



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

ADMINISTRATIVE MEMORANDUM
OFFICE OF MULTIFAMILY PRODUCTION

MEMORANDUM FOR: Risk-Sharing Lenders

FROM: Willie Fobbs, III, Director, Office of Multifamily Production, HTET

SUBJECT: Environmental Review Requirements for Projects Financed under the Risk-Sharing Program

This memo will clarify when a Housing Finance Agency (HFA) may act as the Responsible Entity (RE) for conducting environmental reviews and the level of review that is appropriate for different types of Risk-Sharing projects.

I. APPLICABILITY

All projects insured under Section 542(c) Housing Finance Agency Risk-Sharing Program must comply with the environmental review requirements of [24 CFR Part 58](#). Under Part 58, HUD authorizes Responsible Entities (REs) to conduct environmental reviews for programs listed at 24 CFR 58.1(b). REs assume environmental responsibilities, comply with Part 58 requirements and develop technical and administrative capacity. Chapters 3 and 4 of the [Risk-Sharing Program Handbook \(4590.1\)](#) provide basic guidance on these requirements, as do the program regulations at [24 CFR 266.217](#). In all cases, the RE must complete the project's environmental review before HUD will issue a Firm Approval Letter.

II. LEVEL OF ENVIRONMENTAL REVIEW

At a minimum, all Risk-Sharing projects require a Categorically Excluded from the National Environmental Policy Act (NEPA), Subject to the Related Laws and Authorities (CEST) level of review and must consider all the related laws and authorities specified in Section 58.5, even for refinance loans with no related rehabilitation. Exemptions from the environmental review requirements found at Section 58.34 and categorical exclusions found at Section 58.35(b) only apply in certain limited cases of supplemental assistance provided to a previously reviewed and approved project, as discussed in Section II.d, below.

In performing the review, the RE must aggregate and evaluate as a single project all individual activities that are related to the project, as required by Section 58.32. For example, if a refinance project also includes purchasing equipment, it must be included in the environmental

review. The review should begin from the date of loan application through the completion of all project activities, regardless of whether HUD will insure the loan with a single advance, with multiple advances or upon completion.

For all levels of review, the RE must provide a clear and thorough project description. The project description must go beyond the broad categories of ‘new construction’ or ‘rehabilitation’ and specify the activities that will occur and their scale. Complete and thorough project descriptions support the level of environmental review selected, guide compliance with related environmental laws, and form an essential part of the public notices and communication.

a. Refinance

As noted, all refinance loans require at least a CEST level of review, as required by Section 58.35(a)(5):

Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

If the refinance loan includes rehabilitation, then the RE must aggregate the refinance and rehabilitation activities together to determine whether the project also qualifies under the CEST at Section 58.35(a)(3)(ii):

*(3) Rehabilitation of buildings and improvements when the following conditions are met:
* * **

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

If the project qualifies, then the RE should document this determination and continue with a CEST-level review. If it does not qualify, then the project requires an Environmental Assessment (EA).

A CEST project can ‘convert to exempt’ under the provisions of Section 58.34(a)(12) if no project activities require compliance with any of the federal laws and authorities cited in Section 58.5. A project that converts to exempt is not required to publish a public notice or Request for Release of Funds (RROF). However, a RE can only make this determination after the CEST review has been completed. A sample letter to submit to HUD is an appendix to this memo.

b. Substantial Rehabilitation

A substantial rehabilitation project may require either a CEST or an EA level of review depending on whether the rehabilitation meets the criteria in Section 58.35(a)(3)(ii). If a CEST is required, the project may or may not qualify to ‘convert to exempt’ as described above.

c. New Construction

New construction projects always require an EA level of review, must consider the Environmental Assessment Factors from HUD’s recommended EA format, and include public notice and a RROF.

Figure 1: Level of Reviews

Type of Project	Level of Review	Regulatory Citation	Public Notice and RROF
Refinance with no rehabilitation	CEST	58.35(a)(5)	To be determined after CEST review
Refinance with rehabilitation under CEST threshold	CEST	58.35(a)(5) and 58.35(a)(3)	To be determined after CEST review
Refinance with rehabilitation over CEST threshold	EA	58.36	Yes
Substantial Rehabilitation under CEST threshold	CEST	58.35(a)(5) and 58.35(a)(3)	To be determined after CEST review
Substantial Rehabilitation over CEST threshold	EA	58.36	Yes
New Construction	EA	58.36	Yes

d. Supplemental Assistance

In certain cases, the project may use other HUD funds and the RE may have already conducted an environmental review under Part 58 for the other funding source. For example, an RE may have conducted an environmental review for a HOME grant on the same property that the lender is now processing for a Risk-Sharing loan.

In those cases, the RE may apply the Categorically Excluded from NEPA, Not Subject to the Related Laws and Authorities (CENST) provisions of Section 58.35(b)(7). For a CENST to apply, the original environmental review must have been prepared and certified by the same RE as is processing the Risk-Sharing transaction, and the scope of the previously completed environmental review must encompass all the proposed project activities. The RE should also ensure that there are no new environmental conditions that would invalidate the previously completed review, per the provisions of Section 58.47(a)(2). A sample letter to submit to HUD is an appendix to this memo.

