

May 3, 2023



# **Community Project Funding (CPF) Program**

## **Federal Nexus and Prohibition on Choice-Limiting Actions for CPF Grants**

### **Office of Environment and Energy**



# Overview

## Agenda

- Ask A Question (AAQ) Desk for CPF Grantees
- Federal Nexus & Choice-Limiting Actions
- FY22/23 Legislative Changes & Environmental Review (ER) Process Flow
  - Work Under Contract
  - After-the-Fact Consultations
- HUD Environmental Review Online System (HEROS)
- Frequently Asked Questions (FAQs)



# Housekeeping

**The session will be 75 minutes long**

- 60 minutes of presentation
- 15 minutes at the end for FAQ
- Slides will be available after the presentation

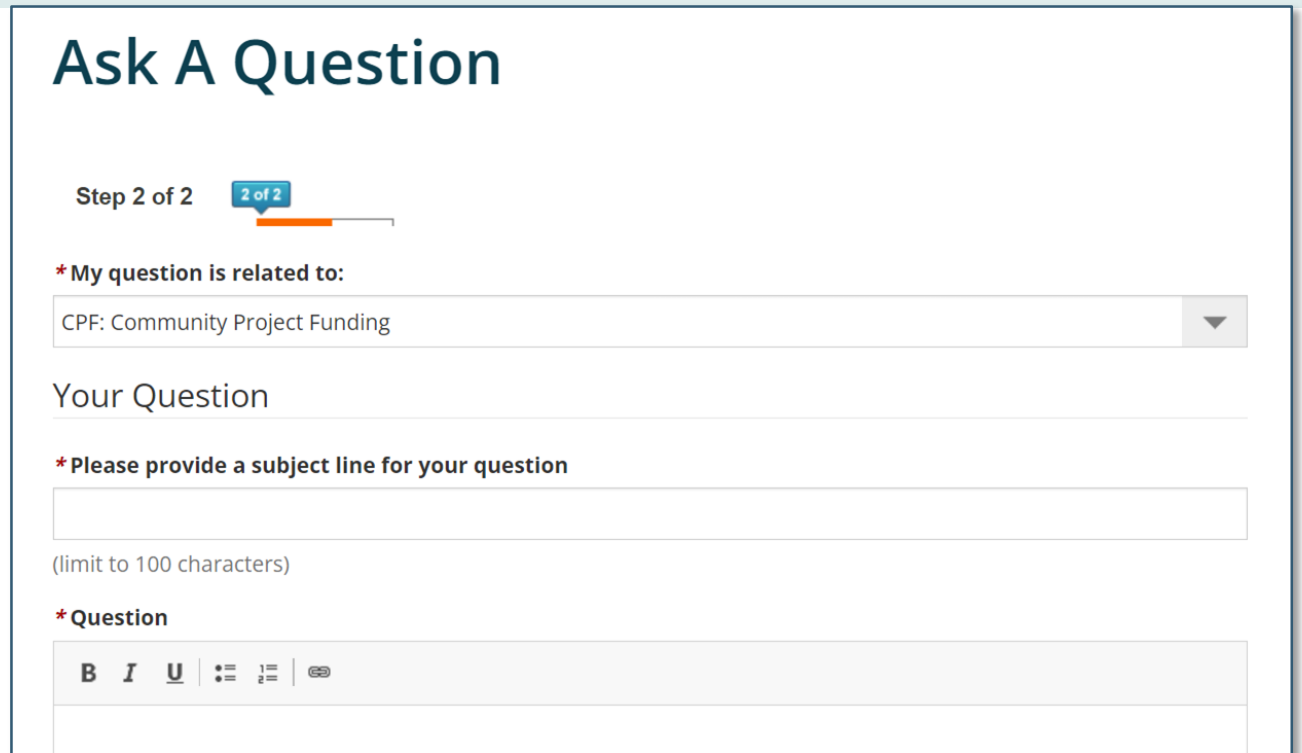


# Ask A Question (AAQ) Desk for CPF Grantees

<https://www.hudexchange.info/program-support/my-question/>

**Fill out the form and submit directly to the AAQ desk**

- Step 1: Fill out personal information
- Step 2: Select CPF from the dropdown and enter question subject and text

A screenshot of the "Ask A Question" web form. At the top, it says "Ask A Question". Below that, a progress indicator shows "Step 2 of 2" with a blue box containing "2 of 2" and an orange progress bar. The first section is labeled "\* My question is related to:" and contains a dropdown menu with "CPF: Community Project Funding" selected. The second section is labeled "Your Question" and contains a text input field. Below the input field is the text "(limit to 100 characters)". The third section is labeled "\* Question" and contains a rich text editor with formatting options (B, I, U, bulleted list, numbered list, link) and a text area for the question.



