NEW YORK STATE OF OPPORTUNITY. | **Homes and Community Renewal**

CDBG Orientation Webinar Series

2. Environmental Review

January 22, 2020

The Orientation Webinar Series

1. Getting Started – January 15 (Completed)
2. Environmental Review – Today
3. Financial Management – January 29
4. Program Administration – February 5
5. Lead-Based Paint – February 12

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This is the second in a series of five webinars designed to provide an overview for new CDBG grantees over the next three months, each one hour in length. The webinars are:

1. Getting Started – was conducted on January 15
2. Environmental Review – today's webinar
3. Program Administration – schedule for January 29
4. Financial Management – scheduled for February 5
5. Lead-Based Paint compliance for housing activities– scheduled for February 12

Grant Agreement Reminder

Must execute within 45 days of award

Must be signed by the Chief Elected Official (CEO)

Any Applicable Schedule A Condition(s) must be met to the satisfaction of the OCR

Grant Agreements are due back by February 3, 2020

If this date cannot be met, contact your
Community or Economic Developer

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The Grant Agreement must be executed and the Conditions specified in Schedule A must be met within 45 days of award.

All grant agreements issued through the CFA Round are due Monday February 3, 2020.

Grant Agreement Reminder

Go to https://hcr.ny.gov/community-development-block-grant

Select Grant Agreement Forms:
- ✓ Authorized Signature Form
- ✓ ACH/Direct Deposit
- ✓ Form 7-2 Program Schedule
- ✓ Form 8-1 Project Team

In addition to the executed Grant Agreement, the following forms or documents are required to be submitted.

First, any Schedule A Conditions must be met and documented.

Next, the following Forms must be executed:
- Authorized Signature Form for Request for Funds
- ACH/Direct Deposit Authorization of NYS CDBG Funds
- Form 7-2 Program Schedule
- Form 8-1 Project Team

You will find these forms under "Forms" on the web site.   Click on "Grant Agreement Forms".

Finally, if the CDBG activity involves the rehabilitation or acquisition of housing, you must also execute Forms certifying compliance with LBP requirements – either Form 5-1 if rehabilitation will occur, or Form 5-2 if acquisition only will occur.   These forms can be located under "General Grant Administration" on the Forms page.   If your activities do not involve housing, then these Forms do not apply.

Objectives This Webinar

1. Familiarize recipients with the federal & state requirements for environmental review (ER)
2. Identify the role of Recipients in ER
3. Define the steps in the ER process, and the resources Recipients will use to document the review

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The objectives for this webinar are to:

1. Familiarize you with the federal & state requirements for environmental review;
2. Identify your role and responsibilities in environmental review and the role of OCR; and
3. Define the steps in the process, and the resources you should use to conduct and document the review.

Environmental Review Requirements, Roles & Resources

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Let's start with a review of the federal and state environmental review requirements and the various roles in the environmental review.

The Requirements and Roles

Applicable environmental review requirements

- Federal: National Environmental Policy Act (NEPA) & Other Federal laws & authorities: 24 CFR Part 58
    - Federal – Recipient is the "Responsible Entity"

- State: State Environmental Quality Review Act (SEQRA) 6NYCRR Part 617
    - SEQR – Recipient is the Lead Agency

- OCR is the review authority

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There are two sets of environmental review requirements – federal requirements related to HUD funding, and state requirements.

The National Environmental Policy Act (NEPA) and "other Federal laws and authorities" require that an environmental review be conducted for all Federally assisted actions. 24 CFR Part 58 contains the "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities."

The State Environmental Quality Review (SEQR) Act and the implementing regulations require state agencies to consider environmental factors prior to any decision to undertake, approve, or fund an action. SEQR requirements are distinct from federal NEPA review, and compliance with SEQR is required in addition to the federal environmental review.

Note that certain other state laws & authorities apply in all cases. These include consultation with SHPO for historic properties and structures, floodplain management, smart growth requirements, coastal zone consistency, and agricultural district protections.

The new SEQR forms and regulations are now in use. Any action that does not have SEQR determination in place by 12/31/2018 must use new forms and comply with new rules.

Note that any ERR submitted after changes go into effect must be in compliance with those changes.

Resources

Office of Community Renewal (OCR) Resources
- Grant Administration Manual (GAM) Chapter 2
  - Exhibit 2-2 Environmental Review Checklist

EXHIBIT 2-2

ENVIRONMENTAL REVIEW RECORD CHECKLIST

FOR RECIPIENT USE ONLY
DO NOT SUBMIT THIS TO OCR

Recipients may use this checklist as a guide to assist in creating and maintaining the Environmental Review Record (ERR). This checklist and the Environmental Review Record are not to be submitted to the Office of Community Renewal (OCR). Only the documents requested should be submitted to OCR unless other documentation has been specifically requested. At a minimum, the items below must be maintained in the ERR:

