

## **FEDERAL REQUIREMENTS**

The HOME Program triggers federal regulatory requirements set forth in 24 CFR part 5 subpart A. These requirements include, but not limited to:

- Non-Discrimination Policy
- Equal Opportunity and Fair Housing
- Accessibility Requirements
- Section 504
- Fair Housing
- Affirmative Marketing
- Environmental Review
- Section 3
- Construction Contract Requirements
- Conflict of Interest
- Procurement
- Contract/Construction Management
- Project Sign Requirements
- Lead-Based Paint
- Asbestos
- Site and Neighborhood Standards
- Accountability and Financial Management
- Uniform Relocation Act (URA)
- Limited English Proficiency

The following section will summarize the major components of each regulation, as well as the compliance requirements. Due to the complexity of the various federal requirements, a sponsor is encouraged to contact IHFA's Technical Assistance Coordinator at least 45 days prior to submission of the HOME application.

## **NON DISCRIMINATION POLICY**

### **Applicability**

All HOME assisted projects.

### **Description**

HOME 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 status or because such person is a recipient of federal, state, or local public assistance.

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

All HOME applicants and sponsors must adopt a non-discrimination policy and include a copy of this written policy in the HOME application information. The following sample language meets the HOME Program requirements:

### Sample Non-Discrimination Policy Language

<p>_____ (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 status or because such person is a recipient of federal, state, or local public assistance.</p>	
<p>This policy was adopted on _____ (Date).</p>	
Signed: _____	_____
Board Chair	Executive Director

### EQUAL OPPORTUNITY AND FAIR HOUSING

#### Applicability

All HOME assisted projects.

#### Description

Owners and managing agents of HOME 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 status 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 choices for both public and privately funded housing. A fair housing policy must be adopted by all HOME recipients 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). Consistent with HUD's responsibilities under these Orders, IHFA will make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. HOME-funded sponsors will be required to mail notices to minority businesses, as listed in the Minority Business Enterprise Directory of the State of Idaho, in a geographical area of a 60 mile radius of the Project locations to notify minority contractors of the opportunity to bid.

In addition, Request for Proposals will be advertised in minority publications and circulated to IHFA's HUD approved minority contacts list.

**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 or familial 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 or familial 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)  
\_\_\_\_\_, \_\_\_\_\_ (Title)  
\_\_\_\_\_, \_\_\_\_\_ (Title)  
\_\_\_\_\_, \_\_\_\_\_ (Title)

**ACCESSIBILITY REQUIREMENTS**

**Applicability**

All HOME 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.

All owners and managers of HOME-assisted housing must comply with the appropriate provisions of each of these acts in the development and management of the housing. Each project will be monitored for compliance with these regulations.

### **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.

### **Definition of recipient**

Recipient is defined as any 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’s 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 Defined**

An individual with a disability is any person who has 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 that there may be some limits to the degree to 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 sufficient accessibility so that 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 that 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 and second 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 that activities and meetings are conducted in accessible locations.

### **Reasonable Accommodation**

A "reasonable accommodation" is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability 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, for example, those, 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 a 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.

### **Rehabilitation Requirements**

Under Section 504, alterations are substantial if they are undertaken in a project that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility. The new construction provisions of 24 CFR 8.22 apply, which requires that a minimum of 5% of the dwelling units, or at least one unit (whichever is greater), shall be made accessible to persons with mobility disabilities. An additional 2% of the dwelling units, or at least one unit (whichever is greater), shall be made accessible to persons with hearing or visual disabilities.

Projects and project sponsors must meet the following specific Section 504 requirements:

1. **Remove physical barriers**

For New Construction multifamily rental projects, 5% of the units in the project must be accessible to individuals with mobility problems, and an additional 2% must be accessible to individuals with sensory impairments.

- a. Section 504 has a different definition of Substantial Rehabilitation than the HOME program. For Section 504, a project with 15 or more units for which the rehabilitation costs will equal at least 75% of the replacement cost, 5% of the units in the project must be accessible to individuals with mobility problems, and an additional 2% must be accessible to individuals with sensory impairments.
- b. When less extensive rehabilitation is undertaken, every alteration to every unit must make the unit accessible to the maximum extent feasible until 5% of the units in the project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the project accessible to the maximum extent feasible.
- c. Structures not undergoing alteration do not have to be made accessible if the program as a whole can be made accessible through other means.

