Chapter 5
Environmental Review

Introduction

Units of General Local Government (UGLG) are required to ensure that an appropriate environmental review is completed for each Community Development Block Grant (CDBG) funded project they are administering before they– or their agents – may incur any project costs or take other actions that would "limit choices" for the project. Note, some activities may be determined by the Certifying Officer (CO) to be exempt activities and may proceed before the full environmental review of other activities is complete. However, even these activities cannot be undertaken until they have been formally determined to be exempt in consultation with the Program Specialist.

In addition, the UGLG or its agents may not commit any project funds (regardless of whether the funding being committed is from CDBG or other sources) to a project (except funds for those activities that have been determined to be exempt) before the full environmental review has been completed and the release of funds has been issued. These requirements are in place in order to comply with the National Environmental Policy Act (NEPA). The purpose of NEPA is to protect and enhance our environment by mitigating the environmental impacts of federally assisted projects. The requirements of NEPA apply to the entire project and include project activities funded with CDBG funds and activities funded by other sources such as private or other public funds.

The CDBG environmental review process described below requires UGLGs to evaluate and certify that they are in compliance with NEPA and other applicable Federal laws, regulations, and executive orders. In addition, many CDBG grantee activities will require state, or local approvals or permits through relevant state or local laws. Applicants are encouraged to contact the relevant state or local agency regarding environmental regulatory permits or approvals.

This chapter covers the environmental regulations that must be followed on all CDBG funded projects. UGLGs should also refer to the CDBG Funding Guide for further guidance on incurring costs.

Section 1 – Background and Responsibilities

Applicable Regulations

The rules and regulations that govern the environmental review process for CDBG funded projects are found under 24 CFR Part 58—*Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities*.

Responsible Entity and Responsible Parties

The Responsible Entity (RE) is a governmental agency that is empowered to conduct environmental reviews in conjunction with CDBG funded projects. For the CDBG programs operated by the Michigan Economic Development Corporation (MEDC), the RE is the UGLG. To carry out its environmental review responsibilities, the UGLG is required to designate two responsible parties:

- **Certifying Officer**: The UGLG must designate a Certifying Officer (CO) -- the "responsible Federal official" -- to ensure compliance with NEPA and the related provisions in 24 CFR Part 58, including the Federal laws and authorities cited at §58.5. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body ….

The CO has the authority to assume legal responsibility for certifying that all environmental requirements have been followed, is authorized to certify the Request for Release of Funds and to represent the UGLG in federal court. This function may not be assumed by administering agencies or consultants.

- **Environmental Review Officer**: The UGLG should also designate an Environmental Review Officer (ERO). The ERO is responsible for completing the environmental review for the project.

Environmental Review Record

As the RE for projects administered by the MEDC, the UGLG must maintain a written record of the environmental review undertaken for each project, covering all activities, including exempt activities. This written record is the environmental review record (ERR). As required by Federal regulations, the ERR is available for public review and contains all of the environmental review documents, public notices, and written determinations or environmental findings required under Part 58. The actual content of the ERR will vary according to the level of environmental review under which a project falls.

Note: The grantee is required to maintain a separate environmental file on each project, which may include the following documents:

- Level of Environmental Review
- Finding of Exempt Activity
- Finding of Categorical Exclusion Not Subject to §58.5
- Finding of Categorical Exclusion Subject to §58.5
- Exemption Memo
- Section 106 SHPO documentation and letter
- Tribal Coordination letters
- Statutory Checklist
- Early Floodplain Wetland Notice
- Final Floodplain Wetland Notice
- Notice of Intent to Request Release of Funds
- Environmental Assessment
- Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds
- Request for Release of Funds and Certification

The final ERR must be submitted to the Program Specialist for review and approval.

Section 2 – Actions Triggering Environmental Review and Limitations Pending Clearance

Actions Triggering the Requirements at Part 58

Part 58 requirements are applicable to all projects. The recipient and any other project participants must cease all project activity (with limited exceptions as outlined below) until the environmental review has been completed or the project has been determined not to be eligible for Federal funding through the CDBG program. Part 58 prohibits further project activities and actions from being undertaken until the environmental review is completed and a release of funds is granted.

Neither an UGLG nor any participant in the development process may commit CDBG or non-CDBG funds, including private and other public funds, until the environmental review is completed and a release of funds is granted. If an UGLG commits funds to a project before the appropriate environmental review is completed, they risk losing their grant and incurring other Federal penalties. Commitment of funds includes execution of a legally binding agreement for property acquisition, demolition, rehabilitation, conversion, repair, or construction pertaining to a specific site.