	LIST OF DOCUMENTS NEEDED	COMMENTS
1. ____	Project Description including location	_____
2. ____	Program Activities	_____
3. ____	Alternatives or changes to proposed action	_____
4. ____	NEPA Classification Determination and Supporting Documentation	_____
5. ____	SEQR Classification Determination and Supporting Documentation	_____
6. ____	SHPO/THPO and Other Applicable environmental regulations (Determination and Supporting Documentation)	_____
7. ____	Statutory Checklist and Applicable Documentation	_____
8. ____	EA and Applicable Documentation	_____
9. ____	EIS and Applicable Documentation	_____
10. ____	Public Notices, as published	_____
11. ____	Distribution list for FONSI	_____
12. ____	Comments Received and Recipient Responses	_____
13. ____	Regulatory Compliance Documentation	_____
14. ____	Floodplain Management Compliance Documentation	_____
15. ____	Coastal Zone Assessment (CAR) Form	_____

OCR Grant Administration Manual   Chapter 2   11/2019
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OCR provides a number of resources to help you meet your environmental review responsibilities
- Grant Administration Manual (GAM) Chapter 2, including all exhibits
- Environmental Review forms & instructions: http://www.nyshcr.org/Forms/NYS-CDBG/
- ER related web links: http://www.nyshcr.org/AboutUs/EnvironmentalReview/reqsum.htm
- GAM Manual Exhibit 2-12

In addition, HUD has substantial online resources to guide localities through the Part 58 environmental review.   It is located at the HUD Exchange, at the web page on the slide (https://www.hudexchange.info/programs/environmental-review/.)

The resources include the regulations, forms and formats for all reviews, FAQs and other guidance. In addition, there are training resources, including recorded webinars, webcasts and WISER – a web-based training series.

We should also note that HUD is moving toward online ERs, and is in the

process of implementing the HEROS online system.   While this is not yet available to State Programs, but only to entitlement communities, it is nonetheless useful to see how HUD is structuring the reviews and documentation, and to look at reviews that have been completed and posted online – to date there are nearly 600 reviews posted.

It is your obligation as the Responsible Entity to know the requirements and properly document the reviews.   There are many resources online to guide you.

Resources

Office of Community Renewal (OCR) Resources

- Environmental Review forms & instructions: https://hcr.ny.gov/community-development-block-grant
    - Select Environmental Review Forms

OCR provides a number of resources to help you meet your environmental review responsibilities

- Grant Administration Manual (GAM) Chapter 2, including all exhibits
- Environmental Review forms & instructions: http://www.nyshcr.org/Forms/NYS-CDBG/
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Resources

- OCR GAM Chapter 2 related web links:
  - Exhibit 2-13 Links to Outside Agency Forms
    - SEQR Short Form
    - SEQR Full EAF
    - DOS Coastal Assessment Form
    - Acceptable Separation Distance Guidebook
- HUD Resources:
  https://www.hudexchange.info/programs/environmental-review/
  - WISER web-based training
  - HEROS online – not yet open to State Programs

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OCR provides a number of resources to help you meet your environmental review responsibilities
- GAM Manual Exhibit 2-13 Links to Outside Agency Forms
  - Please note that at this time, the Acceptable Separation Distance Guidebook is temporarily unavailable.

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It is your obligation as the Responsible Entity to know the requirements and properly document the reviews.   There are many resources online to guide you.

Prohibited Actions Prior to ER Completion

Until review is completed and funds released, the Recipient (and its partners) may **not**:

- Commit (execute legally binding agreements) or expend CDBG funds
- Commit or expend non-HUD funds
- Undertake a "choice limiting" action, e.g.:

  – Acquisition

  – Demolition/movement

  – Construction/rehabilitation/repair

Recipient can incur planning and other exempt costs prior to release, but at their risk

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Completion of the environmental review process is mandatory before taking a physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair or construction activities.

For purposes of the environmental review process, commitment means the expenditure of private or public funds, or a legally binding agreement by the recipient or any parties involved in the project, including subrecipients, contractors, or owners/developers for project activities such as property acquisition, construction, conversion, demolition, movement, rehabilitation, or repair.

"Non-HUD funds" means any other Federal, state, local, private, or other funds.

Recipients may incur costs for exempt activities prior to the release of funds or submittal of the environmental review documentation to OCR provided that the Recipient has fully documented that the activities are exempt from environmental review requirements. However, it is not the practice of OCR to provide reimbursement of such costs until a release of funds or concurrence letter is issued by OCR. Recipients incur costs for exempt activities at their own risk.

Steps in the Process

Now let's walk through the steps in the environmental review process.

EXHIBIT 2-7
ENVIRONMENTAL REVIEW PROCESS FLOW CHART


```
Designate a Certifying  →  Establish an Environmental  →  Determine NEPA Review Format and
Officer                     Review Record (ERR) (Refer to    Classify the Project Activities (Exempt,
                            Exhibit 2-2)                     Categorically Excluded, Activities that are
                                                             neither Exempt nor Categorically
                                                             Excluded)
```

Exempt [58.34(a)] or Categorically Excluded [58.35(b)]

Categorically Excluded [58.35 (a)]

Requires Environmental Assessment [58.36 or

Document Classification in the ERR. [58.34(b)] (Complete Forms 2-3 and 2-4)

Document Determination of Status in ERR. (Complete Forms 2-3 and 2-4)

