



FY23 Community Project Funding (CPF) Environmental Guidance and Scenarios

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users.

This guidance seeks to clarify the environmental review requirements for the Community Project Funding (CPF) Program for expenditure of funds for planning, administration, management, operations, and maintenance activities, as well as for development projects where construction contracts were entered into, or construction was started prior to the date of legislative enactment (December 29, 2022) and/or completion of a satisfactory environmental review.

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Contacts and Project-Specific Assistance

For environmental review purposes, CPF Grantees should contact their [CPF Grant Officers](#) and [Regional Environmental Officers \(REOs\)](#). 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/>.

There is a short guide for requesting support through the AAQ desk at the end of this document.

Legal Framework and Policy

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 the Grant Agreement. The Grant Agreement is the legally binding document that outlines requirements and incorporates assurances and certifications for your project. The Grant Agreement must be signed by HUD prior to the grantee drawing down funds for repayment.

Environmental Review, Federal Nexus and Choice-Limiting Actions

HUD or the RE will be required to complete an environmental review of ALL work that took place or is proposed to take place following the date of enactment (December 29, 2022). 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. As a CPF grantee, you must ensure that an RE or HUD completes an environmental review for your project. You must submit necessary documentation requested by the RE or HUD for the environmental review. You must retain documentation that a Part 58 or Part 50 review was completed.

The date of legislative enactment is the Federal Nexus for the FY2023 CPF program. The date of enactment (Federal Nexus) for FY2023 CPF grants was on December 29, 2022.

After the Federal Nexus, Grantees are prohibited from taking new choice-limiting actions, except for activities that are part of a pre-nexus contractual obligation, until a satisfactory environmental review has been completed for the aggregated project. Although activities that were committed to under a pre-nexus contract are technically allowed, physical actions taken after the nexus may prevent a satisfactory environmental review, preventing drawdown of grant funds. All activities performed after the Federal Nexus are subject to a satisfactory environmental review in order for the project to be eligible for payment. HUD’s aggregation requirements under 24 CFR 58.32 state that environmental reviews must group together and evaluate as a single project all individual activities performed after the federal nexus which are related either on a geographical or functional basis or are logical parts of a composite of contemplated actions. This includes activities associated with pre-nexus contractual obligations that were performed after the federal nexus but does not include related activities performed prior to the nexus, soft costs covered by [HUD’s Part 50 nationwide environmental review for CPF soft costs](#), or soft costs for which a separate exempt or CENST determination has been made under Part 58. For more information on HUD’s aggregation requirements for the CPF program, see CPF ER Webinar #1:



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Determining Level of Review, Environmental Roles and Responsibilities, which can be found on the [CPF Landing Page](#). A *satisfactory environmental review* must include analysis of the applicable environmental laws and authorities, a determination that the project activities will not result in environmental harm that cannot be mitigated, consultation with federal/state agencies in a manner that allows for mitigation measures/conditions to be implemented, and a Request for Release of Funds and Certification (RROF/C) for the project that has been approved by the HUD CPD Field Office Director, if required. Grantees are responsible for implementing mitigation requirements in coordination with the Responsible Entity. Most soft costs are covered by [HUD's nationwide environmental review for CPF soft costs](#) and can be incurred any time after the date of legislative enactment (Federal Nexus) which occurred on December 29, 2022, and can be drawn down for repayment after the Grant Agreement for the project has been executed.

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.

Taking new choice-limiting actions is not permitted after the date of enactment (December 29, 2022) until the environmental review process is complete. However, HUD will not be able to fund a project where any work that occurred after the date of enactment (December 29, 2022), including activities committed to in a pre-nexus contractual obligation, has resulted in environmental harm or where environmental compliance with one or more of the laws and authorities cannot be achieved.

[Programmatic Environmental Review for Planning, Administration, Operations and Maintenance](#)

HUD has completed a nationwide [Part 50 Programmatic Environmental Review covering CPF soft costs](#) for planning, administration, operations, and maintenance activities under the CPF program. Grantees can incur eligible soft costs any time after the date of enactment (December 29, 2022) and following execution of the Grant Agreement, grantees may draw down funds for eligible planning, administration, operations



and costs categorized as maintenance activities under [CPD Notice 16-02: Guidance for Categorizing an Activity for Maintenance](#). Soft costs not covered by HUD’s Nationwide Part 50 for CPF soft costs will require a separate exempt or CENST environmental review determination under Part 58.