# Federal Nexus & Choice-Limiting Actions

# Federal Nexus and Choice-Limiting Actions (58.22)

- The Responsible Entity (RE) or HUD will be required to complete an ER of ALL work that took place or is proposed to take place following receipt of the Federal Nexus
- A “Federal Nexus” is defined as the event that, by its occurrence, triggers the requirements for a federal ER under a host of laws, regulations, and Executive Orders
- Federal Nexus for CPF
  - FY22: July 18–20, 2022 (Date of receipt of Letter of Invitation)
  - FY23: December 29, 2022 (Date of legislative enactment)
- After the Federal Nexus, grantees are prohibited from taking new choice-limiting actions related to hard costs, including commitment or expenditure of HUD and non-HUD funds, until a satisfactory ER has been completed for the aggregated project



# Choice-Limiting Actions (58.22)

A choice-limiting action is any activity that a grantee undertakes, including committing or expending HUD or non-HUD funds, that reduces or eliminates a grantee's opportunity to choose project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

<https://www.ecfr.gov/current/title-24/subtitle-A/part-58/subpart-C/section-58.22>



# Choice-Limiting Actions (cont.)

**HUD's prohibition on choice-limiting actions at 24 CFR 58.22 is derived from the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (NEPA), which state that (with certain exceptions):**

- “until an agency issues a finding of no significant impact, as provided in § 1501.6 of this chapter, or record of decision, as provided in § 1505.2 of this chapter, no action concerning the proposal may be taken that would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives.” (40 CFR § 1506.1).





# Choice-Limiting Actions (cont.)

Examples of choice-limiting actions include:

- Acquisition
- Leasing
- Rehabilitation
- Demolition
- New construction
- Ground disturbance work such as:
  - Clearing
  - Grading
  - Grubbing



# Consideration of Alternatives

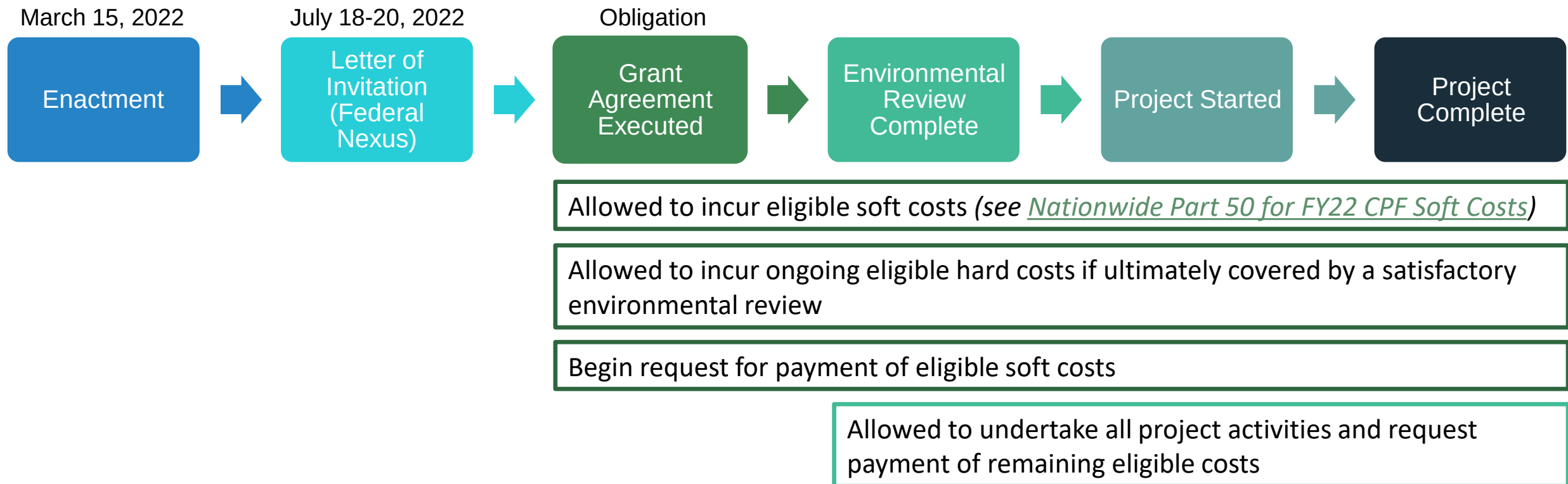
- Commitment of HUD or non-HUD funds prior to approval of the ER inherently diminishes and biases objective consideration of alternative locations for the proposed project (including a no-action alternative).
- HUD believes that the consideration of alternatives is fundamental to the ER process. Consideration of alternatives is the “heart of NEPA.”





