



CDBG Implementation Manual 2025

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Chapter 2: Environmental Review

Overview

This chapter covers the federal Environmental Review (ER) requirements that apply to the State of New Mexico CDBG program administered by the DFA. It outlines the responsibilities of the Grantee, the levels of EA, the submission and publication, certification and notices, the request for the release of funds, documentation of compliance, procedures by activity, and compliance with other environmental laws and authorities such as State Historic Preservation Office (SHPO) requirements and Floodplain determination.

The National Environmental Policy Act (NEPA) was enacted in 1969 to ensure that federal agencies consider and address any environmental impacts that result from the activities and projects they sponsor. As a result, the U.S. Department of Housing and Urban Development (HUD) developed its own set of regulations that implement NEPA. These regulations apply to HUD-funded programs such as the CDBG Program. HUD enforces these regulations to ensure that projects do not pose a negative impact on the environment or create environmental conditions that would negatively impact the persons served by the project. Recipients of HUD funds are required to determine how to mitigate any negative impacts on their CDBG-funded project. This determination is made through conducting an EA, in accordance with the provisions of HUD's regulations at 24 CFR Part 58.

While DFA must monitor compliance with HUD and the CDBG EA requirements, particular responsibilities related to the release of funds fall on the Grantee. A basic understanding of HUD and CDBG EA requirements is crucial. **Failure to comply with these requirements may jeopardize the project as well as the Grantee's ability to apply for future funds and/or result in disallowed costs.**

Grantees are responsible for obtaining the DFA approval of the environmental "Release of Funds" (**Exhibit 2-Q**) before:

- Any commitment of CDBG funds for activities other than those that are specifically exempt from the EA; and
- Any commitment of Federal or State funds that would have an adverse environmental impact or limit the choice of alternatives.

A key factor in performing an EA is the fact that the EA process must consider the ultimate effect of a proposed project. Therefore, effects of both the CDBG and related project activities must be considered. For example, if CDBG funds are being used to acquire a site for a new construction project, the ultimate effect of the project is not solely the acquisition of the site, but also the construction of the project, including infrastructure. Therefore, the EA must address the impacts of both the CDBG-funded land acquisition and any other funding connected to the project. The scope of considerations of an EA should be presented with this definition of a project in mind. The EA process should focus on the determination of the impacts of a project on the environment. In this regard, the review should include the measurable preparation of documentation regarding the mandatory evaluation of physical, social, and economic impacts of proposed activities.

Maintain Records

It is critical that the Grantee maintain an Environmental Review Record (ERR) to document compliance with Federal and State requirements. EA compliance is monitored through audit review by the DFA Project Manager. All the required documents must be kept in the ERR.

2.1 Certifying Official (CO)

The Grantee must designate a Certifying Official (CO) to assume overall responsibility for the environmental review process. The CO must:

- Have legal authority to speak for the county or municipality
- Be able to make legal commitments on behalf of the entity
- Be able to represent the entity in federal courts

The CO is responsible for:

- Resolving findings and signing required certifications.

Usually the Mayor, Commission Chair, or City Manager are designated as the CO, but anyone who satisfies the criteria above is eligible. A CO designation must be issued for each grant. **The individual designated as the CO and Chief Elected Official (CEO) must sign the “Certifying Official Designation” (Exhibit 2-A-1). Exhibit 2-A-1 must be included in the ERR.**

2.2 Environmental Review Determination

DFA determines the level of EA for CDBG projects: exempt, categorically excluded Subject to 24 CFR 58.6, or environmental assessment. DFA makes this determination based on the Grantee’s completion and submission of **Exhibit 2-A** “Environmental Review Determination” as per 24 CFR 58.6. Each level of EA is explained below:

Categorically Excluded Subject To 24 CFR 58.6 (CEST)

Activities that do not have a significant effect on the environment, either individually or cumulatively, as cited in 24 CFR 58.35(c), are categorically excluded and do not require an EA or Environment Impact Statement (EIS).

