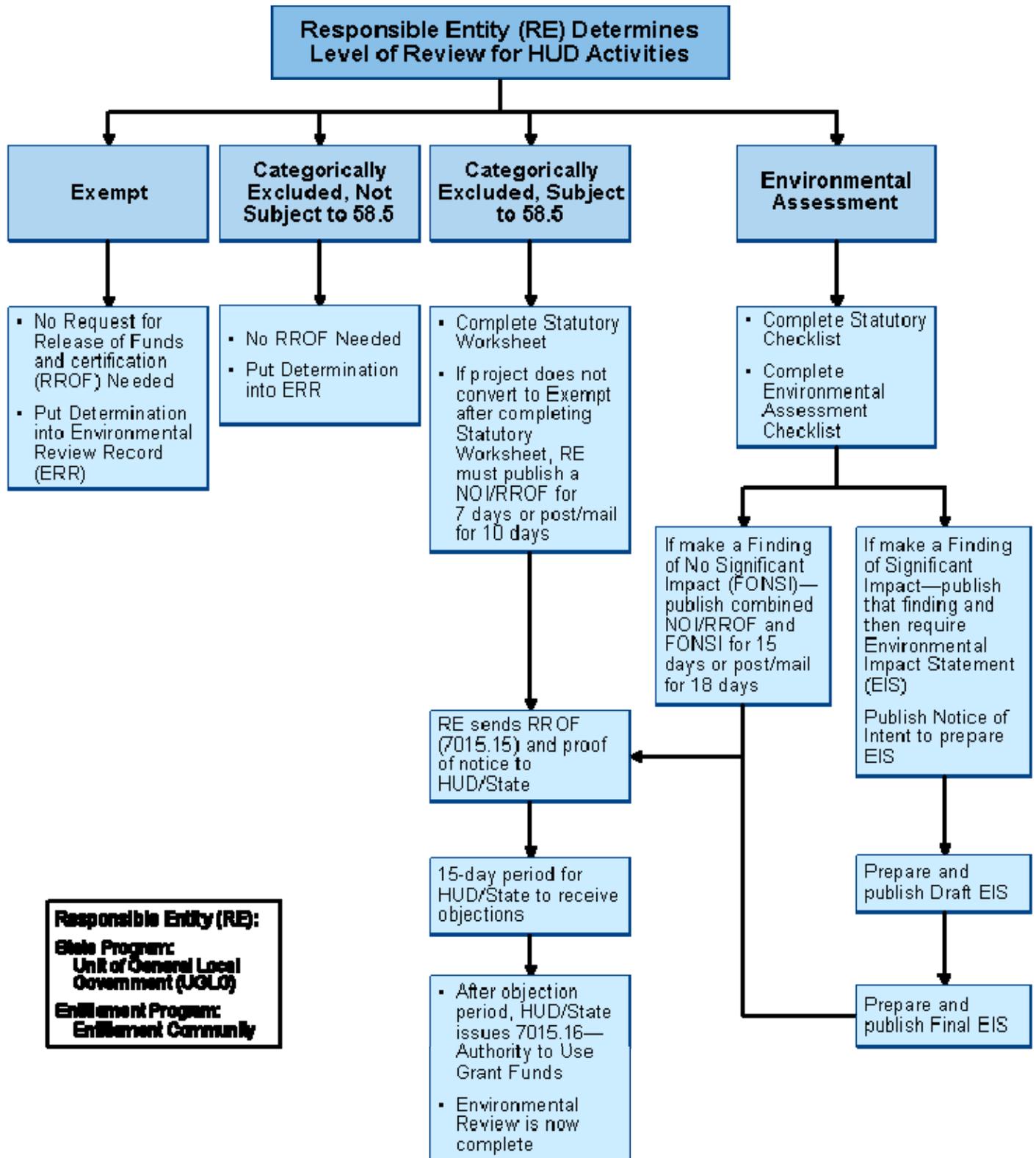
● **File Documentation Requirements**

[Slide 29]

