

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Assistant Secretary for Community Planning and Development  
Office of Economic Development and Empowerment Service  
WASHINGTON, D.C. 20410-7000

Special Attention of:

**NOTICE CPD-99-7**

Field CPD Division Directors  
Field Environmental Officers  
Urban Empowerment Zone Grantees

Issued: September 20, 1999  
Expires: September 20, 2000

Cross Reference: 24 CFR 598.405

Subject: Field Environmental Review Processing for the HUD Urban Empowerment Zones (EZ)  
Program (Round II)

**1. Introduction**

**A. Purpose**

This notice directs field office CPD Division Directors to perform the environmental review processing for any EZ projects located within their HUD field office jurisdiction. These field CPD Division Directors shall direct their staff to conduct the environmental review in accordance with 24 CFR Part 50 -- "Protection and Enhancement of Environmental Quality." (hereafter Part 50) EZ grantees must supply field CPD Division Directors with information that would help HUD complete the environmental review procedure under Part 50. The notice defines the information to be provided by EZ grantees to HUD (see Protocol -**Appendix A**), whenever EZ grantees propose to use EZ or non-HUD funds to acquire, rehabilitate, convert, lease, repair or construct property.

This Notice uses the terms and thresholds in Part 50 to identify when a particular type of activity is subject to compliance with environmental review procedures. This Notice does not address the eligibility of any activity under the EZ program. EZ activities that are eligible for funding are set for in 24 CFR Part 598 -- "Empowerment Zones: Rule for Second Round Designations" (63 FR 19151).

**B. Background**

Section 951 of the Taxpayer Relief Act of 1997 (26 U.S.C. 1391(b)) authorizes HUD to designate 15 Round II Urban Empowerment Zones. The new Urban Empowerment Zones

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will receive grants. HUD must perform an environmental review prior to the grantee's use of EZ grants and non-HUD funds to assist any of the activities not excluded under 50.19(b).

### **C. Authority**

The authority for environmental review of HUD-assisted projects and activities carried out by EZ grantees is the National Environmental Policy Act (NEPA) (42 U.S. C. 4321 et seq.), the implementing regulations of the Council on Environmental Quality, and the Department's regulations at Part 50, whenever EZ grantees propose to use EZ funds and non-HUD funds to acquire, rehabilitate, convert, lease, repair or construct property. The Taxpayer Relief Act did not provide for assumption authority to allow States and units of general local government to perform HUD's environmental review responsibility; therefore the use of 24 CFR Part 58 -- "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities" is not authorized for EZ grants.

## **II. Responsibilities**

### **A. Basic environmental requirement**

The environmental review requirements are stated in EZ interim program regulations, 24 CFR Part 598, published in the Federal Register on April 16, 1998 (63 FR 19151, 19159). Section 598.405 requires:

"Where an empowerment zone's strategic plan or any revision thereof proposes the use of EZ/EC SSBG funds for activities that are not excluded from environmental review under 24 CFR 50.19(b), an environmental review will be performed as required by applicable law.

Selection for award does not constitute approval of any proposed sites. Following selection for award, HUD will perform an environmental review of activities proposed for assistance in accordance with Part 50. The results of the environmental review may require that proposed activities be modified or that proposed sites be rejected in complying with Federal environmental laws and authorities.

### **B. Coordinator, EZ/EC Initiative**

The Coordinator, EZ/EC Initiative shall:

- (1) make certain that the environmental assurance is contained in the grant agreement;
- (2) assure that the grant agreement contains or, as appropriate, has attached to it the following items:
  - (a) the environmental procedures with explicit warning that EZ grantees are not to acquire, rehabilitate, convert, lease, repair or construct property, nor commit HUD or nonfederal funds to these EZ program activities with respect to any eligible property, until HUD environmental approval of the property is received from the field office CPD Division Director;

- (b) an appendix containing a copy of this Notice;
- (c) the name, address, phone and FAX numbers of the field office CPD Division Director to whom grantees must supply the environmental information and from whom grantees obtain environmental approval of the project; and
- (d) a schedule requirement for the grantee's submission of environmental information to the field office CPD Division Director as set forth in this Notice;

**C. Grantee's environmental responsibility**

Grantees shall:

- (1) provide an **environmental assurance** with the execution of the grant agreement;
- (2) supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by Part 50;
- (3) carry out mitigating measures required by HUD or select an alternate eligible property;
- (4) not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or nonfederal funds for these program activities with respect to any eligible property until HUD environmental approval of the property is received from the field office CPD Division Director within whose field office jurisdiction the EZ project is located.