# FY22/23 Legislative Changes & Environmental Review (ER) Process Flows

# FY22 CPF Process Flow *(original)*



# FY22 and FY23 Legislative Changes

## Retroactive Changes to FY22 CPF:

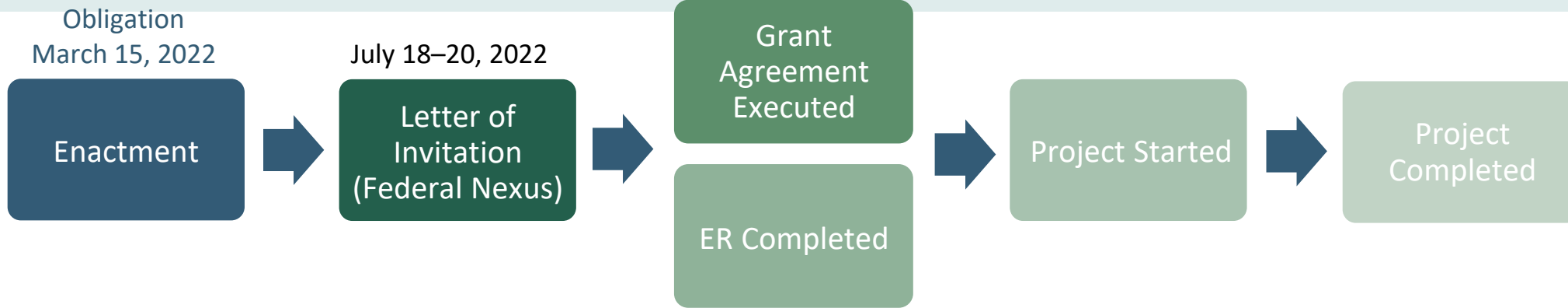
- Removes the 20% cap on soft costs including admin, planning, operations, and maintenance costs
- Grantees can now incur eligible soft costs on or after the date of Enactment of the FY22 Act (March 15, 2022) and prior to the date of grant execution
- Federal nexus remains the same (July 18-20, 2022). No CLAs or physical work after federal nexus, unless part of prior contractual obligation.

## FY23 Changes to CPF:

- Removes the 20% cap on soft costs including admin, planning, operations, and maintenance costs
- Grantees can incur eligible costs on or after the date of enactment of the FY23 Act (Dec 29, 2022) and prior to the date of grant execution
- Federal nexus moved back to FY23 Enactment (Dec 29, 2022). No CLAs or physical work after federal nexus, unless part of prior contractual obligation.



# FY22 CPF Process Flow *(current)*



Allowed to incur eligible soft costs (see [\*Nationwide Part 50 for FY22 CPF Soft Costs\*](#))

Allowed to incur ongoing eligible hard costs (at own risk)—must be covered by a **satisfactory** ER to be eligible for repayment

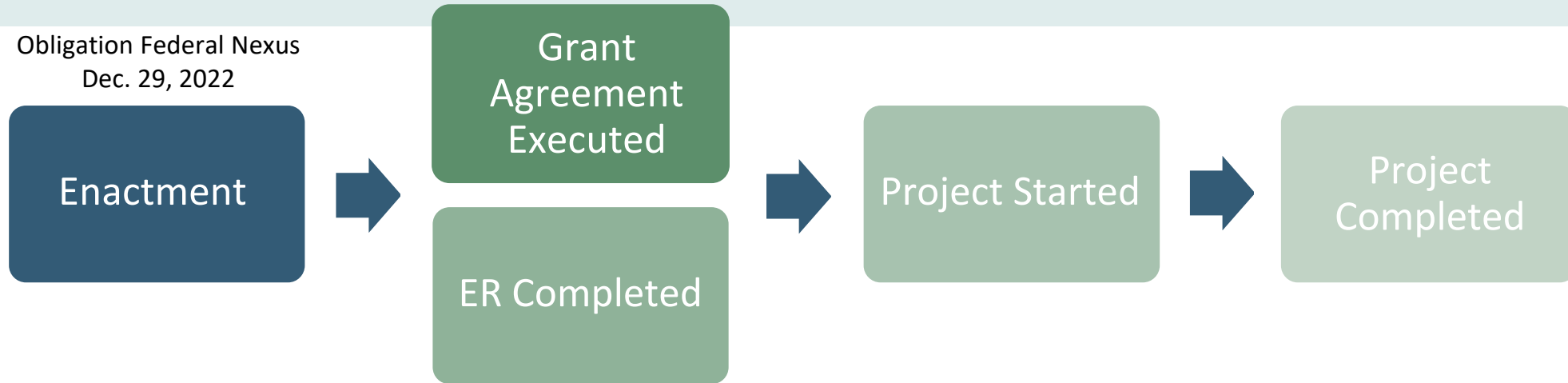
Can begin request for payment of eligible soft costs

Allowed to undertake all eligible project activities and request payment of remaining eligible costs



# FY23 Process

Obligation Federal Nexus  
Dec. 29, 2022



Allowed to incur eligible soft costs (see [Nationwide Part 50 for FY23 CPF Soft Costs](#))

Allowed to incur ongoing eligible hard costs (at own risk)—must be covered by a **satisfactory** ER to be eligible for repayment

Can begin request for payment of eligible soft costs

Allowed to undertake all eligible project activities and request payment of remaining eligible costs



# Eligible Costs

HUD is interpreting “eligible costs” as costs of compliant activities (including NEPA Env compliance) – so in order for costs to be eligible the activities would still need to be covered by a satisfactory ER showing no unmitigable env harm.