While it may be argued that the purchase of a property does not materially change the physical property and therefore does not itself have an impact on the environment, the NEPA statute has been interpreted to consider actions such as property acquisition or demolition of derelict buildings as "choice limiting actions" which are likely to impact what does happen to the project in the future. As such, they should not be undertaken until a full environmental review has been completed and release of funds given. Further, it is HUD policy to not allow the release of bids or other procurement processes for choice limiting actions (such as construction, demolition, etc.) before the environmental review is complete. The environmental review must be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based on the environmental review. However, with prior approval from the MEDC and with sufficient language added to the bid document, the MEDC may approve the release of bids prior to the completion of the environmental review. The language added to the bid document shall clearly indicate that the overall project is contingent on the approval of Federal funding, and that no contract awards will occur prior to the completion of the environmental review.

If a project or activity is exempt under §58.34 or categorically excluded under §58.35(b), the recipient may undertake the activity immediately after the RE has documented its determination and requested and received approval by the Program Specialist. (See Section 3 for more details).

Section 3 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the environmental review process, the RE must first determine the level of environmental review required for the project. An important first step is to describe the project in detail (including the elements funded with and without CDBG) in order to determine what possible impacts the project may have on the environment and to establish a basis for properly ascertaining which exemptions/exclusions apply and which level of review applies. This description should describe all of the major elements of the project budget (including CDBG and non-CDBG funded activities) as well as a narrative of how the property will be changed as a result of the project.

Project Description

The project description, along with other project details, should be included in the project information section of the Level of Environmental Review (Form 5-A) and the form submitted to the ERO of the RE. The ERO completes the project determination section of the form to identify the level of environmental review required for the project. In general, UGLGs should submit the above materials to the Program Specialist after the project activities have been clarified. The determination of the level of environmental review must aggregate (or group together) and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions. Often a project includes both exempt activities (e.g., administration and preparation of environmental reports) and non-exempt activities (e.g., acquisition, construction, and rehabilitation).

It is the responsibility of the ERO to make the determination as to which activities have been considered exempt. Prior to a release of funds, exempt activities may be undertaken as long as the RE has documented in writing its determination that an activity is exempt and has requested and received approval by the Program Specialist.

The five levels of environmental review are as follows:

1. Exempt activities.
2. Categorical exclusion not subject to §58.5.
3. Categorical exclusion subject to §58.5.
4. Environmental assessment.
5. Environmental impact statement.

Each level of environmental review is described in the subsections that follow.

Exempt Activities

As identified at §58.34, exempt activities are:

1. Environmental and other studies, resource identification and the development of plans and strategies.
2. Information and financial services.
3. Administrative and management activities.
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. Payment of principal and interest on loans made or obligations guaranteed by HUD.
12. Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

    Note: In this particular case, there must be a separate and additional review that determines that the activity does not trigger compliance with §58.5. This process is commonly referred to as moving from “categorically excluded to exempt.”

For exempt activities, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Exempt Activity (Form 5-B). The Finding of Exempt Activity form documents the applicable regulation for the determination and addresses the other requirements listed in §58.6 that must be documented. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.

All forms in the Exempt Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

Categorical Exclusion Not Subject to §58.5 (CENST)

As identified at §58.35(b) categorical exclusions not subject to §58.5 (CENST) are:

1. Tenant-based rental assistance.
2. 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.
3. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs.
4. Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
5. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.
6. Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

Note: The exception for "equipment" as a part of the project's operating costs is limited to equipment that is used in the operation or maintenance of the site (e.g. lawn mower) and does not in and of itself render the use of all equipment as categorically excluded not subject to §58.5. For instance, equipment (e.g. installation of a newer, higher capacity sewer pump) that is being used or installed as a part of a construction effort, would clearly indicate that the activity taking place was not categorically excluded not subject to §58.5. In general, any equipment that could be seen as having a significant impact on the water or air quality surrounding the site should not be viewed as categorically excluded not subject to §58.5. UGLGs wishing to employ equipment that is not clearly identifiable as for operation and/or maintenance of the site, or for construction activities, should contact the Program Specialist to determine what level of environmental review is required.

For categorically excluded not subject to §58.5 activities, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Categorical Exclusion Not Subject to §58.5 (Form 5-C). The Finding of Categorical Exclusion Not Subject to §58.5 documents the applicable regulation for the determination and addresses the other requirements listed in §58.6 that must be documented. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.

