

# Now & Next

## Environmental Alert

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### **HUD environmental review reforms under ROAD to Housing Act**

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**The ROAD to Housing Act broadens HUD environmental review exemptions, easing NEPA requirements for key housing activities.**



#### **What's the impact?**

- The ROAD to Housing Act expands NEPA exemptions and categorical exclusions for HUD-assisted housing projects.
- Certain HOME-funded infill, acquisition, rehabilitation, and small new construction projects may now be exempt from NEPA review.
- The Act is expected to help more affordable housing projects gain predevelopment efficiency.

Our previous report on the [21st Century ROAD to Housing Act \(the Act\)](#) highlighted how the Act addresses affordable housing supply, preservation, vouchers, and rural rental assistance. In this alert, we drill down into the Act's statutory and regulatory reforms designed to streamline federal environmental review under the National Environmental Policy Act (NEPA). Recipients of assistance from the US Department of Housing and Urban Development (HUD) may not commit

HUD or non-HUD funds to an activity or project until the project obtains NEPA clearance, sometimes called an Authority to Use Grant Funds (AUGF).

Environmental review conducted by HUD (Part 50 Review) or a local responsible entity (RE) administering HUD funds (Part 58 Review) can add months to a project's timeline and prevent predevelopment activities that could otherwise increase project efficiency. When a project is subject to NEPA, HUD or an RE must review an Environmental Assessment (EA) of the project and either make a Finding of No Significant Impact (FONSI) or require further environmental study. The EA must include an evaluation of the project's impacts and demonstrate compliance with other federal laws and authorities. Once a FONSI is issued, public notice and comment is required before an AUGF is issued. Instead of providing overarching NEPA procedural reforms, the Act focuses on expanding the types of projects that may be exempt from full NEPA review.

## **Expansion of exemptions and categorical exclusions**

Regulations at 24 CFR Part 50 and Part 58 already exempt certain activities from NEPA review. Since they are deemed by regulation to have no environmental impact, an EA, public notice, and other NEPA evaluation are not required. The regulations also list activities that are "categorically excluded" from NEPA review. These actions are exempt except when extraordinary circumstances and conditions at a project location may have a significant environmental effect. A third category of projects, classified as "categorically excluded subject to further review," are exempt from NEPA's EA public notice and FONSI requirements, but must demonstrate compliance with other listed federal statutes and regulations, such as the National Historic Preservation Act, floodplain and wetland protection laws, the Clean Air Act, the Clean Water Act, and others. For this type of project, HUD or the RE must compile an environmental review record demonstrating compliance with each federal law.

In addition to requiring regulatory change, the Act exempts certain actions from NEPA by statute and requires regulatory updates that apply to other HUD funding programs.

## **Statutory exemption for the HOME Program**

The Cranston-Gonzalez National Affordable Housing Act, which governs the HOME program, is amended to add several new and potentially impactful exemptions to NEPA environmental review. The Act now exempts from NEPA:

- / New construction "infill housing projects";
- / the acquisition of real property for affordable housing purposes;
- / rehabilitation projects; and
- / new construction projects of 15 units or less.

Infill housing is defined broadly, including previously disturbed sites of five or fewer acres that are served by utilities and are substantially surrounded by other developments. The scope of exempt rehabilitation projects is not defined in the Act, but HUD may include those projects that do not cross the “substantial rehabilitation” threshold in existing law.

## **Further-reaching regulatory exemptions and categorical exclusions**

The Act directs the HUD Secretary to amend Part 50 and 58 regulations, which apply to a wider range of HUD funding sources.

The following activities that were previously subject to full NEPA review will now be considered categorically excluded, subject to further review, eliminating the need for a FONSI, public notice, and an AUGF:

- / Conversion of office buildings to residential development, subject to a maximum number of units set in forthcoming regulations and a 20% maximum increase in size;
- / Acquisition of open space or residential property to help residents relocate out of an area designated as high risk;
- / New construction, development, demolition, acquisition, or disposition of five to 15 dwelling units on one site;
- / New construction, development, demolition, acquisition, or disposition of fifteen or more housing units on scattered sites where each site has 15 or fewer units when the sites are a number of feet apart as set by the secretary;
- / Rehabilitation of buildings and improvements in the case of a building for residential use with five to 15 units, if the density is not increased beyond 15 units; and
- / “Infill” residential housing units.

Activities that were previously categorically excluded, not subject to further review, are now exempt from NEPA, including:

- / Tenant-based rental assistance;
- / Supportive services, such as healthcare and short-term rent payments;
- / Typical operating costs, such as utility payments and maintenance costs;
- / Economic development activities;
- / Homebuyer assistance;
- / Certain predevelopment costs related to project financing, zoning approvals, and site options; and

/ Approval of supplemental assistance on previously approved projects.

Additionally, emergency homeowner or renter assistance for HVAC, hot water heaters, and other necessary uses of existing utilities are added as an exempt activity.

## **Conclusion**

The minimum NEPA review time for projects that are not exempt or categorically excluded can run from six to eight weeks but is often longer. The Act should help more affordable housing projects gain in predevelopment efficiency by expanding NEPA's regulatory and statutory exemptions and exclusions.

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