In submitting data to HUD, grantees may use the sample format provided in the **Appendix B**, or develop and use an equivalent format. To the extent possible, grantees are to aggregate activities for a single evaluation by the HUD field office in whose jurisdiction the project is located.

Grantees are to provide a separate format for each property or area. If available, grantees also may provide HUD with previously issued environmental reviews prepared by other local, State, or Federal agencies for the subject property. Grantees are encouraged to obtain outside information at the earliest possible stage. A grantee's failure to provide all necessary and required information in a timely manner may delay the environmental review process and thereby the implementation of the grantee's project activities.

A grantee's EZ funds may be used to obtain the environmental information that grantees are responsible for supplying to the HUD Field Office under this notice. There is no requirement for an environmental review for the use of these funds for such purpose. Sec. 50.19(b)(1) and (3) respectively exclude from environmental review procedures both "environmental and other studies" as well as "administrative and management costs." This exclusion extends to the costs of environmental consultants engaged by the grantee and/or payments to local governments for this service.

**D. HUD Field Office CPD Division Director and staff responsibilities**

The field office CPD Division Director shall serve as the "HUD approving official" as defined in 50.2 for the EZ program within the HUD field office jurisdiction in which the EZ is located. Appendix C states the responsibilities of the CPD Division Director and staff.

### **III. Activities Not Subject to Environmental Review**

#### **A. Documentation is not required.**

Sec. 50.19(b) lists the activities that do **not** require an environmental review either under the National Environmental Policy Act (NIEPA) except in extraordinary circumstances (50.20(b)) or under the other laws and authorities cited at 50.4. Grantees may commit and expend funds for these activities, which are not subject to environmental review (except as noted below):

- (1) Environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial advisory services;
- (3) Administrative and management expenses;
- (4) Public services that will not have a physical impact or result in any physical changes, including, but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;
- (10) 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;
- (11) Tenant-based rental assistance;
- (12) 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;
- (13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however in the case of equipment, compliance with 50.4(b)(1) is required (see below III, B, (2));
- (14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction

or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with 50.4(b)(1) is required (see below III, B, (2));

(15) Activities to assist homeownership of existing dwelling units, including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property; however, compliance with 50.4(b)(1) and (c)(1) and 51.303(a)(3) is required (see below III, B, (1)); and

(16) Housing pre-development costs including legal, consulting, developer and other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

**B. Limited documentation is required.**

Limited documentation is required for certain activities. Even though these activities do not require environmental review, compliance with certain laws must be documented. Certain affordable housing activities are categorically excluded from an environmental assessment required by NEPA (24 CFR 50.19) and these activities are not generally subject to the compliance requirements of all of the Federal laws and authorities cited in 24 CFR 50.4, except as noted below. The activities (1) and (2) listed below require a finding of compliance with some of the laws or authorities and therefore HUD approval prior to implementation.

(1) Activities to assist homeownership of existing dwelling units, including closing costs and downpayment assistance to homebuyers, interest buydowns and similar activities that result in transfer of title to the property (referenced in 50.19(b)(15)). These activities are subject to the requirements of: the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), the National Flood Insurance Reform Act of 1994 (Pub.L. 103-325, 108 Stat. 2160); the Coastal Barrier Resources Act as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501 et seq.); and, 24 CFR 51.303(a)(3) Airport Runway Clear Zones and Clear Zones.

(2) Equipment (referenced in 50.19(b)(13) as part of operating costs) and equipment purchase (referenced in 50.19(b)(14) as part of economic development) is subject to compliance with the requirements of: the Flood Disaster Protection Act of 1973 as amended by the National Flood Insurance Reform Act of 1994. If the equipment is Federally-assisted and located within the Special Flood Hazard Area, flood insurance is required.

**IV. Activities Subject to Environmental Review  
(reference 50.20, 50.31, and 50.42)**

**A. Environmental review is required for the following activities:**

(1) Any activity that may have a significant impact to the human environment including: (a) new construction, (b) conversion of land use (including demolition) from non-residential to residential or from residential to non-residential use; and (c) acquisition of undeveloped land for future development;

(2) Major rehabilitation and improvement of existing structures;

- (3) Minor rehabilitation and repair of existing structures;
- (4) Acquisition of existing structures; and
- (5) Leasing of existing structures.

