



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Community Project Funding: Environmental Guidance and Scenarios

November 2022

Environmental reviews are required for all HUD funded programs and project activities.

This guidance seeks to clarify the environmental review requirements for the Community Project Funding (CPF) Program for expenditure of funds for planning, administration and management activities, as well as for development projects where construction contracts were entered into, or construction was started prior to the receipt of the Letter of Invitation (federal nexus) and/or completion of an environmental review.

Contacts and Project-Specific Assistance

For environmental review purposes, CPF Grantees should contact their CPF Grant Officers (<https://www.hud.gov/sites/dfiles/CPD/documents/Community-Project-Funding-Portfolio-Assignments.pdf>) to be connected to their Regional Environmental Officers (REOs) (<https://www.hudexchange.info/programs/environmental-review/hud-environmental-staff-contacts/#region-i-regional-and-field-environmental-officers>). [The CPF Grant Officers and REOs can assist in specific project questions and environmental review requirements for individual projects.](#)

HUD will also be providing trainings on environmental review. HUD has also initiated a technical assistance “Ask A Question” (AAQ) Desk for environmental review to support grantees in navigating the environmental review requirements. You can access the AAQ desk here: <https://www.hudexchange.info/program-support/my-question/>

HUD has developed directions to request support through the AAQ desk, which are included at the end of this document.

Legal Framework and Policy

Federal Nexus and Choice Limiting Actions

A “Federal Nexus” is defined as the event that, by its occurrence, triggers the requirements for federal environmental review under a host of laws, regulations, and Executive Orders.

Your receipt of the Letter of Invitation is the Federal Nexus for FY2022 CPF grants. For most Grantees receiving FY22 funds, this was dated July 2022.

A choice limiting action is any activity that a grantee undertakes, including committing or expending HUD or non-HUD funds, that reduces or eliminates a grantee’s opportunity to choose



project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

Examples of Choice Limiting Actions include acquisition, leasing, rehabilitation, demolition, new construction and ground disturbance work such as clearing, grading or grubbing. HUD's prohibition on choice limiting actions at 24 CFR 58.22 is derived from the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (NEPA), which state that (with certain exceptions), "until an agency issues a finding of no significant impact, as provided in § 1501.6 of this chapter, or record of decision, as provided in § 1505.2 of this chapter, no action concerning the proposal may be taken that would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." 40 CFR § 1506.1.

In addition, the related environmental laws and authorities with which HUD must comply contain their own procedural requirements which have the effect of limiting actions that may be taken before approval of the environmental review. For example, under the National Historic Preservation Act of 1966 regulations (54 U.S.C. 300101, et seq.; 36 CFR Part 800; see 24 CFR § 50.4(a)(1)), in the early stages of project planning, the agency official must determine whether the proposed federal action is an undertaking as defined by the regulations. The agency must then determine whether it is a type of activity that has the potential to cause effects on historic properties, and if so, seek ways to avoid, minimize or mitigate any adverse effects on the property. Similarly, under Section 7 of the Endangered Species Act (16 U.S.C. 1536), the agency must ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species in the wild or destroy or adversely modify critical habitat.

Choice-limiting actions are not permitted after the Federal Nexus until the environmental review process is complete. In addition, HUD will not be able to fund a project where work that occurred after the Federal Nexus has resulted in environmental harm.

Work Under Contract

You can proceed with work covered by contracts that predate the date of receipt of the Letter of Initiation (identified by HUD as the Federal Nexus triggering federal environmental and historic preservation laws and regulations) at your own risk.

If your organization is under a legally binding construction contract prior to receiving the Letter of Invitation, work funded by non-federal funds may proceed to the extent practical and to the extent permitted in accordance with the previously executed contract. After receiving the Letter of Invitation, you may not enter into additional construction contracts or make other choice limiting commitments or actions, including making a commitment of HUD or non-HUD funds to the project, until an environmental review by a Responsible Entity under 24 CFR Part 58 is



completed and a Request for Release of Funds and Certification (RROF/C) is approved by the HUD CPD Field Office Director via certification of the 7015.16 Authority to Use Grant Funds in HEROS, if applicable; or an environmental review by HUD under 24 CFR Part 50 is completed.

