

Red Font denotes new or revised language

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The HOME and HTF Program is required to abide by the federal regulatory requirements set forth in 24 CFR part 5 subpart A and other regulations and requirements as applicable to the type and scope of the activity. The following sections are a summary overview of the major components of each regulation as well as the basic compliance requirements. .

Due to the complexity of the various federal requirements, project sponsors are encouraged to contact IHFA’s Technical Assistance Coordinator at least 45 days prior to submission of an application for funding.

NON-DISCRIMINATION POLICY

Applicability

All HOME and HTF-assisted projects.

Description

Owner/developers/sponsors shall neither deny service to, nor otherwise discriminate, in the delivery of services, against any person who otherwise meets the eligibility criteria for the program on the basis of race, color, religion, sex, age, national origin, citizenship, ancestry, marital status, physical or mental disabilities, familial, and marital status, sexual orientation, gender identity, or because such person is a recipient of federal, state, or local public assistance.

Housing projects must be used exclusively for secular purposes and made available to all persons regardless of religion. In particular, there must be no religious or membership criteria for any tenants of the property.

Owners must adopt a non-discrimination policy and include a copy of this written policy in the application information. The following sample language meets the program requirements:

<p>Sample Non-Discrimination Policy Language _____ (Organization name) certifies that it shall neither deny service to, nor otherwise discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for the program on the basis of race, color, religion, sex, age, national origin, citizenship, ancestry, marital status, physical or mental disabilities, familial and marital status, sexual orientation, gender identity, or because such person is a recipient of federal, state, or local public assistance.</p>	
Adopted on:	_____ (Date)
Signed:	_____
Board Chair	Executive Director

EQUAL OPPORTUNITY AND FAIR HOUSING

Applicability

All HOME and HTF-assisted projects.

Description

Owners and managing agents of assisted projects must comply with the following:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) which states that no person on the grounds of race, color, national origin, religion, sex, persons with

disabilities or familial/marital status, sexual orientation, or gender identity shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. HUD requires all participants to undertake activities that further fair housing choice for publicly funded housing. A fair housing policy must be adopted by all HOME sponsors and included with HOME applications.

2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), the implementing regulations at 24 CFR Part 146, that prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8.
3. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
4. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise).

Sample Fair Housing Policy

(Organization Name) hereby certifies, by signature below, that said Recipient of federal funding understands that discrimination in the sale, rental, leasing or financing of housing or land to be used for construction of housing, or in the provision of brokerage services because of race, color, religion, sex, national origin, disability, sexual orientation, gender identity, or familial and marital status is prohibited by Title VII of the 1968 Civil Rights Act, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing Act).

It is the policy of the above named organization to implement this policy to ensure compliance with the provisions of the Fair Housing Act.

The above named organization will assist, within available resources, all persons who feel they have been discriminated against because of race, color, religion, sex, national origin, disability, sexual orientation, gender identity, or familial/marital status to seek equity under federal and state laws by filing a complaint with the Idaho Human Rights Commission, the Idaho Fair Housing Council or the U. S. Department of Housing and Urban Development, Seattle Regional Office Compliance Division.

The above named organization shall publicize this policy when advertising vacancies of available HOME-assisted housing units and by posting the HUD Fair Housing poster in rental offices and common areas of housing assisted with HOME funds.

This policy was adopted on _____ (date).

SIGNATURE (S):

_____, _____ (title)

ACCESSIBILITY REQUIREMENTS

Applicability

All HOME and HTF-assisted projects and project sponsors.

Description

There are three federal laws relating to accessibility to housing assisted through the HOME Program for persons with disabilities:

1. Section 504 of the Rehabilitation Act of 1973
2. The Fair Housing Act of 1968, as amended
3. The Americans with Disabilities Act (ADA)

Both new construction and rehabilitation of multifamily housing projects are affected by Section 504, (see explanation below) and certain accessibility requirements of the Fair Housing Act also affect new construction of multifamily housing projects. The ADA has a broader application than either Section 504 or the Fair Housing Act in that it addresses employment practices, public services, transportation, and public accommodations, regardless of whether federal funds are received.

Owners, sponsors, and managers of HOME and HTF-assisted housing must comply with the appropriate provisions of the Acts in the development and management activities. Assisted projects are monitored for compliance throughout the Period of Affordability.

Technical Requirements for Accessibility and Other Fair Housing Requirements

Project sponsors, contractors, and architects should review the information found in Exhibit "F" concerning the practical applications of fair housing and accessibility requirements. Technical information concerning design guidelines for accessibility can be found in:

1. The "Fair Housing Accessibility Guidelines" (24 CFR Chapter I) which generally are based on the standards of the American National Standards Institute (ANSI) for accessibility. The reference to the ANSI standards is "ANSI A117.1".
2. HUD's "Fair Housing Act Design Manual" published in August, 1996; and
3. The "Uniform Federal Accessibility Standards" (UFAS) contained in 24 CFR Part 40.

Copies of the guidelines listed may be obtained by contacting IHFA or HUD directly. Project owners, architects, and builders should become familiar with materials and can be held liable for noncompliance with any of the federal laws listed above. IHFA provides general information on how to comply with accessibility requirements; however, IHFA does not represent that it is qualified to make authoritative determinations regarding interpretations of the federal laws regarding accessibility for persons with disabilities.

SECTION 504 REQUIREMENTS (24 CFR PART 8)

The requirements of Section 504 of the Rehabilitation Act of 1973, as amended, states no otherwise qualified individual with a disability in the United States "...shall solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving federal financial assistance or under any program or activity conducted by an Executive agency."

DEFINITIONS**Recipient**

A recipient is defined as a State or its political subdivision, any instrumentality of the State or its political subdivision, any public or private agency, institution, organization, or other entity or any person to which federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. Thus, a public housing authority, or a HUD funded non-profit developer of low-income housing is a recipient of federal financial assistance and is subject to Section 504 requirements. However, a private landlord who accepts Section 8 tenant-based vouchers or a family that receives funds for rehabilitation of an owner-occupied unit is not subject to Section 504.

Disability

Disability is described as a physical or mental impairment that substantially limits one or more major life activities.

Program Accessibility

Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. The concept recognizes there may be limits to the degree which existing housing programs can be made accessible. Thus, under the concept of program accessibility, not every single building, or dwelling unit, must be accessible but there must be accessibility sufficient so persons with disabilities have an equal opportunity to participate in and benefit from the program, with the same range of choices and amenities, as those offered to others.

Examples of Accessibility

1. To the maximum extent feasible, distribute accessible units throughout projects and sites and make them available in a sufficient range of sizes and amenities, so as not to limit choice.
2. Adopt suitable means to assure information regarding the availability of accessible units reaches eligible individuals with disabilities. Recipients must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
3. When an accessible unit becomes vacant, offer the unit first to a current occupant of the project requiring the unit's accessibility features, then, to an eligible qualified applicant on the waiting list requiring the accessibility features. If neither of these conditions exists, the unit may then be offered to an individual who does not require the accessible unit.
4. Ensure all activities and meetings are conducted in accessible locations.

Reasonable Accommodation

Reasonable Accommodation is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person to participate fully in a program, take advantage of a service, or perform a job. Since persons with disabilities may have special needs due to their disabilities, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. Reasonable accommodations may include, adaptations which are necessary in order for the person with a disability to use and enjoy a dwelling, including public and common use spaces.

In order to show that a requested accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's disability. What is

reasonable must be determined on a case-by-case basis. However, the following examples are often considered reasonable accommodations:

1. The housing provider has a policy of not providing assigned parking spaces. A tenant with mobility impairment, who has difficulty walking, is provided a reasonable accommodation by receiving an assigned accessible parking space in front of the entrance to his unit.
2. The housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided a reasonable accommodation by being allowed to mail her rent payment.
3. An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance and she needs a ramp to enter the unit. Her housing provider pays for the construction of a ramp as a reasonable accommodation.

The determination of whether a requested accommodation is reasonable depends on the answers to two questions:

1. Does the request impose an undue financial and administrative burden on the housing provider?
2. Would making the accommodation require a fundamental alteration in the nature of the provider's operations?

If the answer to either question is yes, the requested accommodation is not reasonable. However, even though a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations that do qualify as reasonable.

Example: A tenant is unable to open the dumpster to dispose of his trash. The tenant requests that the housing provider send a maintenance staff person to collect his trash. Because the development is a small, low-budget operation and the maintenance staff is not on site daily, it is an undue financial and administrative burden for the housing provider. However, the housing provider is obligated to provide the tenant with an alternative accommodation, such as providing either an open trash can or placing a trash can which the tenant can open, in an accessible location.

Accessible Unit

Section 504 defines an accessible dwelling unit as a unit that is located on an accessible route and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible. Section 504 imposes specific accessibility requirements for new construction and alteration of housing and non-housing facilities in HUD-assisted programs. Section 8.32 of the regulations states that compliance with the appropriate technical criteria in the Uniform Federal Accessibility Standards (UFAS), or a standard that is equivalent to or stricter than the UFAS, is an acceptable means of meeting the technical accessibility requirements in Sections 8.21, 8.22, 8.23 and 8.25 of the Section 504 regulation.

THE FAIR HOUSING ACT

Applicability

All HOME-Assisted projects

Description

Any new construction project of four or more dwelling units is subject to the accessibility and adaptability requirements of The Fair Housing Act (FHA). Under the FHA new construction requirements, if the building has an elevator, all of the dwelling units must meet the FHA design and construction requirements. If there is no elevator, all of the ground floor dwelling units must meet the FHA

requirements. A unit that meets the FHA accessibility requirements does not have as great a degree of accessibility as a UFAS complying unit, but should be easily adaptable to a fully accessible without significant costs or structural modification.

CONSTRUCTION STANDARDS

HUD's guidelines provide technical assistance for architects, builders, and developers on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988 published in the Federal Register on March 6, 1991. These guidelines are found at 24 CFR 92.251. Generally, these guidelines are based upon the disabled accessibility standards set forth by the American National Standards Institute (ANSI). Specifically, HUD's guidelines reference the ANSI, A117.1 (1986) standard.