Complete Statutory Checklist (58.5) (Form 2-5 or 2-5A) and Document Requirements (58.6)

Complete Statutory Checklist (58.6) (Form 2-5 or 2-5A) and Document

Complete Statutory Checklist (58.5) and (58.6) (Form 2-5 or 2-5A) and Document Requirements

Prepare the Environmental Assessment Checklist (Form 2-6) and Document Requirements

No compliance action is required and no further environmental action is necessary unless 58.6 requirements

No Compliance Actions Required: Project Exempt [(58.34 (a)12)] Document Determination

Compliance Actions Required: Comply with Action(s) Required and Secure Evidence of 58.5

Finding of No Significant Impact (FONSI)

Finding of Significant Impact (FOSI)

Environmental Impact Statement Required (58.37)

Submit documents to OCR for concurrence prior to proceeding with Request for Funds and Project Execution [58.34(b)]

Publish Concurrent or Combined FONSI-NOI/RROF (58.43, 58.45, 58.46, 58.70): 15-Day Public Comment Period [58.45(a) & 58.45 (c)] (Refer to Exhibit 2-8 and 2-9)

Contact your OCR Program Representative

END OF PROCESS

Publish NOI/RROF (58.22 and 58.70): 7-Day Public Comment Period [58.45(b)] (Refer to

After Comment Period, Submit a RROF and Certification Form (Form 1-3) and all other required materials (58.71)

Initiate project upon receipt of OCR approval of the RROF after the 15 day objection period

For Site Specific Projects: END OF PROCESS

For Unknown Sites: Compile ERR for each site (prior to any choice-limiting actions for those sites)

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This is Exhibit 2-7, the Environmental Review Process Flow Chart from Chapter 2 of the CDBG Grant Administration Manual, which can be found at http://www.nyshcr.org/Programs/NYS-CDBG/GrantAdministration.htm. It lists the individual steps to complete the Environmental Review and receive Release of Funds. This detailed process chart will be helpful to reference as you conduct the environmental review in order to plan for the required documents, notices, or consultations with state and federal authorities.

The Recipient, as the Responsible Entity (RE) should begin the environmental review process at the earliest possible time so that potential conflicts between program procedures and environmental requirements are identified at an early stage. The environmental review process should commence as soon as a proposed site is identified.

Note that the process described above is for NEPA, not SEQR
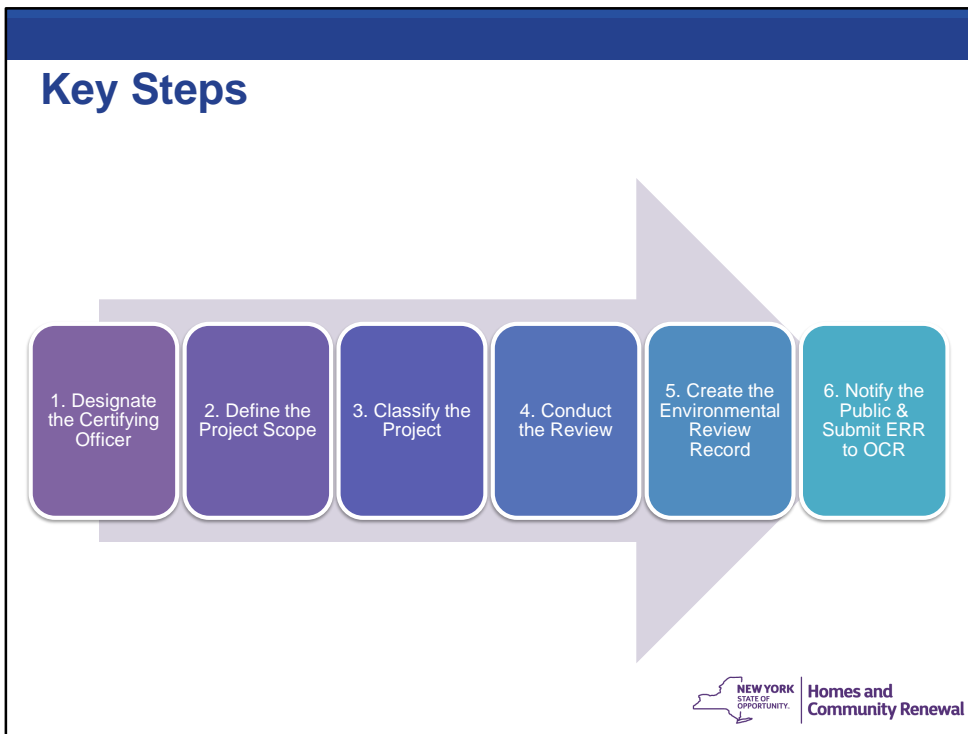
While the Exhibit 2-7 flowchart provides the details, for purpose of this webinar, we have developed a simplified set of six steps that a Recipient must follow as the Responsible Entity.

The rest of our presentation will correlate to these six steps, and you will see the step highlighted in red as we walk through the process. The steps are:

1. Designate the Certifying Officer
2. Define the Project Scope
3. Classify the Project
4. Conduct the Review
5. Create the Environmental Review Record
6. Notify the Public & Submit the ERR to OCR – if required

When all these steps are completed and you have received the Release of Funds or the Concurrence Letter from OCR, you may proceed to implement the activities and incur costs.