2. **Provide program accessibility**

The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

- a. Persons with disabilities must be able to find out about, apply for, and participate in federally assisted programs or activities.
  - b. Special communication systems may be needed for outreach and ongoing communication (for example, a TDD telephone line, materials in Braille or on tape, etc.).
  - c. All policies and procedures must be non-discriminatory.
3. **Make employment accessible**
- a. Employers must not discriminate on the basis of disability.
  - b. Employers must remove physical and administrative barriers to employment.
  - c. Employers must make reasonable accommodations for persons with known disabilities.
4. **Meet administrative requirements**
- a. If recipients or sub-recipients have 15 or more employees, they must:
    1. Designate a Section 504 Coordinator
    2. Notify program participants and employees of non-discrimination policies
  - b. All recipients and sub-recipients must conduct self-evaluations of compliance with Section 504.

## **FAIR HOUSING ACT**

### **Applicability**

All HOME assisted projects

### **Description**

If a new construction project has four or more dwelling units and is built for first occupancy after March 13, 1991, it is also subject to the accessibility and adaptability requirements of the Fair Housing Act (FHA), regardless of whether it receives federal financial assistance. The FHA's accessibility requirements are not as strict as those for Section 504 and the UFAS; however, the FHA's accessibility requirements apply to a broader number of dwelling units. Under the FHA's new construction requirements, if the building has an elevator, all of the dwelling units must meet the FHA's design and construction requirements; if there is no elevator, all of the ground floor dwelling units must meet the FHA's requirements. A unit that meets the FHA's accessibility requirements will be one that does not have as great a degree of accessibility as a UFAS complying unit, but is one that may be easily adapted to be fully accessible without significant costs and the need to do significant structural modifications.

### **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.

## **POLICY AND PROCEDURES FOR AFFIRMATIVE MARKETING**

### **Applicability**

All HOME-assisted projects with 5 or more units.

### **Description**

In furtherance of the State of Idaho’s commitment to non-discrimination and equal opportunity in housing, HOME project sponsors are required to establish procedures for affirmatively marketing their housing units and for affirmatively marketing loan opportunities under the Homeowner Program. The procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability.

HOME project sponsors will be 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.

### **Affirmative Marketing Plans**

Affirmative marketing plans should include at least 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 logotype or slogan, and display of 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. Advertising in the local news media;
  - b. Placing 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. Notifying 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; and/or;
    - e. Use of 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; and
    - d. All applicants 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 will require corrective actions if sponsors fail to carry out the required procedures. Corrective actions may include, but are not limited to, withholding unallocated funds, requiring the return of unexpended funds, requiring the repayment of expended funds or requiring the return of program income. If, after discussing ways to improve procedures the sponsors continue to fail to meet the affirmative marketing requirements, IHFA will also consider disqualifying them from future participation in the HOME Program.

## **ENVIRONMENTAL REVIEW OVERVIEW**

### **Applicability**

The HUD regulations (24 CFR Part 58) require that agencies responsible for administering HOME funds follow specific procedures in completing Environmental Reviews (ER).

Different levels of review apply to different types of projects, but all HOME projects are subject to ER. IHFA as the responsible entity must comply and document the criteria, standards policies, and 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. Additionally,

IHFA must meet the requirements listed at Section 58.6 and maintain documentation in the environmental review record for all projects regardless of whether the activity is exempt under Section 58.34 or categorically excluded under Section 58.35(a) or (b).

### **Description**

The purpose of the environmental review is to determine whether a federally funded activity may have an adverse impact on the human environment. If so, the ER establishes whether that impact is "significant," and what, if any, measures must be taken to mitigate the project's impact on the human environment. Mitigating actions can be required even if the impact is not considered significant. The primary legislation determining environmental review requirements is the National Environmental Policy Act (NEPA) of 1969, as amended.