See project description for list of covered soft costs that do not require completion of separate ER:

- [FY22 HUD Part 50 Nationwide ERR for CPF Soft Costs](#)
- [FY23 HUD Part 50 Nationwide ERR for CPF Soft Costs](#)

In general, all other post-nexus soft cost and physical activities need to be covered by a separate satisfactory ER prior to incurring and requesting payment.

- Work under contract caveat.





# Satisfactory Environmental Review

- All activities performed after the federal nexus must be aggregated into single project-specific ER
  - Except for soft costs covered by HUD's Nationwide Programmatic ER for CPF Soft Costs.
- No unmitigable environmental harm
- Project able to complete after-the-fact consultations with ER authorities for work already performed
- If a satisfactory ER cannot be completed for the project, reach out to Grant Officer to discuss other options, repurposing of funds



# After-the-Fact Consultations

- Some environmental authorities may not agree to post-activity (after-the-fact) consultations
- Endangered species—FWS, NMFS
- Historic preservation—SHPO, ACHP, Tribes
  - Anticipatory demolition—demolishing a structure with an intent to avoid a Section 106 review
  - Section 110(k) of the NHPA prohibits federal agencies from granting assistance to applicants who intentionally adversely affect a historic property to avoid the requirements of Section 106
  - Anticipatory demolition is when an applicant or federal agency, with legal power to prevent it, allows an adverse effect to occur prior to completion of the Section 106 process
  - ACHP guidance states that applicants and federal agencies should avoid any commitments or activities that harm historic properties prior to completing the Section 106 process
  - Applicants who violate Section 110(k) may have their funding revoked and be unable to be reimbursed for activities completed upfront



# Work Under Contract

- Work under contractual obligations entered into prior to the Federal Nexus date can proceed with performing work after nexus (***at your own risk***)
- All activities performed after the nexus date must be aggregated into a *satisfactory* project-specific ER
- If there is unmitigable environmental harm or the project cannot complete after-the-fact consultations with ER authorities for work already performed, then the project is unable to complete a *satisfactory* ER and must reach out to their CGD Grant Officer to discuss repurposing of funds

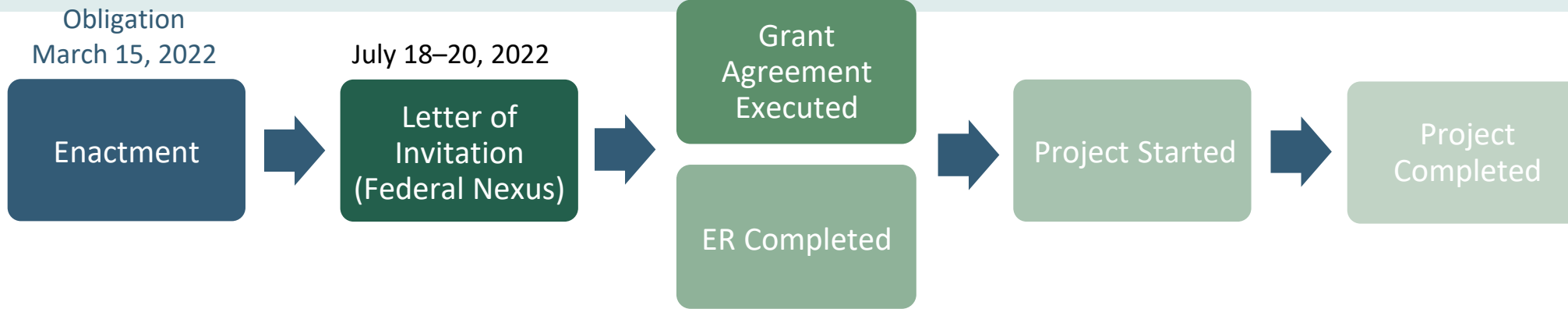


# Work Under Contract (cont.)

- Following the nexus, you may not enter into additional construction contracts or take other new choice-limiting commitments or actions, including making a commitment of HUD or non-HUD funds to the project, until an ER by an RE under Part 58 is completed and a Request for Release of Funds and Certification (RROF/C) is approved by the HUD CPD Field Office Director via certification of the 7015.16 Authority to Use Grant Funds in HEROS, if applicable; or an ER by HUD under Part 50 is completed.



