



TCAP Questions and Answers: National Environmental Policy Act (NEPA) & Related Laws

The following questions and answers are intended to assist TCAP grantees and project owners to understand and comply with the environmental review requirements established by the National Environmental Policy Act of 1969 (NEPA) with respect to TCAP projects. These questions and answers are not a substitute for reading and understanding the regulations at [24 CFR Part 58](#). For further information, please consult [HUD's Office of Environment and Energy webpage](#).

1. What federal environmental laws, regulations and requirements apply to TCAP?

Answer: TCAP funds are federal funds. Consequently, the Recovery Act expressly applies section 288 (42 U.S.C. 12838) of the HOME statute to TCAP. The National Environmental Policy Act of 1969 (NEPA) and related federal environmental laws and authorities apply to projects receiving TCAP funds. TCAP grantees must comply with the implementing regulations at [24 CFR Part 58](#) "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities". A full environmental assessment or environmental impact statement is required for activities that are not categorically excluded or exempt.

A TCAP grantee may not commit TCAP funds to a project before completion of the federal environmental review process.

2. What entity is the "Responsible Entity" (RE) for ensuring compliance with all applicable federal environmental laws, regulations and requirements?

Answer: The Recovery Act expressly applies section 288 (42 U.S.C. 12838) of the HOME statute to TCAP. Section 288 requires the State to be the "Responsible Entity" (RE) and assume the responsibility for compliance with the federal environmental requirements that apply to TCAP. The "State", as defined in the HOME program statute (42 USC 12704(2)), means "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act."

3. Can the State designate the State housing credit agency to carry out the federal environmental review responsibilities on behalf of the State and/or designate the head of the State housing credit agency to act as the environmental certifying officer?

Answer: Yes. If it so chooses, the State (governor or legislature) may authorize the head of the State housing credit agency to act as the environmental certifying officer for the State's TCAP program. The State may also authorize the State housing credit agency to carry out the federal environmental review responsibilities on behalf of the State. However, the State remains the Responsible Entity and retains full accountability for compliance with the applicable federal environmental laws, regulations and requirements, including the responsibility for ensuring that corrective and remedial actions are taken when necessary or required by HUD.

4. If the State subgrants all or a portion of its TCAP funds to a local government housing credit agency, can the State also delegate the federal environmental review responsibilities to that local government housing credit agency?

Answer: States that subgrant their TCAP funds to a local government housing credit agency should contact the local HUD Field Office Environmental Clearance Officer for further guidance on how to comply with the applicable federal environmental laws, regulations and requirements.

5. What entity executes the "Request for Release of Funds and Certification" (form HUD 7015.15) and "Authority to Use Grant Funds" form HUD 7015.16?

Answer: For TCAP funds that have not been subgranted, the authorized State official (or State housing credit agency official) must execute the "Request for Release of Funds and Certification" (form HUD 7015.15) and submit this executed form to the local HUD Field Office: Attention CPD Director. The local HUD Field Office CPD Director executes the "Authority to Use Grant Funds" (HUD 7015.16) or equivalent letter.

When a State subgrants its TCAP funds to a local government housing credit agency, the State should contact the local HUD Field Office Environmental Clearance Officer for further guidance on how to comply with the applicable federal environmental laws, regulations and requirements.

6. When do the federal environmental laws, regulations and requirements apply to a TCAP project?

Answer: The federal environmental laws, regulations and requirements apply to a TCAP project as of the date of the owner's application for TCAP funds, as defined below. After the TCAP application date, the State, the owner, and any other parties may not commit TCAP or any other funds to the project before the federal environmental review has been

completed and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter has been executed. The owner must stop all work that is not being undertaken in accordance with an existing legally-binding contract, until the federal environmental review is complete and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter has been executed.

- a. For States that *will have a formal application process* for TCAP funds, the “date of the owner’s application” for TCAP funds is the date that the State, State housing credit agency or local government housing credit agency receives the project owner’s application.
- b. If a State does not have a formal application process, but instead the State, State housing credit agency or local government housing credit agency will offer TCAP funds to projects via a solicitation letter or some other means, the “date of the owner’s application” is the date that the project owner accepts the award of TCAP funds, as evidenced by a written acceptance letter or other form of written communication.

7. Can work commence or continue on a TCAP project before the federal environmental review is complete and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) has been executed?

Answer: No. As of the date of the owner’s application for TCAP funds, the owner and its contractors are prohibited from undertaking any project “choice-limiting” activity until after the completion of the federal environmental review and the execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter. This includes *any activity* that will result in a physical change to the property including property acquisition, demolition, movement, rehabilitation, conversion, repair, construction, and leasing or disposition. *Performing a choice-limiting action may disqualify a project from receiving any federal TCAP funds.*

The State, State housing credit agency or local government housing credit agency must notify applicants in writing that they and their contractors may not undertake any choice limiting activities before the execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter.

8. What happens if work is already underway on a project in accordance with a pre-existing legally-binding contract(s)?

Answer: Before the federal environmental review is completed and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter has been executed, project owners proceed *at their own risk* with activities that are authorized by pre-existing legally-binding contracts. Projects that fail to successfully complete the federal environmental review process are ineligible for TCAP funding.