All forms in the CENST Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

Categorical Exclusion Subject to §58.5 (CEST)

As identified at §58.35(a) categorical exclusions that ARE subject to §58.5 (CEST) are:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when the following conditions are met:
    a. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland.
    b. In the case of multifamily residential buildings, unit density is not changed more than 20 percent, the project does not involve changes in land use from residential to non-residential, and the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
    c. In the case of non-residential structures, including commercial, industrial, and public buildings, the facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent, and 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.
4. An "individual action" on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between. [This section does not apply to rehabilitation of a building for residential use (with one to four units)].
5. An "individual action" on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site. [This section does not apply to rehabilitation of a building for residential use (with one to four units)].

6. 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.
7. Combinations of the above activities.

For categorically excluded subject to §58.5 projects, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Categorical Exclusion Subject to §58.5 (Form 5-D). The Finding of Categorical Exclusion Subject to §58.5 form documents the applicable regulation for the determination.

As part of completing the Statutory Checklist, the State Historic Preservation Office (SHPO) must be consulted in compliance with Section 106. (www.michigan.gov/shposection106).

After receiving a sign-off letter from SHPO and coordinating with other laws and authorities and interested agencies and groups and Michigan Department of Environmental Quality (MDEQ), the Statutory Checklist (Form 5-F) should be completed by the ERO. This form includes documenting and demonstrating compliance with the Federal laws and authorities cited at §58.5. The Federal laws and authorities cited at §58.5 are grouped in the following categories:

1. Historic properties: Compliance includes consultation with the SHPO and federally-recognized Indian tribes (if applicable). Consultation with Indian tribes is required when a project may affect a historic property of religious and cultural significance to the tribe. The type of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.
2. Floodplain management and wetland protection: **If a project is located in a floodplain or in a wetland, an 8 step decision making process must be completed (see Section 5).**
3. Site Contamination
4. Coastal zone management.
5. Sole source aquifers.
6. Endangered species.
7. Wild and scenic rivers.
8. Air quality.
9. Farmlands protection.
10. HUD environmental standards: HUD environmental standards include noise abatement and control; explosive and flammable operations; hazardous, toxic, or radioactive materials and substances; and airport clear zones and accident potential zones.
11. Environmental justice.

The Statutory Checklist (Form 5-F) also includes documenting compliance with the other requirements listed in §58.6. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.

If, after completing the Statutory Checklist (Form 5-F), the project is found by the ERO to not require compliance with any authority under §58.5 (such as mitigation measures, additional studies, conditions or further consultation), then the project can convert to exempt pursuant to §58.34(a)(12). The publication/posting of a public notice and a submission of a Request for Release of Funds (RROF) is not required in these cases.

For a categorically excluded subject to §58.5 project that cannot in the judgment of the ERO be converted to exempt status, a Notice of Intent to Request Release of Funds (NOI/RROF) (Form 6-M) must be completed by the ERO and approved by the CO. This notice may be published or posted. (See Section 4 for more details). All forms in the CEST Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

On the day after the public comment period has expired and once any received comments have been addressed by the UGLG as the RE, the RROF and Certification (Form 5-G) should be completed by the ERO. The RROF and Certification (Form 5-G) must be executed by the CO and submitted to MEDC. After a 15 day objections period, MEDC may issue a release of funds.

Environmental Assessment (EA)

If a project is not exempt or categorically excluded under §58.34 and §58.35, then an environmental assessment (EA) must be prepared. The UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form to determine a project requires an EA. The Environmental Assessment (Form 5-H) must be completed.

As part of completing the Environmental Assessment (Form 5-H), the SHPO must be consulted in compliance with Section 106. (www.michigan.gov/shposection106).

Completing the Environmental Assessment (Form 5-H) includes documenting and demonstrating compliance with the Federal laws and authorities cited at §58.5. The Federal laws and authorities cited at §58.5 are grouped in the following categories:

1. Historic properties: Compliance includes consultation with the SHPO and receiving a sign off letter from them. Compliance also includes consultation with federally-recognized Indian tribes. Consultation with Indian tribes is required when a project may affect a historic property of religious and cultural significance to the tribe. The type of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.
2. Floodplain management and wetland protection: **If a project is located in a floodplain or in a wetland, an 8 step decision making process must be completed (see Section 5).**
3. Site Contamination
4. Coastal zone management.
5. Sole source aquifers.
6. Endangered species.
7. Wild and scenic rivers.

8. Air quality.
9. Farmlands protection.
10. HUD environmental standards: HUD environmental standards include noise abatement and control; explosive and flammable operations; hazardous, toxic, or radioactive materials and substances; and airport clear zones and accident potential zones.
11. Environmental justice.

