Basics of a Part 58 Review

Office of Environment and Energy
Department of Housing and Urban Development
Introduction
Objectives

• To wrap your head around part 58 environmental reviews (familiarize with terms, forms, requirements)
• To feel comfortable getting started with an environmental review for a project
• To become aware of resources available to help completing an environmental review
• Know where to look for more training on environmental reviews
What Is an Environmental Review?

Analysis of the impact of a project on the surrounding environment and vice versa.
The Objective

To document that our HUD funded projects are not harming the environment and that the environment is not impacting our projects.

To provide decent, safe, and sanitary housing

*(Don’t commit funds before you do it.)*
National Environmental Policy Act of 1969

• Requires Federal agencies to consider the environmental impact of proposed actions early on in the planning and decision making process
• A process designed to encourage public participation
• Requires that documents be available to the public
HUD’s Environmental Regulations

24 CFR Part 50 -- HUD Review Requirements
  – Environmental review requirements for HUD staff

24 CFR Part 51 -- Manmade Hazards
  » Noise
  » Explosives and Thermal
  » Runway Clear Zones

24 CFR Part 55 -- Floodplains & Wetlands

24 CFR Part 58 -- Local Government Review
  – Unit of Local Government accepts HUD responsibility

Take a look!
Part 58: Responsible Entities

Responsible Entity (RE) assumes federal responsibilities

- RE = a unit of general local government, tribe or State

Responsible Entity Certifying Officer

- Evaluates the environmental review
- Is responsible for scope and content
- Makes environmental finding
- Goes to court in a lawsuit
HUD Responsibilities under Part 58

- Receives the form from the RE certifying that the Environmental Review is complete
- Accepts public comments when a public comment period applies for HUD
- Completes a form to authorize the release of funds
- Monitor REs for environmental compliance
- Provide technical assistance

Find your local Field Environmental Officer!
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts
When does Part 58 apply?

**Part 58**
Most CPD programs & Public Housing Programs

**Exceptions**
- NSP2 Non-Profit Grants
- Neighborhood Initiative Grants
- Rural Housing Grants

**Part 50**
- Program’s legislation doesn't allow Local Governments (LG) to assume authority
- Projects where City refuses to accept responsibility (and is not direct recipient)
- HUD determines LG does not have capacity
The Environmental Review Process

- Define the project
- Determine level of review
- Perform the environmental review
- Finalize review
- Expend project funds
- Post-review considerations

Maintain Environmental Review Record (ERR)
The ERR shall:

1. Describe all activities that are part of the project
2. Evaluate effects of project on human environment
3. Document compliance with applicable authorities, particularly 58.5 and 58.6.
4. Record determinations and findings.
5. Contain verifiable source documents and relevant base data.
Document how determinations were made – including but not limited to:

- Maps (including the location of the project)
- Letters of correspondence, approvals or required permits
- 8-step process for floodplain and wetland management
- Phase I and Phase II ESA reports
- Pictures of the site and future renderings
Project Description

- Capture the maximum anticipated scope of the proposal
- Include all contemplated actions that are a composite part of the project

- Project aggregation (58.32)
- Sensitive information
Which is better?

a) “The affected units occur in the North End neighborhood.”

b) “The project will affect the units at 1816 Main St., 165 Worthington St., and 46-48 Liberty St.”
Writing a Project Description

Which is better?

a) “This project will upgrade the HVAC systems and weatherize the windows for single family units.”

b) “The project will modernize single family units.”
Level of Review

- Environmental Impact Statement
- Environmental Assessment
- Categorically Excluded
- Subject to 58.5
- Categorically Excluded
- Not Subject to 58.5
- Exempt
Exempt Activities

Listed in 24 CFR 58.34(a):

- Environmental, planning & design costs
- Information & financial services
- Administrative & management activities
- Public services (no physical impact)
- Inspections
- Purchase of tools & insurance
- Technical assistance & training
- Payment of principal and interest
- Temporary assistance for disaster or imminent threats
Categorically Excluded Not Subject to 58.5 (CENST) Activities

Listed in 24 CFR 58.35(b):
- Tenant-based rental assistance
- Supportive Services (healthcare, housing placement)
- Operating costs (utilities, supplies)
- Economic development costs (non-construction)
- Pre-development costs
- Maintenance
- Supplemental Assistance
Categorically Excluded
Subject to 58.5 (CEST) Activities

Listed in 24 CFR 58.35(a): Narrowly defined activities with physical impacts

- Acquisition, leasing, or disposition of vacant land or existing buildings with no change in land use
- Acquisition or leasing of public facilities with no change in land use
- Removal of barriers that restrict mobility and accessibility to elderly and handicapped
CEST Activities Continued