Environmental Review

HUD or the RE will be required to complete a review of ALL work completed following the Letter of Invitation (Federal Nexus). If work that has taken place after receipt of the Letter of Invitation causes unmitigable environmental harm, is prohibited under environmental laws or HUD's environmental regulations (e.g., damaging endangered species habitat, impacting a structure eligible for listing on the National Register of Historic Places, or work within a regulatory floodway), or precludes completion of federal consultation requirements, those project activities cannot be funded.

If a project is unable to satisfactorily complete an environmental review, HUD can potentially fund other project activities that do not require aggregation with the work started after the Federal Nexus, such as operations and maintenance or program services. Contact your Grant Officer to discuss additional project activities that may be able to be funded on an as needed basis.

Programmatic Environmental Review for Planning, Management Development and Administration

HUD has completed a programmatic environmental review for the purposes of using funds for planning, management development, and administration activities under the CPF program. Following execution of a grant agreement, grantees may request up to 20% of their HUD funds for administration, management development, and planning costs. Construction related costs incurred under such contracts after the grant agreement is executed but prior to completion of the environmental review may be eligible to be paid with federal funds but only after satisfactory completion of an environmental review.

As a reminder, for grants that are not designated as 100% planning, the Act states that only 20% of the grant can be utilized for purposes of planning, management development and administration.

Grant Agreement

The first action that grantees should take is to submit your project narrative and project budget to your Grant Officer per the instructions provided in the Grant Guide. Submitting these materials initiates the processing of a Grant Agreement. The Grant Agreement is the legally binding document that outlines requirements and incorporates assurances and certifications to obligate funding to your project. The Grant Agreement must be signed by HUD prior to the grantee incurring costs that can be paid by HUD funds.



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CPF Environmental Review Scenarios

The below scenarios offer consideration of some common scenarios received from grantees to date about the status of their projects and next steps.

As a reminder, in order for the Congressional Grants Division and the Office of Environment and Energy to best assist you in determining your next steps, you should submit your project narrative and budget to your Grant Officer within HUD's Congressional Grants Division. This will enable HUD to 1) initiate the Grant Agreement and 2) work with grantees to determine the level of environmental review necessary for the project.

Questions and Answers/Project Scenarios

1. **Can I use my planning and administration funds prior to completion of my environmental review?**

ANSWER:

- In order to use HUD funds for planning and administration costs, you must have a fully executed Grant Agreement before you incur the costs.
- As a reminder, pursuant to the FY2022 Consolidated Appropriations Act, up to 20% of your grant may be used for the combined purposes of planning, management development, and administration. After execution of the Grant Agreement, this 20% can be used prior to completion of the environmental review.

2. **Can I use my planning and administration funds to cover the costs to complete an environmental review?**

ANSWER:

- Yes, the costs to complete an environmental review are eligible under the planning, administration and management development activities covered under the programmatic environmental review discussed in Scenario 1 above.
- Again, to use HUD funds, you must have a fully executed Grant Agreement before you incur the costs.

3. **I was awarded a grant that is for a 100% planning activity. Do I have to complete an environmental review?**

ANSWER:

- Based on your project narrative, your Grant Officer will confirm that your project is for planning only activities.



- As mentioned above, HUD has completed a programmatic environmental review for all planning activities within the Community Project Funding portfolio.
- Thus, if you have a planning only grant you do not have to conduct an environmental review because the review has been completed. You must have a fully executed Grant Agreement to access HUD funds.