The Environmental Assessment (EA) (Form 5-H) also includes the following:

1. An environmental finding determination, either a Finding of No Significant Impact (FONSI) or a Finding of Significant Impact.
2. Statement of purpose and need for the proposal.
3. Description of the proposal.
4. Existing conditions and trends.
5. An environmental assessment checklist that evaluates the significance of the effects of the proposal on the character, features, and resources of the project area. This checklist includes the other requirements listed in §58.6.
6. A summary of findings and conclusions that describes alternatives to the proposed action including the no action alternative, mitigation measures recommended, additional studies performed, and a list of persons or agencies consulted

If the EA results in a Finding of Significant Impact, an Environmental Impact Statement (EIS) must be prepared by the ERO. If the EA results in a Finding of No Significant Impact (FONSI), the Combined Notice of FONSI and Notice of Intent to Request for Release of Funds (NOI/RROF) (Form 5-I) should be prepared by the ERO. This notice may be published or posted. (See Section 4 for more details). All forms in the EA Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

On the day after the local public comment period has expired and once any received comments have been addressed by the UGLG as the RE, the RROF and Certification (Form 5-G) should be completed by the ERO. The RROF and Certification (Form 5-G) must be executed by the CO and submitted to Program Specialist. After a 15 day State comment period, the Program Specialist may issue a release of funds.

Environmental Impact Statement

An EIS is required when a project has been determined to have a significant impact on the human environment as a result of completing an EA, or if a project meets a 2,500 unit threshold (see §58.37 for more details). The EIS must meet the minimum requirements for an EIS format of the Council on Environmental Quality's NEPA regulations found at 40 CFR 1502.10. Consult the Program Specialist regarding the EIS.

Section 4 – Publication of Public Notices

The UGLG as the RE may publish or post the NOI/RROF or the Combined Notice.

Note: The notices required for the eight step decision making process must be published and cannot be posted (see Section 5).

A published notice must be published in a newspaper of general circulation in the affected community. A posted notice must be prominently displayed in public buildings, such as the local post office and within the project area.

All public notices, whether posted or published, must also be sent to:

U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30473
Lansing, Michigan 48909

Michigan Economic Development Corporation
Community Development Block Grant Program
300 North Washington Square
Lansing, Michigan 48913

Also send public notices to any agencies, individuals, and groups known to be interested in the project.

Comment periods start the day after a notice is published. The minimum number of calendar days for the various notices are outlined below. When populating the dates in the notices, attention should be given to when the comment periods end on a weekend or holiday.

- For a published NOI/RROF, 7 days must be provided in the notice for local public comment and 15 days must be provided in the notice for the State comment period. For a posted NOI/RROF, 10 days must be provided in the notice for local public comment and 15 days must be provided for the State comment period.
- For a published Combined Notice of FONSI and NOI/RROF, 15 days must be provided in the notice for local public comment and 15 days must be provided in the notice for the State comment period. For a posted Combined Notice, 18 days must be provided for local public comment and 15 days must be provided for the State comment period.

Section 5 – Floodplain/Wetland Compliance Requirements and Stormwater Management Act

This section discusses the eight step decision making process that is required for projects located in a floodplain or proposing new construction in a wetland. The eight step decision making process is required for compliance with Executive Order 11988 (floodplains) and Executive Order 11990 (wetlands). HUD's implementing regulations at 24 CFR Part 55 prescribes measures for protecting floodplains. This process is also suitable for protecting wetlands. The steps are summarized below.

Michigan is one of only two states that have legally assumed the federal Clean Water Act Section 404 (wetlands protection) permitting and compliance program. As such, Michigan is the primary permitting and enforcement agency for both state and federal wetlands protection laws and regulations. Wetlands in the state are regulated under Part 303 Wetlands Protection and Part 323 Shorelands Protection and Management of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended [(Natural Resources and Environmental Protection Act)NREPA]. In conducting an environmental review under NEPA, UGLGs must evaluate impacts to floodplains and wetlands as they are defined and protected under Parts 303 and 323 of NREPA. In particular, the environmental review must evaluate impacts to "isolated wetlands" (those not adjacent to the Great Lakes or navigable waterbodies), which are protected under NREPA, but not under Clean Water Act Section 404.

The steps following are for environmental review of impacts, and do not constitute compliance with wetland or floodplain permitting requirements of NREPA.