Additional guidance was provided by HUD in a supplemental notice published in the Federal Register on June 28, 1994 entitled "Supplement to Notice of Fair Housing Guidelines: Questions and Answers about the Guidelines." In addition, HUD published in August 1996, a "**Fair Housing Act Design Manual**" to provide additional guidance to architects and builders on compliance with the Fair Housing Act. In April of 1998, HUD published a revised manual.

[2017] Prior to the commitment of home funds, the project's architectural plans, and specifications must be reviewed and approved by both the IHFA-HOME architect and consultant and the owner/developer architect. both parties must agree to fair housing design requirements, as applicable. if parties are unable to reach consensus, the more stringent interpretation will apply.

AFFIRMATIVE MARKETING PLAN

Applicability

All HOME-assisted projects with five or more units.

Description

In furtherance of IHFA's commitment to non-discrimination and equal opportunity in housing, HOME project sponsors are required to establish procedures to affirmatively market their project. The procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

Affirmative Marketing consists of actions taken to provide outreach to attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial/marital status, sexual orientation, gender identity or disability, that are the least likely to apply

HOME project sponsors are required to sign an agreement to affirmatively market newly constructed or rehabilitated units beginning on the date on which all the units in the project are completed. A plan for the affirmative marketing of units must be included with the project application.

(See Exhibit T)

Affirmative Marketing Plan

An Affirmative Marketing Plan should include, at a minimum, the following elements:

1. Method for informing the public, owners, and potential tenants about federal Fair Housing laws and affirmative marketing policies by:
 - a. Visiting tenants/owners in buildings selected for rehabilitation and posting signs regarding the Program in each building project. The HUD Equal Housing Opportunity logo must appear on all postings;

-
- b. Using the Equal Housing Opportunity logo or slogan in press releases and other written communications used in the marketing of rehabilitated units.
 2. Requirements and practices each owner must adhere to in order to carry out the affirmative marketing procedures and requirements, like use of commercial media, community contacts, the Equal Housing Opportunity logo-type or slogan, and display fair housing posters.
 3. A procedure to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach using such resources as:
 - a. Advertise in the local news media;
 - b. Place flyers in the local unemployment center, community groups, offices of the local housing authority, places of worship, fair housing groups, offices of any other local housing counseling agencies and other agencies serving low-income persons;
 - c. Notify applicants on the local housing authority's waiting lists about upcoming vacancies.
 4. Special Outreach may be accomplished through:
 - a. Announcements in general circulation newspapers and/or ethnic; neighborhood, community, or school newspapers;
 - b. Announcements in church or school bulletins, posters, or oral presentations to community organizations;
 - c. Posters publicizing the housing placed in grocery stores, job center sites, community centers, schools, etc;
 - d. Supportive outreach assistance provided by organizations such as social service agencies, housing counseling agencies, or religious organizations;
 - e. Community organizations run by minorities or those who primarily serve minorities, minority churches, etc.
 5. Project sponsors must keep records describing actions taken by the owners to affirmatively market units and records to assess the results of these actions for the duration of the HOME period of affordability concerning:
 - a. The racial, ethnic, and gender characteristics of:
 1. Tenants/owners occupying units
 - b. Activities they undertake to inform the general renter public, specifically:
 1. Copies of advertisements placed in the news media
 2. Dates on which the owner contacted other agencies
 3. Dates on which the owner contacted the local housing authority
 - c. Activities recipients undertake for special outreach
 - d. Applications for tenancy

Monitoring

IHFA will conduct periodic on-site monitoring of each project as described in the regulatory agreement at which time local affirmative marketing results will be analyzed. Effectiveness of affirmative marketing efforts will be assessed by IHFA as follows:

1. Determine if good faith efforts have been made; and
2. Determine the results of the efforts.

IHFA requires corrective action if a sponsor fails to carry out the procedures. Corrective action may include, but is not limited to: withholding unallocated funds; requiring the return of unexpended funds; repayment of expended funds; the return of program income. If, after discussing ways to improve procedures the sponsor fails to meet the affirmative marketing requirements, IHFA may suspend future participation in the HOME Program.

ENVIRONMENTAL REVIEW AND CLEARANCE OVERVIEW

Applicability

- All HOME & HTF activities.
- **When both HTF and HOME funds are used, the applicable ER requirements for both programs will be followed.**

Description

IHFA is the Responsible Entity for HUD in Idaho and is responsible for determining if a HOME funded project has an adverse human health or environmental impact by completing an Environmental Review. If it is determined a project may have adverse human health or environmental impact, the project may be rejected or require mitigation.

No funds can be committed to a HOME activity/ project before the completion of the Environmental Review Process and IHFA determines that the project has Environmental Clearance. IHFA will notify the project sponsor when Environmental Clearance is obtained.

Increase in Funding Award or Change In The Scope Of Work

Whenever funding (from any source) is increased, or the scope of work changes, the ER may require re-evaluation.

The primary legislation determining the Environmental Review requirements is the National Environmental Policy Act (NEPA) of 1969, as amended. HUD regulations (24 CFR Part 58) require IHFA, the agency responsible for administering the State of Idaho's HOME funds, to follow specific procedures to conduct the Environmental Review Process. It is noted different levels of review will apply to different types of projects (acquisition, new construction, down-payment assistance, CHDO predevelopment, rehabilitation, etc.)

Purpose

To determine if a federally funded activity may have an adverse human health or environmental impact.

If the environmental review determines there is an adverse impact, the ER then establishes whether the impact is "significant", and what, if any, measures must be taken to mitigate the impact.

Note: Mitigating actions may be required even if the impact is not considered significant. If the environmental review requires conditions to mitigate any environmental impacts, then IHFA should enter into an agreement with the Purchaser to ensure the conditions will be undertaken.

IHFA follows 24 CFR Part 58 to document the criteria, standards and policies, regulations of the laws and authorities specified at 24 CFR 58.5 for all projects that are categorically excluded at 58.35(a) and for all projects that require environmental assessments.

IHFA must meet the requirements listed at Section 58.6 and maintain documentation in the environmental review record for all activities/projects. This includes Exempt activities (Section 58.34) and Categorically Excluded activities (under Section 58.35(a) or (b)).

Choice-Limiting Activities

Any activity that adversely impacts and/or limits the choice of “reasonable alternatives” for a HOME project before the completion of the Environmental Review Process is considered a Choice-Limiting Activity.

Purchase Option Agreement/Contract

A Purchase Option Agreement and a Conditional Contract(see definition below) must adhere to the following requirements:

A **Purchase Option Agreement** is a legal agreement between the potential buyer of real property and the owner, giving the potential buyer the exclusive right to buy the property at a specific price, within a specific time frame. A Purchase Option Agreement does not impose any obligation upon the potential buyer to purchase the property. The Purchase Option Agreement obligates the seller to sell at the specified price if the potential buyer exercises the option in the manner described in the contract.

★ **A Purchase Option Agreement can be used for any HOME-assisted activity, including new construction and the purchase of existing units.**

A **Conditional Contract** is a legal agreement between the potential buyer and the owner that includes conditions which must be met for the obligation to purchase to become binding.

★ **A Conditional Contract can only be used for existing single-family (1-4 unit) and existing multi-family residential properties.**

NEPA case law has determined entering into Purchase and Sales agreement (either a Purchase Option agreement or a Conditional Contract) is a choice-limiting action. Therefore, if the agreement is entered into before the environmental review is complete, it is a violation of 24 CFR 58.22, unless the following additional requirements are met.

- 1) The agreement includes the following (or similar intent) Environmental Review Clearance Clause:
 - "This agreement is subject to a determination by IHFA on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58"
 - No transfer of title to the purchaser or removal of the environmental condition(s) in the purchase contract occurs unless and until IHFA determines, on the basis of the environmental review, the transfer to the buyer should go forward, and IHFA has obtained approval of a Request for Release of Funds and environmental certification, where applicable. IHFA shall use its best efforts to conclude the environmental review of the property expeditiously."
- 2) **For existing multi-family rental structures only** - The structure(s) is not located within a Special Flood Hazard Area;
- 3) The cost of the option should be a reasonable nominal portion of the purchase price. For multi-family, if the option is non-refundable deposit, it cannot exceed 3% of purchase price or less.
- 4) The term or automatic renewal language is sufficient to provide assurance the agreement will not expire prior to HOME loan closing.

5) For single family, activities, a non-refundable deposit cannot exceed \$1000.

Once a HOME Application or Exhibit S has been submitted to IHFA the ER Process has begun, and no choice-limiting activity(s) can be undertaken by an owner, developer, and/or contactor until a Request for Release Of Funds (RROF) has been issued. This includes expending any public or private funds AND/OR executing an agreement to conduct any of the following activities regarding a specific site:

- a) Property acquisition
- b) Rehabilitation
- c) Conversion
- d) Leasing
- e) Renting
- f) Repair
- g) Construction
- h) Demolition

Engaging in any choice-limiting activity before the entire Environmental Review Process is complete may result in the denial of federal funds to the HOME Project.

Timing of Environmental Review Process and Related Restrictions

First Step- The Environmental Review Process begins with the submission to IHFA, one of the following documents:

- HOME Pre-Application(“Exhibit S”)
- CHDO Predevelopment Loan application
- HOME application

Second Step- Although IHFA may issue a Conditional Reservation and/or a Conditional Commitment of HOME funds during the ER Process, the ER must be completed (see Steps 1-4 of Environmental Review Process) before any choice-limiting activities occur.

Third Step- IHFA will send the Project Sponsor written notification when/if a project receives Environmental Clearance.

Some HOME activities may be determined to be “exempt” or “categorically excluded” from the Statutory Authorities Checklist (as defined at 58.35(a), however, only IHFA is responsible for making this determination.

Environmental Review Process Flow Chart Levels of Environmental Review

IHFA's first step is to determine the level of review required, i.e., whether the project consists solely of exempt activities, categorically excluded activities, or if an environmental assessment is required to determine if there will be significant impacts on the environment, triggering preparation of an environmental impact statement. An Environmental Review Requirements manual has been prepared by IHFA for use in completing Environmental Reviews. This manual is available upon request from IHFA.

There are five possible levels. This section describes the review process for each of these five levels as they relate to HOME-assisted projects.

