

Subject: How to prepare “Limited Scope” Environmental Reviews for Continuum of Care (CoC) leasing or rental assistance projects without any associated repairs, rehabilitation, construction, or other activities with physical impacts.

Projects that consist only of project-based leasing or project-based rental assistance¹ activities require only a “limited scope” environmental review. Responsible Entities conducting a limited scope review need only analyze certain environmental laws and authorities and may assume that the project is in compliance with others without analysis. A limited scope review is appropriate **only** if the project consists entirely of leasing or rental assistance activities in existing residential buildings without any associated physical impacts, including repairs, rehabilitation, or new construction. For projects that involve any additional activities beyond leasing or rental assistance, Responsible Entities should complete a standard environmental review using their regular formats. This document provides guidance on how to complete a limited scope review.²

Note that most tenant-based leasing and rental assistance projects do not require a “limited scope” environmental review, because these activities are Categorically Excluded *Not* Subject to 58.5 (CENST) under 24 CFR 58.35(b)(1). As such, tenant-based leasing and rental assistance projects are categorically excluded from NEPA, and subject *only* to the Federal laws and authorities listed in 24 CFR 58.6. A project would be considered tenant-based leasing or rental assistance for purposes of environmental review if the participant selects the location of the unit. Responsible Entities completing environmental reviews for tenant-based rental assistance may use HUD-recommended formats for Part 58 CENST reviews available at <https://www.onecpd.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>.

I. Initiating Limited Scope Environmental Reviews

Use the attached CoC Limited Scope Review Format to complete your environmental review. Complete all required fields (those marked with an asterisk) and all other fields that apply. Some fields have already been completed with language appropriate for leasing and rental assistance projects.

II. Determining Compliance with Required Environmental Laws and Authorities

¹ For purposes of conducting the environmental review, “project-based rental assistance” refers to any rental assistance where the funding is attached to the unit, rather than the program participant. Leasing and project-based rental assistance are both defined as Categorically Excluded Subject to 58.5 (CEST) pursuant to 24 CFR 58.35(a)(5), meaning that they are categorically excluded from the National Environmental Policy Act (NEPA), but still subject to the related Federal laws and authorities listed in 24 CFR 58.5 and 58.6. In the CoC program, this would include both project-based rental assistance and sponsor-based rental assistance.

² Responsible Entities conducting a large number of leasing or rental assistance projects may streamline the environmental review process by conducting a tiered environmental review. HUD is currently developing guidance on conducting tiered reviews for leasing and rental assistance projects.

The Environmental Review must document compliance with each environmental law and authority listed in 24 CFR 58.5 and 58.6. Compliance determinations have already been provided for those factors where compliance can be assumed (e.g. Endangered Species Act, National Historic Preservation Act, HUD’s Noise regulations) in the right-hand column of the “Compliance with 24 CFR 58.5 and 58.6 Laws and Authorities” chart. For the remaining laws and authorities where compliance determinations were not provided (i.e., Coastal Barrier Resources, Flood Insurance, Contamination and Toxic Substances, Floodplain Management, and Environmental Justice), a compliance determination must be prepared. Provide a short description for each law and authority summarizing the analysis conducted, documents consulted, public notices and responses to comments received (where applicable), and the determination that the project is in compliance. Instructions on how to determine compliance with each law and authority are provided below.

Indicate whether formal compliance steps or mitigation measures are required for all laws and authorities.

If the project is not initially in compliance with one of the above laws or authorities, mitigation measures must be conducted or the project must be canceled at this location. Document any required mitigation measures or conditions on the project in the environmental review record.

a. Coastal Barrier Resources Act

HUD assistance may not be used for activities proposed in the Coastal Barrier Resources System. The Act prohibits most federal assistance within barrier islands that are subject to frequent damage by hurricanes and high storm surges. Islands, sand bars, and sand spits that are part of the system are along the Atlantic Ocean, Gulf of Mexico, and the Great Lakes.

Responsible Entities must reject any project located in the Coastal Barrier Resources System.

The Environmental Review should contain **one** of the following:

- A statement that the project is not in a state with Coastal Barrier Resources
 - The following states have Coastal Barrier Resources: Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Minnesota, New Jersey, New York, North Carolina, Ohio, Puerto Rico, Rhode Island, South Carolina, Texas, U.S. Virgin Islands, Virginia, and Wisconsin.
- If your project is in one of the states listed above, provide a CBRA map from U.S. Fish and Wildlife Service (FWS) that documents the project site is not in a Coastal Barrier

Resources Unit. The FWS website is at <http://www.fws.gov/CBRA>, and FWS's Coastal Barrier Resources System Mapper tool is available at <http://www.fws.gov/CBRA/Maps/Mapper.html>. Provide a copy of the CBRA map with the project site identified.

b. Flood Insurance

Section 102(a) of the Flood Disaster Protection Act of 1973 requires that most projects receiving federal assistance and located in an area identified by the Federal Emergency Management Agency (FEMA) as being within a Special Flood Hazard Area (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP).

