

SECTION IV. ENVIRONMENTAL REVIEW

Before **any** CDBG funds can be obligated, expended, or drawn down from the State, the grantee must complete an environmental review for his/her project **and** have received a Release of Funds (ROF) letter from the Department, indicating that the environmental review requirements have been met. All documentation related to this process constitutes the Environmental Review Record (**ERR**).

For projects funded with a **HOUSING REHABILITATION revolving loan**, the grantee may complete a generic environmental review. As site specific locations of the homes to be rehabilitated and/or the businesses to be assisted are not usually known at the time of grant application, a project specific environmental review containing historical, floodplain, and in some instances a noise determination, is required **PRIOR** to obligating CDBG funds.

For projects funded with an **ECONOMIC DEVELOPMENT revolving loan**, the grantee may obtain the generic environmental review documentation which would be used as a source reference for the actual environmental reviews required for each project. The generic environmental review, known as a reference source for economic development projects, can be used in completing the project specific reviews.

NOTE: For projects that contain the **acquisition of either land or structures**, it is now permissible to enter into an **"option to buy"** agreement **prior** to the completion of the appropriate environmental review. The Grantee should utilize its non-federal revenue sources for the earnest deposit if one is required. **IN ORDER TO AVOID THE ISSUE OF OBLIGATING FEDERAL FUNDS PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW, THE "OPTION" MUST CONTAIN THE PROVISION/CLAUSE THAT THE "OPTION" IS CONTINGENT UPON THE SUCCESSFUL COMPLETION OF THE ENVIRONMENTAL REVIEW.**

IT IS STRONGLY ENCOURAGED BY THE STATE THAT THE GRANTEE, PRIOR TO SIGNING AN "OPTION", CONDUCT A PRELIMINARY "WALK THROUGH" OF THE SITE OR FACILITY, FOR THE PURPOSE OF DETERMINING THE LIKELIHOOD FOR THE NEED FOR ANY ENVIRONMENTAL MITIGATION THAT MAY BE NECESSARY AS A RESULT OF THE FINDING OF THE REVIEW. THE COST OF MITIGATION MAY BE UNAFFORDABLE GIVEN EXISTING REVENUES FOR THE PROJECT.

Designation of a Certifying Official

For each project, the grantee will need to identify and designate a **certifying official** who will sign the environmental review on behalf of the grantee. HUD prefers that the certifying official be a local government elected official or senior staff member (city manager, county planning director, etc.). Document the designation of the certifying official in the Environmental Review Record (ERR).

Determining Which Level of Environmental Review Is Appropriate for Your Project

To determine the extent of the environmental review required for each project, the Department follows the rules laid out in the Code of Federal Regulations (CFR). The CFR is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government (in this case, Housing and Urban Development). There are four basic categories of environmental review. These categories correspond to the varying scope, complexity and anticipated environmental disturbances associated with different types of CDBG (and HOME) projects.

The four categories of environmental review are:

- Exempt Activities
- Categorical Exclusions Not Subject to CFR 58.5
- Categorically Excluded
- Activities Requiring an Environmental Assessment

A. EXEMPT ACTIVITIES

Activities considered "exempt" from environmental review requirements of NEPA and other related federal environmental laws include:

- Administrative costs
- Most engineering and design costs associated with eligible projects
- Environmental studies
- Project planning
- Interim assistance to arrest the effects of an imminent threat or physical deterioration in which the assistance does not alter environmental conditions.
- Continuation of a CDBG eligible, nonphysical public service (e.g., fire protection)
- Per HUD guidance, economic development projects which are non-physical / non-altering projects (such as solely operating expenses and inventory purchases) will normally be exempt.

For any project activity determined by the certifying official to be exempt, the applicant should prepare a Finding of Exemption (**EXHIBIT IV-A**) that identifies the activities that are exempt and cites the appropriate statutory authority. Submit this form to the state and retain a copy for your project file.

