

Environmental Reviews for COVID-19 Projects



December 10, 2020 1PM – 2:30 PM EST

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Presenters from the Office of Environment and Energy:

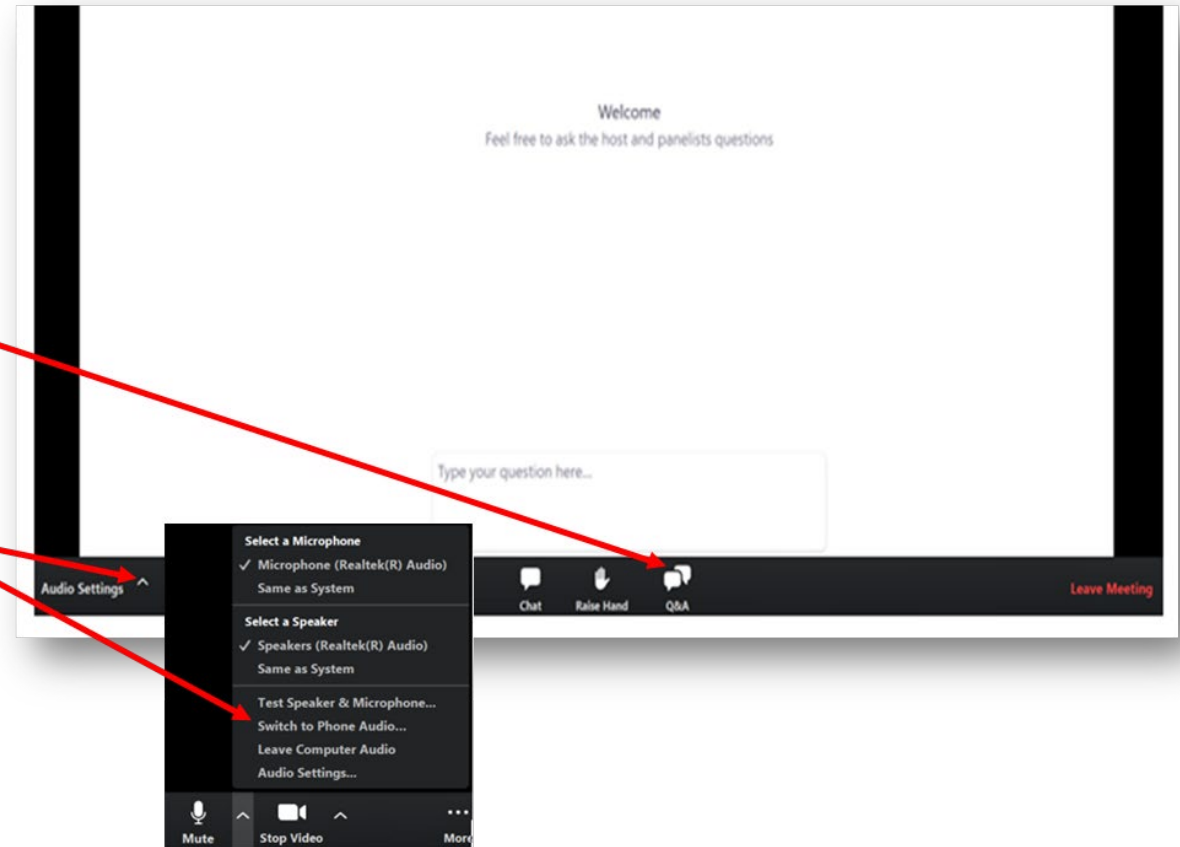
- Liz Zepeda, Senior Environmental Specialist
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TA Provider:

- Enterprise Advisors, Enterprise Community Partners, Inc.

