

FAQs: On using the exemption at 24 CFR 58.34(a)(10) or 50.19(b)(10) for activities undertaken in response to the COVID-19 public health emergency.

Updated to add Question 15: April 4, 2021

Notice CPD-20-07, *Guidance on conducting environmental reviews under 24 CFR Part 58 for activities undertaken in response to the national emergency declaration regarding the imminent threat to public health from COVID-19* (Aug. 6, 2020) describes the environmental review requirements for activities necessary to respond to COVID-19. These FAQs provide additional information about the types of activities that may utilize the emergency exemption at 24 CFR 58.34(a)(10).

Q1. Where can I find general information on environmental requirements for activities undertaken in response to COVID-19?

A: Resources on conducting environmental reviews for activities in response to COVID-19 may be found on the Environment & Energy COVID-19 Guidance webpage at https://www.hud.gov/program_offices/commplanning/environment_covid-19.

Q2. Are all projects assisted with CARES Act funding exempt under the § 58.34(a)(10) exemption for an imminent threat to public safety?

A: No, activities assisted with CARES Act funding must comply with 24 CFR Part 58 and complete the appropriate level of environmental review for the proposed activity. The exemption at § 58.34(a)(10) applies to activities that meet the conditions described in [Notice CPD 20-07](#) and [OEE Guidance in Response to COVID-19](#).

Q3. Is the exemption at § 58.34(a)(10) only applicable to projects assisted with CARES Act funds?

A: No, the exemption may apply to projects assisted by any HUD program.

Q4. Is there a format that can be used to document the environmental review for activities exempt under § 58.34(a)(10)?

A: Yes, HUD has prepared a suggested format to help Responsible Entities document that the exemption applies. This is a two-step process:

- 1) Prepare a normal exempt review, using either HEROS or HUD's suggested [Exempt/CENST format](#) to document compliance with § 58.6; and
- 2) Complete the Imminent Threat Exemption Checklist to affirm the activity meets the conditions for the emergency exemption. Upload this Checklist to the project description screen in HEROS or attach to the [Exempt/CENST format](#).

Q5. Can a tiered environmental review cover all activities funded with CARES Act funds?

A: Tiering would not be appropriate to cover an entire program of activities that may require different levels of review. Tiering is appropriate for projects that involve carrying out the same or very similar activities over a defined area. For more information on the appropriate use of the tiered environmental review protocol review [OEE's tiered environmental review webpage](#).

Q6. Is a project to modify the interior of a single-family residential property to provide quarantine space, room for a caregiver, or to accommodate a family member affected by COVID-19 exempt under 24 CFR 58.35(a)(10)?

A: Temporary or permanent interior improvements to a single-family residential property may meet the exemption at § 58.34(a)(10) if the project complies with § 58.6 and does not alter environmental conditions.

To document compliance with § 58.34(a)(10), complete the [Exempt/CENST format](#) to document the project complies with § 58.6 and the Checklist to document the project meets the two conditions listed in [Notice CPD 20-07](#), Section II, B.

Q7. Is a project to acquire and use trailers, tiny homes, or other movable residential units to respond to the impacts of COVID-19 exempt under 24 CFR 58.34(a)(10)?

A: Projects to provide movable residential units for quarantine space or health care may meet the exemption at § 58.34(a)(10) as long as the project does not involve site acquisition (including newly leasing a property), the units are placed on sites such as those described in the examples below, and the units can be removed with minimal impact to the site after the threat to public health is over. For projects that involve site acquisition refer to [OEE Guidance in Response to COVID-19](#) or Part 58 to determine the appropriate level of review.¹

Examples of circumstances when using trailers, tiny homes, or other movable residential units to respond to COVID-19 may be found not to alter environmental conditions:

- Placing movable units² on existing private residential sites when all utilities are installed above ground or tie into pre-existing utility lines
- Sites that have been previously cleared and prepared for construction, such as land being developed for housing, office buildings, city parks, ball fields, schools, etc., when all the utilities are installed above-ground or tie into pre-existing utility lines
- Existing RV/Mobile Home Parks, campgrounds, other types of areas with pre-existing utility hookups

¹ If these activities rely on ESG-CV funds, they may be temporary emergency shelters and exempt from environmental review. Refer to Q11 for more information.

² Mobile/movable residential units have wheels, do not have a foundation or slab or other similar support, and after the imminent threat to public health and safety is over can be removed with minimal impact to the site. A modular home is not a mobile home; it is a home that is built off-site.