B. CATEGORICAL EXCLUSIONS NOT SUBJECT TO CFR 58.5

Projects that involve payments in the form of subsidies now form a new category of environmental clearance. Activities that now require the completion of (**EXHIBIT IV-A-1**) and (**EXHIBIT IV-M-1**) include:

- Tenant-based rental assistance (TBRA).
- Supportive services including, but not limited to, health care, housing services, permanent housing replacement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and federal government benefits and services.
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs.
- Economic development activities, including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
- Activities to assist home ownership of existing "or new dwelling units not assisted with federal funds" including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property.
- Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- **(NEW)** Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and reevaluation of the environmental findings is not required under Sec. 58.47.

C. CATEGORICALLY EXCLUDED ACTIVITIES

Projects involving rehabilitation, reconstruction, and/or replacement of an existing facility or infrastructure which would cause only minimal change in use, size, or capacity (less than 20%) are considered Categorically Excluded Activities. These activities are categorically excluded from NEPA requirements, but remain subject to other related environmental laws (e.g., floodplain, historical review, etc.). For Categorically Excluded Activities, the grantee must prepare a Statutory Checklist (**EXHIBIT IV-B**). To assist grantees in completing the Statutory Checklist, the Department has prepared Statutory Checklist Instructions (**EXHIBIT IV-C**) which provide regulatory background and contact information for all consulting agencies.

Projects that involve construction of new facilities or extensive renovation that will substantially change the use, size, capacity, or character of the facility or its site will require an Environmental Assessment (See "D" below).

Generally speaking, Categorically Excluded Activities include:

- Acquisition of facilities that are in place and will be retained for the same use
- Replacement or upgrading of facilities with only a minimal change in use, size, capacity or location
- Projects which will not change the use, size, capacity, or character of the site
- Projects involving the purchase of equipment (hospitals, clinics, fire departments, etc.)
- Projects which reduce or eliminate material and architectural barriers
- **NEW for HOUSING PROJECTS - An individual action on a one-to-four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.**
- Rehabilitation which does not increase unit density by more than 20 percent and which does not require a change in land use, residential class, or zoning; and for which the estimated cost is less than 75% of the total estimated cost of replacement after rehabilitation.

For **housing rehabilitation** projects, the grantee may develop a generic environmental review and will probably arrive at a finding of categorical exclusion, i.e., no federal laws have been triggered at this point. **This determination must be supplemented by the completion of a site-specific review which consists of floodplain, historical, and in some instances, noise determinations to see if they trigger other federal laws.** The grantee or subgrantee is required to complete an Individual Housing Environmental Clearance Form, **EXHIBIT IV-M** prior to the initial reimbursement request for CDBG funds. The completion and submission of **EXHIBIT IV-M** verifies that the grantee or subgrantee has completed the environmental review for the activity for which it is seeking to apply CDBG funds.

For **OED Revolving Loan Fund Projects only**, per HUD guidance, if certain activities (such as construction) **are or can** proceed independent of the CDBG funds, (such as for working capital) as long as CDBG funds **are not** going into the stated activity, the environment reviews for such projects may be defined as more narrow in scope (including only the CDBG activities and other activities not proceeding).

In preparing and compiling the Statutory Checklist, the grantee is urged to attach any and all documentation (letters, e-mails, floodplain maps, etc.) used to arrive at the findings in the Checklist and reference these documents in the area marked "Reference to Notes Providing Documentation Sources & Correspondence." This would include making reference to phone conversations with local government sources (such as a planning or building departments). In referencing phone conversations, please indicate who you spoke with and when the conversation occurred.

Once all sections of the Statutory Checklist are completed, the certifying official must make a determination on whether any of the applicable laws and authorities cited were "triggered" (see bottom of page 2 of the Statutory Checklist). If any laws or authorities were triggered, a publication of a Notice of Intent to Request Release of Funds (**EXHIBIT IV-F**) may be required. For example, if the project site was determined to have noise issues due to the proximity to a railroad, mitigation would probably be required. This mitigation to bring the project into compliance with the laws and authorities would drive a publication requirement. Following the publication of a Notice of Intent to Request Release of Funds, there is a fourteen day public comment period. On the fifteenth day following the publication, the state will issue a Release of Funds letter.

If none of the applicable laws and authorities were triggered in the course of the environmental review (as is the case in most instances), the certifying official signs and submits the Statutory Checklist (along with all accompanying documentation) to the Department. A copy should be retained and placed in the grantee ERR.