Welcome

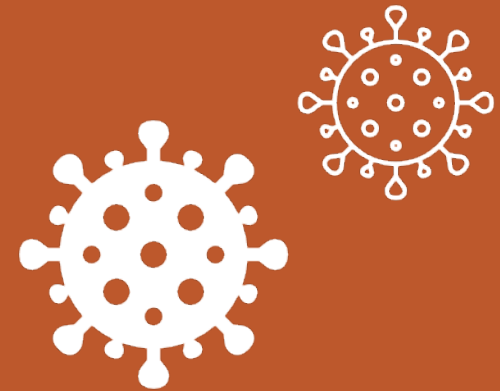
- The webinar will begin promptly at 1pm EST and will be recorded.
- All attendees will be muted.
- Please use the Q&A panel on the bottom of your screen to ask questions. The Chat option will be disabled.
- For best audio quality, please listen to the webinar via phone line by using the dial-in number provided.
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Training Objectives

This webinar will train responsible entities, recipients, and HUD staff on environmental review requirements and procedures during the COVID-19 emergency, including:

- Determining the appropriate level of review for COVID-19 projects
- Completing section 106 consultation for COVID-19 projects
- Temporary public notice and comment procedures while offices are closed due to COVID-19
- Applying Notice CPD-20-07 to specific scenarios and activities



Agenda

Environmental Reviews for COVID-19 Projects

Introduction and Resources

Imminent threat exemption

Section 106 Consultation

CDBG-CV and ESG-CV Funds

Public notice and comment procedures

Frequently asked questions

Taking your questions

What are COVID-19 Projects?

“COVID-19 Projects” (as used in this webinar) describes any project designed to address COVID-19, including:

- Providing equipment and supplies necessary to carry out public services
 - *Examples: distributing gloves, masks, temporary washing stations, telehealth equipment*
- Economic development activities to minimize impacts related to the public health emergency
 - *Example: grants and loans for small businesses*
- Financial assistance to individuals and families struggling financially due to COVID-19
 - *Examples: short-term payments for rent, mortgages, utilities, educational needs*
- Establishing, constructing, and renovating shelters, health facilities, and community centers to expand capacity of healthcare facilities and accommodate quarantines
 - *Examples: residential shelters, field hospitals, warming stations, mobile homes, tiny houses*

COVID-19 Projects may or may not be funded by CARES Act programs.

- Notice CPD-20-07, *Guidance on conducting environmental reviews pursuant to 24 CFR Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19*
- Expedited Section 106 Review of Undertakings Responding to COVID-19
- RROF/C and notice and comment procedures:
 - Temporary flexibilities in signature and certification processes for RROFs and AUGFs
 - Expanded options for public review and comment
 - CPD centralized inboxes for objections to RROF
 - Tips to avoid republication of RROF
- Program-specific guidance

Online Resources:

<https://www.hudexchange.info/programs/environmental-review/covid-19-guidance/>

<https://www.hud.gov/coronavirus>

Notice CPD-20-07 (published on August 20, 2020)