The Environmental Review Record must contain all of the Environmental Review documents, public notices and written determination or environmental findings as part of evidence of the review, decision making and actions pertaining to the project. The file will be available for public review. The file must:

- Describe the project and the activities that are part of the project
- Evaluate the effects of the project or the activities on the human environment
- Document compliance with applicable statutes and authorities
- Record the written determinations and other review findings (e.g., exempt and categorically excluded projects determinations, findings of no significant impact)
- Contain other verifiable source documents and relevant base data used or cited in the Environmental Assessment, Environmental Impact Statements or other project review documents. The documents may be incorporated by reference.
- Contain all public comment notices, FONSI, Request for Release of Funds
- Contain HUD state approval of completion of Environmental Review and approval to use funds

Environmental Review Process



Responsible Entity (RE):
State Program:
 Unit of General Local Government (UGLG)
Entitlement Program:
 Entitlement Community

● Other HUD Documents

[Slides 30-31; review key documents – several have already been discussed....]

- Environmental Review Guide for CDBG Programs (Green Book)
- Assessment Tools for Environmental Compliance
- Suggested Format for Exemption
- Categorical Exclusion Suggested Format for Activities Not Subject to 24 CFR 58.5
- Categorical Exclusion Suggested Format for Activities Subject to 24 CFR 58.5 (Statutory Worksheet & Instructions)
- Environmental Assessment (HUD-recommended format)
- Protocol for Threshold Review for Proposed Activities

[The Protocol for Threshold Review is useful for those not familiar with Part 58. HUD uses it for non-entitlement grant recipients. State CDBG program staff might find this useful for the REs if they are providing a grant to an RE without much HUD environmental experience.]

- Sample Notice of Intent to Request Release of Funds
- Sample Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds
- Sample Floodplain and Wetland Notices
- Sample Disclosure for Target Housing Sales

[Introduce the HUD ER website (if not done already), and the resources available, with particular emphasis on the Assessment Tools for Environmental Compliance and the FAQs.]

● Solving the Case Study

[Slide 32]

Group the participants by table (between 6-10 per table) and provide the first page of the “Conducting an Environmental Review.” Each table should complete an Environmental Assessment (emphasize again that they should confer with their HUD Field Environmental Officer or state on the appropriate recommended format). The table should also discuss what items would be in the Environmental Review Record (ERR). Provide approximately 20 minutes for the exercise and let each table present its findings.

1. When can BHP purchase the property for this project? Can BHP use nonfederal funds to purchase the property prior to completion of the environmental review?

Once BHP submitted its application to DHCD for CDBG assistance for the project, neither BHP nor any participants in the development process may commit or expend HUD funds, nor any non-HUD funds on activities that would have an adverse environmental impact, or limit the choice of reasonable alternatives until the State approves the Request for Release of Funds. BHP can only acquire the property after an Environmental Review is complete and State approves the Request for Release of Funds.

BHP cannot use nonfederal funds to purchase the property prior to completion of the Environmental Review. See 24 CFR 58.22

2. What is the level of review for the first property – rehabilitating an existing house?

The level of review for the first property may be Categorically Excluded, but subject to the related laws and authorities in §58.5 because the land use did not change. However, if the amount of rehabilitation does not meet the criteria defined in 24 CFR 58.35(a)(3), then a full Environmental Assessment may be required.

3. What is the level of review for the alternate property?

The alternate property would require a full Environmental Assessment.

4. Are there any environmental issues with the alternate property that might delay the Environmental Review?

The new site, which previously housed a dry cleaner, will complicate the project because the site may be contaminated. HUD's policy is that all properties that are proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants, or the intended use of the property [sec. 58.5(i)(2)]. Although Part 58 does not require preparation of an ASTM Phase I Environmental Site Assessment, if the RE cannot establish through other means that the site is not affected by contamination, then a Phase I will need to be conducted and testing may be required to determine whether the site is contaminated.