1) **Exempt:** If the federally funded portion of the project consists solely of the types of activities listed below, the project can be classified as an "exempt activity" (24 CFR Part 58.34). IHFA must review and place a dated "Exempt Certification" in the HOME project file. Exempt activities must still comply with the requirements in 24 CFR 58.6. Some examples of exempt activities are:

Environmental studies; development of plans and strategies, inspections and testing, engineering or design costs, technical assistance and training; temporary or permanent improvements that do not alter environments conditions and are limited to activities to protect, repair, or arrest the effects of disasters, imminent threats, or physical deterioration; payments of principal and interest on loans or obligations guaranteed by HUD.

2) **Categorically Excluded Not Subject To 58.5:** If the activity can be defined as categorically excluded (24 CFR Part 58.35), the project shall be reviewed for compliance with a variety of federal laws and authorities designed to protect the environment (listed in 58.5 and 58.6). If no laws and authorities are triggered, the project can be converted from categorically excluded to exempt under (58.34(a) (12)), when compliance with federal requirements are documented in the file the project may proceed. With respect to HOME- assisted projects, categorically excluded activities may include:

Tenant-based rental assistance; operating costs including maintenance, equipment, operation, supplies, utilities, staff training and recruitment; economic development, expenses not associated with construction or expansion; activities to assist homeownership of existing or new dwelling units not assisted with Federal funds, including closing costs and down payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title; pre-development costs: legal consulting, developer and other site-option costs, project financing administrative costs for loan commitments, zoning approval; other activities that don't have a physical impact.

3) **Categorically Excluded Subject To 58.35(a):** The following activities are defined as Categorically excluded subject to 58.5 statutory authorities (Statutory Checklist):

Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped; single family housing rehabilitation if the unit density is not increased beyond 4 units, the project doesn't involve change in land use, cost of rehab is less than 75% of the estimated cost of replacement after rehab; multi-family housing rehab if the unit density change is not more than 20%, project doesn't involve change in land use, cost of rehab is less than 75% of the estimated cost of replacement after rehab; individual action(e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per site; acquisition(including leasing) or disposition of, or equity loans on an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use; combinations of these activities.

- 4) Environmental Assessment:** If the project cannot be classified as exempt or categorically excluded, an Environmental Assessment (EA) is required (as described in 24 CFR Part 58.36). Some examples are: generally, new construction of five or more homes, and conversion from one type of land use to another.

The EA includes:

- a. An inspection of the project site to determine if any conditions exist that might, in the event the project is funded, create an impact on the environment;
- b. A review of the project's compliance with the laws and authorities listed in 58.5 and 58.6, as described in the previous section on categorically excluded activities;
- c. Solicitation of written responses or compliance documentation from a variety of local, state, and federal authorities as to the potential impact of the project on human health and the environment .

In the event, "*no significant impact*" is found:

- a. A Notice of Finding of No Significant Impact (FONSI) must be prepared and made available for public review and comment, along with the record of the EA, for a period of 15 days (per 58.43); and
- b. A Notice of Intent to Request a Release of Funds (NOI/RROF) must be prepared and made available for public review and comment, and the RROF must be submitted to HUD (except in the event the HOME funds have been awarded to a unit of local government, in which case the RROF is submitted to IHFA by the unit of local government). The comment period for the NOI/RROF ends approximately 15 days following the end of the comment period for the FONSI. See 58.45 for all public comment periods.

In the event that "*significant impact(s)*" is found, an Environmental Impact Statement is required.

- 5) Environmental Impact Statement:** In the event the EA reveals the project would have a potentially significant impact on human health or the environment, an Environmental Impact Statement (EIS) (24 CFR 58.52-66) must be prepared. The most stringent level of review is the EIS.

Any project that would significantly impact the quality of human health or the environment and therefore require an EIS under National Environmental Policy Act will be declared ineligible for HOME funds.

Compliance Areas

- A.** All HOME project sponsors should be aware that all levels of environmental review are subject to 24 CFR 58.6. The following regulations are compliance requirements of 24 CFR 58.6:

1) The Flood Disaster Protection Act of 1973

Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128),

HOME funds may not be used with respect to a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards. Properties located within the 100-year floodplain will not be assisted with HOME funds unless the property owner obtains flood insurance.

2) The Coastal Barrier Resources Act

Coastal Zone Management Act of 1972, as amended in 1976, 1980, and 1996, particularly section 307 (c) and (d). This Act does not apply because there are no coastal zones in Idaho.

3) Airport Clear Zones (as applicable to 24 CFR 58.6)
24 CFR 51.303(a)(3) and 24 CFR 58.6 (d)

This regulation as it pertains to 58.6 requires notification for purchase or sale of an existing property in a Runway Protection Zone (RPZ) or Accident Potential Zone (APZ). If a property is in an RPZ or APZ the buyer must sign a statement acknowledging that the property is in the RPZ or APZ and be notified of the safety and other implications of the zone, and the realization that the airport operator may acquire the property in the future.

All HOME project sponsors should be aware of the following environmental review requirements for activities that are Categorically Excluded and subject to 58.5 or that require an Environmental Assessment. The following regulations are compliance requirements for projects subject to 24 CFR 58.5

1) Historical Preservation

National Historic Preservation Act, 16 U.S.C. 470(f), section 106.

Section 106 of the Historic Preservation Act requires federal agencies to consider the effects of their undertaking on historic properties and resources.

When the project will alter environmental conditions (such as groundbreaking to develop vacant land) or has the likelihood to affect historic properties, a complete Section 106 review must be completed prior to committing funds.

Rehabilitation Activities involving properties 50 years old or older must obtain a statement from the Idaho Historical Society that the property:

- a. Is not listed on the National Register of Historic Places and not considered eligible for listing; or
- b. May be eligible but the use of the building and the changes proposed will not impact the qualities that make it eligible; or
- c. Is eligible and/or listed but the use of the building and the changes proposed would not impact the qualities that made it eligible. In this case, historic preservation requirements will be followed as set forth in 24 CFR 58.17.

Section 106 also has a specific requirement for the agency to make a reasonable and good faith effort to identify tribes that might attach religious and cultural significance to the properties in the area. IHFA will:

- a. Make a good faith effort to notify the Tribal Historic Preservation Officer that under Section 106 they have the right to comment.
- b. If the tribe demonstrates interest, they must be invited to participate in a consultation.

2) Floodplain Management

Executive Order 11988, May 24 1977.

Floodplain Management is more restrictive than the Flood Disaster Protection Act. The purpose of floodplain management is to avoid adverse impacts of floodplains and to avoid development in a floodplain whenever there are practicable alternatives. If a project is located in a FEMA 100 year Special Flood Hazard Area, it is encouraged to choose an alternative site not located in a flood zone. The completion of an 8-Step Process is to determine there are no alternate, suitable sites available. If this can be demonstrated through the 8-step process, then the project must obtain a Conditional Letter of Map Revision (CLOMR), build the building pads above the Base Flood Elevation (BFE) and achieve a Letter of Map Revision (LOMR). Until a LOMR has been issued, the Sponsor must obtain and maintain flood insurance. Additionally, 500-year flood zones are restricted from critical actions such as nursing homes and childcare centers.

3) Wetlands

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 CFR 26961 et seq.); particularly section 2 and 5.

If a site is determined to be located in a wetland as defined by the Executive Order, an 8-Step Process is required to be completed to determine that there are no other suitable sites available. The exception to the 8-step process would be if any development activities were located outside of the wetland and would not impact the wetland area.

4) Sole Source Aquifer

The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended, particularly section 1424(e) (42 U.S.C. 300 h-303(e)).

Project developers must consider the applicability and feasibility of the Best Management Practices (BMPs) in reference to the nature of the storm water run-off. New construction located over a designated sole source aquifer shall incorporate BMPs or local government requirements into storm water run-off treatment. Storm water run-off systems are subject to the Environment Protection Agency's approval, as agreed to in a Memorandum of Understanding between IHFA, HUD, EPA, and Department of Commerce.

5) Endangered Species

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

IHFA must comply with the laws and authorities at 58.5, and is not limited to allowing the entities the opportunity to comment on a project. IHFA must obtain a species list relative to any specific project and then based on credible information make a determination if the project will affect the endangered species. If there is a "may affect, not likely to adversely affect" or "may adversely affect" determination, IHFA must consult with FWS and/or NOAA fisheries.

6) Wild and Scenic Rivers

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended: particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

Idaho has several rivers designated as wild and scenic. The Act safeguards the designated rivers to keep them free-flowing, unaltered, unpolluted and maintains cultural and natural values. If a project is located within one mile of a designated Wild and Scenic River, consultation with the National Park Service will help determine if the project will have an adverse effect.

7) Air Quality

The Clean Air Act (42 U.S.C. 7401 et seq.) as amended particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).

Projects must comply with the air rules (IDAPA 58.01.01) as applicable. If a project is located in an area that is designated as non-attainment or maintenance for any of the six criteria air pollutants, then the project must comply with the area specific maintenance plan within the Idaho Department of Environmental Quality State Implementation Plan.

8) Farmlands Protection

Farmland Protection Policy Act of 1981(7 U.S.C. 4201 et seq) particularly section 1540(b) and 1541(7 U.S.C. 4201 and 4202).

If a project is located on prime or important farmland, consultation with the Natural Resources Conservation Service (NRCS) and completion of the Farmland Conversion Impact Rating form is required. The NRCS has 45 days to respond. "Zoning" does not exempt a project from compliance with the FPPA.

9) Environmental Justice

Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority and Low-Income populations (3 CFR, 1994 Comp Pg 859). The purpose of considering environmental justice is to determine if a project places low-income people and/or minorities at a greater environmental risk than that of the general population. If it is determined that no adverse human health or environmental impacts result from the project, then environmental justice is not a concern. Mitigation of any potential adverse impacts may solve any environmental justice concerns.

Note: Environmental Justice as defined here as it relates to the Environmental Review process only; This definition does not pertain to Social Justice or Fair Housing Act.

10) Noise Abatement and Control

Noise Control Act of 1972, The Quiet Communities Act of 1978 as amended, OMB Circular 75-2. New noise-sensitive use projects must be evaluated to ensure that the noise levels do not exceed HUD's acceptable levels. New construction located within HUD's Normally Unacceptable noise exposures are prohibited unless noise attenuation features reduce noise exposure to HUD acceptable levels. For major or substantial rehabilitation, projects located within HUD's normally unacceptable noise levels the project developer shall seek to incorporate noise attenuation features as practical during rehabilitation activities. Mitigation can include specific construction materials, barrier walls and structure location placement.