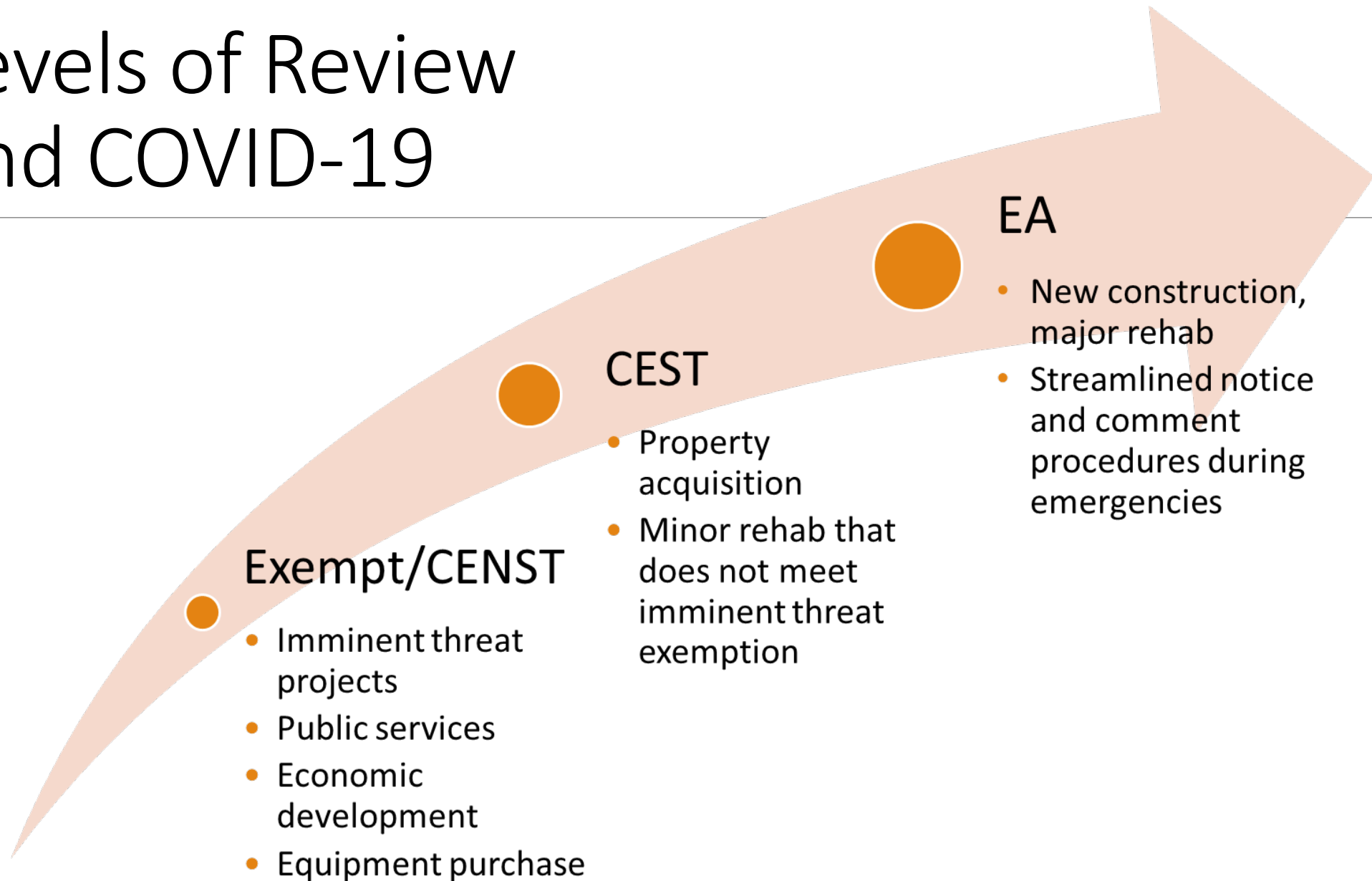
Guidance on conducting environmental reviews pursuant to 24 CFR Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19

- Provides guidance on:
 - Applying the imminent threat exemption at 24 CFR 58.34(a)(10) and 50.19(a)(10) for activities undertaken in response to a national or locally declared public health emergency
 - Streamlined public notice and comment procedures described in 24 CFR 58.33
- Updates HUD's 2012 Memorandum, *Environmental Review Processing During Emergencies and Following Disasters under 24 CFR Part 58*, which focuses on natural disasters
- Available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf>

Imminent Threat Exemption



Levels of Review and COVID-19



Imminent Threat Exemption Cont'd

24 CFR 58.34(a)(10) and 50.19(a)(10) provide an exemption for HUD assistance for *temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.*

Projects must meet **two conditions**:

1. Activities do not alter environmental conditions, and
2. Activities are limited to temporary or permanent improvements necessary to control or stop the imminent threat to public safety.

See **Notice CPD-20-07** for detailed information on the imminent threat exemption.

CARES Act Assistance

QUESTION

Does the imminent threat exemption apply to all CARES Act-assisted projects?



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ANSWER

No, the level of review depends on the proposed activities.

- CARES Act-assisted projects must comply with Part 50 or 58 and complete an environmental review at the appropriate level of review.
- Refer to HUD regulations and guidance to determine if projects are exempt.
- The imminent threat exemption applies only if the proposal meets both conditions described in CPD-20-07.