Categorically excluded activities typically involve work to rehabilitate or repair existing structures or facilities that can change in size or capacity up to 20%. Examples of categorically excluded activities may include:

- Repairs to an existing water or sewer line with no location or capacity changes
- Street repairs with no location or capacity changes (additional width can be deemed a capacity change)
- Rehabilitation of existing housing

Categorically excluded projects must comply with Federal laws, statutes and regulations and the ERR must document this compliance. For a full list of CEST activities, see 24 CFR 58.35(a)(1) through (6) and 24 CFR 58.35 (b)(1) through (7).

Environmental Assessment (EA)

When a project or activity is not exempt under 24 CFR Part 58.34 or CE under 24 CFR Part 58.35 and will change the physical environment, at a minimum an EA is required. To complete the EA, the Grantee must analyze the project's impact on the human environment and comply with the review required by the Federal laws cited in 24 CFR 58.5 and 58.6. The requirements of an EA are contained in 24 CFR 58 Subpart E and the ERR must document compliance with these requirements. If the Assessment supports a finding that the activity will not have a significant impact on the environment, no further review is needed. The distinction between the requirements of the categorically excluded activities and those which require an environmental assessment are minor.

Environmental Impact Statement (EIS)

An EIS is required when an EA indicates that a proposed project or activity will significantly impact the human environment, as defined in 24 CFR 58.37. The EIS is a detailed written statement describing, analyzing and assessing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the proposed action and alternatives to the proposed action. It is unlikely that any CDBG activity will trigger an EIS. In the rare event a Grantee finds itself involved with this level of review, they should contact their Project Manager immediately.

Reuse of a Previous EA

In order to request the use of an existing EA, the Grantee must submit documentation of the following to DFA in a formal letter signed by the CEO and CO. The Grantee must also resubmit the entire existing EA.

- The project area remains unchanged from the original EA.
- No significant change in the area within the last 5 years.
- Consultation with State Historical Preservation Office SHPO (**Exhibit 2-J**) to confirm compliance with Section 106 and 110 compliance review under the provisions of the National Historic Preservation Act. NOTE: If the proposed project directly or indirectly affects a listed or eligible for listing historic property that is more than 45 years old, or it is located within a listed historic district, then the 5-year EA allowance will not apply.
- No change to the Laws and Authorities checklist (**Exhibit 2-N**) conducted by the initial EA that would initiate correspondence with the appropriate regulatory agency or a response from that agency.
- "Authority to Use Grant Funds" (**Exhibit 2-Q**) from the original EA was signed within the last 5 years.

Along with meeting these conditions, the following documentation will need to be submitted for the current project:

- “Environmental Review Determination” (**Exhibit 2-A**)
- “Certifying Official Designation” (**Exhibit 2-A-1**)
- “Request for Release of Funds” (**Exhibit 2-L**)
- A complete copy of the EA being reused

Environmental Determination Change

If the Grantee does not agree with DFA’s level of environmental determination, it may request reconsideration in a written request to DFA. The DFA staff will review the written request and render a decision.

2.3 Exempt – Planning grants

Planning grants are typically Exempt. For an Exempt determination, the Grantee still must submit a number of documents in accordance with 24 CFR Part 58.6- Other Requirements. Infrastructure projects are not Exempt.

However, the Grantee must submit the following documents:

- “Transmittal Letter for Finding of Exempt Projects” (**Exhibit 2-B**)
- “Certification of Exemption for CDBG Projects” (**Exhibit 2-B-1**)
- “Compliance Documentation Checklist” (**Exhibit 2-B-2**)
- “Request for Release of Funds” (**Exhibit 2-L**)
- “State Historical Preservation Office SHPO Consultation” (**Exhibit 2-J**), if applicable*

*The **Exhibit 2-J** will only apply if a historical building is involved in the planning grant, such as design of a renovation to a historical building, or a planning grant for a historical area of town.

Once DFA has determined the above listed documents are complete and accurate, an “Authority to Use Grant Funds” (**Exhibit 2-Q**) will be issued. At this point the EA for exempt activities is complete.