III. DOCUMENTATION

REs are encouraged to use HUD's Environmental Review Online System (HEROS) for documenting its review. For REs not using HEROS, HUD has a recommended [CEST Format](#) and [EA Format](#).

In both the HEROS and paper formats, after completing the CEST review, the RE must make one of the following determinations:

- The project is categorically excluded and can convert to exempt, in accordance with Section 58.34(a)(12) because there are no circumstances which require compliance with any of the federal laws and authorities cited at Section 58.5; OR
- The project is categorically excluded and cannot be converted to exempt because there are circumstances which require compliance with one or more federal laws and authorities cited at Section 58.5. The project must complete the consultation/mitigation protocol requirements, publish a Notice of Intent to Request a Release of Funds (NOI/RROF) and submit a cover letter requesting a firm approval letter; OR
- The project is subject to a full EA in accordance with Part 58 Subpart E due to extraordinary circumstances as described in Section 58.35(c) and it requires public notice and a RROF with a cover letter requesting issuance of a firm approval letter.

All EA level reviews require a public notice and a RROF with a cover letter requesting issuance of a firm approval letter.

Further information about public notices, RROFs and notifying HUD about a finding of a conversion to exempt is found in Chapters 3 and 4 of the Risk-Sharing Handbook.

IV. AUTHORITY TO ACT AS A RESPONSIBLE ENTITY AND CERTIFYING OFFICER

An HFA may perform its own environmental reviews if it meets the definition of a RE in Section 58.2(a)(7):

Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site.

In accordance with the Risk-Sharing statute, "State means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico". If the HFA is a regular part of the state government, it can act as the RE since it would be acting on behalf of the state. If the HFA is an instrumentality of the state and statutorily independent of the state government, it can still act as the RE provided it has been "Approved by the Governor" and has been authorized to act for the state in its administration of the Risk-Sharing program. An HFA which is an instrumentality of a District, County or City cannot act as an RE.

For states or instrumentalities of states, anyone other than the governor must have a formal delegation by the governor or the legislature to act as a Certifying Officer. HUD should be provided with a copy of this delegation.

V. TRAINING AND RESOURCES

There are many online environmental review trainings and resources available to grantees and their staff conducting environmental reviews under 24 CFR Part 58. One online resource is the [HUD Exchange](#) which serves as the official environmental review website and should be always be consulted for the most up-to-date policies, guidance, checklists, tools and other information related to the environmental review process. In addition, there are online webinars available on HUD exchange to assist with the environmental review process, including:

1. [HEROS “How To” Videos](#)
2. [Basics of a Part 58 Environmental Review for HUD-Assisted Projects](#)

Lastly, the [Web-Based Instructional System for Environmental Review](#) (WISER) teaches grantees how to address all aspects of the environmental review process required for all HUD-assisted projects.

Multifamily Housing will host a webinar to go over the topics in this memo and to answer questions. Details to follow.

If you have further questions, or need additional guidance, please reach out to Risk-Sharing staff in the Office of Multifamily Production, who can consult with staff within HUD’s Office of Environment and Energy or Housing Program Environmental Clearance officers, as needed.

Attachment: Appendix

APPENDIX: LETTER OF FINDING OF EXEMPT ACTIVITY FROM RE

[To be put on Responsible Entity's letterhead and submitted to HUD as part of the Risk-Sharing Application. Do not attach the environmental review record.]

To [insert HUD Office or Contact]:

This is to advise you that the activities to be undertaken under the [HFA]'s Risk-Sharing Application for [Name of Property], are exempt from HUD's environmental review approval requirements.

[Provide complete project description as described in Section II of the memo]

The transaction was found to be categorically excluded subject to the laws and authorities listed in 24 CFR 58.5 per the following citation(s):

- ☐ **24 CFR 58.35(a)(3)** Rehabilitation of buildings and improvements when the following conditions are met:
 - (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;
 - (ii) In the case of multifamily residential buildings:
 - (A) Unit density is not changed more than 20 percent;
 - (B) The project does not involve changes in land use from residential to non-residential; and
 - (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- ☐ **24 CFR 58.35(a)(5)** Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

As documented in the environmental review record, there are no circumstances that require compliance with any other federal laws and authorities cited in 24 CFR 58.5. As a result, [Responsible Entity] has concluded that a Request for Release of Funds and Certification and approval from HUD are not required, pursuant to 24 CFR 58.34(a)(12).

OR

□ 24 **CFR 58.35(b)(7)** The transaction was found to be Categorical Excluded from NEPA, Not Subject to the Related Laws and Authorities (CENST) because it is supplemental assistance.

As documented in the environmental review, the same RE prepared and certified the original environmental review and the scope of the previously completed environmental review encompasses all proposed project activities. **[Responsible Entity]** has confirmed that there are no new environmental conditions that would invalidate the previously completed review, per the provisions of Section 58.47(a)(2).

As the authorized official of the responsible entity, I so certify.

Signature: _____

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