### **Timing of Reviews and Related Restrictions**

Following a reservation and/or conditional commitment of HOME funds, an environmental review must be completed before the site is acquired, before any construction activities occur on the site and before HOME Program funds can be obligated to the project. The exception to this is if the site has been acquired before the HOME application is submitted to IHFA. ***No funds will be committed to a HOME activity or project before the completion of the Environmental Review and approval of the Request for Release of Funds from the United States Department of Housing and Urban Development (HUD). See Exhibit "S".***

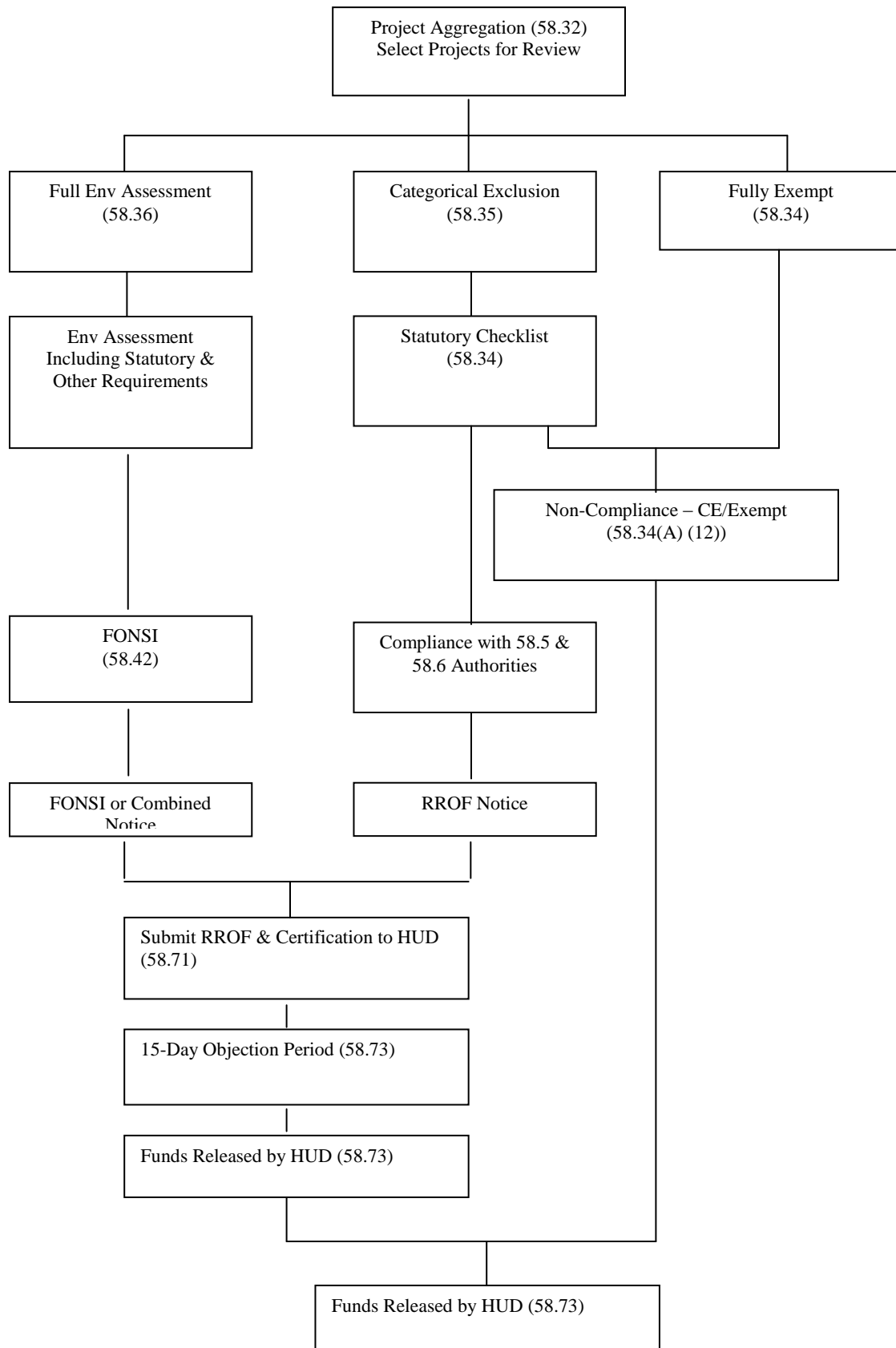
Once a HOME application has been submitted, do not acquire property, start construction, demolition, rehabilitation, lease, rent, or conduct any other choice-limiting activity on the property until HUD has issued a release of funds and IHFA sends notification of such. This also applies to any affiliate or related entities. If any of these activities occur during the environmental review process, the conditional reservation of HOME Funds ***may be rescinded.***

If funds are distributed to units of general local government, the unit of government will assume the environmental review responsibilities as described in 24 CFR 58.10. The project sponsor may be required to assist in completing the environmental review by providing information about the site. Unless they are units of general local government, project sponsors are never responsible for completing environmental reviews.