Condition 1

Projects **do not alter environmental conditions** if they do not:

- Irreversibly affect significant elements of properties listed on or eligible for listing on the National Register of Historic Places;
- Replace, reconstruct, or substantially improve structures within a floodplain (SFHA) as determined by a current, preliminary, or pending Flood Insurance Rate Map (FIRM);
- Involve occupancy of a project site that is impacted by contamination or hazardous substances;
- Involve work on sites that may affect threatened or endangered species or critical habitat;
- Involve new construction in a wetland; or
- Otherwise permanently alter environmental conditions.



Condition 2

Activities must be limited to temporary or permanent **improvements necessary to control or stop the imminent threat to public safety.**

Examples of projects to prevent the spread of COVID-19:

- Renovate interior spaces to provide temporary shelter or relieve overcrowding
- Add walls or barriers to create individual spaces
- Improve existing buildings to provide treatment or quarantine facilities
- Create temporary testing sites or sanitation facilities



Documentation and Compliance

If a proposed project meets both conditions in 24 CFR 58.34(a)(10), the imminent threat exemption applies.

The RE should:

- Complete an exempt/CENST environmental review, and
- Attach an addendum to the ERR describing how all proposed activities meet the conditions of the exemption, including why the project is necessary to respond to COVID-19
 - If using HEROS, upload the addendum on the Project Summary screen

If the project does not meet the criteria in the imminent threat exemption, the RE should complete the appropriate level of environmental review and follow the procedures in Part 58.

- Special procedures may apply due to office closures

Imminent Threat Exemption Checklist

Addendum to the Exempt/CENST format

for a Project that is Exempt under 24 CFR 58.34(a)(10)

HUD recommends using this checklist to confirm that a project undertaken in response to COVID-19 meets the conditions of the emergency exemption at § 58.34(a)(10). For guidance on the imminent threat exemption, refer to Notice CPD 20-07, [Guidance on conducting environmental reviews pursuant to 24 CFR Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19](#). Responsible Entities are encouraged to upload this Addendum to the project description screen in HEROS or attach it to the [Exempt/CENST format](#).

Project Name:

Condition 1

Check the boxes below to confirm that the project will not alter environmental conditions. Documentation may consist of maps, reports, or written statements attached to the environmental review record.

☐ The project will not irreversibly affect significant elements of properties listed on or eligible for listing on the National Register of Historic Places.

Provide documentation confirming that either (a) the project does not involve any historic properties or (b) all work proposed in historic properties is limited to temporary interior improvements that are reversible after the health emergency is over.

☐ The project will not replace, reconstruct, or substantially improve structures within a special flood hazard area (SFHA) as determined by a current, preliminary, or pending Flood Insurance Rate Map (FIRM).

Provide documentation confirming that either (a) the project site is outside of the SFHA on any current, preliminary, or pending FEMA map or (b) the project does not involve replacing, reconstructing, or substantially improving any structures.

☐ The project site is not impacted by contamination or hazardous substances.

Provide documentation (e.g. a report from [NEPAssist](#)) confirming that there is no known risk of contaminants or hazardous substances at the project site.

☐ The project will not involve work that may affect threatened or endangered species or critical habitat.

Provide documentation confirming that either (a) there are no listed species or critical habitats

Imminent Threat Exemption Checklist

Recommended checklist to confirm that a project meets the conditions of the imminent threat exemption

<https://www.hud.gov/sites/dfiles/CPD/documents/Imminent-Threat-Exemption-Checklist-11-18-20.pdf>



Expedited Section 106 Consultation

FOR COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT

7-Day Expedited Review

- 36 CFR 800.12 “Emergency Situations”
- Immediate rescue and salvage to save people and property from death or destruction is exempt from Section 106
- Regulation allows for 7-day expedited review of disaster response projects within 30 days of a disaster declaration or event that caused an immediate threat to life or property
- Applies to COVID-19 response projects funded by federal agencies (HUD, FEMA, USDA, etc.)
- Advisory Council on Historic Preservation (ACHP) can extend the emergency period beyond 30 days
 - Currently extended through December 31, 2020 for COVID-19 response projects
 - Future extensions posted at <https://www.achp.gov/coronavirus>
 - Extensions only apply to COVID-19 projects