9. What happens if the project is already complete?

Answer: The State, State housing credit agency or local government housing credit agency may not commit funds to a completed project until the federal environmental review process is complete and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter is executed. Any negative impacts identified through the environmental review process must be mitigated. Projects that fail to successfully complete the federal environmental review process are ineligible for TCAP funding.

10. Can the State, State housing credit agency or local government housing credit agency conditionally commit TCAP funds to a project before the completion of the federal environmental review and execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#))?

Answer: The State, State housing credit agency or local government housing credit agency may not commit TCAP funds to a project before the federal environmental review process is complete and the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter has been executed. However, the State, State housing credit agency or the local government housing credit agency may enter into an agreement for the *conditional commitment* of TCAP funds to a project before the completion of the federal environmental review process and the execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) *provided* the action conditional commitment meets the criteria of “Conditional Commitment of Funds” found below.

“Conditional Commitment of Funds” - The State, state housing credit agency or the local government housing credit agency (when the State has subgranted its TCAP funds) may enter into an agreement for the conditional commitment of TCAP funds for a specific project before the completion of the federal environmental review process. The State, state housing credit agency or local government housing credit agency must ensure that any such agreement does not provide the project owner any legal claim to any amount of TCAP funds to be used for the specific project or site unless and until the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter has been executed.

The following language is acceptable in an otherwise appropriately drafted agreement:

- A. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of the federal environmental review and receipt by [the TCAP grantee or subgrantee] of an executed “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter. The parties further agree that the provision of any funds to the project is conditioned on the [TCAP grantee’s or subgrantee’s] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.
- B. The agreement must also contain a provision prohibiting the project owner and its contractors from undertaking or committing any funds to physical or choice-limiting

actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction, or leasing or disposition prior to the execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter, and must indicate that the violation of this provision may result in the denial of any funds under the agreement. The agreement should not contain provisions requiring the execution of a construction contract unless the provision requires prior completion of the federal environmental review and execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter, and advice from the grantee or subgrantee to proceed with the project and/or proceed with execution of the contract. Provisions such as specific work descriptions and plans or specifications should not be included in a conditional TCAP commitment. Grantees or subgrantees are encouraged to keep any conditional TCAP commitments short and, if necessary, include more detailed provisions relating to project execution in an unexecuted attachment to avoid the appearance of permission or encouragement to begin undertaking choice-limiting actions.

11. If a federal environmental review has already been completed because the LIHTC project has been previously awarded other HUD funds (such as NAHASDA, HOME or CDBG), must a new federal environmental review be completed for TCAP funding? Must a separate “Request for the Release of Funds and Certification” (form [HUD 7015.15](#)) be completed?

Answer: If the Responsible Entity for the federal environmental assessment has not changed *and* neither the project nor the environmental conditions have changed since the completion of the previous federal environmental review and execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter, then no new environmental review and “Request for Release of Funds and Certification” (form [HUD 7015.15](#)) are required. [See 24 CFR 58.35\(b\)\(7\)](#) “Categorical Exclusions”. The only requirement is that the Responsible Entity must make a determination that no additional federal environmental review is required and record this determination in the environmental review record for that project.

If the Responsible Entity has changed, a new federal environmental review, “Request for Release of Funds and Certification” (form [HUD 7015.15](#)) and execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter are required.

12. Can the cost of conducting and completing federal environmental reviews be charged to the TCAP grant?

Answer: The costs incurred by the grantee or subgrantee for conducting and completing environmental reviews are administrative costs of the TCAP program and therefore cannot be charged to the TCAP grant. The project owner’s costs for providing information to the TCAP grantee or subgrantee are eligible to the extent that the costs may be included in the “eligible basis” of the project under Section 42 of the Internal Revenue Code of 1986, as amended.

13. What records are required to document compliance with the federal environmental laws, regulations and requirements?

Answer: The State is responsible for ensuring that records are maintained that fully document the compliance by the State, State housing credit agency and local government housing credit agencies with the applicable federal environmental laws, regulations and requirements in accordance with [24 CFR 58.38](#). Records must be retained in accordance with the record retention requirements of [24 CFR 85.42](#). In general, records must be retained for a minimum of three years after project completion and submission of the final expenditure report, unless any litigation, claim or audit is underway during that period.

14. What should a TCAP grantee or subgrantee do if it has no experience in completing federal environmental review requirements?

Answer: TCAP grantees and subgrantees that do not have previous experience with completing the federal environmental review process are strongly encouraged to seek assistance from another State department or agency that has this experience. All States receive an allocation of HOME funds and have agencies that have federal environmental review experience.

15. Where can TCAP grantees and subgrantees, and project owners find guidance on complying with the applicable federal environmental laws, regulations and requirements?

Answer: The implementing regulations for “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities” can be found at [24 CFR Part 58](#).

Additional guidance can be found through [HUD’s Office of Environment and Energy webpage](#).

The local [HUD Field Office Environmental Clearance Officers](#) are also available to provide guidance. Their names and telephone numbers can be found at the HUD Office of Environment and Energy web site.

State housing credit agencies, local government housing credit agencies and project owners are strongly advised to seek technical assistance and training regarding compliance with the federal environmental laws, regulations and requirements.

If you have additional questions after reviewing the applicable laws, regulations and guidance provided in this Question and Answer, please send an email to the TCAP mailbox at TCAP@hud.gov