2.4 Agency Consultations and Reviews

A critical piece of an environmental review is consultations with agencies that can consider how the project may impact the environment, or how the environment may impact the project. Agency consultations are necessary to ensure compliance with federal and state law. Below are the steps to conducting the agency consultations:

- 1) Use **Exhibit 2-E** to determine which agencies must be consulted for review.
- 2) Go to TDAT <https://egis.hud.gov/TDAT/> and look up the county where the project will take place to determine which Native American tribes must be consulted.

- 3) With the exception of the State Historical Preservation Office (SHPO) and the Local/County Floodplain manager, the Grantee may use **Exhibit 2-I** as a template to draft for the Agency consultation notices.
 - a) The notices must be on **Grantee letter head** and signed by the Certifying Official.
 - b) Grantees should use **Exhibit 2-J** as template to draft the notice to SHPO. The letter to SHPO should also include pictures and maps of the project location.
 - c) Grantees should use **Exhibit 2-F** for the notice to the Local/County Floodplain manager.

- 4) Send the notices to the agencies listed on **Exhibit 2-E** and the Native American tribes listed on **TDAT link**, found on **Exhibit 2-E** and above. Grantees may send the notices via mail or email. Contracted administrators may provide technical assistance by sending the mail or email, but the letters must be on Grantee letter head, signed by the Certifying Official.
 - a) Grantees must keep a copy of each notice sent to include with their EA materials.
 - b) As Grantees receive responses from the agencies they must keep copies of the responses with their EA materials.

- 5) After a period of one week to 10 days has passed from the date Grantee sent the initial consultation letter, the Grantee must make a second consultation attempt.

- 6) The Grantee must provide both first and second attempt correspondence with their EA materials. The Grantee is encouraged to make additional attempts, as some agencies may not answer until the third try.

- 7) In some cases, the agencies consulted will require follow-up activities. The most common are:
 - a) SHPO requires a Cultural Resources Survey for the site. If this determination is made, it is the Grantee's responsibility to contract a SHPO approved archaeologist to perform the survey.
 - b) The Local/County Floodplain manager indicates the project will be located in a floodplain, the Grantee will have to complete a floodplain review. Specifics of the floodplain review requirements appear in the following section.

When an agency consulted indicates anything other than that the project will have no significant impact, the Grantee should contact the DFA Project Manager for guidance.

- 8) **Responses are required from SHPO, the Local/County Floodplain Manager and the New Mexico Environmental Department.** If the Grantee does not receive responses from other agencies, the Grantee must document all good faith efforts made to contact them by completing "Agency Response Letter Certification" (**Exhibit 2-I-1**).

2.5 Floodplains Management

To comply with floodplain management requirements, Grantees must complete the HUD-prescribed process:

- 1) Determine if the project is located in a 100-year or 500-year floodplain or wetland. Determination is done using an NFIP floodplain map.
 - a) The Local/County Floodplain Manager must be consulted and provide independent verification of the determination.
 - b) For projects that involve acquisition of or construction in any “area having special flood hazards” designated by FEMA shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. “Flood Insurance Coverage” (**Exhibit 2-F-1**) explains dollar amount and duration of insurance coverage for projects. Note: Flood insurance may not be applicable for certain types of projects. Please inquire with your DFA assigned Project Manager.
 - c) If the Local/County Floodplain Manager determines that the proposed activity is in a floodplain, the Grantee must comply with the HUD-prescribed process. If not, there are no additional floodplain requirements for the environmental assessment.
- 2) If the project is in a floodplain, the affected and interested public must be provided the opportunity for early public review. This consists of publishing a “**Floodplains and Wetlands Early Public Review Notice**” (**Exhibit 2-G**) in a local newspaper to make the public aware of the project intent. This Notice must provide a 15-day comment period before proceeding to the next notification. Copies of each published Notice should be sent to interested parties from the **Exhibit 2-E** and a copy of a separate distribution list for each Notice as well as copies of transmittal letters are to be kept in the ERR.
- 3) Identify and evaluate practicable alternatives to locating the proposed activity in the base floodplain. Alternatives to be considered include:
 - Carrying out the proposed activity at a location outside the base floodplain (alternative sites)
 - Other means of accomplishing the same purpose as the proposed activity (alternative activities)
 - No action (the “no action” alternative must be considered)
- 4) Identify the adverse impacts of the proposed activity. Three basic types of impacts that must be addressed are:
 - Positive and negative impacts