D. ACTIVITIES REQUIRING AN ENVIRONMENTAL ASSESSMENT

Projects involving new construction or extensive rehabilitation that will substantially increase the size and capacity of a facility will require the completion of an Environmental Assessment (**EXHIBIT IV-H & EXHIBIT IV-I**). To assist grantees in completing the Environmental Assessment, the Department has prepared Environmental Assessment Instructions (**EXHIBIT IV-J**) which provide regulatory background and contact information for all consulting agencies.

In preparing and compiling the Environmental Assessment, the grantee is urged to attach any and all documentation (letters, e-mails, floodplain maps, etc.) used to arrive at the findings in the Assessment and reference these documents in the area marked "Source of Documentation." This would include making reference to phone conversations with local government sources (such as a planning or building departments). In referencing phone conversations, please indicate who you spoke with and when the conversation occurred.

Once all sections of the Environmental Assessment are completed, the certifying official must make a determination on whether any of the applicable laws and authorities cited were "triggered" (see bottom of page 6 of the Environmental Assessment). Ideally, the grantee will make a Finding of No Significant Impact. **All grantees completing an Environmental Assessment must publish a Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds (EXHIBIT IV-K).** Following the publication of a Combined Notice, there is a thirty day public comment period. On the thirty-first day following the publication of the Combined Notice, the state can issue a Release of Funds letter.

If the certifying official makes a determination that there is a Finding of Significant Impact, s/he should immediately contact the state project monitor for further instructions. The program monitor will work with the grantee directly to decide a course of action for fulfillment of the environmental requirements.

State Monitoring

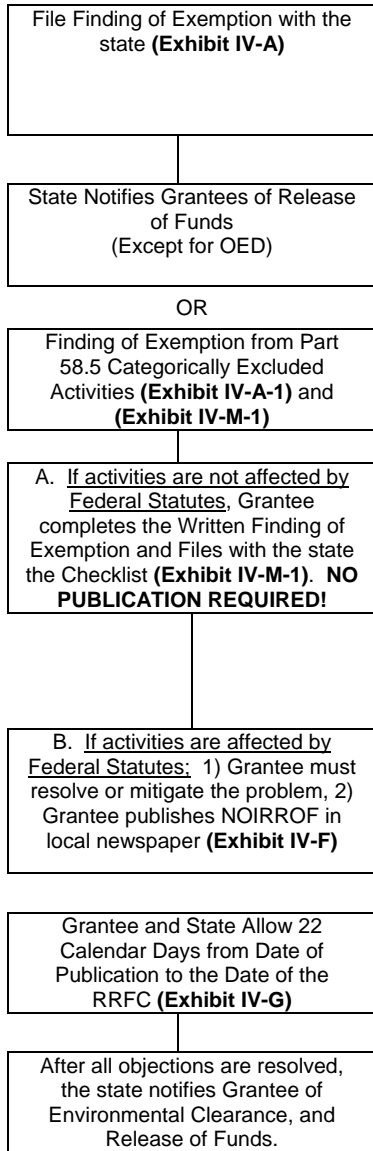
Environmental standards monitoring question can be found in **Section X (State CDBG Monitoring)** of this guidebook. The section specifically details the items to be addressed when the state field representative monitors your CDBG project.