1. Designate the Certifying Officer

Recipient must designate Certifying Officer

- Must be Recipient employee or elected official
- May not be a consultant or engineer
- Designate by resolution – complete Exhibit 2-1

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The first step upon award of funds is to designate the Certifying Officer.

The Certifying Officer must be part of the jurisdiction – either a employee or elected official. It cannot be a consultant or engineer.

The designation should be done by resolution, and the Designation of Certifying Officer Form in Exhibit 2-1 of the GAM should be completed and the original sent to OCR.

2. Define Project
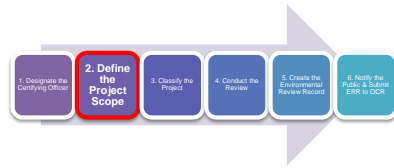
Aggregation - Group integrally related activities into single ER
- All funding sources/activities, not just CDBG activities
- Also aggregate activities part of multi-year project

As the second step in the process, the Recipient needs to define the scope of the project or activity to be able to determine what kind of review is required.

A project is defined as, "an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective" [24 CFR 58.2(a)(4)]. When performing an environmental review, it is essential to include all project activities in the review, regardless of who is funding the activities (24 CFR 58.32). For example, for homeownership projects, a tiered review must consider the potential impacts of any planned rehabilitation activities, regardless of the funding source.

The purpose of project aggregation is to group together related activities so that the Recipient can analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected, and closely related, or that are dependent upon other activities and actions.

Recipients should begin to formulate a written project description. The project description must address the entire scope of the project, not just the CDBG portion of the project. For example, if CDBG funds are covering the sewer portion of a sewer and

water line project, the ERR and project description must address both the sewer AND water portions of the project. Avoid using buzz words, such as "mixed-use" or "Sewer/water improvements." You may consider using the project description provided in the grant application submitted to OCR. Again, note that the review must cover all related project components, regardless of the funding source.

Next, the Responsible Entity must determine whether a full review can be conducted, or whether a tiered review process is required.   This hinges primarily on whether sites are identified.

2. Define Project

Tiered Review - 2-tier review if sites not yet selected

- Common for many housing & microenterprise programs
- Tier I - establishes parameters to be followed as sites are identified; Request for Release of Funds processed
- Tier II - site-specific reviews; no notices or a Request for Release of funds if no impacts beyond Tier 1.
- No choice limiting actions, including acquisition, until the Tier 2 review is completed.

Tier I programmatic reviews are conducted for projects where the specific site has not been identified at the time the environmental review is conducted. This is typical for many housing programs and economic development programs (particularly microenterprise), where specific project sites are not determinable at the time of the initial environmental review. A "tiered" environmental review allows grant recipients to conduct an "umbrella" or programmatic review of possible environmental hazards or conditions that could be encountered, and to establish a protocol that will be followed when individuals sites are selected and a site-specific, or Tier 2, environmental review is done. Request for Release of Funds are processed at the Tier 1 stage and the Release of Funds are issued at the Tier 1 stage.

Site-specific reviews are conducted for projects where the specific site has already been identified at the time the environmental review is conducted, or as a Tier II review when a specific site has been determined. All compliance documentation for that individual site should be maintained in the ERR for the project.

Tier 2 site-specific reviews follow the protocol established by Tier I, and will not trigger a separate Request for Release of Funds as long as conditions or impacts encountered were already addressed in the overall Tier I programmatic review. Site-specific reviews

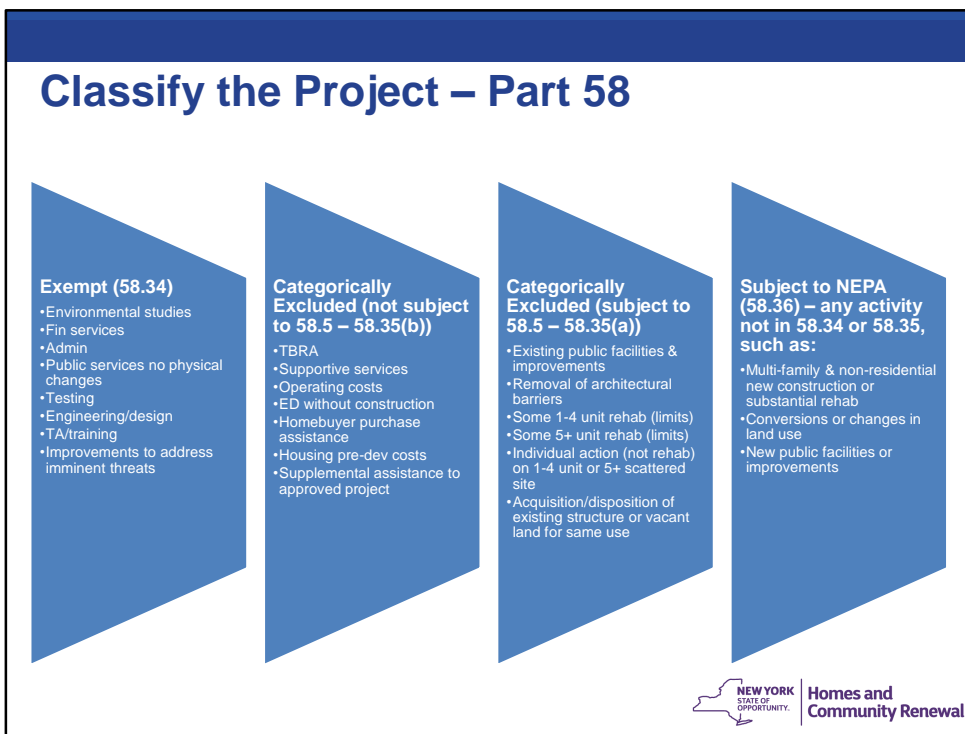must be conducted before the commitment of funds to a specific site and costs are incurred.