- Concentrated and dispersed impacts
 - Short- and long-term impacts
- 5) If the proposed activity will result in an identifiable impact, this impact must be minimized and natural and beneficial floodplain values must be restored and preserved.
 - 6) Re-evaluate the proposed alternative, considering whether the activity is still feasible. If not, consider limiting the activity to non-floodplain sites. If neither is acceptable, the alternative is no action.
 - 7) A decision of No Practicable Alternative must be explained to the public by publishing a “Floodplains and Wetlands Notice of Explanation” (**Exhibit 2-H**) in a local newspaper. This notice must also provide a 7-day comment period after publishing and must be published separately from the **Exhibit 2-G**. Copies of each published notice should be sent to interested parties from **Exhibit 2-E** and a copy of a separate distribution list for each notice as well as copies of transmittal letters are to be kept in the ERR.
 - 8) Implement the proposed activity with the appropriate mitigation measures, if required.

2.6 Compliance with Environmental Laws and Authorities

A Grantee’s ERR must evidence and provide assurances of compliance with all other applicable environmental laws and authorities as outlined in this section by completing the “Laws & Authorities Checklist for All Projects Not Exempt” (**Exhibit 2-N**). This document should provide specific references and citations from the responses received during the agency consultation process, detailed in the subsequent section.

The “**Laws & Authorities Checklist for All Projects Not Exempt**” (**Exhibit 2-N**) should include maps, online references, and citations from the agency consultation notices should be detailed in the exhibit. At a minimum, the Grantee must document who responded to the inquiry, when the response was received and what the contents of the response letter stated.

If project mitigation is required or suggestions listed in the agency response letters, then this information needs to be included on the **Exhibit 2-N**. If the project will affect or be affected by any of these laws and authorities, the Grantee should initiate correspondence with the appropriate regulatory agency. The “**Laws & Authorities Checklist for All Projects Not Exempt**” (**Exhibit 2-N**) lists most of these agency contacts and their addresses. For clarification about complying with any of these laws, the Grantee should contact their designated DFA Project Manager.

To complete the “Laws & Authorities Checklist for All Projects Not Exempt” (**Exhibit 2-N**), the Grantee utilizes the responses from its agency consultation notices.

2.7 Assemble Environmental Review Record (ERR)

2.7.1 Procedures for Categorical Exclusion

Complete Written Finding of Categorical Exclusion. The Grantee must complete a written Finding of Categorical Exclusion that cites the subsection of 24 CFR 58.35(a) by which the activities or projects funded are Categorically Excluded from the requirements of 24 CFR Part 58. A sample format for the written finding can be found in **Exhibit 2-C-1**. **Exhibit 2-D** is a “Sample Transmittal Letter for Categorical Exclusion”.

Publish/Post Public NOI/RROF. Once the Grantee has verified compliance with Laws and Authorities (**Exhibit 2-N**) it must publish or post the NOI/RROF. The CDBG project number, a sufficient description of the project and its location must be included in the NOI/RROF.

- If the Grantee **posts**, it must provide “**Evidence of Posting Notices**” (**Exhibit 2-M**). A “Sample NOI/RROF” is included as **Exhibit 2-K**. Note: Grantees must comply with locally established Open Meetings Act Resolutions regarding publications. The Grantee must provide the public with at least **ten** calendar days to comment on the Notice (i.e. **Exhibit 2-K**) following the date of posting. If the Grantee chooses to post the NOI/RROF instead of publishing, the notice must be displayed in a prominent public place, within the project area, e.g. Post Office, City Hall, County Courthouse, Community Center, etc. In addition, the notice must also be mailed to the agencies listed in the “Contact/Distribution List” (**Exhibit 2-E**).
- If the Grantee **publishes** the NOI/RROF, it must provide appropriate documentation (i.e. affidavit of publication.) The Grantee must provide the public with at least **seven** calendar days to comment on the NOI/RROF. In addition, the notice must also be mailed to the agencies listed in the “Minimum Required Agency Contact/Distribution List” (**Exhibit 2-E**).
- The first day of a public comment period starts at 12:01 a.m. on the day following the day of publication, mailing, or posting.