Part 50 Nationwide ERR for CPF Soft Costs

Covered

- Environmental and other studies, resource identification, development of plans and strategies. 50.19(b)(1)
- Information and financial advisory services. 50.19(b)(2)
- Administrative and management expenses. 50.19(b)(3)
- Public services. 50.19(b)(4)
- Inspections and testing of properties for hazards or defects. 50.19(b)(5)
- Purchase of insurance 50.19(b)(6)
- Engineering or design costs. 50.19(b)(8)
- Technical assistance and training. 50.19(b)(9)
- Supportive services. 50.19(b)(12)
- Operating costs including most **maintenance*** 50.19(b)(13)
- Purchase of vehicles, but not other equipment.



NOT Covered

- Purchase of tools. 50.19(b)(7)
- Emergency assistance necessary to control or arrest the effects from disasters or imminent threats to public safety. 50.19(b)(10)
- Tenant-based rental assistance. 50.19(b)(11)
- Economic development activities. 50.19(b)(14)
- Homebuyer Assistance. 50.19(b)(15)
- Affordable housing pre-development costs 50.19(b)(16)
- Approval of supplemental assistance 58.35(b)(7)



Work Under Contract

Grantees can proceed with work covered by contracts that predate the date of enactment (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 the date of enactment (December 29, 2022), 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 the date of enactment (December 29, 2022), grantees 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 (RE) 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.

Hard Costs

HUD or the RE is required to complete a satisfactory environmental review of ALL work that took place or is proposed to take place following the date of enactment (December 29, 2022). Grantees can undertake project activities covered by contracts that were entered into prior to the date of enactment and can incur eligible hard costs related to construction and ground-breaking activities occurring any time after the date of enactment (December 29, 2022) at their own risk. If work that has taken place after the date of



enactment (December 29, 2022) 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 date of enactment, such as operations and maintenance or program services. Contact your [CPF Grant Officer](#) to discuss additional project activities that may be able to be funded on an as needed basis.

Grant funds can be drawn down for payment of eligible costs after execution of the Grant Agreement for the project.

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.

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:

- Prior to the completion of the aggregated environmental review for the project, grantees can incur eligible soft costs for planning and administration any time after the date of enactment (December 29, 2022).
- A list of covered CPF soft costs can be found in [HUD's Part 50 Programmatic Environmental Review for CPF Soft Costs](#) and can be drawn down for payment after execution of the Grant Agreement.

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, management, and maintenance activities covered by [HUD's programmatic environmental review](#) discussed in Scenario 1 above.
- Again, grantees may incur eligible soft costs any time after the date of enactment (December 29, 2022), but in order to draw down funds for payment the grantee must have a fully executed Grant Agreement.



3. Can my local government Responsible Entity use their own HUD funds to pay for the cost of preparing the environmental review for my CPF grant?

ANSWER:

- Local government Responsible Entities that are also HUD CPD Entitlement communities may use Community Development Block Grant (CDBG) funds to pay for the staff cost of preparing an environmental review for another recipient, but only if all of the project activities are CDBG-eligible AND the project also meets all other CDBG programmatic requirements. If you have any question about your Responsible Entity's use of CDBG or other HUD funds for this purpose, please reach out to your REO for more information.

4. 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 a new environmental review because the review has already been completed by HUD. You must have a fully executed Grant Agreement to draw down HUD funds for payment of eligible activities.

5. I completed my project before receiving a signed grant agreement from HUD. Are my project activities eligible for payment?

ANSWER:

- Some activities may be eligible for payment depending on their timing and nature.
- Soft costs covered by [HUD's programmatic review](#) that were incurred after the date of enactment (December 29, 2022) are eligible for payment after the execution of the Grant Agreement.
- Eligible hard costs incurred after the date of enactment (December 29, 2022) are eligible for payment after the execution of the Grant Agreement, with the completion of a satisfactory environmental review covering the aggregated project. See Federal Nexus and Choice-Limiting Actions section above for more information on HUD's project aggregation principles and what is included in a satisfactory environmental review process.
- For activities that fall outside of the scope of eligibility for payment, HUD may be able to fund a related activity associated with the completed project. HUD's [CPF Grant Officers](#) will work with you to determine if there are other elements of the CPF-referenced project that can be funded in keeping with the intent of Congress.