11) Explosive and Flammable Operations

Sec.2 of the Housing and Urban Development Act of 1969 (42 U.S.C. 1441 (a)).

All applicable projects must be assessed to determine if any above-ground storage tanks that contain flammable or explosive materials are located at least the Acceptable Separation Distance (ASD) (as defined by HUD and calculated by the Responsible Entity (RE)) away from the project site. New Construction projects are prohibited if located less than the acceptable separation distance from a hazard, as defined in 51.201, unless appropriate mitigating measures are implemented, as defined in 51.205, or unless mitigating measures are already in place.

12) Toxic Chemicals and Radioactive Materials

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by Superfund Amendments and Reauthorization Act.

Any toxic or radioactive substances which could affect the health and safety of occupants or conflict with the intended use of the property must be mitigated or the project must be rejected. Particular attention should be given to nearby landfills, polluting industrial sites or other operations with hazardous wastes which could potentially impact the project site.

13) Airport Clear Zones (as applicable to 24 CFR 58.5)

24 CFR 51, Subpart D

This regulation as it pertains to 58.5 does not allow HOME funded new development in an RPZ or APZ unless the development will not frequently be used or occupied by people and the airport operator provides written assurances that there are no plans to purchase the project site.

14) Environmental Assessment Factors

Under 24 CFR 58.5, the review includes an analysis of the project's impacts on land development, socioeconomic factors, community facilities and services, and natural features [24 CFR 58.40].

15) Alternative Sites and Project Modifications Analysis

[Revised 2017] Assessment must include other reasonable courses of action that were considered, such as other sites, design modification, or other uses of the proposed site. Assessment must describe the benefits and adverse impacts to the human environment of each alternative site(s) and the reason(s) for rejecting it. [See Exhibit R of this Plan for a sample Analysis that must be submitted as part of the HOME/HTF application for funding (rental projects)].

Previous Environmental Reviews

Where HOME funds are added to a previously approved federally assisted project, a second environmental review *may* not be necessary. If the scope of the project is unchanged, and an analysis of the original review indicates that environmental conditions have not changed and all relevant factors have been considered, IHFA may adopt the prior review with or without modifications. A FONSI and NOI/RROF may still need to be published and a Release of Funds would need to be obtained from HUD based on the reassessment of the original environmental review. (*see 58.47(b) (1)*).

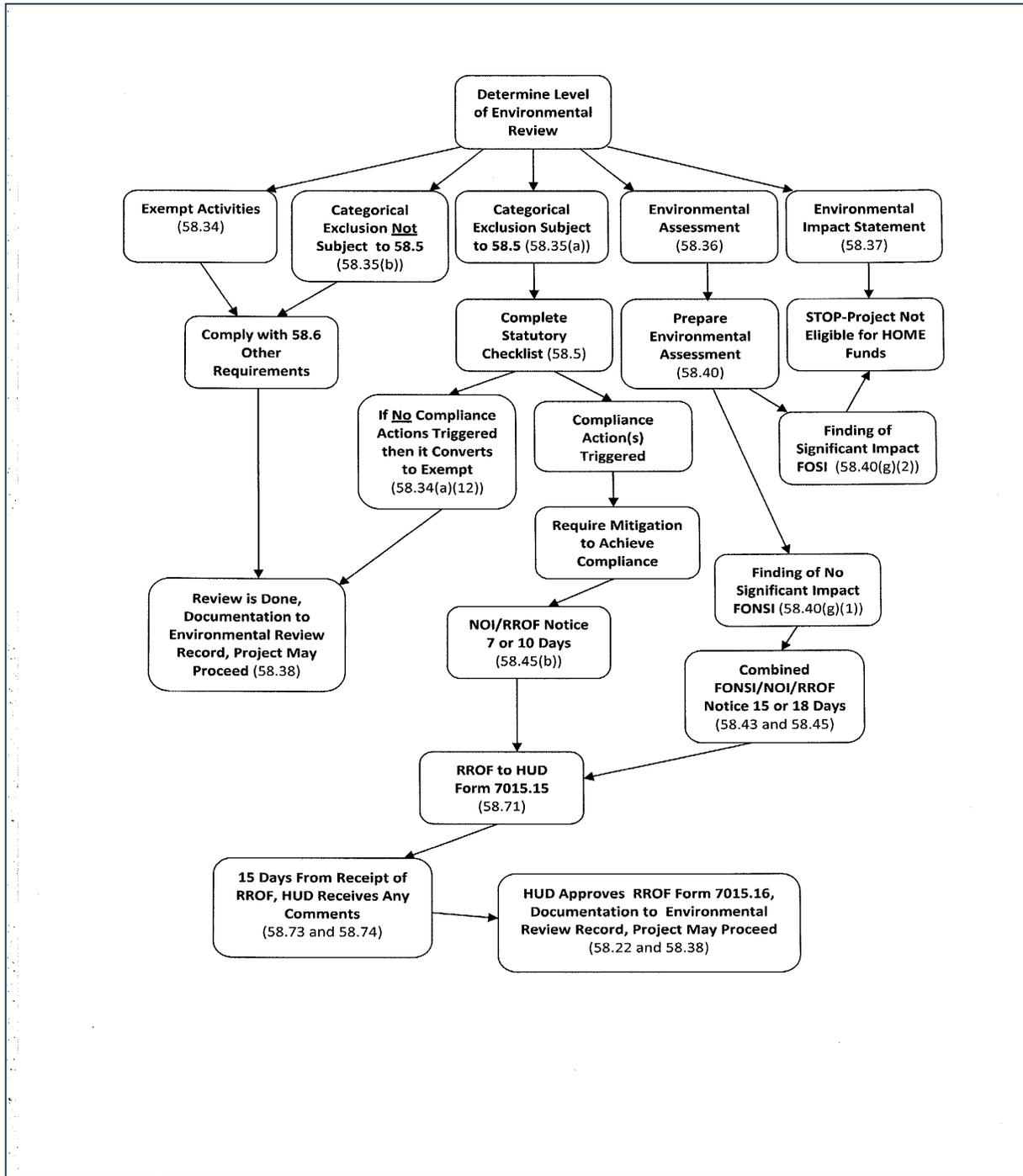
Public Notice Process

A Public Notice is required for all Environmental Assessment level reviews, and for those Categorical Exclusion projects that cannot convert to exempt. Public notices for Environmental Assessments can be a Finding, or No Significant Impact (FONSI), or a combined notice which includes the FONSI, and a Notice of Intent to Request Release of Funds (NOI-RROF). Public notices for non-exempted Categorical Exclusions include the NOI-RROF. IHFA must either publish in a newspaper of general circulation in the affected community or prominently display such notices in public buildings and within the project area. The Public Comment period for the NOI-RROF is 7 days when published and 10 days when posted. The Public Comment period for the FONSI or combined notice is 15 days when published, or 18 days when posted. When the comment period ends, IHFA submits a Request for Release of Funds (RROF) to HUD. Upon receipt of the RROF, HUD has an additional 15-day comment period. If there are no comments, or objections, HUD will issue to IHFA an Authority to Use Grant Funds, at which time the Environmental Review Process, which includes Environmental Clearance, is complete.

Environmental Approval

IHFA notifies the Project Sponsor if and how they may proceed. The Project Sponsor is required to certify and provide evidence of identified environmental Conditions.

If the scope of work changes or funding from any source increases after the completion of an Environmental Review, the ER may require re-evaluation.



LEAD-BASED PAINT

★Residential Housing Constructed On Or Before January 1, 1978 Is Suspended From The HOME and HTF Programs Until Further Notice

APPLICABILITY

HOME and Housing Trust Fund Properties

Due to potential liability issues because of current conflicting interpretations by HUD and EPA lead-based paint rules, IHFA has determined it will not award HOME or HTF funds to any residential unit constructed on or before January 1, 1978. When Federal agency guidance becomes clear in the future, IHFA will re-assess the current suspension of Pre-78 housing.

The following LBP sections are suspended until further notice

Due to the complexity and potential liability involved in LBP requirements, please contact HOME Technical Assistance before planning to undertake a pre-78 activity @ jerik@ihfa.org To be funded, a assisted activity must follow HUD and EPA regulations prior to development, and during development.

Important Note: All required EPA and HUD LBP documentation, disclosures, proof of delivery, reports, notifications, certifications, must be made available to IHFA for any assisted project subject to the LBP regulations.

Any work (repair, maintenance, renovation, alteration, etc.) on a assisted property that was constructed pre-78, is subject to both EPA and HUD's 2012 Lead Safe Housing Rule.

Failure to follow HUD and EPA Lead-Based Paint requirements may jeopardize funding.

Applicability

Assisted residential buildings constructed prior to January 1, 1978 must comply with both

- HUD's 2012 Lead-Safe Housing Rule (LSHR) (24 CFR 35) and
- EPA Renovation, Repair, and Paint Rule (RRP) (40 CFR 745)
- The most restrictive rule applies

Anyone who performs rehab, renovation, and/or maintenance on residential housing built prior to January 1, 1978 for compensation must:

1. Distribute the most current EPA-approved Lead-based Paint disclosure pamphlet found at <http://www2.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure> *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet to the housing owner and all occupants before renovation begins.
2. Obtain confirmation of delivery of *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet from the owner and occupant(s)
3. Retain disclosure and lead hazard reduction activity records for 5 years.

LBP Disclosure Requirements

Property owners and/or their agent must disclose the possibility of lead-based paint in a pre-78 housing unit to prospective homebuyers/occupants/tenants with documentation regarding known lead-based paint hazards.

Seller/Seller's Agency Responsibility**Required Documentation:**

- Notify seller of their obligations under the LBP rules;
- Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to the lessees, buyers, and tenants.
- Must provide buyers, lessees, and tenants with the most current EPA-approved LBP disclosure pamphlet <http://www2.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>
- Seller must give buyer 10 days to conduct a lead-based paint inspection or risk assessment. Timeframe may be negotiated after the minimum.
- Sales contracts must contain the appropriate notification and disclosure language as well as proper signatures.
- Sellers, lessors, and agents share responsibility for ensuring compliance.
- Agent is not responsible for information withheld by seller.