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in a 100-year floodplain (or 500-year floodplain for a critical action) or wetland, including "isolated wetlands" as protected under Michigan's NREPA. Critical actions include actions on facilities such as nursing homes and hospitals. For floodplains, maps published by the Federal Emergency Management Agency (FEMA), available online at www.msc.fema.gov, should be checked. For wetlands, National Wetland Inventory (NWI) maps, available online at www.fws.gov/wetlands/Data/Mapper.html, should be checked. If a project is not located in a floodplain or is not proposing new construction in a wetland, no further review under the eight step decision making process is needed. Complete Flood Determination (Form 5-L) and return with environmental review package documents to the Program Specialist.

Step 2: Engage Public Comment

After the UGLG as the RE determines that the project is located in a floodplain or is proposing new construction in a wetland, the second step is to formally involve the public in the decision making process by publishing a notice in the local newspaper [see sample notice, Early Floodplain Wetland Notice (Form 5-J)]. This notice must also be sent to agencies, individuals, and groups known to be interested in the project. A minimum of 15 calendar days must be provided for local public comment and the comment period starts the day after a notice is published.

Note: UGLGs are encouraged to involve the public at as many stages in the process as possible and are free to inform the community of their intentions and receive feedback as early as they are evident. However, the formal responsibility to offer the public opportunity to comment begins with the declaration that the project is in a floodplain or wetland.

Step 3: Identification and Evaluation of Alternative Locations

The third step involves identification and evaluation of the practicable alternatives to locating the project in a floodplain or wetland. This requires the UGLG as the RE to evaluate:

- Alternative locations for the project outside a floodplain or wetland.
- Alternative methods to serve the identical project objective.
- The consequences of a determination not to approve any action.

Step 4: Identify Impacts of Proposed Project

In this step, the potential direct and indirect impacts associated with the occupancy or modification of the floodplain or wetland is identified by the UGLG, in consultation with the MDEQ. If the project directly or indirectly supports floodplain or wetland development, these impacts also need to be identified.

Step 5: Minimize Potential Impacts & Identify Methods to Restore and Preserve Beneficial Values

In this step, the project is designed or modified, where practicable, to minimize the potential adverse impacts to lives, property, and natural values within the floodplain or wetland and to restore and preserve the values of the floodplain or wetland.

Step 6: Reevaluate Project

The project is reevaluated by the UGLG to determine:

- Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain or wetland values.
- Whether alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5.

Step 7: Publish Statement of Findings and Public Explanation

If the reevaluation results in the determination that there is no practicable alternative to locating the project in a floodplain or wetland, a final notice must be published in the local newspaper [see sample notice, Final Floodplain Wetland Notice (Form 5-K)]. This notice must also be sent to agencies, individuals, and groups known to be interested in the project. A minimum of 7 calendar days must be provided for local public comment and the comment period starts the day after a notice is published.

Step 8: Implement the Project

Upon completion of Steps 1 through 7, the UGLG can move to the next step in the environmental review process. There is a continuing responsibility of the UGLG as the RE to ensure that the mitigation measures identified in Step 7 are implemented.

Section 6 – Lead, Asbestos, and Radon

Lead-Based Paint

Whenever Federal funds, such as CDBG, are used to assist housing built before 1978, steps must be taken to address lead hazards. The purpose of this section is to provide grantees with a general understanding of HUD's Lead Safe Housing Rule (24 CFR Part 35). The Rule applies to all housing units assisted with CDBG funds, including single and multi-family units, whether publicly or privately owned. The requirements differ, however, depending on the activity – rehabilitation or acquisition.

The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing. The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. The regulation is divided into subparts, of which the following apply to the CDBG program:

Subpart A	Disclosure
Subpart B	General Requirements and Definitions
Subpart J	Rehabilitation
Subpart K	Acquisition, Leasing, Support Services, and Operations
Subpart R	Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

Types of Requirements (Subpart A)

For CDBG projects, the lead-based paint requirements established by the regulation fall into the three major categories listed below:

1. Notification: Recipients must meet four notification requirements:
    a. Lead Hazard Information Pamphlet - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.
    b. Pamphlets should be provided to all households at time of application. See Protect Your Family from Lead in Your Home (Form 5-Q).
    c. It is recommended that states develop an acknowledgement form and have all households sign to document they received and understood the pamphlet. See Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (Form 5-R).
    d. A copy of this acknowledgment form should then be placed in the file.
    e. Disclosure - Check that property owners have provided purchasers and tenant households with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
    f. A disclosure notice must be provided to purchasers before closing so that they are aware that there may be lead in the home they are purchasing. A copy of the disclosure notice must be placed in the file.
    g. Tenants must receive a disclosure notice before moving into the unit. Ideally, they should receive a disclosure notice at time of application so they can make an informed decision when choosing housing for their household. A copy of the disclosure notice should be kept by the landlord in the tenant's file.
    h. Notice of Lead Hazard Evaluation or Presumption - Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.
    i. A copy of this notice must be provided to owners and tenants within 15 days of the evaluation.
    j. A copy of this notice should be kept in the project file.

k. Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
l. A copy of this notice must be provided to owners and tenants within 15 days of the project achieving clearance.
m. A copy of this notice should be kept in the project file.