Assisted leasing activities that do not include repairs, improvements, or acquisition are excepted from these flood insurance requirements. **Flood insurance is not required for leasing alone.** However, it may still be advisable to purchase flood insurance for leasing projects in some cases for contents or the building. Pursuant to the updated regulations at 24 CFR 55.12(b)(5), if units are leased within a building of five or more residential units or any nonresidential properties are leased on one site in a SFHA, the 8-Step Process is not required **if** the entire building, i.e. all units and common areas, are fully covered by flood insurance. Units leased within one- to four-family buildings do not require a review due to an exception at 55.12(b)(1), since leasing is considered to be a lesser form of purchasing a property.

If flood insurance was purchased, include a receipt or policy statement as proof of insurance.

c. Contamination

All property proposed for use in HUD programs must 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 conflict with the intended utilization of the property. The environmental review of multifamily housing with 5 or more dwelling units must include a review of previous uses of the site or other evidence of contamination on or near the site to assure the proposed occupants are not impacted by any of these hazards.

The Environmental Review should contain **all** of the following:

- A report of nearby toxic sites and releases using EPA's Envirofacts at <http://www.epa.gov/enviro/index.html>, NEPAassist at <http://nepassisttool.epa.gov/nepassist/entry.aspx>, or a similar service. To obtain a map using Envirofacts, insert the project address in the box under the title "Get the

Envirofacts” and press enter. Print the map and list of EPA regulated sites. For each EPA regulated site listed, print the compliance report.

- If you are providing assistance to multifamily housing with 5 or more dwelling units (even if leasing fewer than 5 units), provide documentation showing past uses of the site. Assistance provided to housing with 4 or fewer units does not require analysis of past uses. Examples of types of documentation could be any of the following:
 - Historical aerial photographs of the site showing the status of the site through time. You do not need to go back further than 1940. These photos may be available at the local library or the local planning department. Ask if they have access to Sanborn Fire Insurance Maps or other historical mapping data.
 - A letter from someone who has specific information on the history of the site, for example the current or previous owner, the local historian, an elder in the community, the local planning department. The letter should indicate who the person is, the date the information is provided, how they have particular knowledge on the site, and the specific information on the previous uses of the site.
 - A Phase I Environmental Assessment Report. If a Phase I report is provided, none of the above toxics information is needed (the Envirofacts map, historic aerial photographs, and the letter from someone with specific information on the site.) These items will be included in the Phase I.
- **A discussion of potential adverse impacts, if any.**³ If hazards were found that could affect the health and safety of the occupants, all impacts must be mitigated or the site rejected.

d. Floodplain Management

There are several different kinds of floodplains that may affect leased properties. Executive Order 11988 - Floodplain Management requires Federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. The Federal Emergency Management Agency (FEMA) designates floodplains. The FEMA Map Service Center provides this information in the form of FEMA Flood Insurance Rate Maps (FIRMs). **The Environmental Review must include a FIRM to document whether your project is located in a Coastal High Hazard Area, Floodway, or 100 Year Floodplain. Remember to identify where your project is located on the map.**

Coastal High Hazard Areas—The Coastal High Hazard Area is an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High

³ For assistance interpreting the results of a search for toxics sites and releases, Responsible Entities may contact their HUD Field Environmental Officer.

Hazard Areas are identified in the FIRM map as zone “V”. **You must reject any project located in a Coastal High Hazard Area unless the building meets the design criteria in 24 CFR 55.1(c)(3).**⁴

Floodway—The Floodway is that portion of the floodplain that is effective in carrying flow, where the flood hazard is the greatest, and where water depths and velocities are the highest. Floodways are identified in the FIRM map by a “cross hatch.” **You must reject any project located in a Floodway.**

100-year Floodplains— 100-year Floodplains are areas where each year there is a 1 percent chance of flooding and over the life of a 30 year mortgage, there is a 26 percent chance of flooding. People and property are at risk in the 100-year floodplain and HUD discourages the use of McKinney-Vento Act funds in these areas. The area is designated on a FIRM map as Zone A1–30, AE, A, AH, AO, AR, or A99.