# FY22 CPF Process Flow *(current)*



Allowed to incur eligible soft costs (see [Nationwide Part 50 for FY22 CPF Soft Costs](#))

Allowed to incur ongoing eligible hard costs (at own risk)—must be covered by a **satisfactory** ER to be eligible for repayment

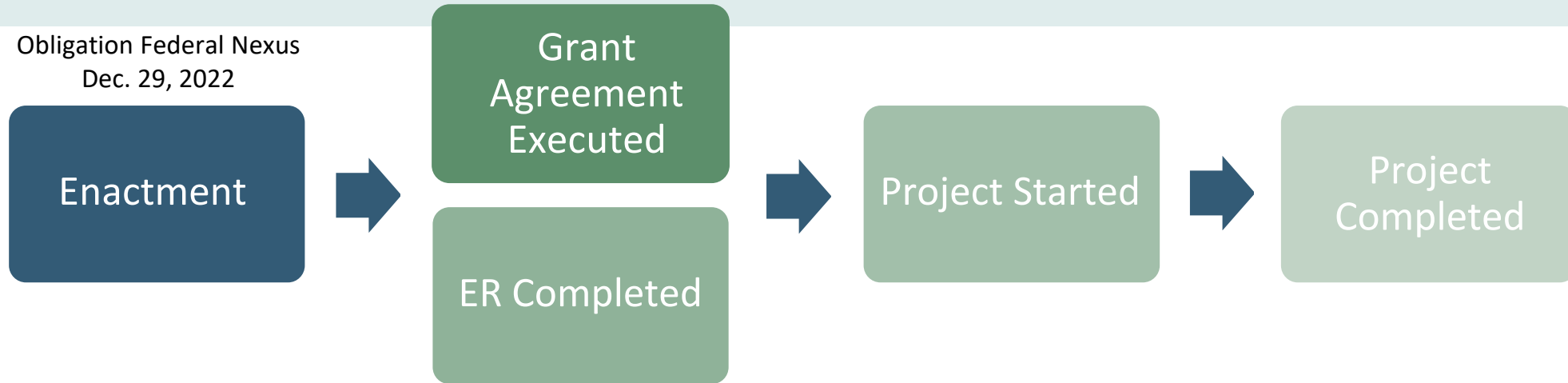
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# FY23 Process

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Dec. 29, 2022



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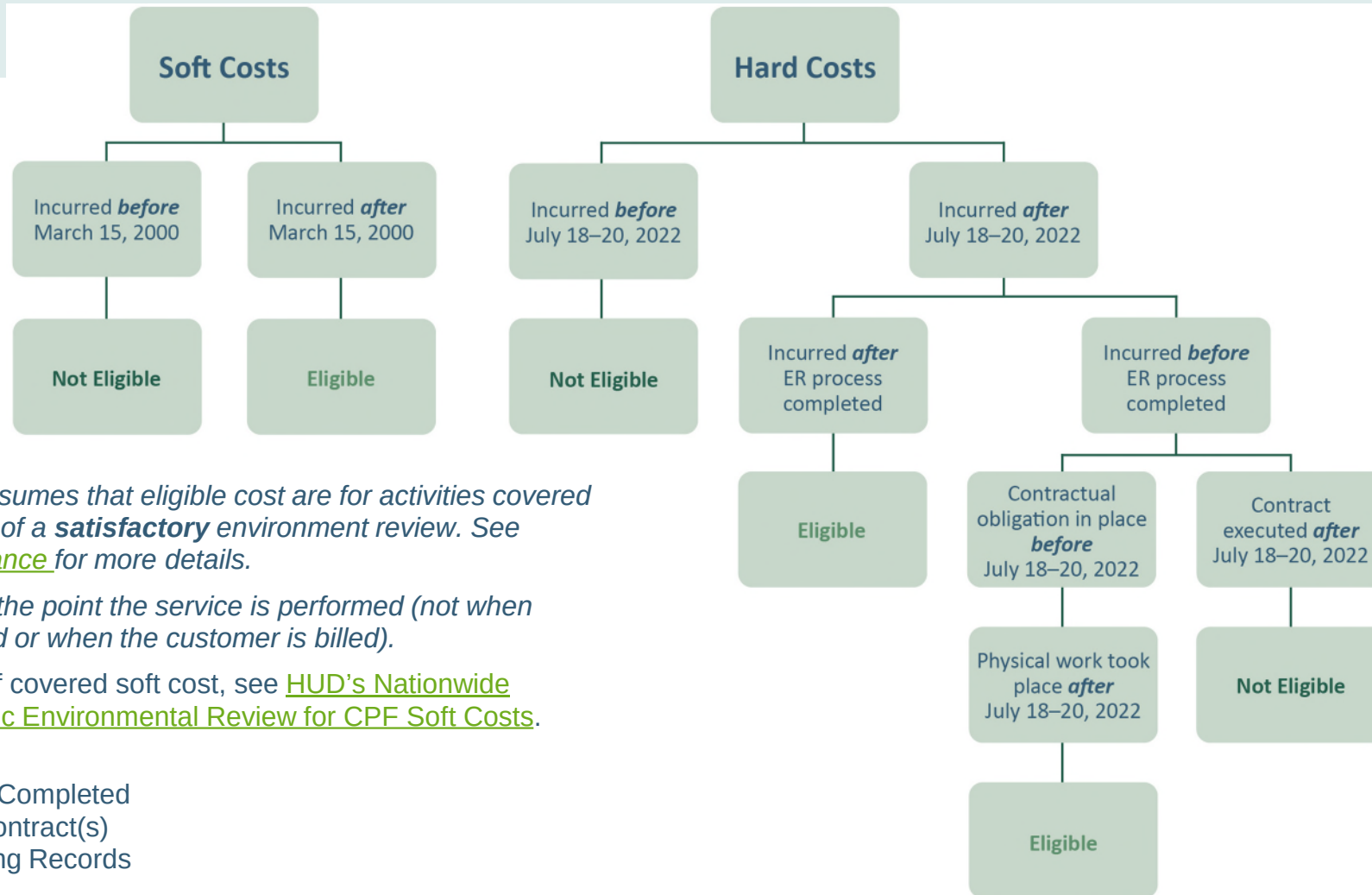
Allowed to incur ongoing eligible hard costs (at own risk)—must be covered by a **satisfactory** ER to be eligible for repayment