2. Lead Hazard Assessment/Evaluation: Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

3. Lead Hazard Reduction: Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken (for definitions, refer to 24 CFR 35.110).

Exemptions (Subpart B)

1. Some CDBG projects may be exempt from the Lead Safe Housing Rule if they meet the criteria listed below:
   a. Housing units constructed after 1978.
   b. Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.
   c. The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.
   d. Housing "exclusively" for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit. This language must be specifically mentioned in the lease.
   e. An inspection performed according to HUD standards found the property contained no lead-based paint.
   f. According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.
   g. The rehabilitation will not disturb any painted surface.
   h. The property has no bedrooms.
   i. The property is currently vacant and will remain vacant until demolition.

2. UGLGs administering emergency repair programs should pay particular attention to the exemption "The rehabilitation will not disturb any painted surfaces." Many emergency repair programs replace only water heaters or roofs where no painted surfaces are disturbed and thus may be exempt from the Rule.

3. All exemptions must be documented in the project file via the Lead-Based Paint Requirements Applicability Worksheet (Form 5-S).

Requirements for Rehabilitation Projects (Subpart J)

CDBG funds may be used for the rehabilitation of existing units. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly

describes the relevant requirements. See Four Approaches to Implementing Lead Hazard Evaluation and Reduction (Form 5-T).

Calculating the Level of Assistance

1. The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:
    a. Per unit rehabilitation hard costs (regardless of source of funds); or
    b. Per unit Federal assistance (regardless of the use of the funds).

2. To make this determination, it helps to understand several terms:
    a. Rehabilitation Hard Costs. The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.
    b. Lead Hazard Evaluation and Reduction Costs. Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
    c. Federal Assistance. Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

Requirements for Projects Receiving Rehabilitation Assistance Up to and Including $5,000 per Unit (Subpart R)

Projects where the level of rehabilitation assistance is less than or equal to $5,000 per unit must meet the following requirements:

1. The goal is to "do no harm." Therefore all work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices.

2. Lead Hazard Evaluation. UGLGs should presume that these surfaces contain lead-based paint.

3. Lead Hazard Reduction. UGLGs must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint.
    a. If lead-based paint is detected or presumed, safe work practices must be used during rehabilitation.
    b. Clearance is required by a certified clearance examiner. For assistance and clarification regarding what constitutes a certified clearance examiner, please contact your CDBG Program Specialist.

4. Notices must be provided to owners and tenants:
    a. The Lead Hazard Information pamphlet;
    b. The Notice of Evaluation (if paint testing is performed) or Notice of Presumption (if paint testing is not performed); and
    c. The Notice of Lead Hazard Reduction.

In short, for rehabilitation projects where the level of assistance is less than or equal to $5,000 per unit, workers must be trained in safe work practices, notices must be provided to owners and tenants, and clearance must be achieved.

Requirements for Projects Receiving Rehabilitation Assistance Between $5,000-$25,000 per Unit

Projects where the level of rehabilitation assistance is between $5,000 and $25,000 per unit must meet the following requirements.

1. The goal is to "identify and address lead hazards." A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls.

2. Lead Hazard Evaluation. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.

3. Lead Hazard Reduction. If the risk assessment identifies lead-based paint hazards interim controls must be implemented to address lead-based paint hazards.
    a. Interim controls must be performed by qualified professionals using safe work practices.
    b. Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.

4. Options. There are two options, as follows:
    a. The UGLG is permitted to presume that lead-based paint is present and that lead- based paint hazards exist. In such cases, evaluation is not required. The UGLG must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.
    b. The UGLG is also permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the UGLG must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.)

5. Notices must be provided to owners and tenants:
    a. The Lead Hazard Information pamphlet;
    b. The Notice of Evaluation (if a risk assessment is performed) or Notice of Presumption (if a risk assessment is not performed). For assistance in determining the correct notice, please contact your CDBG Program Specialist; and
    c. The Notice of Lead Hazard Reduction.

6. In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting and budget.

Requirements Projects Receiving Rehabilitation Assistance over $25,000 per Unit

Projects where the level of rehabilitation assistance is over $25,000 per unit must meet the following requirements.