Environmental Review Flow Charts

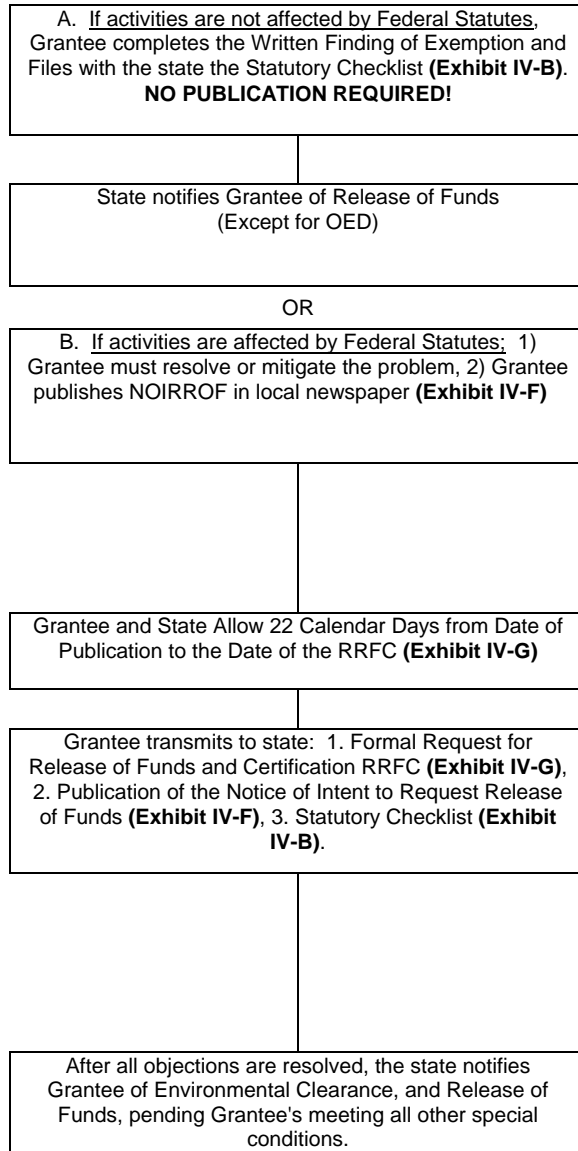
The chart that follows portrays the environmental review process. These charts are for your information only. The process is not overwhelming if each grantee first identifies all the components necessary for its project and then completes the review in segments.

ENVIRONMENTAL REVIEW PROCESS

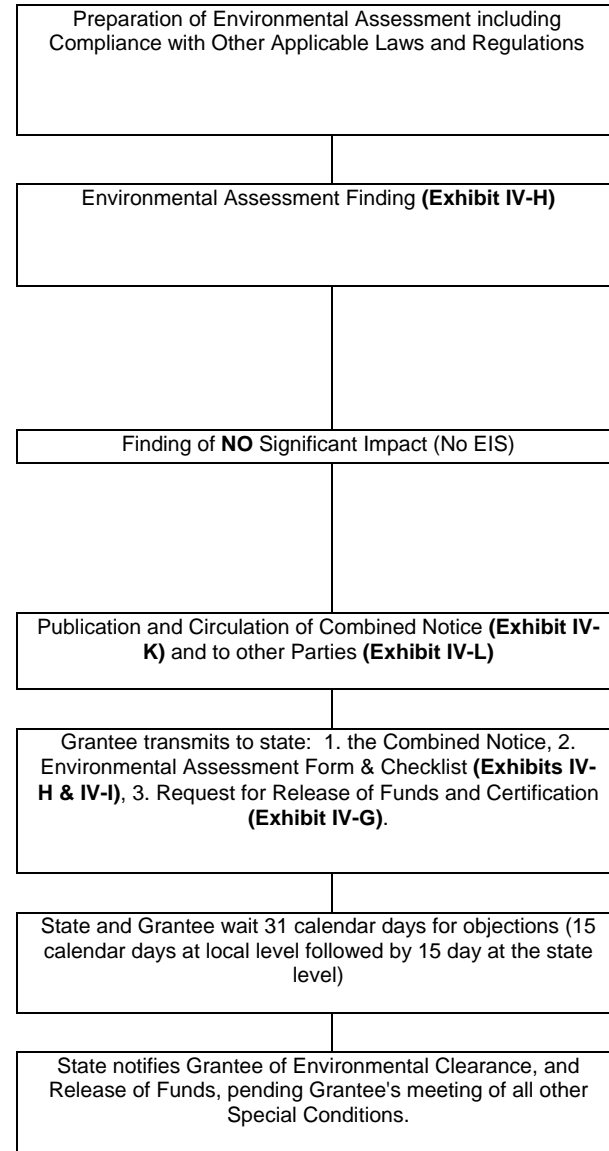
I. EXEMPT ACTIVITIES



II. CATEGORICALLY EXCLUDED ACTIVITIES



III. ENVIRONMENTAL ASSESSMENT REQUIRED



IV.