- Paved areas, such as parking lots at facilities such as conference centers, shopping malls, airports, industrial port facilities, business parks, military bases, when all the utilities are installed above-ground or tie into pre-existing utility lines

As with any application of § 58.34(a)(10), the environmental review record must demonstrate that the project does not alter environmental conditions. When placing trailers, tiny homes, and other movable residential units, Responsible Entities must ensure that the units will:

- Be located outside of the special flood hazard area (SFHA),
- Be free of contamination and hazardous substances; and
- Not destroy or adversely modify a wetland.

To document compliance with § 58.34(a)(10), complete the [Exempt/CENST format](#) and the Checklist to document the project complies with § 58.6 and the two conditions listed in [Notice CPD 20-07](#), Section II, B.

Q8. Does a proposal to use vouchers at motels or hotels to shelter, quarantine, or treat people to respond to COVID-19 meet the 58.34(a)(10) exemption?

A: No. However, a proposal to use vouchers for rental assistance at motels and hotels meets the categorical exclusion at 58.35(b)(2) for short term payments for rent/mortgage/utility costs. Short term rental assistance activities are Categorically Excluded Not Subject To § 58.5 (“CENST”)³ and completing the Checklist is not required even though the activity may be in response to COVID-19.

HUD encourages Responsible Entities to prepare one environmental reviews (ER) for short-term rental payments rather than completing separate environmental reviews for each project site. The ER should consider the largest possible geographic area (an entire city, county, state) within which the short-term rental assistance will be provided. There is no need to list specific project locations or addresses in the environmental review record for this type of project.

Note that rental assistance and leasing do not trigger flood insurance or airport hazard requirements, so programmatic reviews for rental assistance projects are required only to document compliance with the Coastal Barrier Resources Act (CBRA).

- When completing an ER for a geographic area that does not include Coastal Barrier Resource Units, Responsible Entities do not need to map or analyze individual sites for compliance with CBRA.
- When completing an ER for a geographic area that includes one or more Coastal Barrier Resource Units, Responsible Entities should confirm in the project description that HUD assistance will not be used to rent units within a Coastal Barrier Resource Unit.

³ It is more efficient to rely on this categorical exclusion to the extent possible. Projects that are also exempt or CENST under subsections other than § 58.34(a)(10) are not required to also document compliance with the criteria of that section.

Q9. Is a project to renovate office space and provide supplies to protect staff from the spread of COVID-19 exempt under 24 CFR 58.34(a)(10)?

A: The answer varies by specific activity. For example, any of the following may be considered CENST equipment and supplies under § 58.34(b)(3):

- Installing hand sanitizer stations throughout the office;
- Providing protective masks, plastic face shields, gloves, and sanitation supplies to employees; and
- Mounting temporary barriers, walls, and dividers that are not affixed to the structure itself.

If this categorical exclusion applies, complete the [Exempt/CENST format](#) to document compliance with Part 58.6.

Other activities, particularly those involving permanently moving or installing barriers or walls that will be permanently fixed to the structure may be exempt under the 58.34(a)(10) emergency exemption if the project meets the two conditions listed in [Notice CPD 20-07](#), Section II, B.

Note that if the building is historic, activities must be limited to temporary interior improvements that are reversible after the health emergency is over to use the emergency exemption. Permanent improvements may irreversibly affect significant elements of the structure and would require consultation with the State Historic Preservation Office. These projects may still move forward after completion of the appropriate level of environmental review.

Q10. What are the environmental review requirements when using the reimbursement option allowed by the CARES Act?

A: An environmental review must be completed and if applicable, the Authority to Use Grant Funds (HUD Form 7015.16) must be obtained in accordance with Part 58, prior to using CDBG-CV or ESG-CV funds to reimburse for allowable coronavirus related costs. Refer to individual program office reimbursement requirements.⁴

Q11. What are the requirements for the exemption from environmental review for temporary emergency shelters?

A: The CARES Act includes an exemption from environmental review requirements for temporary emergency shelters; however, the Emergency Solutions Grant Program funds (ESG-CV) must be the sole source of HUD assistance for the proposed temporary emergency shelter and the exemption applies only to those temporary emergency shelters that have been determined by State or local health officials to be necessary to prevent, prepare for, and respond to coronavirus. The project must also comply with ESG-CV program requirements for temporary emergency

⁴ HUD, Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs, § III.B.5.(b), 85 Fed. Reg. 51463 (Aug. 20,2020), available at <https://www.govinfo.gov/app/details/FR-2020-08-20> and Notice CPD-20-08: Waivers and Alternative Requirements for the Emergency Solutions Grants (ESG) Program Under the CARES Act (September 1, 2020) available at https://www.hud.gov/program_offices/comm_planning/homeless_esg_covid-19.

shelter projects provided in [Notice CPD 20-08, Waivers and Alternative Requirements for the Emergency Solutions Grants \(ESG\) Program Under the CARES Act](#).