3. Classify the Project
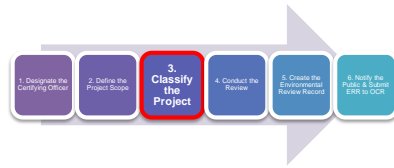
Identify the category of project to determine the type of review and public notice required:

- Part 58
- SEQR

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The third step is to classify the project or activity. The classification will determine the specific review, documentation, and public notice required. Separate classifications must occur for both the HUD rules at Part 58 and for the State SEQRA requirements.

Classify the Project – Part 58

Exempt (58.34)
- Environmental studies
- Fin services
- Admin
- Public services no physical changes
- Testing
- Engineering/design
- TA/training
- Improvements to address imminent threats

Categorically Excluded (not subject to 58.5 – 58.35(b))
- TBRA
- Supportive services
- Operating costs
- ED without construction
- Homebuyer purchase assistance
- Housing pre-dev costs
- Supplemental assistance to approved project

Categorically Excluded (subject to 58.5 – 58.35(a))
- Existing public facilities & improvements
- Removal of architectural barriers
- Some 1-4 unit rehab (limits)
- Some 5+ unit rehab (limits)
- Individual action (not rehab) on 1-4 unit or 5+ scattered site
- Acquisition/disposition of existing structure or vacant land for same use

Subject to NEPA (58.36) – any activity not in 58.34 or 58.35, such as:
- Multi-family & non-residential new construction or substantial rehab
- Conversions or changes in land use
- New public facilities or improvements

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There are four environmental classifications under HUD Part 58:

(1) Exempt (as defined in 58.34);

(2) Categorically Excluded not subject to 58.5 (as described in 58.35 (b));

(3) Categorically Excluded subject to 58.5 (as defined in 58.35 (a)); and

(4) Activities that are neither Exempt nor Categorically Excluded (not included in 58.34 or 58.35, and therefore subject to 58.36

Recipients should begin to determine the classification of their project by looking first at the Exempt classification, and then progressing to Categorically Excluded. If the activity is not Exempt or Categorically Excluded, the preparation of an Environmental Assessment (EA) is required. If it is evident at the outset that a project may potentially have a significant impact on the environment, the Recipient should proceed directly to an Environmental Impact Statement (EIS).

Please note that much of this information, including the references from the federal register that regulate the NEPA process, can be found on our website in Chapter 2 of OCR's grant administration manual, and also on the HUD web site. Some of the key activities that fall into each category are as follows:

Exempt (58.34)
     Environmental studies
     Financial services
     Admin
     Public services, no physical changes
     Testing
     Engineering/design
     TA/training
     Improvements to address imminent threats

Categorically Excluded (not subject to 58.5 – 58.35(b))
     Tenant Based Rental Assistance (TBRA)
     Supportive services
     Operating costs
     ED non-construction
     Homebuyer purchase assistance
     Housing pre-development costs
     Supplemental assistance to approved project

Categorically Excluded (subject to 58.5 – 58.35(a))
     Existing public facilities & improvements
     Removal of architectural barriers
     Some 1-4 unit rehab with no density increase, land use change or footprint change in floodplain
     5+ unit rehab – density change less than 20%, not conversion, rehab cost < 75% replacement cost
     Individual action (not rehab) on 1-4 unit or 5+ scattered site
     Acquisition/disposition of existing structure or vacant land for same use

Subject to NEPA (58.36) – Environmental Assessments
     Multi-family & non-residential new construction or substantial rehab
     Conversions or changes in land use
     New public facilities or improvements

Some projects consist of multiple activities that fall into different categories. In such cases, you must apply the requirements that apply to the highest level activity.

Each classification has different requirements and procedures. We will cover those requirements for each classification in a moment.

Classify the Project - SEQR

Form 2-3A, Certification of SEQR Classification

- Type I Action
  - SEQR Long Form required
  - Coordinated Review; publication in Environmental Notices Bulletin (ENB)
- Type II Action – no SEQR Action (document)
- Unlisted Action
  - SEQR Short Form required
  - Coordinated Review

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Compliance with SEQR requires Recipients to classify the activities to determine the state review required.   This is in addition to the Part 58 classification.