7-Day Expedited Review Cont'd

Process:

- RE (Part 58) or HUD official (Part 50) provides project notification to ACHP, State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Indian tribes, and Native Hawaiian Organizations (NHOs)
 - Include project description, information/photos of affected properties, statement that project is in response to COVID-19, and request for 7-day review
- Parties have 7 days to comment (less in extreme situations)
 - Normal review timeframe is 30 days or longer
 - 7-day timeframe applies even if SHPO or THPO offices are closed due to the pandemic
- RE or HUD Official considers comments and makes final determination
- Project proceeds
- Advisable to notify parties of the outcome

Programmatic Agreements (PAs) that Expedite Review

- Statewide and local PAs can contain exemptions for some disaster recovery activities
- PA database for disaster-related agreements
<https://www.hudexchange.info/resource/3675/section-106-agreement-database/>
- HUD Addendum to statewide FEMA PAs for disaster recovery activities
 - Contain exempt activities, shortened review timeframes, and standard mitigation measures that avoid the need for a negotiated Memorandum of Agreement for projects with adverse effects
 - Louisiana, Colorado, New York, New York City, New Jersey, Oklahoma, South Carolina, Puerto Rico, U.S. Virgin Islands, West Virginia, Georgia, and Florida
 - Connecticut and Texas have specific PAs for HUD disaster recovery activities

More on Section 106 Consultation during the pandemic

- During the pandemic, some SHPO, THPO and Tribal offices are closed or operating at reduced capacity
 - Operating status of SHPO offices can be found at <https://ncshpo.org/>
- The ACHP has "paused" review deadlines and encourages agencies to be flexible and allow more than 30 days for responses if feasible
- If SHPO/THPO/Tribes/NHOs are unable to respond at all, ACHP has posted guidance on next steps
 - <https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts>
 - Notifications to ACHP are submitted at <https://www.achp.gov/e106-email-form>

Environmental Review Requirements for CDBG-CV and ESG-CV Funds



CARES Act Statutory Exemption from Environmental Review Requirements

- The CARES Act exempts ESG-CV program funding for *temporary emergency shelters* from environmental review standards and requirements (see Notice CPD 20-08).
- Applies to temporary shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus.
- Recipient must retain documentation that the property or structure meets the definition of temporary emergency shelter and that the statutory exemption was used.

CARES Act Statutory Exemption from Environmental Review Requirements

- Environmental requirements for all other CARES Act funding *cannot* be waived.
- If ESG-CV is not the **sole** source of HUD assistance, the exemption does not apply. Refer to OEE guidance and Part 58 to determine the appropriate level of review.



Reimbursement

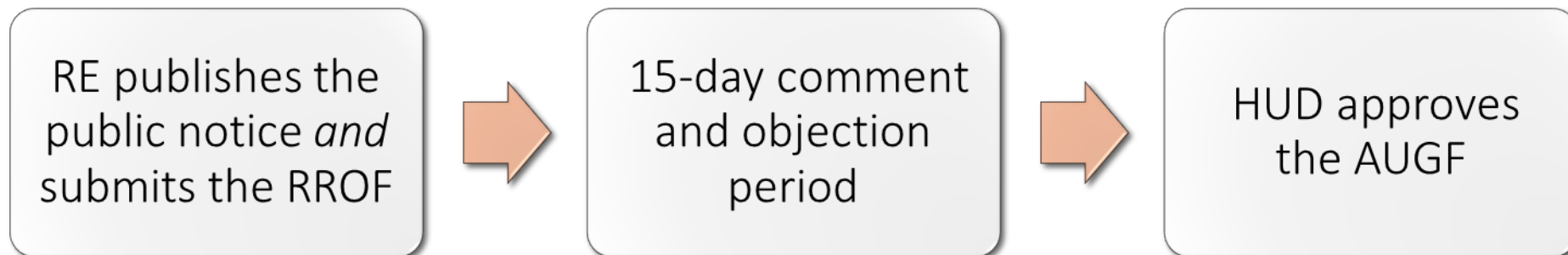
- The CARES Act provides that CDBG-CV and ESG-CV funds may be used to reimburse allowable costs of activities used to respond to coronavirus.
- Environmental review requirements do not apply prior to application for CDBG-CV or ESG-CV funds (federal nexus).
- Grantees must document compliance with Part 58 environmental review requirements prior to reimbursement of pre-application costs.
- Note: If the grantee cannot document compliance with all Part 58 requirements and cannot demonstrate there was no environmental harm committed, the activities may not be eligible for reimbursement.