1. The goal is to "identify and eliminate lead hazards." A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional.

2. Lead Hazard Evaluation. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or UGLG may assume that lead-based paint hazards exist.

3. Lead Hazard Reduction. To address hazards identified:
    a. Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.
    b. If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
    c. Clearance is required when lead hazard reduction activities are complete.

4. Options. There are two options, as follows:
    a. The UGLG is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The UGLG must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
    b. The UGLG is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the UGLG must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)

5. Notices must be provided to owners and tenants:
    a. The Lead Hazard Information pamphlet;
    b. The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted), For assistance in determining the correct notice, please contact your CDBG Program Specialist; and
    c. The Notice of Lead Hazard Reduction.

6. In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

Requirements for Acquisition, Leasing or Supportive Services Projects (Subpart K)

CDBG funds may be used for acquisition, leasing and supportive services. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the requirements needed to follow to be in compliance.

1. Lead Hazard Assessment. A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

2. Lead Hazard Reduction. Deteriorated paint must be corrected using paint stabilization methods. Paint stabilization must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
    a. Safe Work Practices. Safe work practices are required so workers must be appropriately trained or supervised.
    b. Clearance. Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.

3. Notification
    a. Lead Hazard Information Pamphlet. The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. UGLG do not have to provide the pamphlet if they can document that it has already been received.
    b. Notice of Lead Hazard Reduction Activity. The notice must be provided within 15 calendar days of the date when the paint stabilization is completed.

Compliance

Failure to comply with the lead-based paint requirements under the regulation will subject a recipient to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject a recipient to other penalties available under state or local law. Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve recipients of their responsibilities under the new regulation.

Not complying may expose households and contractors with potentially dangerous levels of lead dust and debris that can cause life threatening illnesses and developmental delays. Refer to Summary of Required Activities to Address Lead-Based Paint (Form 5-U).

Asbestos

Asbestos is a mineral fiber that was commonly added to products to strengthen them, and to provide heat insulation and fire resistance. Asbestos is commonly found in older homes where it was used for pipe and furnace insulation, in asbestos shingles, millboard and transite siding, floor tiles, and a variety of other coating materials. The only way to determine whether a material is asbestos (containing more than 1% asbestos by volume) is through Polarized Light Microscopy.

The handling of asbestos-containing materials is regulated by the Environmental Protection Agency (EPA) under the National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, and the Occupational Safety and Health Administration (OSHA) under regulation delineated in 29 CFR 1926.1101.

General Asbestos Policy

All construction, demolition, and rehabilitation that is done in whole or in part with CDBG funds must comply with state and federal asbestos removal requirements. It is the responsibility of the grantee, developers, owners, and contractors to know and comply with local, state, and federal construction standards. See For 5-V, Asbestos Applicability Worksheet.

1. Before renovation or demolition begins:

    a. an Asbestos Applicablity Worksheet (Form 5-V) should be completed,
    b. a National Standards for Hazardous Air Pollutants (NESHAP) asbestos inspection should be completed, and
    c. any asbestos survey that has been completed should be placed in file.

2. Leave undamaged asbestos in place. Asbestos should only be removed when it is friable (defined as when asbestos can be crumbled to a powder by hand pressure) or when it will be disturbed by building rehabilitation or demolition.

3. Removal of asbestos-containing material can be legally performed by certified/licensed contractors.

4. Regulations regarding disposal of asbestos in approved landfills must be followed.

5. There are notification requirements to the Michigan Department of Environmental Quality (MDEQ) and the Michigan Occupational Safety and Health Administration (MIOSHA), depending on the level of remediation necessary:

    a. If doing friable asbestos removal or encapsulation, contractors must provide the start and ending dates with a specified timeframe for remediation.
    b. Notification must be given 10 days prior to any non-exempt asbestos abatement project exceeding 10 linear feet or 15 square feet of friable asbestos materials.

Radon

Radon is a radioactive gas that cannot be seen, smelled or tasted. Radon gas is a natural substance that can be found in the dirt and rocks beneath houses, in well water and in some building materials. It can enter homes through soil, crawlspaces, foundation cracks, floors and walls. Once inside, it can sometimes become trapped in your home. All homes have some radon gas. Breathing high levels of radon can put you at risk for lung cancer. To see if your house has dangerous levels of radon, you should test it. Radon is measured in picoCuries per liter of air (pCi/L). Radon levels inside houses below 4 pCi/L are considered acceptable.