On Form 2-3A Recipients must classify the proposed activities according to criteria at 6 NYCRR Part 617.4 and 617.5 to determine if they are Type I, Type II, or Unlisted actions.

- Type II actions require no SEQR action other than documentation of the classification, supported by municipal resolution.
- Unlisted actions require a coordinated review, using a short Environmental Assessment Form (EAF) (full EAF is optional) resulting in a determination of significance, either a Positive Declaration or a Negative Declaration.
- Type I activities must use the full EAF in determining the significance of the action. Fillable versions of both EAF's as well as additional information on SEQR are available from the DEC website www.dec.ny.gov/permits/6191.html.

A Positive Declaration for either an Unlisted or Type I action requires the preparation of an Environmental Impact Statement (EIS). The SEQR process uses the EIS to examine ways to avoid or reduce adverse environmental impacts related to a proposed action. This includes an analysis of all reasonable alternatives to the action.

4. Conduct the Review

The Review varies by project classification

Generally, two main types of reviews for Part 58:

1. Compliance Determination – for projects that are Categorically Excluded, completion of Statutory Checklist(s)
2. Environmental Assessment – for projects not exempt or excluded, full environmental assessment plus Statutory Checklists
   – If finding of impact, Environmental Impact Statement (EIS) required

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The review varies by classification, but you will generally hear us refer to two types of review – a Compliance Determination or an Environmental Assessment.

"Compliance Determination" is the phrase used by HUD to label an environmental review for complying with the applicable requirements of "other Federal laws and authorities" listed in §58.5 and 58.6. Compliance determinations are documented on Statutory Checklist formats.

Activities that require mitigation measures to comply with any of the Federal laws and authorities also require the publishing of a Notice of Intent to Request Release of Funds and submittal of a Request for Release of Funds by the state. If no mitigation is required in the Compliance Determination, public notice and the Request for Release is not required.

For projects unclassified under NEPA, a full NEPA "Environmental Assessment" is required. If a Finding of No Significant Impact, or FONSI results, then publication and request for release of funds can proceed. However, if impacts are indicated, then a full environmental impact statement, or EIS, is required.

We will now talk about the review required in each of the four Part 58 categories.

Exempt – 58.34

Activities that are Exempt under 58.34, e.g.:
- Environmental studies
- Administration
- Design/engineering
- Some public services
- Some purchases
- TA/training & loan payments

Requirements
- Does not require public notice
- Submit Form 2-5A Exempt Statutory Checklist
- OCR issues Concurrence letter

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The first NEPA classification is the Exempt classification. Examples of exempt activities include, but are not limited to:

- Environmental and other studies, resource identification, and development of plans and strategies [(a)(1)];
- Information and financial services [(a)(2)];
- Administration and management activities [(a)(3)];
- Public services that will not have a physical impact or result in physical changes, such as services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare, or recreational needs [(a)(4)];
- Inspections and testing of properties for hazards or defects [(a)(5)];
- Purchase of insurance [(a)(6)];
- Purchase of tools [(a)(7)];
- Engineering or design costs [(a)(8)];
- Technical assistance and training [(a)(9)];
- 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 physical disasters,

imminent threats, or physical deterioration [(a)(10)];
- Payment of principal and interest on loans made or obligations guaranteed by HUD [(a)(11)],

Activities that are determined to be Exempt under 24 CFR Part 58.34 are not required to undergo a full environmental assessment, public notice, or comment period. However, Environmental Review documentation must be submitted to OCR and a concurrence letter issued by OCR prior to the first request for funds.

In addition, activities that are deemed to be categorically excluded 58.35(b), are also considered exempt provided that there are no circumstances which require compliance with any other federal laws and authorities, cited in 58.6[(a)(12)], such as other agency permits.

Examples of Categorically Excluded 58.35(b) activities include but are not limited to:

- Tenant-based rental assistance [(b)(1)];
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, 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 [(b)(2)];
- Operating costs including maintenance, equipment, supplies, staff training and recruitment, and other incidental costs, security, operations, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs [(b)(3)];
- Economic development activities, including but not limited to, equipment purchase not subject to construction, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations [(b)(4)];

- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title [(b)(5)].

Similar to Exempt activities, completion of Form 2-5A to address the 58.6 "other requirements is required, but no public notice or request for release is required if no significant environmental effect is foreseen. OCR will issue a Concurrence Letter.

Activities classified as Categorically Excluded under 24 CFR 58.35 (a) require compliance with regulations at 24 CFR 58.5 and 58.6. Certifying Officers must determine if the project is subject to other related laws and regulations by completing the Statutory Checklist (Form 2-5). If the activities trigger compliance with any of the related laws and regulations, Recipients must comply with their environmental review requirements and publish a Notice of Intent / Request for Release of Funds (NOI/RROF). If the activity does not trigger compliance with any of the related laws and regulations listed on the Statutory Checklists, the activity is classified as Exempt.