Public Notice and Comment Procedures

Emergency Expedited Comment Periods

24 CFR 58.33 allows for a Notice of Intent to Request Release of Funds (NOI-RROF) and FONSI, if applicable, to be published simultaneously with the submission of the RROF/C to HUD

- 24 CFR 58.33 applies during Presidentially-declared disasters or local emergencies.
- The public comment period and objection period obligations can be met simultaneously over 15 days.
- The public notice must state that funds are needed on an emergency basis due to the declared emergency and that the public comment and objection periods have been combined.
- All comments must be submitted to both the grantee and to HUD.



Signing and Submitting the RROF/C

REs temporarily have flexibility to sign and submit RROF/Cs to HUD via email

- Good time to use HEROS!
- Temporary option during quarantine: Responsible Entities may submit the RROF to HUD via email.
- Submit either:
 - Scanned paper RROF/C, or
 - PDF with e-signature
- Guidance is available on the [HUD Exchange](https://www.hudexchange.info/resource/6095/guidance-for-rrof-and-augf-signature-and-certification-process-during-the-covid19-national-emergency/)¹.



¹ <https://www.hudexchange.info/resource/6095/guidance-for-rrof-and-augf-signature-and-certification-process-during-the-covid19-national-emergency/>

Review and Comment Procedures

HUD is temporarily expanding options for public review of ERRs

- The Responsible Entity should make the ERR available online, or via email or U.S. mail by request.
 - The public notice must include a URL where the ERR can be accessed or an email/U.S. mail address where the ERR can be requested.
- Any objections to HUD's release of funds should be sent via email during the objection period.
 - The public notice must include an email address for objections.
 - Some HUD program offices have [centralized inboxes](#)¹ for environmental documents.
- Guidance is available on the [HUD Exchange](#)².

¹ <https://files.hudexchange.info/resources/documents/CPD-Centralized-Inboxes-for-Objections-to-RROF-During-COVID-19.pdf>

² <https://www.hudexchange.info/programs/environmental-review/covid-19-guidance/>

Avoiding RROF/C Publication Problems

HUD has identified two errors that have frequently led to REs being forced to republish public notices:

1. Failure to direct the public to send objections to HUD via email
2. Instructing the public to review the ERR at an office that is closed to the public

More information on troubleshooting public notice and comment procedures during office closures can be found on the [HUD Exchange](https://files.hudexchange.info/resources/documents/Tips-to-Avoid-Republication-of-RROF-During-COVID-19.pdf)¹.

¹ <https://files.hudexchange.info/resources/documents/Tips-to-Avoid-Republication-of-RROF-During-COVID-19.pdf>



Frequently Asked Questions

<https://www.hud.gov/sites/dfiles/CPD/documents/OEE-COVID-19-Fact-Sheet-FAQs-11-18-2020-clean.pdf>

Single-Family Rehabilitation

QUESTION

Can a single-family rehab project be exempt under § 58.34(a)(10)?



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ANSWER

Yes

Temporary or permanent interior improvements to provide quarantine space, room for a caregiver, or accommodate a family member affected by the economic impacts of COVID-19 **may** be exempt.

All activities must comply with the conditions of the imminent threat exemption.

Movable Residential Units

QUESTION

Is acquisition and set-up of trailers, tiny homes, and other movable residential units exempt under § 58.34(a)(10)?