4. I completed my project before receiving a signed grant agreement from HUD. Can I be reimbursed?

ANSWER:

- No. Per the FY2022 Appropriations Act, HUD cannot reimburse project funds incurred prior to obligation, which is the date HUD signs the grant agreement.
- However, this does not mean that HUD cannot fund a related activity associated with the completed project.
- The Congressional Grants division requests that you send the project narrative and budget to HUD. HUD's Congressional Grants Grant Officers will work with you to determine if there are elements of the CPF-referenced project that can be funded in keeping with the intent of Congress.

5. I have started construction on my project with non-HUD funds, but plan to use HUD funds for a portion of my project:

a. Do I have to stop work on the project if the work was under contract prior to the Letter of Invitation?

ANSWER:

- HUD is not directing you to stop construction work in instances where a construction contract was entered into prior to the Letter of Invitation (Federal Nexus). In such cases, work funded by non-federal funds may proceed to the extent practical, and to the extent permitted in accordance with the previously executed contract. You may not enter into additional construction contracts or make other choice limiting commitments or actions, including making a commitment of HUD or additional non-HUD funds to the project, after receipt of the Letter of Invitation. An environmental review must be completed before HUD funds and new commitments of non-HUD funds can be used on a project.
- HUD recommends that you stop work after receipt of the Letter of Invitation as a best practice, however. If there has been any environmental harm that cannot be mitigated (e.g., damaging endangered species habitat, impacting a structure eligible for listing on the National Register of Historic Places), or any work that requires federal consultation requirements – such as consultation with the State Historic Preservation Officer and Tribal consultation under the National Historic Preservation Act, those project activities cannot



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be funded with CPF funds. For these reasons, continuing with work has risk of ineligibility for funding.

b. Do I have to stop work on a project if there isn't a contract in place?

ANSWER:

- If you are using your own workforce to do the work and can stop work – i.e., there is no preexisting legal obligation with another party to continue the construction activities – you must pause construction (where practical) until the environmental review is completed.

c. How is the environmental review conducted when the project is underway under an existing contract?

ANSWER:

- Upon receipt of the Letter of Invitation, federal compliance requirements apply to the project and HUD funds cannot be expended on work that results in environmental harm that cannot be mitigated.
- While CPF funds can only be used for costs incurred after executing your Grant Agreement, the scope of the project for environmental review purposes consists of the activities taking place after receipt of the Letter of Invitation.
- Analysis with the environmental laws and authorities must assess that there hasn't been environmental harm that cannot be mitigated, and that consultation with federal/state agencies is conducted in a manner that allows for mitigation measures/conditions to be implemented.

If an environmental review cannot be completed due to environmental harm, work with your Grant Officer and Regional Environmental Officer to determine next steps.

6. I have a completed environmental review, but I do not have an executed Grant Agreement. Can I start using HUD funds?

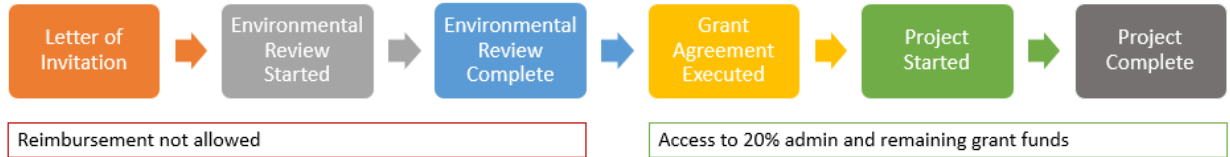
ANSWER:

- No, you need your Grant Agreement to incur costs.