Can begin request for payment of eligible soft costs

Allowed to undertake all eligible project activities and request payment of remaining eligible costs



# FY22 Costs Eligibility



**NOTE:** This chart assumes that eligible cost are for activities covered by the project scope of a **satisfactory** environment review. See [FY22 CPF ER Guidance](#) for more details.

Cost are incurred at the point the service is performed (not when the contract is signed or when the customer is billed).

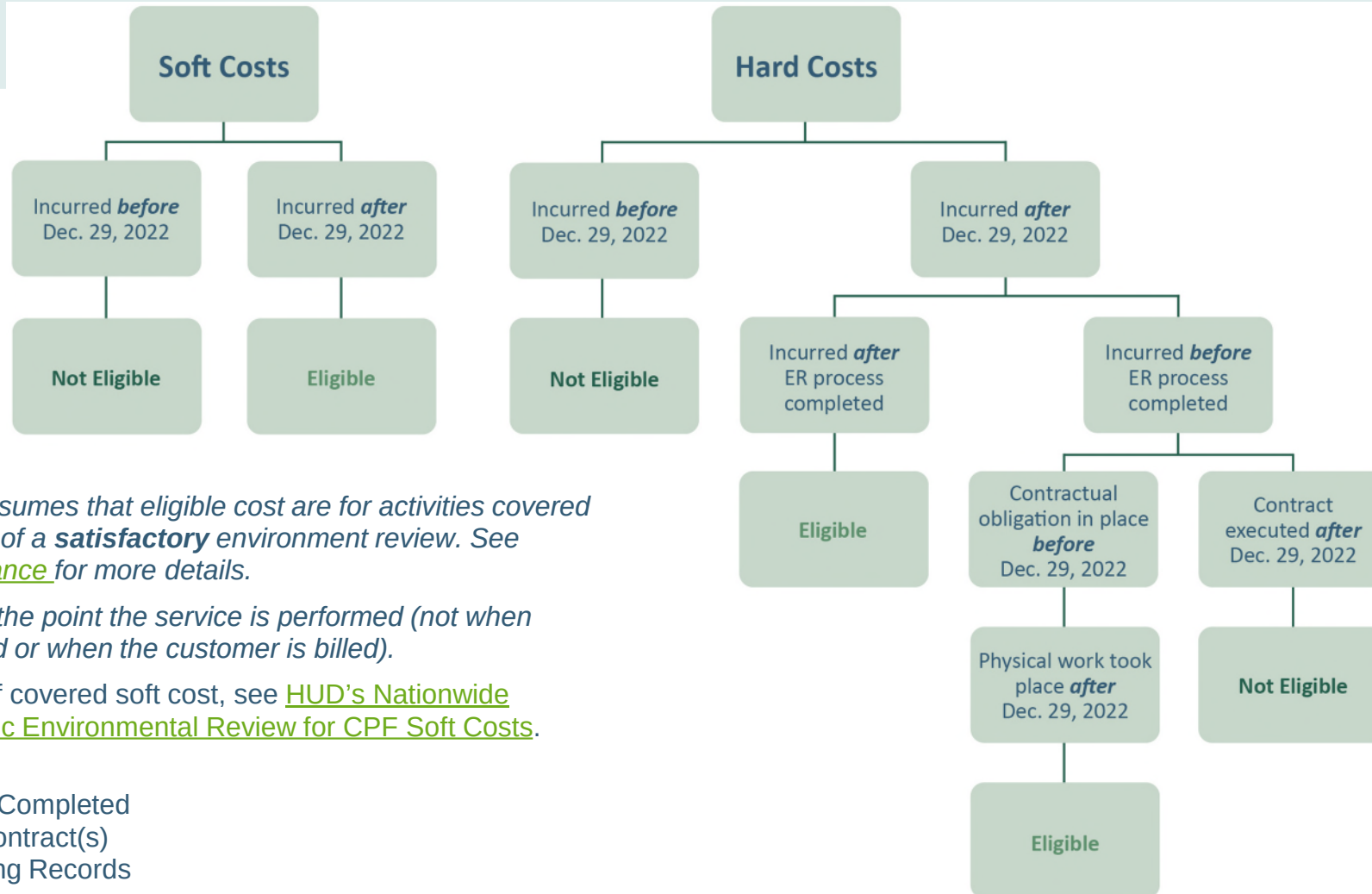
For a complete list of covered soft cost, see [HUD's Nationwide Part 50 Programmatic Environmental Review for CPF Soft Costs](#).