The Environmental Protection Agency (EPA) recommends mitigation for residences with radon concentrations at or above 4.0 picocuries per liter of air (pCi/L) [2]. The best way to mitigate radon is to prevent it from entering a building in the first place. Radon generally poses the greatest risk to occupants living at or below ground level. Occupants on the lower levels of structures are at risk of excess exposure if radon levels are elevated and these structures are not appropriately mitigated, or if they occupy new construction in areas with high radon that is not built using radon resistant construction methods.

A radon assessment conducted by a certified Radon Professional must be included for all CDBG funded housing projects in EPA Radon Zone 1 counties (Branch, Calhoun, Cass, Hillsdale, Jackson, Kalamazoo, Lenawee, St. Joseph, and Washtenaw). Per American Association of Radon Scientists and Technologists, Inc. (AARST) and HUD multi-family radon testing and mitigation policy, all "ground level" units are to be tested, regardless of the foundation type.

For projects with test results exceeding the EPA action level of 4.0 picocuries/liter, plans and specifications approved by a Radon Professional for addressing these exceedances must be submitted prior to initial closing. New construction projects and any proposed mitigation plans must be consistent with the radon resistant code requirements as detailed in Appendix F of the Michigan Residential Code.

Further information on mitigation strategies and maps of radon zones around the country can be found at http://www.epa.gov/radon/index.html

Section 7 – Re-evaluation of Environmental Findings

The re-evaluation of a project is required by the RE when new activities are added, unexpected conditions arise, or substantial changes are made to the nature, location, magnitude or extent of the project. The purpose of the re-evaluation is to determine if the original environmental finding is still valid. Complete the Re-Evaluation of Environmental Assessment (Form 5-N) and contact your Program Specialist for assistance with this process.

If the original environmental finding is still valid but the data or conditions upon which it was based has changed, the UGLG as the RE must affirm the original finding and update the ERR. In these cases, if a FONSI has already been published, no further publication of a FONSI is required. A new environmental review must be prepared if the original finding is no longer valid.

When the ERR process is complete, the final ERR must be submitted to the Program Specialist.

Chapter 5 Form(s)

Exempt Project Packet

5-A Determination of Level of Environmental Review
5-B Finding of Exempt Activity
5-E Exemption Activities Determination Letter SAMPLE

CENST Project Packet

5-A Determination of Level of Environmental Review
5-C Finding of Categorical Exclusion NOT Subject to 58.5
5-E Exemption Activities Determination Letter SAMPLE

CEST Project Packet

5-A Determination of Level of Environmental Review
5-D Finding of Categorical Exclusion Subject to 58.5
Section 106 State Historic Preservation Office (SHPO) review: www.michigan.gov/shposection106
5-F Statutory Checklist
5-L 8 Step Process for Compliance with Floodplain Management
5-J Early Notice and Public Review of Proposed Activity in a 100-Year Floodplain or Wetland
5-K Final Notice and Public Explanation of Proposed Activity in a 100-Year Floodplain Wetland
5-M Notice of Intent to Request Release of Funds
5-G Request for Release of Funds and Certification

EA Project Packet

5-A Determination of Level of Environmental Review
Section 105 State Historic Preservation Office (SHPO) review: www.michigan.gov/shposection106
5-H Environmental Assessment
5-L 8 Step Process for Compliance with Floodplain Management
5-J Early Notice and Public Review of Proposed Activity in a 100-Year Floodplain or Wetland
5-K Final Notice and Public Explanation of Proposed Activity in a 100-Year Floodplain Wetland
5-I Combined Notice
5-G Request for Release of Funds and Certification

Reference forms

5-N Re-Evaluation of Environmental Assessment
5-O Environmental Review Checklist
5-P Environmental Review Process Flowchart
5-Q Protect Your Family from Lead in Your Home, EPA-747-K-12-001
5-R Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
5-S Lead-Based Paint Applicability and Compliance Worksheet
5-T Four Approaches to Implementing Lead Hazard Evaluation and Reduction
5-U Summary of Required Activities to Address Lead-Based Paint

Chapter 5 Reference links

DEQ Permit Information, EQP-3580, 10.07.14	http://www.michigan.gov/documents/deq/deq-oea-cau-permits-eqp3580_415019_7.pdf
FEMA	http://msc.fema.gov/portal
HUD Environmental Review	https://www.hudexchange.info/programs/environmental-review/
HUD Guidance on Tribal Consultation	https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/

HUD's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition)	https://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines
MDEQ	http://www.michigan.gov/deq
National Wetlands	https://www.fws.gov/wetlands/Data/Mapper.html
SHPO	www.michigan.gov/shposection106
Tribal Directory Assessment Tool (TDAT)	https://egis.hud.gov/tdat/