### **The Environmental Review Process**

Completion of the ER process, which includes environmental clearance, is mandatory **before** any site limiting activities are undertaken. Site limiting activity is **any** physical action on a site by the sponsor or developer or anyone associated or contracted by the sponsor or developer. Environmental clearance must be completed before a commitment or expenditure of HUD or non-HUD funds for property acquisition, demolition, clearance, rehabilitation, conversion, lease, repair or construction activities. Non-HUD funds are defined as any **other** federal, state, local, private, or other funds.

As indicated above, project sponsors, contractors, owners, developers and any affiliate or related entity must not expend public or private funds or execute a legally binding agreement for property acquisition, rehabilitation, demolition, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.



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 Handbook has been compiled by IHFA for use in completing Environmental Reviews. This Handbook is available upon request from IHFA.

There are five possible levels of environmental review. 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 58.34). The only action required by IHFA before the release of funds is to complete the environmental review and place a dated “Exempt Certification” in the HOME project file. 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 activity 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 ft 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 either 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. A physical 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 from a variety of interested local, state, and federal authorities as to the potential impact of the project on the human environment, in their opinions; and

In the event that *no significant impacts* are found:

- d. 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
  - e. 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 16 days following the end of the comment period for the FONSI. See 58.45 for all public comment periods.

In the event that *significant impacts are found*, an Environmental Impact Statement is required, see below.

**5. Environmental Impact Statement:** In the event the EA reveals that the project would have a potentially significant impact on the *human* 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 the human environment, and therefore requiring an EIS, under National Environmental Policy Act, will be declared ineligible for HOME funds.**

### **Environmental Assessment Compliance Areas**

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. Section 106 requires federal agencies to consider the effects of their undertaking on historic properties and resources. There is a specific requirement to make a reasonable and good faith effort to identify tribes that might attach religious and cultural significance to the properties in the area of potential effect.

**Activities that meet criteria are:**

#### **1. Historical Preservation:**

Rehabilitation Activities involving properties over 50 years old 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.

**2. National Graves and Repatriation Act**

Section 106 of the Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and resources. There is 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. See <http://home.nps.gov/nacd/> to identify potential tribe(s).
- b. If the tribe demonstrates interest, under the National Graves and Repatriation Act, they must be invited to participate in a consultation.

**3. Floodplain Management:**

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of 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 and the flood hazards are mitigated to the satisfaction of IHFA, which includes completing an 8-Step Process to determine that there are no alternate suitable sites available. If, this can be proven by the Sponsor, 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.

**4. 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 suitable sites available.

**5. Sole source aquifers:** 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. 300h-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 (maps of their locations can be found on-line at:

<http://www.epa.gov/safewater/swp/ssa/reg10.html>) 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, EPA, and Department of Commerce.

**6. 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 NOAA fisheries.

7. **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)).
8. **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)).
9. **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).
10. **Environmental Justice**  
Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (3 CFR, 1994 Comp. p. 859). The purpose of considering environmental justice is to determine if the placement of a unit at a specific site places low and moderate income people or minorities at a greater environmental risk than the general population.
  - a) Contaminated, hazardous, or toxic sites, releases, wastes or emissions on or near the project site;
  - b) Landfills on or near the project site;
  - c) Superfund site- a location designated by Federal EPA as a contaminated site.