Prepare RROF and Certification. After the public comment period has expired and all comments, if any, are addressed, the Grantee’s Chief Elected Official shall complete the “Request for Release of Funds” (**Exhibit 2-L**). *This form cannot be signed prior to the end of the public comment period.*

2.7.2 Procedures for Environmental Assessment

Complete the Environmental Impact Checklist (Exhibit 2-O). The nature, magnitude, and extent of all environmental impacts should be identified using the “Environmental Assessment Impact Checklist” (**Exhibit 2-O**). Each project should be evaluated based on its potential impact on the environment and how the environment will affect the project. Sources and documentation for the evaluations should be identified in the space provided on the exhibit. This checklist must be completed prior to issuing a FONSI or FOSI. Guidance questions for completing the “Environmental Assessment Impact Checklist” are included as **Exhibit 2-O**. In order to adequately and accurately complete **Exhibit 2-O**, use the responses to the agency consultation notices.

If the “Environmental Assessment Impact Checklist” (**Exhibit 2-O**) shows that an area may be adversely affected, the Grantee must identify and document possible alternatives and mitigation methods, and contact its DFA assigned Project Manager. The Grantee’s Certifying Official should determine if the adoption of feasible alternatives to the project would eliminate or minimize environmental impacts. The effects of an alternative project scope and design, location and of the no-action alternative should be considered. The second page of **Exhibit 2-O** provides space to summarize the environmental conditions and to discuss alternatives and mitigation measures.

The Grantee can make one of the appropriate environmental findings:

- A FONSI in which the Grantee determines that the project is not an action that may or will significantly affect the quality of the human environment
- A FOSI in which the project is deemed to be an action that may significantly affect the quality of the human environment. **In this event, the Grantee should contact the DFA Project Manager immediately for further assistance.**

The second page of **Exhibit 2-O** provides space to make the conclusion and findings and to list the reasons for the decision. This list of reasons is a part of the FONSI public notice, discussed next. The last page of the “Environmental Assessment Impact Checklist” consists of the actual FONSI/FOSI.

Publish/Post Public Notices and Comment Periods. Once **Exhibit 2-O** is completed and a FONSI is determined, the federal requirements for notices, comment periods and clearance procedures must be followed:

- 1) Prepare and distribute “Notice of FONSI and NOI/RROF” (**Exhibit 2-P**) to
 - Local news media
 - Individuals and groups known to be interested in its activities
 - Appropriate local, State, Federal and Native American agencies. See “Contact/Distribution List” (**Exhibit 2-E**).
- 2) Provide evidence of **posting Exhibit 2-P**, if not published, as **Exhibit 2-M** with EA materials.
 - “Notice of FONSI and NOI/RROF” (**Exhibit 2-P**)
- 3) Allow for a local Public Comment Period prior to taking further action pursuant to the following notices, the following minimum time periods for comments shall be adhered to:
 - If **Exhibit 2-P** is published, allow **15** days
 - If **Exhibit 2-P** is posted, **18** days

The Grantee must take into account the comments received in response to **Exhibit 2-P** before proceeding with completing the RROF and Certification form. Failure to address public comments will delay the environmental clearance and the start of project construction. After the public comment period has expired and all comments, if any, are

addressed, the Grantee’s Chief Elected Official shall complete the “Request for Release of Funds” (**Exhibit 2-L**). This form cannot be signed prior to the end of the public comment period.

4) State Public Comment Period

- DFA cannot provide an authorizing signature on **Exhibit 2-Q** prior to the State’s 15-day public comment period. The waiting period begins after “completed document” of the Environmental Review is received, reviewed and approved by DFA.

2.8 Submission of Environmental Review Record

Upon completion of the ERR, it should be submitted to DFA for approval. Refer to the checklists in assembling the document. Follow the guidance of the DFA assigned Project Manager on delivery/submission of the ERR. Following a complete and accurate submission of an ERR, DFA will review, approve, and have another 15-day public comment period. **Expect the Exhibit 2-Q after** the State’s 15-day public comment period ends.