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ANSWER

Providing movable residential units as quarantine space or health care may be exempt under § 58.34(a)(10) if:

1. The project does not involve site acquisition
2. Units are placed on sites where they will not alter environmental conditions, and
3. Units can be removed with minimal impact to the site.

Movable Residential Units, Cont'd

Sites where movable residential units would not alter environmental conditions include:

- Existing private residential sites
- Sites that have been previously cleared and prepared for construction
- Existing RV/mobile home parks, campgrounds, other of areas with pre-existing utility hookups
- Paved areas including parking lots

In all cases, utilities must be installed above ground or tie unto pre-existing utility lines.



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Vouchers for Motels and Hotels

QUESTION

Are vouchers for motels or hotels to shelter, quarantine, or treat people for COVID-19 exempt?



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ANSWER

Use of vouchers for rental assistance at motels and hotels are CENST under § 58.35(b)(2).

These activities do not need to rely on the exemption for imminent threats to public health.

Use the standard exempt/CENST format or HEROS to document compliance with § 58.6.

Workplace Improvements and Worker Safety



Workplace Improvements

QUESTION

Are office renovations to protect staff from the spread of COVID-19 exempt?



ANSWER

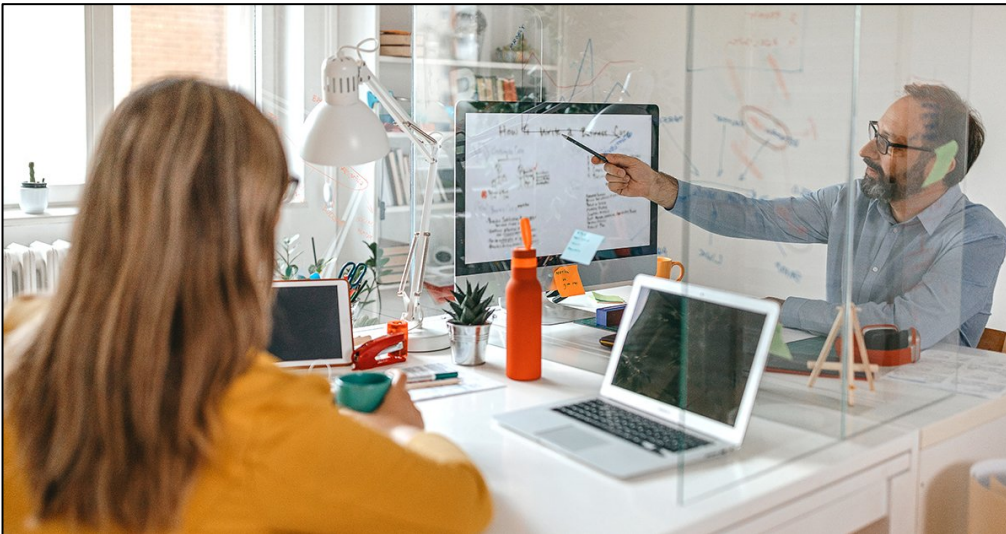
Hand sanitizer stations, sanitizing equipment, protective gear, plexiglass barriers, and **temporary** walls may be CENST equipment and supplies under § 58.35(b)(3).



Improvements to Historic Structures

QUESTION

Are improvements to historic buildings permitted under the imminent threat exemption?



ANSWER

If the building is eligible for or listed on the National Register, only temporary interior improvements may be exempt under the imminent threat exemption.

All improvements must be reversible, meaning that they can be removed with minimal impact to the site after the public health emergency has ended.

Examples of reversible improvements include temporary removable walls, window treatments such as shades or blinds, or putting in a temporary wheelchair ramp.

New and Expanded Services

QUESTION

Are healthcare and other public services to increase testing, treat patients, and assist the public exempt under the imminent threat exemption?



"Michigan Guard conducts COVID testing in Sturgis & Battle Creek, MI" by Michigan National Guard is licensed under CC BY-NC 2.0



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ANSWER

Yes, the imminent threat exemption may apply to the temporary use of existing structures or vacant or underutilized land with minimal ground disturbance for services such as:

- Temporary hospitals, healthcare facilities, clinics, and mortuary facilities
- Health screening and testing checkpoints
- Food, water and sanitation stations

Environmental Review Records

QUESTION

How can REs document that a project meets the requirements of the emergency exemption at § 58.34(a)(10)?