Note: If the project involves other HUD program funds in addition to the ESG-CV funds the other program funds are not exempt from HUD's environmental review requirements. To determine the appropriate level of review refer to [Notice CPD 20-07](#), Section II, B and [24 CFR Part 58](#).

Q12. What are the environmental review requirements if a temporary emergency shelter was acquired using ESG-CV and now the grantee is proposing to add additional HUD funds? Can the additional funding be considered supplemental assistance?

A: No, if the temporary emergency shelter was exempt from environmental review requirements based on the exemption for ESG-CV funds, the later proposal to add other HUD funds is not considered Supplemental Assistance under 58.35(b)(7) because there is no original environmental review. Prior to committing any other HUD funds, an environmental review must be completed and if applicable, an Authority to Use Grant Funds (HUD Form 7015.16) must be obtained.

Q13. The grantee used ESG-CV to acquire a structure to use as a temporary emergency shelter and is now proposing to use the shelter as a permanent homeless shelter. If the original acquisition was not subject to environmental review requirements, does the change from a temporary to a permanent shelter require an environmental review?

A: Yes, prior to a commitment to the change from a temporary to a permanent shelter, the appropriate level of environmental review for the acquisition and all related activities must be completed in accordance with 24 CFR Part 58 or 50.

Q14. Does the emergency exemption at 24 CFR 50.19(b)(10) apply to a Part 50 environmental review for an activity necessary to respond to the COVID-19 public health emergency?

A: Yes, the exemption at § 50.19(b)(10) may apply if the project meets the conditions of the exemption, "temporary or permanent improvements that do not alter environmental conditions and are limited to repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats" to public health as a result of the Presidentially declared public health emergency from COVID-19. The environmental review must document the reason the project is necessary to control or arrest the effects from COVID-19 and the basis for determining the project does not alter environmental conditions.

Temporary or permanent improvements necessary to control or stop the imminent threat to public safety from COVID-19 may involve expanding the capacity of an existing healthcare facility to treat COVID-19 patients or temporary interior renovations to create a quarantine area for residents infected by COVID-19.

Projects that do not alter environmental conditions are those that do not:

- (i) Involve acquisition, including leasing, or new construction;

- (ii) Irreversibly affect significant elements of properties listed on or eligible for listing on the National Register of Historic Places;⁵
- (iii) Replace, reconstruct, or substantially improve structures within a Special Flood Hazard Area (SFHA) or critical actions⁶ within a 500-year floodplain as determined by a current, preliminary, or pending Flood Insurance Rate Map (FIRM);
- (iv) Involve occupancy of a project site that is impacted by contamination or hazardous substances;
- (v) Involve work that may affect threatened or endangered species or critical habitat;
- (vi) Involve new construction (as defined in 24 CFR 55.2(b)(8)) in a wetland;
- (vii) Or would otherwise permanently alter environmental conditions.

Q15. Can CARES Act or American Rescue Plan Act of 2021 funding be used to assist tenants currently living in a Coastal Barrier Resource System (CBRS) unit who have been impacted by COVID-19, or to provide assistance for home health care and food distribution activities in a CBRS unit in response to COVID-19?

A: Although Section 5 of the Coastal Barrier Resources Act (CBRA)⁷ prohibits new federal expenditures or “financial assistance” for any purpose within a CBRS unit, Section 3 of the CBRA excludes from the definition of “financial assistance”, and therefore allows, “assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program”⁸ Because most HUD-assisted activities, including short-term rental assistance, are related to development, the CBRA prohibits the use of HUD assistance for most activities that are proposed in a CBRS unit.

The CARES Act and the American Rescue Plan Act of 2021 allocated funding to HUD to prevent, prepare for, and respond to the coronavirus. Based on the exclusion in Section 3 of the CBRA for “assistance pursuant to programs entirely unrelated to development”, a Responsible Entity (RE) may design a program to use CARES Act or American Rescue Plan Act of 2021 funds to provide assistance for home health care and food distribution activities in a CBRS unit and to provide short-term tenant-based rental assistance to tenants already renting an existing property in a CBRS unit.⁹

⁵ Reversible interior improvements are permitted within historic buildings. Such temporary improvements are permitted if, after the imminent threat to public health and safety is over, the improvements can be removed with minimal impact to the site. Examples of reversible improvements include temporary removable walls, window treatments such as shades or blinds, or putting in a temporary wheelchair ramp.

⁶ See 24 CFR 55.2(b)(3).

⁷ CBRA; 16 U.S.C. § 3504

⁸ CBRA: 16 U.S.C. § 3502(3)(E))

⁹ This exclusion does not apply to project-based rental/voucher assistance.