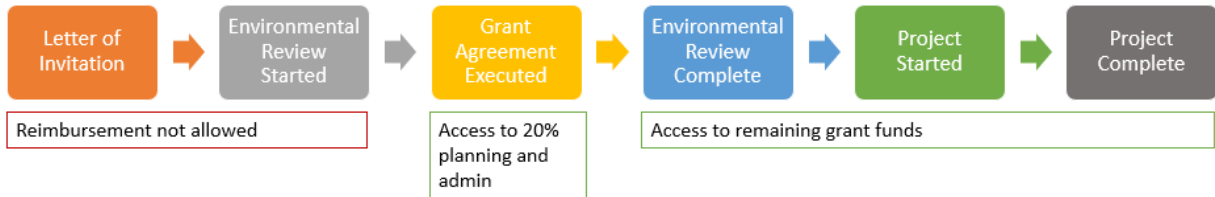


Process Flows

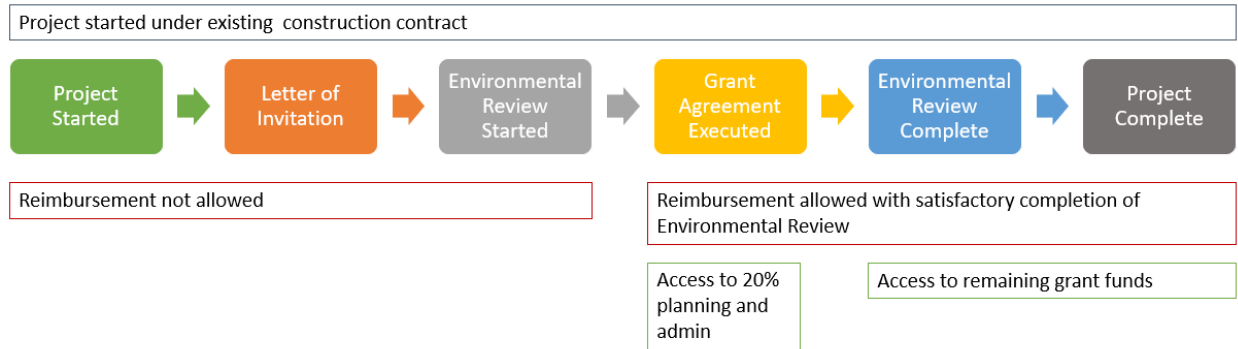
Scenario A: Typical process: Grant agreement executed after environmental review completed.



Scenario B: No project activity until grant agreement executed and environmental review completed.



Scenario C: Project started prior to initiation of environmental review and execution of grant agreement.





Environmental Review Ask A Question (AAQ) for Community Project Funding Recipients

We are excited to announce that the Ask A Question tool on HUD Exchange has been expanded to provide technical assistance for Community Project Funding (CPF). You can access the website by going to <https://www.hudexchange.info/program-support/my-question/>.

The first step in submitting a question is to fill in the Personal Information fields. All the fields are required.

Step 1 of 2 1 of 2

Personal Information* Required fields

* First Name

* Last Name

* State ▼

* City/Town

* County ▼

* Phone Number
Format: xxx-xxx-xxxx x____ (Extension Optional)

* Email Address

* Confirm Email

Once you have entered your personal information, please select I am a... “HUD Grantee.” If your organization or community is listed, please select the correct grantee name.

* I am a ▼

* Which Grantee are you? ▼

Step 2 >



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If you do not find your entity's name, select "Other – Please Specify" in the I am box and you will be able to provide the entity name in the Other box.

* I am a

Other - Please Specify

* Other

Step 2 >

Once you have identified yourself, select the button for Step 2

You will be taken to Step 2 of 2 after a prompt to review your personal information. Please select "CPF: Community Project Fund" in the My question is related to... box. Then add a subject line, enter your question, and upload any applicable documents. Submit your question.



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Step 2 of 2

2 of 2

* My question is related to:

CPF: Community Project Fund

Your Question

* Please provide a subject line for your question

(limit to 100 characters)

* Question

B *I* U |

If you have more than one question, please submit them separately

Upload related documents

Attach File

No file chosen

Allowed: PDF, MS Word, Excel, PowerPoint, or GIF/JPEG/PNG image
Limit: 5 files, 5MB each

Privacy Statement: For your privacy, please do not include social security numbers or dates of birth. By submitting your question, you acknowledge you agree to the [website privacy policies](#).