5. What is the content of the environmental review record (ERR) for the alternate property?

See HUD recommended format for the Environmental Assessment

Contents of Environmental Review File:

The Environmental Review Record must contain all of the environmental review documents, public notices and written determination or environmental findings as part of evidence of the review, decision making and actions pertaining to the project. The file will be available for public review. The file must:

- Describe the project and the activities that are part of the project
- Evaluate the effects of the project or the activities on the human environment
- Document compliance with applicable statutes and authorities
- Record the written determinations
- Other verifiable source documents and relevant base data used or cited in Environmental Assessments, Environmental Impact Statements or other project review documents. The documents may be incorporated by reference.

6. What must the grantee do before committing or expending funds?

Notices/Request

- Publish combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds (minimum 15 calendar days)
- Respond to comments, if received.
- Send Request for Release of Funds and Certification (form 7015.15) and proof of Notice to State
- Must wait 15 days for public objection period to elapse
- State issues Authority to Use Grant Funds (form 7015.16), or equivalent authorization.

Note: All of these documents must be placed in the Environmental Review File.

● Discussion Questions

[Slide 33]

1. List three activities that are “exempt” from the NEPA requirements.

1. Grant administration
2. Environmental studies or assessments
3. Project planning and management
4. Engineering design

5. Public services,
6. Inspections and testing of properties for hazards or defects,
7. Purchase of insurance,
8. Technical assistance and training,
9. Assistance for improvements to arrest or control imminent threats to public safety, provided it will not alter environmental conditions and is limited to doing only what is necessary to control or arrest the effects from disasters or imminent threats,
10. Payment of principal and interest on loans made or obligations guaranteed by HUD.

2. What are “categorically excluded” activities?

Categorically excluded activities are those excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA), but may be subject to other Federal laws.

3. Under what circumstances is a public comment period required?

When publishing, posting and/or mailing the Notice of Intent to Request Release of Funds, as well as the Finding of No Significant Impact (FONSI), when required.

The NOI-RROF is required whenever the activity or project is categorically excluded SUBJECT TO sec. 58.5 and cannot convert to exempt, or when an Environmental Assessment (EA) and Environmental Impact Statement (EIS) has been prepared.

For Environmental Assessments, the public comment periods in a combined NOI-RROF and FONSI run simultaneously, but the notice must indicate that comments are being accepted on both notices.

4. How long after the Notice of Intent to Request for Release of Funds is published can the grantee begin spending funds?

After the grantee has submitted its Request for Release of Funds to HUD/state and has received approval from HUD (for Entitlement) or the state (for State CDBG and Small Cities grantees), but no sooner than 15 calendar days after HUD/state has received the Request for Release of Funds or from the time specified in the Notice, whichever is later. Note: The grantee may not submit its request to HUD/state until it has resolved and/or responded to comments it's received during the public comment period.

5. Describe the documents that must be in the Environmental Review Record.

a. Exempt Activities

- Describe the project and the activities that are part of the project
- Record the written determination of exemption [cite application subsection of 58.34(a)]
- Evidence of § 58.6 compliance

b. Categorically excluded subject to § 58.5

- Describe the project and the activities that are part of the project
- Record the written determinations [cite applicable subsection of 58.35(a) and whether project converts to exempt]
- Document compliance with applicable statutes and authorities
- Include other verifiable source documents and relevant base data used or cited in the Statutory Worksheet
- When applicable, include copies of public postings for the Notice of Intent to Request for Release of Funds
- Include RROF/C (form 7015.15)
- Include HUD or state approval of the Request for Release of Funds
- Evidence of § 58.6 compliance

c. Environmental Assessment

- Describe the project and the activities that are part of the project
- Evaluate the effects of the project or the activities on the human environment
- Document compliance with applicable statutes and authorities
- Record the written determinations and other review findings (e.g., exempt and categorically excluded projects determines, findings of no significant impact)
- Include other verifiable source documents and relevant base data used or cited in Environmental Assessments.
- Include copies of public postings for the FONSI, Notice of Intent to Request for Release of Funds
- Include RROF/C (form 7015.15)
- Include HUD or state approval of the Request for Release of Funds
- Evidence of § 58.6 compliance