- **For leasing or rental assistance within buildings of one to four units:** While the Department will not deny assistance to projects of four or fewer existing units in a floodplain solely on its location in a floodplain, HUD strongly recommends that grantees choosing to place people in these areas encourage participants to maintain personal flood insurance for contents. The 8-Step process is not required.
- **For leasing or rental assistance of nonresidential leases or within buildings of five or more residential units:** The 8-Step Process is generally required for leasing or rental assistance within buildings of five or more units. For information on the 8-Step Process, refer to <https://www.onecpd.info/resource/3190/floodplain-management-8-step-decision-making-process/>. The Environmental Review must include **one** of the following:
 - Record of a completed 8-Step Process, including the early public notice and the final notice.
 - If a leased property within a building of 5 or more units is fully covered by flood insurance and consistent with the revised Part 55.12(b)(5), then no 8-Step Process required. Provide proof of insurance in lieu of an 8-Step Process.

e. Environmental Justice

Environmental justice means ensuring that the environment and human health are protected fairly for all people regardless of race, color, national origin, or income. Executive Order 12898,

⁴ For leasing and rental assistance projects, a qualifying project must be in an existing building designed for a Coastal High Hazard Area, meaning that:

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; *or*

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

"Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" (2/94) requires federal agencies, including HUD, to consider how federally assisted projects may have disproportionately high and adverse human health or environmental effects on minority and low-income populations.

The Environmental Review should contain **one** of the following:

- Evidence that the site or surrounding neighborhood does not suffer from adverse environmental conditions and evidence that the proposed action will not create an adverse and disproportionate environmental impact or aggravate an existing impact.
- If there are disproportionate adverse effects on low-income or minority populations (e.g. site contamination, floodplains), documentation that that the affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, minimize, or mitigate) the adverse effect from the project and the resulting changes.

III. Finalizing the Environmental Review

a. Environmental Finding

If no mitigation or compliance steps are required for any laws and authorities, the project may “convert to exempt,” which significantly reduces the requirements of finalizing the environmental review. When analysis of all laws and authorities is complete, make a final environmental finding from the following 3 options:

- This project converts to exempt per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities.
 - If this is your finding, funds may be committed and drawn down for this (now) exempt project once the environmental review has been signed by the preparer and RE Agency Official. This project does not require public notice or a Request for Release of Funds and Certification (RROF).
- This project cannot convert to Exempt status because one or more statutes or authorities listed at Section 58.5 requires formal consultation or mitigation.
 - If this is your finding, you must complete consultation/mitigation protocol requirements, provide public notice, complete the RROF (form HUD 7015.15), and obtain a signed “Authority to Use Grant Funds” (form HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds. Continue to the next section for instructions on how to finalize the review.

- Extraordinary circumstances exist and this project may result in significant environmental impact.⁵
 - If this is your finding, this project requires preparation of an Environmental Assessment (EA) (See 24 CFR 58.2(a)(3), 58.35(c)). Contact your Field Environmental Officer for assistance.

b. Public Notice and Request for Release of Funds and Certification (RROF)

If you made a finding that the project could not convert to exempt and should remain categorically excluded, your project requires a Notice of Intent and RROF.

Give the public notice of the project by publishing or posting a Notice of Intent to Request Release of Funds (NOI/RROF), as well as in all cases mailing the NOI/RROF to individuals and groups known to be interested in the project, to the local news media, to the appropriate tribal, local, state and Federal agencies, to the regional office of the U.S. Environmental Protection Agency, and to the HUD field office (or the state, if the state will be releasing the funds). This notice should include a project description, any findings, and the address of your office where the public can submit comments regarding the project. The comment period for a NOI/RROF is 7 days when published in a local newspaper or 10 days when prominently posted in public buildings such as a library or city hall. Note that the comment period begins the day after the review is posted or published, not the day of.

After the comment period for the NOI/RROF is over, review and respond to any comments received. You should then submit the RROF (<https://www.onecpd.info/resource/2338/hud-form-701515-request-release-funds-certification/>) to HUD for approval.

c. HUD Approval and Drawdown

Once HUD receives the RROF, a second public comment period can begin. During this time, the public may submit objections to the approval of the RROF directly to HUD. HUD then determines whether any actionable objections were received (see 24 CFR 58.75). If not, HUD will approve the environmental review by completing HUD form 7015.16, Authority to Use Grant Funds (AUGF). When you receive the AUGF from HUD, you may begin committing project funds and proceed with the project.

⁵ A finding of extraordinary circumstances would be unusual for a project that consists solely of leasing. Examples of a leasing project where extraordinary circumstances apply include projects where contamination could significantly endanger the residents of a building or where area residents have raised substantial environmental justice concerns.