6. 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 date of enactment (December 29, 2022)?**



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ANSWER:

- HUD is not directing grantees to stop construction work in instances where a construction contract was entered into prior to the date of enactment (December 29, 2022). 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. Grantees may not enter into additional construction contracts or make other choice-limiting commitments or actions, including commitments of HUD or additional non-HUD funds to the project after the date of enactment (December 29, 2022) without the completion of a satisfactory environmental review covering the aggregated scope of the project. An environmental review must be completed before HUD funds and new commitments of non-HUD funds can be used on a project.
- However, HUD does recommend that grantees stop work after the date of enactment (December 29, 2022), as a best practice. If any work conducted results in 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 precludes completion of federal consultation requirements, those project activities cannot be funded. 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:

- As of the date of enactment on December 29, 2022, federal compliance requirements apply to the project and HUD funds cannot be expended on work that results in environmental harm that cannot be mitigated. A satisfactory environmental review is necessary to determine the environmental impacts of the project.
- Existing contracts or commitments entered into and completed prior to the date of enactment (December 29, 2022) are not eligible for payment and do not need to be included in the satisfactory environmental review.
- Contracts or commitments that were entered into prior to enactment, but consist of work that will continue after enactment, may proceed at their own risk, as a satisfactory environmental review is required for all activities taking place after receipt of the date of enactment (December 29, 2023).
- Analysis with the environmental laws and authorities must be conducted 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.



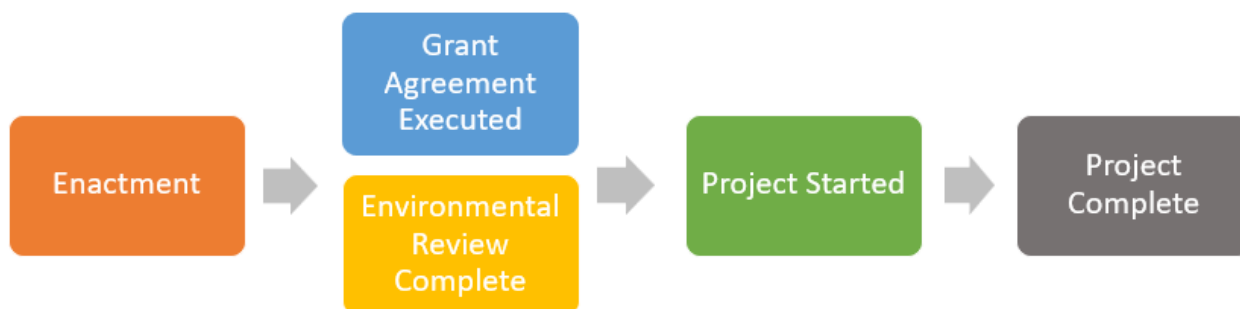
Note: If a satisfactory environmental review cannot be completed due to environmental harm, work with your Grant Officer and Regional Environmental Officer to determine next steps.

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

ANSWER:

- Soft costs covered by [HUD’s programmatic review for CPF soft costs](#) can be incurred any time after the date of enactment (December 29, 2022) and can be drawn down for payment after the execution of the Grant Agreement.
- Eligible hard costs can be incurred after the date of enactment (December 29, 2022) and can be drawn down for payment after the execution of the Grant Agreement and the completion of a satisfactory environmental review for the aggregated project.

FY23 CPF Process Flow



- Allowed to incur reimbursable soft costs (see [Nationwide Part 50 for FY23 CPF Soft Costs](#))
- Allowed to incur ongoing eligible hard costs if covered by a satisfactory environmental review
- Begin reimbursement of soft costs
- Allowed to undertake all eligible project activities and reimburse all remaining project funds

Resources

- Congressional Appropriations Bill:
[CPF Laws and Regulations](#)
- CPF Program Resources:
[CPF Landing Page](#)
[CPF Grant Officer Portfolio Assignments](#)
[Community Project Funding Grant Guide](#)
[CPF Cost Eligibility Chart](#)
[CPF Frequently Asked Questions](#)



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CPF Environmental Review Resources:

[CPF ER Guidance & Scenarios](#)

[HUD Environmental Contacts](#)

[CPF Environmental Review FAQ](#)

[CPF Environmental Review Training Series](#)

[Guidance for Documenting the Environmental Review for CPF Grants](#)

[Request for Release of Funds \(RROF\) Point-of-Contact for CPF Grants](#)

[Ask A Question \(AAQ\) Help Desk for CPF](#)

[Sample MOA between a Responsible Entity and CPF Non-profit Grantee](#)

General Environmental Review Resources:

[24 CFR Part 58: Procedures for Entities Assuming HUD Environmental Responsibilities](#)

[HEROS - HUD Environmental Review Online System](#)

[HUD Environmental Review Landing Page](#)

HUD's Nationwide Part 50 Programmatic Environmental Review for CPF Soft Costs:

[Part 50 CPF-Soft-Costs-Nationwide-Programmatic ERR](#)



Environmental Review Ask-A-Question (AAQ) Guide

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 >

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.



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* I am a

* 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.