General Requirements for all pre-1978 assisted housing

- All housing units constructed prior to January 1, 1978 must undergo a HUD Visual Assessment.
- The person conducting a Visual Assessment must provide a certificate of completion to IHFA. The HUD Visual Assessment course can be found at <http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>
- IHFA recommends the HUD Visual Assessment and the home inspection be conducted by the same person.

Under HUD's Lead-Safe Housing Rule additional lead hazard evaluation and lead hazard reduction activity may be required:

- Additional evaluation is defined by the type of activity undertaken such as acquisition, acquisition and/or rehabilitation.
- Lead Hazard Reduction Activity- The level of activity is defined by the type of activity undertaken (single-family homebuyer or rental and the amount of Federal funds invested in the property. See below).

Level of Lead Hazard Reduction Activity Required by HUD

(1) Lead-based paint requirements fall into three categories that depend on the lesser of (A) Average Federal Funding per unit or: (B) Average Per Unit rehabilitation hard costs(not including any acquisition soft costs or costs of lead hazard evaluation, reduction, clearance and training rehabilitation assistance provided).

Based on the level of assistance as determined above by the lower of A or B, the three categories are:

- (i) **Assistance up to and including \$5,000 per unit**- Test and Repair Disturbed Paint
- (ii) **Assistance of more than \$5,000 per unit up to and including \$25,000 per unit**- Risk Assessment and Interim Control of Lead Hazards
- (iii) **Federal Rehabilitation Assistance of more than \$25,000 per unit**- Risk Assessment and Abate Lead Hazards

(2) For purposes of determining the activity as described at §35.930 and §35.935, federal assistance includes all Federal funds assisting the project, regardless of the type or use of the funds, including funds

being used for acquisition of the property, construction, permits, fees, and other project costs. The hard costs of rehabilitation include all hard costs, regardless of source (see above for definition of soft costs under the LBP rule). However, the costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to compliance with the requirements of this part are not to be included in the hard costs of rehabilitation.

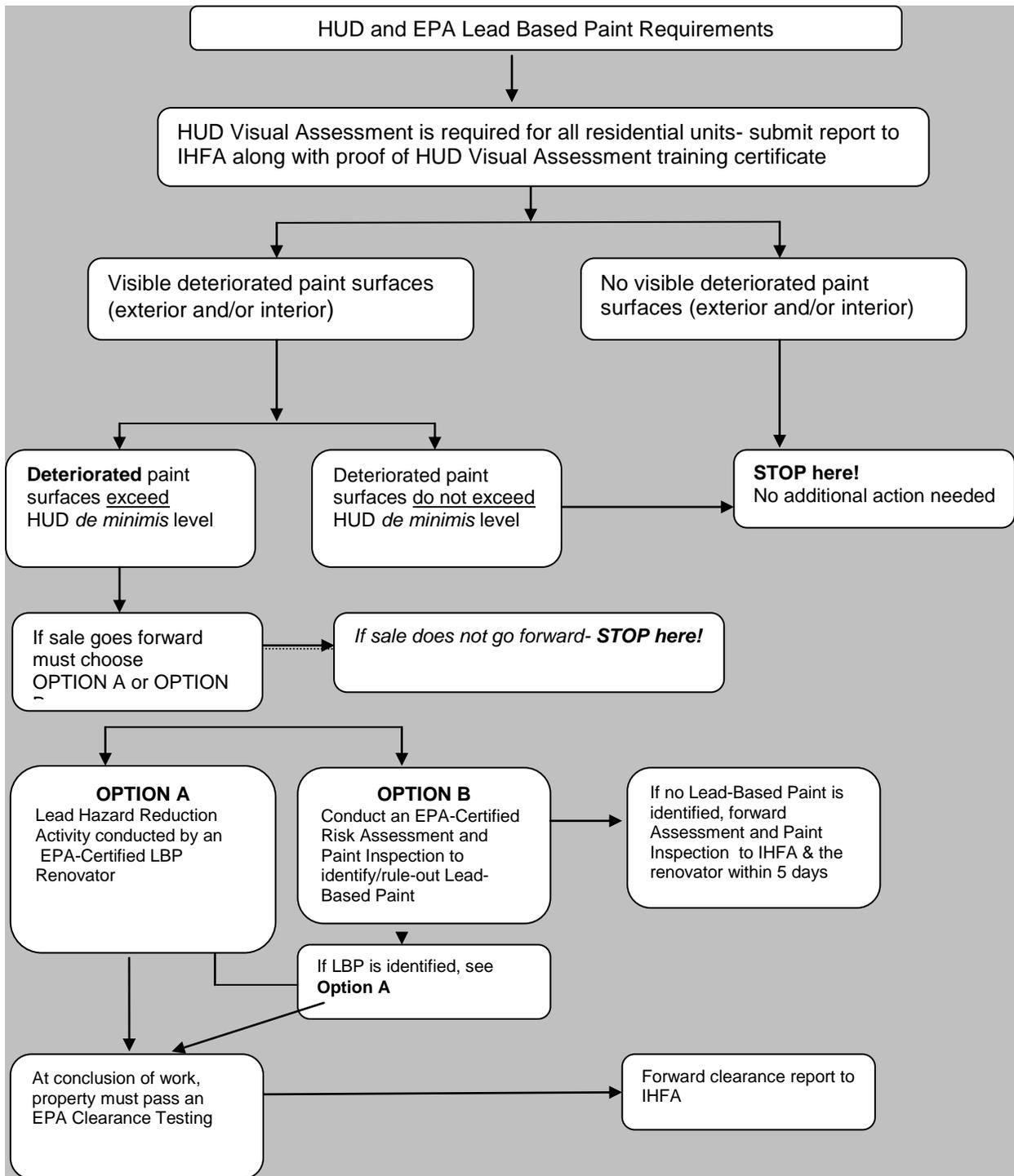
All hard rehabilitation costs are to be included, regardless of whether the source of funds is Federal or non-Federal, public or private.

1. **\$1 to \$5,000 per unit: "Do No Harm" Approach.** Lead safety requirements apply only to the surfaces being disturbed as part of the work. Surfaces may be tested to determine presence of LBP or it can be presumed that the surfaces contain LBP. Work/repairs that may disturb painted surfaces known or presumed to be LBP shall be done by as certified RRP renovator using safe work practices. Clearance testing/report is required.
2. **Greater than \$5,000 and up to \$25,000 per unit: Identify and control lead hazards.** Identify all lead hazards in funded units, common areas and exteriors by performing a Lead Based-Paint Risk Assessment in accordance with HUD's LSHR. Control all hazards using interim controls. Surfaces may be tested to determine presence of LBP or it can be presumed that the surfaces contain LBP. Standard treatments must be used to address hazards. HUD/EPA RRP course is required for renovators and workers.
3. **Greater than \$25,000 per unit: Identify and abate lead hazards.** Identify all lead hazards at the property by performing a risk assessment and then abate all hazards. Surfaces may be tested to determine presence of LBP or it can be presumed that the surfaces contain LBP and abate them. This approach requires certified abatement contractors perform the abatement part of the job.

LBP Requirements for Down Payment/Closing Cost Assistance

If the HUD Visual Assessment, home inspection, or appraisal determines the presence of chipping, peeling and/or deteriorating paint on the interior/exterior that exceeds HUD's 'de minimis' level, and the sale goes forward, there are two LBP options available. Both options must be conducted by a properly EPA certified individual and/or firm.

- **Option A-** LBP Paint Stabilization must be performed by an EPA-Certified Renovation Firm and individual RRP Certified Renovators to address deteriorating paint. Must follow EPA guidelines for this level of hazard reduction activity. Must receive LBP clearance; or
- **Option B-** EPA-Certified Paint Testing and Risk Assessment must be completed. If lead-based paint is identified, then Option A must be followed.



Definitions

Abatement-A set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes the removal of **identified** lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and also all preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Clearance Examination- Clearance must be performed after hazard reduction, rehabilitation, or maintenance activity(s) to determine if the unit is safe for occupancy. It involves a visual assessment, analysis of dust samples, and preparation of a report. The clearance test **MUST** be performed by someone **INDEPENDENT** from the entity/individual that conducted the paint stabilization or hazard reduction activity.

- EPA Certified Risk Assessor
- EPA Certified Paint Inspector
- EPA Certified Lead Sampling Technician (also referred to as a Clearance Technician in HUD Lead-Safe Housing Rule)

De minimis (HUD) - Safe work practices and clearance are not required when maintenance or hazard reduction activities do not disturb painted surfaces below the *de minimis* threshold of:

- 20 Sq. feet (2 sq meters) on exterior surfaces;
- 2 Sq. feet (0.2 sq meters) in any one interior room or space; or
- 10 % of the total surface area on an interior or exterior type of component with a small surface area (such as windowsills, baseboards, and trim).

Hazard Reduction-Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

Interim Controls- A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Lead-Based Paint Inspection- A surface-by-surface investigation is required to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

- EPA Certified Paint Inspector
- EPA Certified Risk Assessor

While a risk assessment determine the presence of lead-based paint hazards in deteriorated paint, only LBP Paint Testing inspection determines the presence of lead-based paint on painted surfaces.

Lead Hazard Screen- A limited risk assessment activity that can be performed instead of a full risk assessment in housing units that meet certain criteria (e.g. are in good condition- paint is intact with no deteriorated paint surfaces). If the unit fails the lead hazard screen, a full risk assessment must be performed.

- EPA Certified Risk Assessor

Paint Stabilization-Repairing any physical defect in the substrate of a painted surface that is causing

paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint Testing- Testing paint on specific surfaces by an EPA- Certified Risk Assessor or Paint Tester with an XRF and includes lab analysis to determine the presence of lead in the tested surfaces

Risk Assessment- A procedure for determining the existence, nature, severity and location of lead-based paint **hazards** in or on a residential property and for reports the findings of the assessment and the option for controlling or abating the hazards that are found. A risk assessment does not identify if lead-based paint is present.