Supporting Docs:

- Date ER Process Completed
- Executed Work Contract(s)
- Grantee Accounting Records



# FY23 Costs Eligibility



**NOTE:** This chart assumes that eligible cost are for activities covered by the project scope of a **satisfactory** environment review. See [FY23 CPF ER Guidance](#) for more details.

Cost are incurred at the point the service is performed (not when the contract is signed or when the customer is billed).

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Supporting Docs:

- Date ER Process Completed
- Executed Work Contract(s)
- Grantee Accounting Records





# Timing of Review

- Begin the ER process as soon as possible
- Typical times required to complete the review range from 1 to 120 days, depending on scope and nature of the project
- Allow time for periods of public comment on environmental notices, including Findings of No Significant Impact (FONSI) and the Notice of Intent to Request for Release of Funds (NOI-RROF)



# HUD's Environmental Reviews Online System (HEROS)

HUD's Office of Environment and Energy has developed an online system for developing, documenting, and managing ERs

- It covers all levels of ERs for both Part 50 and Part 58 projects and includes on-screen guidance for completing HUD ERs

**HUD Environmental Review Online System (HEROS)** HEROS version training-1334-6103af18

[HEROS Home](#) [Guide to HEROS](#)

[My Environmental Reviews](#) [Reports](#) [Admin](#) [Logout](#)

**My Environmental Reviews (50/58)**

HEROS integrates guidance and assistance into the environmental review format, but it is not a substitute for learning and understanding HUD's environmental review process and all environmental laws and authorities addressed in this system. Responsible Entities are encouraged to attend regular environmental trainings led by HUD staff and ensure that they are familiar with all relevant environmental laws and authorities. HEROS users remain responsible for ensuring that their environmental review records are accurate and complete.

[Start a new environmental review](#) [Go to tiered reviews](#) ☒ Show All ☐ Show Reviews Assigned to Me

| Select                | Name of Project   | City   | State | Level of Review | Status      | Mitigation Status | Last Updated<br>MM/DD/YYYY   | Assigned To     | ER ID           | Generate<br>ERR | Cancel<br>or<br>Reopen | Part 50/58 |
|-----------------------|-------------------|--------|-------|-----------------|-------------|-------------------|------------------------------|-----------------|-----------------|-----------------|------------------------|------------|
| <input type="radio"/> | 1000-Main-Street  |        | N/A   |                 | In progress | N/A               | Wed Mar 29 11:46:30 EDT 2023 | Vanessa Walters | 900000010035642 |                 |                        | Part 58    |
| <input type="radio"/> | 220-Center-Street |        | N/A   |                 | In progress | N/A               | Wed Mar 29 11:32:57 EDT 2023 | Vanessa Walters | 900000010035640 |                 |                        | Part 58    |
| <input type="radio"/> | 110-N-Main-St     | Denver | CO    | CENST           | In progress | N/A               | Tue Mar 28 14:29:21 EDT 2023 | Vanessa Walters | 900000010035638 |                 |                        | Part 58    |

[Edit selected environmental review](#) [View 7015.16 - Authority to Use Grant Funds](#) [View selected environmental review](#) [Assign Review](#) [View Assignment History](#)

This system is to be used by local, state, and tribal governments, sub-recipients, applicants, and third-party providers who submit information to be used in the completion of environmental review records under 24 CFR Parts 50 and 58. HUD uses this information to monitor and approve requests for release of funds for environmental reviews completed pursuant to Part 58 and to complete environmental reviews under Part 50. The information collected is required to obtain and/or retain benefits. The information collected will not be held confidential. Public reporting burden for this collection of information is estimated to average 30 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.

OMB No. 2506-0202

This HEROS version was deployed on Fri Sep 9, 2022 at 9:28



# HEROS Access

To obtain HEROS Access—

**Step 1:** Determine User Type

**Step 2:** Review HEROS Access Form Instructional Video

**Step 3:** Complete the HEROS Access Form

It typically takes 2–3 weeks for new requests to be processed. Once an account has been created, users will receive a HEROS welcome letter via email with their account information and instructions for accessing HEROS through the HEROS login page.