Rehabilitation, Repair, and Improvements

• Public facilities and non-residential buildings: no change in land use, change in size or capacity < 20%
• Multifamily residential: no change in land use, change in size or capacity < 20%, cost of rehab < 75% of cost of replacement after rehab
• Single family residential: no change in land use, density < 4 units, footprint not in floodplain or wetland

Determine level of review
CEST Activities Continued

New Construction, Reconstruction, & Demolition

- **Individual action**: single family residential only
  - Maximum of 4 units, OR
  - **Scattered site**: 5+ units on sites 2,000+ ft apart, with no more than 4 units per site

Determine level of review
Environmental Assessment (EA)

The default level of review
- Major rehabilitation
- Most new construction, reconstruction, or demolition
- Any change in land use
- Whenever no exclusion applies
Environmental Impact Statement (EIS)

Listed in 24 CFR 58.37:

- Finding of significant impacts (FOSI)
- Projects affecting 2,500+ units or beds

Recommended format: see CEQ regulations at 40 CFR 1502.10
Quiz: Choose the Level of Review

1. Construction of a 4-unit apartment building
   ❖ Answer: CEST (24 CFR 58.35(a)(4)(i))
Quiz: Choose the Level of Review

2. Demolition and reconstruction of a 5-unit apartment building
   - Answer: EA
Quiz: Choose the Level of Review

3. Replacement of an office building’s plumbing system
   ❖ Answer: CEST (58.35(a)(3)(iii))
4. Office operating costs

- Answer: CENST (58.35(b)(3))
5. Buying an apartment building with the intent to perform minor repairs and rent out individual apartments
   – Answer: CEST (58.35(a)(3)(ii), 58.35(a)(5), 58.35(a)(6))
6. Selling an office building to a developer who plans to demolish the building

Answer: EA
So, what’s required?

Perform the environmental review

- Exempt
- CENST
- CEST
- EA
- EIS

58.6 Compliance

58.5 Compliance

EA Factors

FONSI

NOI/RROF

CEQ EIS Requirements

NOI/RROF unless exempt
58.6 Applies to ALL Projects!!

Requirements in 24 CFR 58.6:
- National Flood Insurance Program
- Coastal Barrier Resources Act
- Airport Runway Clear Zones
Phew, that wasn’t too bad. What next?

Perform the environmental review

Exempt
CENST
CEST
EA
EIS

58.6 Compliance
58.6 Compliance
58.6 Compliance
58.6 Compliance
58.6 Compliance

58.5 Compliance
58.5 Compliance
58.5 Compliance

NOI/RROF unless exempt
FONSI
NOI/RROF
NOI/RROF

CEQ EIS Requirements
EA Factors
24 CFR 58.5: The fun stuff

a.k.a. the “Statutory Checklist”

- Clean Air Act
- Coastal Zone Management Act
- Contamination and Toxic Substances
- Endangered Species Act
- E.O. 12898 on Environmental Justice
- Explosive and Flammable Hazards
- Farmlands Protection Policy Act
- E.O. 11988 on Floodplain Management
- National Historic Preservation Act
- Noise Abatement Regulation
- Sole Source Aquifers
- E. O. 11990 on Wetlands
- Wild and Scenic Rivers Act
58.34(a)(12): CEST projects can convert to exempt if there are no circumstances which require compliance with any other Federal laws and authorities cited in 58.5.
What else is required?

Perform the environmental review

Exempt

CENST

CEST

EA

EIS

58.6 Compliance

58.6 Compliance

58.6 Compliance

58.6 Compliance

58.5 Compliance

58.5 Compliance

58.5 Compliance

58.5 Compliance

EA Factors

CEQ EIS Requirements

NOI/RROF unless exempt

FONSI

NOI/RROF

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NOI/RROF

NOI/RROF

NOI/RROF

NOI/RROF

NOI/RROF
Environmental Assessment

• NEPA analysis
• Additional considerations
The other special thing about EAs...

Perform the environmental review
Finalize review

Exempt
CENST
CEST
EA
EIS

58.6 Compliance
58.6 Compliance
58.6 Compliance
58.6 Compliance
58.6 Compliance

58.5 Compliance
58.5 Compliance
58.5 Compliance

EA Factors
CEQ EIS Requirements

NOI/RROF unless exempt
FONSI
NOI/RROF

NOI/RROF
NOI/RROF

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Finding of [No] Significant Impact

Is there a significant impact?