- EPA Certified Risk Assessor

Safe Work Practices-There are four components to safe work practices and they include

- Occupant Protection
- Worksite Preparation and Containment
- Prohibited Methods
- Worksite Cleanup

HUD Visual Assessment- This is a visual assessment of the interior and exterior surfaces to identify the condition of all painted surfaces that may present a lead-based paint hazard. The visual assessment does not evaluate or determine the presence of lead-based paint. The following professionals can perform a HUD Visual Assessment:

- Home Inspector who has certificate of completion for the HUD Visual Assessment course
- EPA Certified Risk Assessor/Paint Inspector
- Other professional not directly involved in the transaction who has certification of completion for the HUD Visual Assessment course (i.e. an appraiser, certified renovator)

Training and printable certificate for the Visual Assessment is available at <http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>

Exemptions

An Exempted property must have prior approval by IHFA Grant Programs.

The following properties are not covered by EPA or HUD LBP regulations, either because lead paint is unlikely to be present, or because children will not occupy the house in the future:

- Housing built on or after January 1, 1978 (when lead paint was banned for residential use)
- Housing (100% of all units) that will or was built exclusively for the elderly or persons with disabilities, unless a child under age 6 is expected to reside there for prolonged periods of time
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified inspector
- Property from which all lead-based paint has been removed, and clearance has been achieved
- Unoccupied housing that will remain vacant until it is demolished
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface.
- Emergency repair actions, which are those needed to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage, are exempted.

Finally, the requirements do not apply to emergency housing assistance (such as for the less), unless the assistance lasts more than 100 days, in which case the rule does apply.

Asbestos

Undertaking rehabilitation where asbestos is present is subject to increasing regulations at all levels of government. Careless, improper, or illegal handling of asbestos-containing materials (ACMs) can subject the contractors, workers, building occupants, and the general public to health hazards, placing the contractor, manager, and owner in a position of potential civil and criminal liability.

Most housing and buildings constructed before 1979 will probably contain some form of asbestos. While there are no federal regulations that require a building owner to inspect, survey, test, or assess for ACMs, there are federal regulations that govern worker exposure to asbestos, abatement procedures, and disposal procedures.

The Environmental Protection Agency and the Occupational Safety and Health Administration are responsible for federal regulations governing asbestos removal. If asbestos is present in an assisted project, an assessment may protect the recipient from being in violation of the law, or from becoming subject to any lawsuits.

SITE AND NEIGHBORHOOD STANDARDS

New construction of rental housing assisted with program funding must comply with the following:

1. The housing must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act and Executive Order 11063 (Equal Opportunity in Housing) and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.
2. The housing must meet site and neighborhood standards according to 24 CFR Part 92.202 and for new construction 24 CFR 983.57(e)(2) and 3.
 - a. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
 - b. The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.
 - c. The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
 - d. A project may be located in an area of minority concentration only if: (a) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; or (b) the project is necessary to meet overriding housing needs that cannot be met in that housing market area.
 - e. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
 - f. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings, or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
 - g. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

- h. Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

SECTION 3

APPLICABILITY

Projects receiving over \$200,000 in aggregate federal assistance where there are contracts for construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards) and a contracts or subcontract that is over \$100,000.
(for additional information, see Admin Plan Exhibit G)

DESCRIPTION

Section 3 requires that economic opportunities generated by certain HUD financial assistance (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low and very-low income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons. **This is a statutory requirement for the award of jobs and contracts generated from projects that receive HUD funding.** The Section 3 regulation is found at 24 CFR Part 135. It is based on Section 3 of the HUD Act of 1968.

Note: Section 3-covered contracts do not include contracts for the purchase of supplies and materials.

Some examples of acceptable outreach:

- Post flyers in and around the area of the project that specifically solicit area Section 3 employees and businesses. Examples could include post office, low-income housing rental offices, churches, service providers, food banks, shelters, etc.
- Post flyers in the rental office of low-income housing in the area of the project
- Use the unemployment office in the area and target local Section 3 employees and businesses
- Submit job/bid proposals, a brief description of project and work, name of company, a response due date, and contact information to:

PTAC

<http://idahosbdc.org/specialized-services/government-contracting-ptac/ptac-services/>

gary.moore@boisestate.edu

lee.velten@boisestate.edu

Use HUD's Section 3 website to search for self-certified Section 3 businesses, register your business, and get information about the business registry @ <http://www.hud.gov/Sec3Biz>.

GOALS

Section 3 has established numerical goals regarding hiring of Section 3 eligible persons and businesses. In meeting these goals, the recipient of federal funds must demonstrate compliance with the "greatest extent feasible" requirement by providing training, contracting, and employment opportunities to Section 3 eligible persons and businesses.

Employment goals: To the greatest extent possible, hire Section 3 persons for Section 3 covered work.

Business goals: To the greatest extent possible, covered contractors/sub contractors will hire 30% percent of the total dollar amount of all Section 3-covered contracts.

Preferences and Eligibility for Training and Employment

HUD has established a preference system for providing employment and training opportunities to Section 3 eligible persons and for awarding contracts to Section 3 business concerns with respect to HOME assisted projects. These preferences are as follows:

Preferences for Individuals	
Preference Category	Description
1	Section 3 eligible persons residing in the project service area or neighborhood
2	Participants in HUD Youthbuild programs carried out in the jurisdiction
3	Other Section 3 residents

Preferences for Businesses	
Preference Category	Description
1	Section 3 business concerns that provide economic opportunities for Section 3 eligible persons in the project service area or neighborhood
2	Entities selected to carry out HUD Youthbuild programs in the jurisdiction
3	Other Section 3 business concerns

Administration and Monitoring

It is important to note that the Section 3 hiring and contracting goals are not intended to be a requirement to employ a Section 3 eligible person or business concern who does not meet the qualifications of the position to be filled or the work to be performed.

The burden of proof of eligibility to be a Section 3 "eligible person" or a Section 3 business concern, rests with the individual or business. Forms have been developed and are available from IHFA to document eligibility for each of the Section 3 requirements described above. Each owner/developer/sponsor is required to maintain records that demonstrate how the Section 3 requirements were met and report such information to IHFA.

Outreach requirements

A good faith, comprehensive and continuing endeavor utilizing available and appropriate public and private sector local resources is suggested when soliciting bids, and hiring new employees and business for assisted activities.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

Recipients will take the necessary steps to include minority and women owned business enterprises (MBE/WBEs) and labor surplus area firms are provided an opportunity to provide goods and services to assisted activities.

Definition

1. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members, or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals.
2. A woman-owned business enterprise is defined as a business that is at least 50% owned by a woman or women who are U.S. Citizens and who also control or operate the business.

Affirmative outreach may include, but not limited to:

- Including MBE/WBEs, when qualified, on solicitation mailing lists;
- Encouraging MBE/WBE participation through direct solicitation of bids or proposals when they are potential sources;
- Utilizing the local media, electronic and print, to market and promote contract and business opportunities for MBE/WBEs;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirements permit, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above;
- Sponsoring business opportunity-related meetings, conferences, seminars, etc.

Recipients will also be responsible for assuring completion of an MBE/WBE Activity Report by each contractor.

Minimum Acceptable Outreach Standards

Section 281 of the National Affordable Housing Act requires recipients to establish an MBE/WBE outreach plan. The minimum standards for such outreach efforts are:

- A good faith, comprehensive and continuing endeavor;
- Publishing a statement of public policy and commitment in the print media of widest local circulation;
- Appointment of an office and/or key-ranking staff person with oversight responsibilities for MBE/WBE outreach and access to the executive director/chief official;
- Utilization of all available and appropriate public and private sector local resources.
- Submit job/bid proposals, a brief description of project and work, name of company, response due date and contact information to:

- PTAC- <http://idahosbdc.org/specialized-services/government-contracting-ptac/ptac-services/gary.moore@commerce.idaho.gov> 208-287-0777
[lee.velten@commerce.idaho.gov](http://idahosbdc.org/specialized-services/government-contracting-ptac/ptac-services/lee.velten@commerce.idaho.gov) 208-287-3167

The proposal/bid will be emailed to all registered MBE/WBE participants in Idaho. Proposal/bid sent by PTAC helps also meet Section 3 outreach requirements.

CONSTRUCTION CONTRACT REQUIREMENTS

Applicability

All HOME and HTF assisted projects

Description

The owner is responsible for selecting a competent contractor to undertake project construction. In most instances, this will require an open bidding process as explained in the following section on Procurement. The owner shall award contracts for construction work only to contractors who are registered with the State of Idaho and licensed by the City/County in which the project is located.

The contract for construction work between the owner and the contractor shall be in a form consistent with the professional standard building practices, and shall contain all terms and provisions necessary for compliance with applicable federal, state, and local laws and regulations.

Owners may not act in the capacity of the contractor or subcontractor(s) unless they have previous project construction management experience, met payment and performance bond or letter of credit requirements, can document a history of successful project completions, and have received IHFA's written approval.

CONFLICT-OF-INTEREST

Applicability

All HOME and HTF assisted projects.

Description

In the procurement of property and services, 24 CFR Part 85.36 and OMB Circular A-110 rules regarding conflict of interest apply. In all cases not governed by those rules, conflicts of interest are not permitted.

In all cases not governed by 24 CFR Part 85.36 and OMB Circular A-110, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by IHFA, by sponsors, or to individuals, housing developers, and other private entities under eligible activities, which authorize such assistance (e.g., rehabilitation of housing).

The provision of 24 CFR 92.356 (f) applies to owners, developer or sponsors.

If a person is: an employee, agent, consultant, officer, elected official or appointed official of IHFA, State recipient or sub-recipient of HOME funds, **AND** has HOME-related responsibilities or access to inside information;

That person may NOT: obtain a financial benefit or interest from any HOME/HTF activity for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

No persons described in the paragraph above who exercise or have exercised any functions or responsibilities with respect to activities assisted with program funds or who are in a position to

participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from an assisted activity (including occupying an assisted affordable housing unit in a project), or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This provision does not apply to an individual who receives funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Exceptions may be granted on a case-by-case basis to further the purposes of HOME/HTF and the effectiveness and efficiency of IHFA's operation.

PROCUREMENT PROCEDURES

Applicability

Recipients may use their own procurement procedures. These procedures must reflect applicable State and local laws and federal regulations, including Section 3 and Minority and Women-Owned-Business Entity Outreach requirements (see Section 3 and MBE-WBE in this chapter). Recipients will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This system must be in writing. The Project Sponsor must keep all project records, invoices, and proof of payment for five years after the Project completion date. Project Sponsor and Contractor will be required to certify they have followed their procurement policy/procedures.