ANSWER

This is a 2-step process:

1. Complete a normal Exempt environmental review, either using HEROS or the HUD-recommended format
2. Attach supporting documentation demonstrating that the project meets the criteria of that exemption
 - HUD has prepared a checklist for REs to follow when assembling the necessary documents

Part 50 Projects

QUESTION

Does the emergency exemption in 24 CFR 50.19(b)(10) apply to Part 50 environmental reviews for COVID-19 projects?



ANSWER

Yes, the exemption may apply if the project meets the conditions in that exemption.

The environmental review must document:

1. The reason the project is necessary to control/arrest the effects from COVID-19, and
2. The basis for determining that the project does not alter environmental conditions.

OEE Resources

Environmental Review Guidance in Response to COVID-19:

<https://www.hudexchange.info/programs/environmental-review/covid-19-guidance/>

- Options for public review of ERR: <https://www.hudexchange.info/resource/6094/consultation-review-and-comment-on-the-environmental-review-record-in-response-to-covid19/>
- Signing and submitting RROF/Cs: <https://www.hudexchange.info/resource/6095/guidance-for-rrof-and-augf-signature-and-certification-process-during-the-covid19-national-emergency/>
- Tips to avoid RROF/C republication: <https://files.hudexchange.info/resources/documents/Tips-to-Avoid-Republication-of-RROF-During-COVID-19.pdf>
- Central CPD inboxes: <https://files.hudexchange.info/resources/documents/CPD-Centralized-Inboxes-for-Objections-to-RROF-During-COVID-19.pdf>

Notice CPD-20-07, FAQs, Imminent Threat Exemption Checklist:

<https://www.hudexchange.info/resource/6112/notice-cpd2007-guidance-on-conducting-environmental-review-pursuant-to-24-cfr-58-for-activities-undertaken-in-response-to-covid19/>

Program Office COVID-19 Guidance

- HUD's Coronavirus Resources
<https://www.hud.gov/coronavirus>
- CPD COVID-19 General and Specific Program Guidance links
https://www.hud.gov/program_offices/comm_planning/covid-19
- CDBG-CV Notice: Program Rules, Waives, and Alternative Requirements Under the CARES Act
<https://www.hud.gov/sites/dfiles/CPD/documents/FR-6218-N-01-CDBG-CV-clean-8-7-20-header-for-posting.pdf>
- ESG-CV Notice: Waivers and Alternative Requirements for the ESG Program Under the CARES Act
<https://www.hud.gov/sites/dfiles/OCHCO/documents/20-08cpdn.pdf>
- ONAP COVID-19 resources
https://www.hud.gov/coronavirus/native_americans
- Public Housing Agencies
https://www.hud.gov/coronavirus/public_housing_agencies
- FHA Lenders and Office of Housing program participants
https://www.hud.gov/coronavirus/housing_stakeholders



Section 106 Consultation Resources

- Advisory Council of Historic Preservation (ACHP) emergency procedures and extensions of emergency period: <https://www.achp.gov/coronavirus>
- ACHP guidance on next steps if SHPO/THPO/Tribes/NHOs are unable to respond: <https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts>
- PA database for disaster-related agreements: <https://www.hudexchange.info/resource/3675/section-106-agreement-database/>
- Operating status of SHPO offices: <https://ncshpo.org/>

Environmental Review Guidance in Response to COVID-19:

<https://www.hudexchange.info/programs/environmental-review/covid-19-guidance/>

For more questions:

- Program Environmental Specialist (PES) or Program Environmental Clearance Officer (PECO)
- Local Field or Regional Environmental Officer:
<https://www.hudexchange.info/programs/environmental-review/hud-environmental-staff-contacts/>
- CPD questions answered mailbox: CPDQuestionsAnswered@hud.gov
- Office of Native American Programs mailbox: CodeTalk@hud.gov

Questions?