Any one of the above, depending upon severity, may disqualify a site. Any two or more of the following, depending upon severity, may disqualify a site:

- a) Surrounding area is industrial or commercial
- b) Site is out of character or scale with existing physical environment
- c) Visual or air pollution due to trash, junk, parking, etc.
- d) Project differs in size, materials, or style from its neighbors
- e) Overgrown property adjacent
- f) Abandoned buildings adjacent
- g) Canals, ditches, old wells
- h) Deteriorated streets or sidewalks
- i) Power substations adjacent
- j) High voltage power transmission lines through or adjacent
- k) Contaminated soil
- l) Steep slopes
- m) Unstable soil or erosion
- n) Wrecking or repair business adjacent to or on the site

The following are items that **are** desirable:

- a) Proximity to community services
- b) Proximity to utilities
- c) Appropriate mix of minority and income levels
- d) Social components such as close proximity and access to:
  - Recreation
  - Community facilities
  - Cultural events
  - Fire departments
  - Employment
  - Open spaces
  - Schools
  - Police

- Employment
  - Shopping
- 11. HUD environmental standards:** Environmental Criteria and Standards (24 CFR Part 51), other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a) (3).
- a. **Noise abatement and control:** All noise-sensitive 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.
- b. **Projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature:** All 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 in place.
- 13. 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. *(Please see 58.47(b) (1)).*
- The laws and authorities in 58.6 are:**
- a. The Flood Disaster Protection Act of 1973;
  - b. The Coastal Barrier Resources Act;
  - c. The requirements of 24 CFR Part 51 regarding properties located in a Runway Clear Zone.

### **Public Notice Process**

A Public Notice is required on all Environmental Assessment level reviews, and for those Categorical Exclusion projects that cannot convert to exempt. IHFA must either publish in a newspaper of general circulation in the affected community a Finding of No Significant Impact (FONSI) or Combined Notice or prominently display a FONSI or Combined Notice in public buildings within the project area. The Public Comment period is 15 days if published, 18 if posted. On or about 15-days after 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 is complete.

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## 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 the contracts or subcontracts are over \$100,000.

### 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 receiving HUD financing assistance.** The Section 3 regulation is found at 24 CFR Part 135. It is based on Section 3 of the HUD Act of 1968

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

### 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.

1. **Employment goals:** IHFA will ensure that the following Section 3 goals for hiring Section 3 eligible persons are met through its administration of the Idaho HOME Program:
  - a. 10 percent of the aggregate new hires for the one year period beginning FY 1995;
  - b. 20 percent of the aggregate new hires for the one year period beginning FY 1996;
  - c. 30 percent of the aggregate new hires for the one year period beginning FY 1997 and continuing thereafter.
2. **Achievement of the employment goals** will be ensured by requiring that each project sponsor, contractor, or subcontractor covered by Section 3 comply with the following:
  - a. 10 percent of the new hires for Section 3-covered work will be Section 3 residents for the one year period beginning FY 1995;
  - b. 20 percent of the new hires for Section 3-covered work will be Section 3 residents for the one year period beginning FY 1996;
  - c. 30 percent of the new hires for Section 3-covered work will be Section 3 residents for the one-year period beginning FY 1997.
3. **Business goals:** Furthermore, to the greatest extent possible, HOME project sponsors must comply with the following numerical goals for contracts awarded in connection with all Section 3-covered projects and activities:
  - a. At least 10 percent of the total dollar amount of all Section 3-covered contracts for building trades work arising in connection with housing rehabilitation or housing construction; and

- b. At least three percent of the total dollar amount of all other Section 3-covered contracts.

The numerical goals must be met to demonstrate compliance with Section 3. Failure to meet these goals must be accompanied by evidence demonstrating why it was not feasible to meet the goals. Such evidence may include impediments encountered despite actions taken.

**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:

<b>Preferences for Individuals</b>	
<b>Preference Category</b>	<b>Description</b>
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

<b>Preferences for Businesses</b>	
<b>Preference Category</b>	<b>Description</b>
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 construed as 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 HOME project sponsor is required to maintain records that demonstrate how the Section 3 requirements were met and report such information to IHFA.

**CONSTRUCTION CONTRACT REQUIREMENTS**

**Applicability**

All HOME 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.

### **Davis-Bacon**

Any contract for the construction (rehabilitation or new construction) of affordable housing with **12 or more units assisted with HOME funds** must contain a provision requiring that 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. 276a-5), 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 Sponsor is responsible to monitor and compile the appropriate documentation and forward copies to IHFA. IHFA will require certification of compliance with the provisions of this section before making any payment under such contract. Qualifications for a Grant Administration include individuals who have successfully completed the Idaho Department of Commerce Grant Administrators Program.**

Davis-Bacon does not apply to volunteers. A volunteer for the purposes of Davis-Bacon is defined as someone who:

- Receives no compensation, or
- Is paid only expenses, reasonable benefits or a nominal fee to perform services for which he or she volunteered; and
- Is not otherwise employed at any time in the construction work.