**B. Qualified data sources**

Grantees are encouraged to obtain outside information at the earliest possible stage. Appendix B or an equivalent format should be used for providing HUD with the information pertaining to compliance with the Federal environmental laws and authorities. Information provided by grantees must be from a qualified data source.

**Definition:** a qualified data source may include any Federal, State, local, or tribal agency with expertise or experience in environmental protection or any other source qualified to provide reliable information on the particular subject. One letter from a qualified source could possibly provide threshold information for several of the Federal environmental laws and authorities.

**C. Federal environmental laws and authorities that apply to various EZ activities**

**(1) Leasing of existing structures:**

Leasing of existing housing and non-residential properties is generally subject only to applicable authorities for properties located within coastal barrier resources, contaminated sites, or, for project-based leasing activities, in flood prone or wetland locations. Report these activities in section G(1) of Appendix B or equivalent.

**(2) Acquisition of existing structures:**

Acquisition of existing structures is subject to the same authorities as lease activities as well as generally to the applicable authorities for properties requiring flood insurance protection, or located within clear or accident potential zones of airports and airfields. Report these activities in section G(2) of Appendix B or equivalent.

**(3) Minor rehabilitation<sup>1/</sup> and repair of existing structures:**

Minor rehabilitation or repair activities are subject to the same authorities as lease and acquisition of existing structures as well as to the applicable authority for properties that are historic or affect a historic property. This also includes archeological and cultural resources. Report these activities in section G(3) of Appendix B or equivalent.

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<sup>1/</sup> Minor rehabilitation means proposed fixing and building repair: (i) where the estimated cost of the work is less than 75 percent of the total estimated cost of replacement after rehabilitation, (ii) that does not involve changes in land use from residential to nonresidential, or from nonresidential to residential, and (iii) that does not increase unit density by more than 20 percent.

**(4) For new construction, conversion, acquisition of vacant land for future development, and for major rehabilitation and improvement of existing structures:**

(a) **Individual actions under 50.20(a)(3):** Individual actions cover new construction or acquisition of land for development of up to four housing units or for five or more units of housing developed on scattered sites where the housing sites are more than 2,000 feet apart with not more than four units on any one site. Report these activities in section G(4) of Appendix B or equivalent. Except in extraordinary circumstances, an environmental assessment for compliance with the National Environmental Policy Act ( NEPA) is **not** required for "individual actions," however "individual actions" are subject to compliance with other environmental reviews under the applicable the Federal laws and authorities cited in 50.4.

(b) **Other Actions:** For all other new construction (other than for "individual actions"), for conversion of land use (including demolition) from nonresidential to residential (or from residential to nonresidential), or for the acquisition of vacant land for future development, or for major rehabilitation and improvement of existing structures,-- an **environmental assessment** is required for compliance with the National Environmental Policy Act (NEPA) and all applicable Federal laws and environmental authorities cited in 50.4. In addition, any activity that may have a significant impact to the human environment may require an **environmental impact statement**. Report these activities in section G(5) of Appendix B or equivalent.

**V. Other**

**A. Use of prior environmental assessments**

When other Federal, State, or local agencies have prepared an environmental assessment or other environmental analysis for a property (or neighborhood) which the grantee had selected for use in its EZ program, these documents should be requested and used to the extent possible (see 50.35). Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.5(a) require HUD to independently evaluate environmental information submitted by the grantee and be responsible for its accuracy, as well as to verify (but not redo) acceptable work.

**B. Environmental consultant and administrative costs**

EZ grantee's administrative funds may be used to obtain the information that the grantees are responsible for supplying to the HUD Field Office under this notice. There is no requirement for an environmental compliance review for the use of these funds for such purpose. Section 50.19(b)(1) and (3) respectively exclude from environmental review procedures both "environmental and other studies" as well as "administrative and management costs." This exclusion extends to the costs of environmental consultants engaged by the grantee and/or payments to local governments for this service.

**C. Suggested "time-savers"**

To save time and effectively deliver information to HUD, EZ grantees are encouraged to use e-mail or FAX in communicating with the HUD Field Office staff responsible for performing the environmental processing under this notice.