Description

Definitions of procurement and contracting terms can be found in Exhibit "H."

Ethics in Public Contracting

Recipients will maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the HOME recipient shall participate in selection, or in the award or administration of a contract supported by HOME funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following have a financial or other interest in the firm selected for award:

- The employee, officer, or agent of the HOME recipient; **or**
- Any immediate family member of the employee, officer, or agent of the HOME recipient (this includes father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister); **or**
- His or her partner; **or**
- Any firm selected for award which employs, is negotiating to employ, or is about to employ any of the above.

The recipient and/or his agent will neither solicit, nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Cost and Price Analysis

The common rule on grantee procurement requires a cost or price analysis be performed for every procurement. An independent cost estimate for each procurement must be made before soliciting bids or proposals. The extent of the analysis depends on the dollar value and complexity of the procurement. In most cases, it will be sufficient to use price analysis, which may be as simple as comparing the independent cost estimate with the competitive prices received, to ensure that the contract price will be reasonable. A cost analysis serves to assist the recipient in preparing for negotiations with the contractor to obtain a reasonable price.

In developing the independent cost estimate, the recipient may use available published price lists, construction cost estimating publications, Davis-Bacon wage rates, architect cost estimates, and pricing history from prior contracts. The estimate should include anticipated labor costs, material expenses, subcontracted items, overhead, profit, and any other cost factor that might have an impact on the eventual contract. In the case of commercial items, the estimate should be based on published catalog or market prices, and the recipient should maintain available price lists from local or national vendors to assist in developing independent cost estimates.

The independent cost estimate is considered confidential information that shall not be disclosed with outside sources. The reason for this protection is that contractors often bid the same as or less than the independent cost estimate, if known, as a means of securing a contract award without consideration of the true cost of a job. The preferred approach to procurement is to have each prospective contractor conduct an analysis and develop the offer independently, considering only what the stated needs are, without relying on an estimate of what the recipient is able to afford. To assist the bidders in understanding the scope of the project, it is acceptable to disclose a general range of dollars for construction contracts; for example: less than \$25,000; between \$25,000 and 100,000; between \$100,000 and \$250,000.

In addition to the initial independent cost estimate, when competition is not obtained, a change order has been issued, or the procurement is for complex items such as professional services, the recipient should perform a cost analysis which involves obtaining a cost breakdown from the proposed contractor(s), analyzing the labor, material, indirect costs, and profit proposed, and identifying areas of questioned costs, unallowable costs, or items which appear to be inflated or unnecessary.

Contract Types

Recipients should strive to award their procurement on a stipulated sum basis as much as possible. Under this pricing arrangement, the risk of increased cost during contract performance is on the contractor, because the price is established in the contract and is not subject to later adjustment.

Methods of Procurement

The procurement method to be used will depend on the expected dollar value of the procurement. The independent cost estimate performed prior to announcing the bidding process will assist the recipient in determining which method should be used. For small purchases, the process may be as simple as examining the price paid in the most recent contract for the same or similar item(s) and factoring in inflation or changed market conditions. For larger contracts, this process may be more complex, involving a written analysis of the estimated labor categories and hours required, materials, subcontractors required, etc.

When acquiring goods or services, the recipient must provide contractors with clear and accurate specifications of the technical requirements for the material, product, or service required. Such specifications shall not contain features that unduly restrict competition. The specifications will include a

statement of the quantitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform to satisfy its intended use.

Procurement transactions must be conducted in a manner providing full and open competition. To assure compliance with these requirements, procurement of equipment, material, and supplies, as well as the awarding of contracts for services, repairs, and maintenance shall be done in one of the following manners, as indicated by the specific procurement needed:

1. **Procurement by Small Purchase Procedures**

Small purchase procedures are those relatively simple and informal procurement methods for purchasing services, supplies or other property that do not cost more than \$100,000.00 The recipient will be responsible to try to obtain a minimum of three price or rate quotations from qualified sources and must maintain adequate documentation of all quotations in the file.

2. **Procurement by Sealed Bids**

Bids are publicly solicited and a firm-fixed-price contract is awarded. The award will go to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction contracts.

For construction contracts and routine supplies above the small purchase limit, the recipient must abide by the following:

- a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening bids;
- b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services required in order for the bidder to be able to respond properly;
- c. All bids will be opened publicly at the time and place prescribed in the invitation for bids;
- d. The low bid must be examined to determine whether the low bid is responsive to the Invitation for Bids (IFB) (i.e. conforms to its requirements), and if the low bidder is capable of performing the work for the price quoted. The recipient should also perform a price analysis, which may be as simple as comparing the prices received to the in-house cost estimate to ensure that the contract price will be reasonable.
- e. A firm-fixed-price contract will be awarded in writing to the lowest responsive and responsible bidder. No bid shall be considered for award if the bid is not responsive to the essential requirements of the solicitation or is submitted by a non-responsible bidder. Conditions and alternatives imposed by a bidder which give the bidder an advantage over other bidders, or limit the recipient's rights (such as conditioning the bid on receiving award of another contract as well) or affect price, quantity, quality, or delivery against the best interest of the recipient are causes for bid rejection as non-responsive. In addition, documented previous unsatisfactory performance is grounds for determining that the bidder is not responsible.
- f. Any and all bids may be rejected if there is a sound documented reason for the rejection.

3. **Procurement by Competitive Proposals**

Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids, such as when contracting for professional services. Under the competitive proposals method, both technical and price factors are considered in awarding the contract. The process begins with the recipient describing its needs in a statement of work, and preparing both an independent cost estimate and a technical evaluation plan for analyzing proposals received. If this method is used, the following requirements apply:

- a. Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- b. Proposals will be solicited from an adequate number of qualified sources;
- c. Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- d. Awards will be made to the responsible firm, whose proposal is most advantageous to the program, considering price and other factors.

4. **Qualifications-Based Selection**

The Qualifications-Based Selection (QBS) method, where price is not used as a selection factor, is permitted only in procurement of Architectural and Engineering services. Under QBS, the recipient requests technical qualifications statements from prospective contractors, and then ranks them technically. The recipient then holds negotiations with the top-rated firm to reach agreement on a fair and reasonable price. If an agreement cannot be reached, the recipient then negotiates with the next highest rated firm, and so on until a fair and reasonable price is obtained. This method is prohibited for the purchase of any other types of services.

Pre-Bid Conference

After the Invitation for Bids (IFB) is issued and before bids are due, the recipient may hold a pre-bid conference with prospective contractors to discuss the IFB and explain any unusual circumstances or requirements. The conference should be attended by both the Contracting Officer and supporting technical staff. A pre-bid conference is normally conducted only for large or complex procurements. Notice of any scheduled conference must be included in the IFB. The timing of the conference should allow bidders enough time to review the IFB and adequate time to revise their bids before bid opening. At the conference, the Contracting Officer should state that nothing at the conference will change the terms of the IFB unless a subsequent amendment is issued. A summary or transcript of the conference should be sent to all those on the solicitation mailing list, not just those who attended. Attendance at the pre-bid conference, while desirable, should not be mandatory, and lack of attendance should not be a basis for rejecting a bid as nonresponsive. Some firms may already be so familiar with the work that attendance is not necessary. Other firms may not be able to schedule a representative to attend, although they may be well qualified to do the work at a reasonable price.

Contractor Qualifications and Selection

Obtaining quality workmanship and products from contractors is critical. It is essential that recipients do business only with contractors who are considered responsible. Responsible contractors are those who have the ability to perform the required work, both financially and technically, and who have a satisfactory record of integrity, past performance, and compliance with public policy (e.g., the Equal Employment Opportunity requirements). Consideration should also be given to such matters as the contractor's financial and technical resources in assessing the contractor's ability to successfully complete the job.

If the recipient is familiar with the contractor and considers him or her to be responsible, then no formal analysis is required. However, if uncertain as to the contractor's reliability, a pre-award survey may be

warranted. A pre-award survey may entail an on-site inspection of the bidder's facility, including a review of financial statements, record keeping, production capacity, contacts with the contractor's other clients, or similar factors that impact on the ability to perform the contract.

A determination of non-responsibility must be made by the Contracting Officer if, after a thorough pre-award survey, the information obtained does not support a finding that the prospective contractor is responsible. A recipient is not required to do business with a non-responsible firm, even if that firm is the low bidder. Federal standards require the contract to be awarded to the lowest responsible bidder.

The Recipient is responsible for notifying IHFA upon selection of a contractor. The recipient should supply IHFA the name, address, owner, and tax ID number of the contractor. IHFA will then submit the contractor to HUD for clearance. The Association will not approve any contract or subcontract to any party which has been debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

Once the contractor is cleared through HUD, the contractor and the Recipient will sign a contract and a Notice to Proceed will be issued.

Bonding Requirements

For construction or rehabilitation contracts over \$100,000, or any sealed bid construction contract, three types of bonds or guarantees are normally required: a bid guarantee, a performance bond, and a payment bond. Performance and payment bonds requirements are described at Section "Construction Contract Requirements" in this chapter.

A bid guarantee or **bid bond** is submitted by the bidders with their bids and assures that, if awarded the contract, the bidder will accept and perform the contract and not attempt to withdraw or otherwise disavow the contract and will execute such contractual documents as may be required within the time specified. A certified check, bank draft, U.S. Government Bonds at par value, bid bond secured by a surety company or other negotiable instrument may be accepted as a bid guarantee. A bid guarantee must equal no less than 5% of the bid price.

If the low bidder fails to produce acceptable assurances of completion, the recipient shall consider the bid guarantee forfeited and notify the surety company, if any. The amount to be recovered should equal at least the difference between the defaulted bid and the next higher acceptable bid, or the amount by which the bid accepted by re-soliciting exceeds the defaulted bid. The defaulting bid should not be rejected until after recovery.

DAVIS-BACON

Contracts for the construction or rehabilitation of affordable housing consisting of **12 or more HOME-assisted unit** must contain the provision that requires not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276 a-5).

HTF-Specific

The HTF was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289). This statute did not make the labor standards of Davis-Bacon applicable to the HTF. Therefore, in order to be consistent with the statute, HUD did not require Davis-Bacon labor standards on the HTF in the interim rule.