# HEROS Resources

## HUD Exchange—Environmental Reviews

- [HEROS User Guide](#)
- [“How To” Videos](#)
- [Archived Reviews](#)
- [Roles & Responsibilities](#)
  - Click through user types under HEROS availability

Home > Programs > Environmental Review > HEROS: HUD Environmental Review Online System

### HEROS - HUD Environmental Review Online System

HUD's Office of Environment and Energy has developed an online system for developing, documenting, and managing environmental reviews. It covers all levels of environmental reviews for both Part 50 and Part 58 projects and includes on-screen guidance for completing HUD environmental reviews.

#### HEROS Availability

HEROS is available to the following user types:

|                               |   |
|-------------------------------|---|
| Responsible Entity (RE) Users | + |
| HUD Users                     | + |
| Partner Users                 | + |

#### How to Access HEROS

|                                           |   |
|-------------------------------------------|---|
| Access for REs, Partners, and Consultants | + |
| Access for HUD Staff                      | + |

#### Environmental Review Records

HEROS increases transparency of environmental reviews by posting them for public review. *Environmental assessments and categorically excluded projects* completed through HEROS are posted online during public comment periods and archived for a year after completion.

[Search Environmental Review Records on HUD.gov](#)

#### Hours of Operation and Questions?

**Hours:** HEROS is available Monday to Saturday from 7:00A.M. – Midnight ET and on all federal holidays.

**Password Resets:** To reset your password for either the HEROS production or HEROS training site, contact HUD's information technology services (HITS) National Help Desk at (888) 297-8689 (Option 3). Users requesting a password must provide their B or C User ID and their Verification PIN Number.

**Technical Assistance:** If you need any assistance with HEROS, please submit your request through HUD Exchange Ask A Question (AAQ) so that HEROS staff can assist you.

- HEROS user account/access issues
- Technical issues/errors in HEROS
- Questions about how to use HEROS

[Ask a Question](#)

#### News

New HEROS Quick Guide Available: Completing a HEROS Access Form Request

Consultation, Review, and Comment on the Environmental Review Record in Response to COVID-19

Materials Posted: HEROS Frequently Asked Questions Webinar - August 6, 2020 - 1:00 PM EDT

#### Resources

[HEROS Login](#)

[Environmental Review Partner Worksheets](#)

[FAQs](#)

#### Training

[Webinars and "How To" Videos](#)

[User Guide](#)

[Quick Guides](#)

[Practice Using HEROS](#)



# Resources

## CPF ER Guidance and Scenarios:

- [FY22 CPF ER Guidance & Scenarios](#)
- [FY23 CPF ER Guidance & Scenarios](#)

## CPF ER Process Guidance:

- [Guidance for Documenting the ERR for CPF Grants](#)

## Reimbursement Eligibility:

- [FY22 CPF Cost Eligibility Chart](#)
- [FY23 CPF Cost Eligibility Chart](#)

## HUD's Nationwide Part 50 Programmatic ERR for CPF Soft Costs:

- [FY22 Part 50 CPF-Soft-Costs-Nationwide ERR](#) (3/15/22)
- [FY23 Part 50 CPF-Soft-Costs-Nationwide ERR](#) (12/29/22)

## CPF Environmental Review Resources:

- [HUD Environmental Review Landing Page](#)
- [CPF Grant Officer and Environmental Officer Contacts](#)
- [RROF points of contact for CPF Grants](#)
- [Ask A Question Help Desk for CPF](#)
- [Sample Memorandum of Agreement Between Responsible Entity and CPF Non-Profit Grantee](#)



# FAQs

- At what point do federal environmental review requirements apply to my project?
- Can I continue work under contracts that were entered into prior to the federal nexus?
- Do I have to stop work on a project if there wasn't a contract in place prior to the federal nexus?
- How is the ER conducted when the project is underway under an existing contract?
- What constitutes a satisfactory environmental review and what happens if it cannot be achieved?
- Can I use my planning and administration funds prior to completion of my environmental review?
- I was awarded a grant that is for a 100% planning activity. Do I have to complete an environmental review?
- At what point are hard/soft costs considered incurred?
- My project took a choice limiting action after the federal nexus, can HUD funds still be used for the project?
- I have started construction on my project with non-HUD funds, but plan to use HUD funds for a portion of my project. Do I have to stop work on the project if the ongoing work was under contract prior to the federal nexus?
- We are getting ready to renew our lease for the building we plan on using CPF funds for. Is this a choice-limiting action?





# Questions?

HUD's AAQ Desk for CPF



# **Next Webinar: May 17, 2023, 1:00 P.M. EST**

**Cost Eligibility and Documenting the Environmental Review Record (ERR)  
for Community Project Funding (CPF) Program Grants**