- Poses threats to health or safety
- Regional rather than local impact
- Long-term rather than short-term impacts
- Impact on unique resources
- Violation of Federal, state, tribal environmental laws
- Highly controversial

Finding of No Significant Impact (FONSI) | Finding of Significant Impact
---|---
NOI/RROF | EIS

Finalize review
I’m in compliance! What now?

Exempt

58.6 Compliance

CENST

58.6 Compliance

CEST

58.6 Compliance

EA

58.6 Compliance

EIS

58.6 Compliance

58.5 Compliance

EA Factors

58.5 Compliance

CEQ EIS Requirements

FONSI

NOI/RROF unless exempt

NOI/RROF

NOI/RROF

Finalize review

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Notice of Intent to Request Release of Funds

Inform the public of your intent to submit a Request of Release of Funds (HUD form 7015.15) for this project. Do so by publishing or posting.

<table>
<thead>
<tr>
<th>Type of Notice</th>
<th>Length of Comment Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of FONSI</td>
<td>15 days when published Or 18 days when mailing and posting</td>
</tr>
<tr>
<td>Notice of Intent to Request for Release of Funds (NOI-RROF)</td>
<td>7 days when published Or 10 days when only mailing and posting</td>
</tr>
<tr>
<td>Concurrent or combined notices</td>
<td>15 days when published Or 18 days when mailing and posting</td>
</tr>
</tbody>
</table>
Request for Release of Funds and Certification

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

<table>
<thead>
<tr>
<th align="left">Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)</th>
</tr>
</thead>
<tbody>
<tr>
<td align="left">1. Program Title(s)</td>
</tr>
<tr>
<td align="left">4. OMB Catalog Number(s)</td>
</tr>
<tr>
<td align="left">6. For information about this request, contact (name &amp; phone number)</td>
</tr>
<tr>
<td align="left">8. HUD or State Agency and office unit to receive request</td>
</tr>
</tbody>
</table>

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following:

| 9. Program Activity(ies)/Project Name(s) | 10. Location (Street address, city, county, State) |

11. Program Activity/Project Description
Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.

2. The responsible entity has assumed responsibility for and complied with and will continue to comply with the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5, and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.

3. The responsible entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and Native Hawaiian organizations, and the public.

4. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did [ ] did not [ ] require the preparation and dissemination of an environmental impact statement.

5. The responsible entity has disseminated and published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.

6. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.

7. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.

9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in any capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity

Title of Certifying Officer

X

Date signed

Address of Certifying Officer

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of the Recipient

Title of Authorized Officer
Now that the RROF’s at HUD...

The RROF may be disapproved (58.75) if any of the following conditions apply:

- HUD has knowledge that the RE did not properly conduct the environmental review.
- HUD finds inaccuracies in the Certification or RROF.
- HUD receives valid public objections attesting to the inaccuracy or non-compliance of the environmental review.

See the form here!
If there are no objections raised regarding the project or the Certification and RROF, then HUD approves the release of funds by filling out form 7015.16.

See the form here!
Exempt

CENST

CEST

EA

EIS

58.6 Compliance

58.6 Compliance

58.6 Compliance

58.6 Compliance

NOI/RROF unless exempt

FONSI

NOI/RROF

CEQ EIS Requirements

NOI/RROF

Expend project funds

Say that again?
Mitigation and Monitoring

• If mitigation measures were required in any of the portion of the environmental review, make sure they are implemented.

• HUD staff may periodically monitor Responsible Entities for environmental compliance on completed projects.
RE must re-evaluate environmental findings when:

- Change in nature or extent of project,
- New environmental circumstances or conditions
- Selection of alternative not in original finding

If FONSI is reaffirmed, no new FONSI is required – MUST UPDATE ERR
If original findings no longer valid, prepare a new review at a higher level of review.
Take-Away Messages

An Environmental Review (ER) is an analysis of the impacts of both the project on the environment and the environment on the project.

Under Part 58 the Responsible Entity Certifying Officer becomes the “responsible Federal Official” for NEPA responsibilities.

Funds cannot be committed, obligated, or expended prior to the completion of the environmental review.

The RE must create an environmental review record with verifiable resources and documented findings for each project.

The goal of the process is to improve projects or ensure that projects do not adversely affect human health and safety or the environment.
Common Deficiencies

- Failure to aggregate interdependent activities in single ERR
- ERR lacks traceable source documentation
- Project funds are committed before submitting RROF or obtaining AUGF
- Failure to address HUD environmental standards – noise, airports, explosives, toxics
- Failure to consult with appropriate agencies
Just to throw a quick curveball... tiering!
Resources


- Local Environmental Field Officer Contacts – http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

Resources


• HUD’s resources library – http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/library