Prevailing wages will be paid to all laborers and mechanics employed on the job, and such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety

Standards Act (42 CFR Part 327-333). All contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards including HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable.

The developer is responsible to monitor, compile the appropriate documentation and forward copies to IHFA. IHFA requires certification of compliance with the provisions of this section before making any payment under such contract.

Davis-Bacon provisions do not apply to volunteers.

Volunteer defined as:

- Works without pay on the construction project to which Davis-Bacon and related Acts apply
- Restriction: Cannot be paid for work on the project and then volunteer for other work on the same project
- Permissible: May cover reasonable costs such as travel or other incidental benefits

Definitions

A small business is defined as a business that is independently owned, not dominant in its field of operation, nor an affiliate or subsidiary of a business dominant in its field of operation.

A minority-owned business is defined one in which is at least 51% owned by one or more minority group members, or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. A women's business enterprise is defined as a business that is at least 50% owned by a woman or women who are U.S. Citizens and who also control or operate the business.

A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A (See Appendix D).

Affirmative Steps may include, but not limited to:

- Including MBE/WBE on solicitation mailing lists;
- Encouraging MBE/WBE participation through direct solicitation of bids or proposals when they are potential sources;
- Utilizing the local media, electronic and print, to market and promote contract and business opportunities for MBE/WBEs;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirements permit, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above;
- Sponsoring business opportunity-related meetings, conferences, seminars for MBE/WBE

HOME recipients will also be responsible for assuring completion of an MBE/WBE Activity Report by each contractor. This report will include minority or women owned business status, Social Security or Tax ID numbers, and addresses for all contracts and sub-contracts.

CONTRACT/CONSTRUCTION MANAGEMENT

Applicability

All HOME and HTF-assisted construction projects

Description

The recipient will monitor the construction phase of the project to assure the contractors perform on time and in accordance with the terms, conditions, and specifications of the contract. This includes adherence to federal requirements regarding Section 3 and Minority and Women-Owned Business (MBE/WBE) concerns (requirements are set forth in this chapter). Failure to closely monitor progress and work performance can result in unnecessary additional costs and time delays for the recipient.

A recipient must maintain a system of contract administration based on good management concepts and federal standards.

Objectives of contract administration are to assure that:

- The contractor complies with the contract's terms and conditions and requirements, including Section 3 and MBE/WBE
- The contracted-for product/service quality is provided
- The quality is delivered in a timely manner

To accomplish these objectives, the HOME recipient should:

- Pro-actively monitor performance and progress
- Make appropriate contract modifications
- Address unsatisfactory performance immediately

To assure good contract administration, the recipient should:

- Read the contract
- Establish the monitoring plan before awarding the contract
- Engage in timely monitoring, proper documentation, and problem solving

After the Award

Once a contract is awarded, recipient should:

1. Grant Programs staff and the recipient should hold a pre-construction conference to assure that all parties fully understand the terms and conditions; operation and delivery schedule; and reporting and monitoring conditions of the contract
2. Grant Program Staff will issue a Notice to Proceed to the applicant and the recipient can then issue a Notice to Proceed or similar order to their contractor
3. Monitor the contractor's performance.

This is accomplished by reports such as progress reports, technical, financial, time, personnel:

- a) On-Site Visits
 - b) Compare actual performance with the contract schedule
 - c) Compare contractor's reports and billings with actual performance
 - d) Observe use of personnel, equipment, and materials and compare with the contract requirements.
 - e) Progress Meetings
4. Receive and inspect all materials/supplies.
 - Accept/Reject deliveries as applicable: If materials/services are not acceptable, you have three options: reject the materials/services completely; require a correction; or accept with or without a consideration on the part of the provider.
5. Make the payments as specified in the contract.

6. Perform a final inspection of the work/service.
7. Close out the contract completing all documentation and reporting.

Contract Modifications

Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort. All contract modifications must be in writing; signed by an authorized representative of all parties; be within the general scope original contract; and undergo a cost analysis.

There are three types of contract modifications:

1. Administrative Change Orders: Changes that alter administrative details and do not effect substantive requirements of the contract.
2. Change Orders: A written order directing the contractor to make changes to the contract within the original scope of work. Change orders must be executed for any deviation, addition, or deletion made to the original job specifications. Examples include changes to any of the following:
 - a. Specifications
 - b. Completion of Work
 - c. Description of Work
 - d. Method or Manner in Which the Work is performed
 - e. Furnished Facilities, Equipment, Materials, Services, or Site
3. Supplemental Agreements- Modifications that add additional work or revise the existing contract terms mutually agreed upon.

The recipient shall submit the following information concerning all contract change orders to IHFA for review and approval:

- A detailed description of the proposed change in work;
- A reference to the applicable working drawings and specifications;
- A fixed price (credit, debit, or no change) for the change in contract work;
- Estimate of the time, if any, required to complete the work;
- The contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors; and
- The change indicated on the architectural or engineering drawings, if applicable.

Change Orders must be submitted to IHFA for approval and signature prior to the work being performed or materials being acquired. The recipient shall maintain accurate records and documentation regarding contract modifications by including a register in each contract file. This is required to provide a permanent record of all actions taken in connection with each contract. To provide an overview of all contract modifications and for tracking purposes, the recipient should consider maintaining in the contract file a register of modifications to identify:

- The number of modifications;
- A brief description of the modification;
- The cost of the proposed modification;
- The amount of additional time required by the contractor.

Contract Termination

The recipient may terminate a contract or purchase order for default for any of the following reasons: failure to deliver the supplies, services, or construction as specified; failure to perform work in a timely manner; violation of a contract clause, such as the prohibition against gratuities; repeated violations of labor standards; and similar reasons. A default clause must be included in the contract that provides for

termination without negotiation when the contractor fails to perform as specified in the contract. Contracts terminated for the convenience of the recipient likewise require immediate work stoppage, but termination costs are negotiated until a satisfactory settlement is reached.

The recipient shall terminate a contract for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail, return receipt requested. The notice shall state the following:

- That the contract is being terminated for the convenience of the recipient or for default, under the contract clause authorizing the termination;
- Whether the contract is terminated in whole or in part; for partial termination, identify the specific items being terminated;
- If terminated for default, the acts or omissions constituting the default, the Contracting Officer's determination that failure to perform is not excusable, the recipient's right to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;
- The effective date of termination;
- If a partial termination, the contractor's right to proceed under the un-terminated portion of the contract;
- Any special instructions.

Copies of the notice should be sent to the contractor's surety, if any, and assignee, if any.

Payment of Contractors

All recipient contracts shall indicate the schedule for payment to the contractor. This may be on a periodic basis, such as every two weeks for construction or service contracts, or for single or multiple items of supply. To maintain good relations with contractors, the recipient should ensure that work performed by contractors is inspected in a timely manner and that contractor invoices are paid promptly for work accepted.

For each monthly draw request the owner/developer, contractor, and the architect shall meet to do an on-site inspection of the work performed and the materials used and/or on site.

IHFA staff will attend as many of these on-site inspections as possible. If IHFA is not able to attend, the architect's certification that the work has been performed and the building materials are on site will suffice. If there are particular items of concern the architect or sponsor may submit actual photos of the construction site via e-mail.

Please Note: If any draw request covers, in whole or in part, a payment for materials not yet incorporated into the Project, IHFA shall have no obligation to make such disbursement unless IHFA determines, from evidence provided by the Contractor, that the materials are stored at a secured and protected location acceptable to IHFA; that the materials are fully insured under a satisfactory insurance policy naming IHFA and the Sponsor as loss payees; that the materials are identifiable and, if stored off the property, are non-fungible and properly segregated from materials not intended for the Improvements; and that IHFA has a perfected security interest in the materials.

ACCOUNTABILITY AND FINANCIAL MANAGEMENT

Applicability

All HOME and HTF assisted projects

Description

Recipients of program funds must be able to identify and track program dollars received to an approved budget item. Financial records must be kept for each loan received to facilitate recording, for future auditing purposes, and project closeout.

LIMITED-ENGLISH PROFICIENCY REQUIREMENTS

Applicability

All HOME and HTF-assisted projects

Description

Project sponsors/managers must make reasonable efforts to provide **meaningful** language assistance to limited English-proficient persons to ensure they have equal access to the recipient's programs and activities.

General Requirements

- Conduct the four-factor analysis (see below) to determine when/if alternate formats are necessary. If analysis determines the need for alternate formats:
 - Develop a Language Access Plan
 - Provide **appropriate meaningful** language assistance

A four-factor analysis can help determine if/when alternate format requirements, including timely notification, are necessary:

Step 1. Establish the number or proportion of potential Limited English Proficiency (LEP) groups served/encountered in the area of program, activity, or service impact;

Step 2. Determine the frequency which (affirmatively furthering fair housing), activity or service or, the likelihood that members of those protected classes would be reluctant/unable to learn about same ;

Step 3. Prioritize the nature and importance of the program, activity, or service or document (i.e. is it a 'Vital Document')

A '**Vital**' document or information is defined as a document or information that has/will have a serious or legal consequence if not provided accurately or in a timely manner (eviction notices, notice to vacate, URA notices, lease agreement, etc.)

Step 4. Determine the resources available as well as costs of providing the service;

Applicability

All HOME and HTF-assisted projects

Description

The meaningful access requirement of the Title VI regulation requires recipients to make reasonable efforts to provide language assistance to ensure meaning access for LEP persons to the recipient's programs and activities. IHFA must work to ensure that activities receiving federal funds provide meaningful access to LEP persons. To do this, the recipient should: 1) Conduct the four-factor analysis; 2) develop a Language Access Plan (LAP); and 3) provide appropriate language assistance.

ANALYSIS OF IMPEDIMENTS TO AFFIRMATIVELY-FURTHERING FAIR HOUSING CHOICE

“Analysis of Impediments (“AI”) to Fair Housing and Community Resources

IHFA and the Idaho Department of Commerce (“IDOC”) commissioned a statewide AI research project to expand and update information gathered to date, including data on patterns of fair housing complaints, local codes and ordinances, demographic information, surveys and interview responses.

<http://www.idahohousing.com/ihfa/grant-programs/plans-and-reports.aspx>