Some examples of Categorically Excluded 58.35(a) activities include but are not limited to:

- Acquisition, repair, improvement, reconstruction, rehabilitation or installation of public facilities, and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent; this includes replacement of water and sewer lines, reconstruction of curbs and sidewalks, and street repaving [58.35(a)(1)];
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons

[58.35(a)(2)];

- Rehabilitation of buildings and improvements for residential use (with one to four units), where the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland [58.35(a)(3)(i)];
- Any combination of the above activities

This category requires compliance with both 58.5 and 58.6, so the review must occur to complete Form 2-5.   If no mitigation is required to comply with 58.5 & 58.6, the project can be converted to exempt and no public notice and Request for Release is required.

If the property is being reviewed under a Tier II, be sure to check the Tier I for any conditions or requirements.

One of the Statutory Checklist items is historic review.   We want to highlight this because it is often the process that can slow you down or create compliance issues.

For all federally funded new construction, rehabilitation, public facility, public infrastructure projects, and economic development projects, consultation with State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) is required.

Recipients must consult with the State Historic Preservation Office (SHPO) on whether there are any historic properties on the project site or whether the project will have an effect on historic properties and when ground disturbance is involved. SHPO is required to review all Federally funded new construction, rehabilitation or public facilities projects. Recipients must initiate the SHPO review process by submitting directly to SHPO through link above for every project that may include an action that may have an adverse impact on properties that may be of historic significance. SHPO may ask the applicant for further information regarding the existing site or proposed project design in order to make its determination. Recipients should consult with SHPO as soon as possible to prevent delays in the progress of their project.

The SHPO review should be submitted electronically through the Cultural Resource Information System (CRIS) at https://cris.parks.ny.gov.

In addition, all recipients must also consult with the Tribal Historical Preservation Office (THPO) on whether the projects will have an effect on tribal historic sites and any time ground disturbance is involved. Recipients should go to the link in the slide to determine the individual tribe contact and send a request for determination on the project. Tribal consultation must only be completed through this website listed and tribes must be given 30 days to respond to any request.

For information on completing the THPO consultation review, please go to http://egis.hud.gov/tdat/Tribal.aspx.

For any projects that does not have currently identified project sites, indicate as such on the Exhibit 2-5 Statutory Checklist and that SHPO will be notified once those sites are determined.

Environmental Assessment - 58.36

Projects that are not Exempt or Categorically Excluded 58.35(a) or (b) require an Environmental Assessment or EIS

Complete Forms 2-5 Statutory Checklist, and 2-6 Environmental Assessment Checklist

Publish FONSI/RROF (Form 2-4) or FOSI & proceed to EIS

Activities that are neither Exempt nor Categorically Excluded require an Environmental Assessment (24 CFR 58.36). An Environmental Assessment (EA) enables Recipients to determine the degree of impact that an activity (by itself or in combination with other activities) may have on the environment and whether an Environmental Impact Statement (EIS) is required. In some cases, Recipients may want to omit the EA and proceed directly to the preparation of an EIS. An EIS is required for activities that may have a significant impact on the environment.

The EA should result in one of the following findings:

1. A Finding of No Significant Impact (FONSI), in which the Certifying Officer determines that the project is not an action that will result in a significant impact on the quality of the human environment
2. A Finding of Significant Impact (FOSI), in which the project is deemed to be an action which may significantly affect the quality of the environment (preparation of an EIS is required).

Environmental Impact Statement – 58.37

An Environmental Impact Statement (EIS) may be required if project is large scale (affecting more than 2,500 beds or 2,500 housing units) or if the project is determined thru Environmental Assessment to have a potentially significant impact on the environment

- Don't have to complete EA if EIS is indicated

If your project meets EIS thresholds or will result in significant impact, consult with OCR Community/Economic Developer

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An EIS is required for activities that may have a significant impact on the environment.

Projects funded under the NYS CDBG program rarely require an EIS because they generally are not of the scale to pose a significant impact on the environment. Thresholds included construction of more than 2,500 beds, 2,500 housing units, or water/sewer projects affecting more than 2,500 units.

However, an Environmental Assessment could indicate a potentially significant impact on the environment, and thus trigger an Environmental Impact Statement (EIS). Recipients may determine early on in the environmental process that an EIS is required, in which case, preparing an EA is unnecessary.

If your project meets these thresholds or will result in other significant effects, consult with your OCR Community/Economic Developer regarding the preparation of an EIS.

5. Create the Environmental Review Record
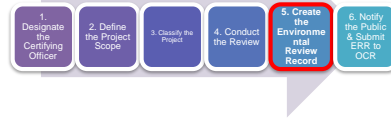
Compile ERR as complete record of the review; must contain:
- Description of activities
- Activity classification
- All documentation associated with environmental assessment or compliance determination, as applicable
- Public notices & comments/concerns

ERR checklist in GAM Exhibit 2-2

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Recipients are required to prepare and maintain a complete written record of the environmental review undertaken for NYS CDBG activities, according to criteria found at 24 CFR 58.38. This written record of the review process is called the Environmental Review Record and must be available for public review in the general offices of the Recipient.

The ERR must be organized to include:

Program activities;
Program classification (exempt, categorically excluded, other);
Regulatory compliance documentation;
Environmental assessment and determination of significance, if required;
Public notices, as applicable, and public comments and concerns.

OCR has prepared an Environmental Review Record Checklist (Exhibit 2- 2) for the Recipient's use in preparing the Environmental Review Record. The Checklist identifies the minimum information required to be maintained in the file. This Checklist is to be used as a guide only and does not necessarily identify all information that may need to be maintained.

Recipients must submit the Environmental Review Record (ERR) within 90 days of award; if there will be delays notify your Developer.

5. Create the Environmental Review Record

Submit ERR to OCR within 90 days of award

Projects with December 19, 2019 award date, the ERR is due by March 18, 2020

Recipients must submit the Environmental Review Record (ERR) within 90 days of award; if there will be delays notify your Developer.

6. Notify the Public and Submit to OCR

Exempt and converted to exempt 58.35 activities do not require publication & request for release of funds

Required notice & Request for Release:
- Program Tier 1
- Categorically excluded requiring mitigation measures
- Environmental assessments & EIS

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The final step of the environmental review process is to publish the required public notices and submit a request for release of funds to the OCR. As noted previously, exempt activities, and activities that convert to exempt do not require the publication of notices.

Prior to publishing the NOI/RROF or the FONSI/NOIRROF, all other actions must be complete, including any required coordinated review, and comment periods for any other required notices must be complete.

Some projects require recipients to publish the Notice of Intent to Request a Release of Funds. The NOI/RROF includes an 8 day local comment period followed by a 15 day OCR comment period.

Some projects, including ones that require an Environmental Assessment or and Environmental Impact Statement, recipients must publish a combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. The FONSI/NOIRROF includes a 15 day local comment period followed by 15 day OCR comment period.

After the public notices are published in a paper of general circulation, recipients should submit the affidavit of publication complete with the entire ERR.

When preparing publication of the NOIRROF or FONSI/NOIRROF, the date of publication is day zero, the first business day after the date of publication is day 1.

The environmental review must be completed and submitted to OCR and a Release of Funds or Concurrence Determination received prior to requesting any funds from OCR. For projects requiring a request for release of funds, the Recipient must receive a Release of Funds from OCR prior to incurring any costs for non-exempt activities such as construction.

The ERR can be submitted electronically, with the exception of Form 1-3 which **must** be submitted with an original signature. The Form 1-3 must be mailed to the OCR together with a copy of the public notice and a cover letter stating whether comments were received and, if so, how the recipient responded to the comments. The Request for Release of Funds and Certification should not be submitted before the recipient has addressed these comments.

If the request is sent by FAX, the original signed form should be mailed to the OCR. The date of receipt by FAX will be counted as the submission date. However, the OCR will not issue a written approval for the release of funds until after the <u>original</u> signed form is received.

Following completion of the OCR comment period, which begins when the OCR received the Form 1-3, Recipients will receive a letter that states that they are allowed to drawdown CDBG funds.

Depending on the project type, Forms 1-4, 1-5 or 1-6 will need to be submitted in order to request CDBG grant funds.

Request for Funds will not be processed until the ERR is completed and a Release of Funds or a Concurrence letter is issued by OCR, even for exempt costs.

Do not incur any project costs (except what may be exempt under 58.34) until the ERR is complete and a request for release of funds, or a letter of concurrence, has been received from the OCR.

Costs associated with establishing and completing the ERR and release of funds may be requested for reimbursement **AFTER** the release of funds has been approved.
- ➢ Any cost incurred, including, but not limited to construction, purchase of equipment, entering contracts, transfer of property, inventory, working capital, purchase orders for material, or labor costs are deemed as "choice-limiting" and are ineligible when these costs are incurred prior to a release of funds issued by OCR.
- ➢ When in doubt, don't. Contact your OCR community/economic developer with any questions.

Additional Guidance

The Environmental Finance Center

(Draft Agenda) Engineers Roundtable for Municipal Infrastructure Funding

Syracuse University Center of Excellence
Room 203
727 E. Washington Street
Syracuse, NY 13210

Tentative Date: Thursday, March 19, 2020
Tentative Time: 10:00am-3:00pm (lunch provided)

1. Welcome and Introductions
2. Grant Funders Tips – Do's and Don'ts for Funding Applications
3. Co-Funding Scenario Demonstration – Applying for Multiple Grants to Support Projects
4. Completing the NEPA Review
5. Funding Efficiency for Projects

Please contact Meredith Beckner Perrault maperrea@syr.edu

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Questions that are not answered in the time remaining today will be addressed in FAQs. You may also follow up with your OCR contact regarding questions specific to your grant and activities.

Question

Post your questions now in the Question box

Questions after this webinar:
- Email to ocrinfo@nyshcr.org or
- Contact your Community or Economic Developer at
  518-474-2057

Please visit the OCR website at:

https://hcr.ny.gov/community-development-block-grant

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Upcoming Webinars

Webinar series:

3. Financial Management – January 29
4. Program Administration – February 5
4. Lead Based Paint Compliance – February 12

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Please note that the remainder of the CDBG Orientation Webinar Series is currently scheduled as follows:

3. Financial Management– February 27
4. Program Administration – March 13
5. Lead Based Paint Compliance – March 27