The prevailing wage provisions also do not apply to members of an eligible family who provide labor in lieu of, or as a supplement to, rent payments.

### **Debarment**

The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor that fails to provide a certification that neither it nor its principals are presently debarred, suspended, or placed in ineligibility status under 24 CFR Part 24, or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5. ( Subcontractors status online: [www.epls.gov](http://www.epls.gov))

### **Bonding or Letter of Credit**

IHFA requires all contracts in excess of \$100,000, be backed by payment and performance bonds or a letter of credit. Project owners and/or another project lender may also require such bonds or letters of credit.

Generally, for construction or rehabilitation contracts over \$100,000, or any sealed bid construction contract, a performance bond and a payment bond for 100% of the contract price are required:

1. **Performance bonds** are a means to assure that the contract is successfully carried out. The performance bond guarantees that, if the successful bidder is unable to complete the contract, someone (the surety company) will step in to finish the contracted effort.
2. **Payment bonds** are a method of assuring that contractors pay their subcontractors. The payment bond provides a way for the HOME recipient to avoid disputes concerning payment of subcontractors by guaranteeing, through a surety, that subcontractors will be paid. To further assure that no liens will be filed against any HOME recipient's building or lot of ground, the HOME recipient must also require that each contractor and subcontractor of any tier provide the IHFA with a Stipulation against Liens.

Generally, performance and payment bonds are combined into a single document (Upon request, IHFA will provide the format for these bonds with the Loan Documents for the HOME Funds).

#### **Letter of Credit in Lieu of Bonding Policy**

In certain circumstances, and at the sole discretion of IHFA, a Letter of Credit may replace the Bonding requirements under the HOME Program. Letters of Credit will be accepted only under the following circumstances and only with the following documentation:

1. A formal request for use of a Letter of Credit in lieu of bonding which clearly states reason why this substitution is required for project feasibility or timeliness.
2. Contractor financial statements from the past three years, as well as current operating statements from the past three years.
3. Letter of Credit must be for a minimum of 25% of the construction contract, and may be required to be for as much as 50% of the construction contract, at the sole discretion of IHFA. The amount of contingency projected; the adequacy of the projected construction costs and the experience and financial strength of the contractor and the inspecting architect will be used to evaluate the amount of the Letter of Credit required.
4. The Letter of Credit must have a minimum one-year term with a provision for an extension, if required, due to construction time lines. The Letter of Credit will not expire until 60 days following the issuance of a certificate of completion for the project. A Latent Defects letter of credit in an amount of 5% of the original letter of credit will be required for a period of one year. A Letter of Credit Agreement among the Owner, IHFA, and the Contractor is also required.
5. The financial institution issuing the Letter of Credit must have at the time of issuance, replacement, and renewal; throughout the term of the Letter of Credit at least one of the following ratings should be used:
  - a. Thompson's Bank Watch Rating of "B" or better:
  - b. Standard & Poors, or Moody's long-term senior debt rating of "A" or better; or
  - c. If the long-term senior debt of the financial institution (or its parent) is not rated by either S&P or Moody's, the financial institution must have an S&P or Moody's long-term bank deposit rating of "A" or better.

A Letter of Credit issued by an affiliate of the Lender or by a financial institution that does not meet the rating requirements set forth above is acceptable only if the

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Letter of Credit is confirmed by an acceptably rated financial institution that is not an affiliate of the Lender.

The financial institution issuing any Letter of Credit (or confirmation of Letter of Credit) provided in connection with any Mortgage might not have a lien on all or any portion of the Property as collateral for the Borrower's obligation to that institution.

### **Guarantee Agreements**

IHFA at its sole discretion may accept a personal guarantee from the owner or developer. In such cases, some form of negotiable collateral shall be pledged to the guarantee for the term of construction. IHFA shall require that such pledged liquid asset shall be in a minimum amount of twenty-five (25%) of the HOME loan amount up to a maximum of twenty-five percent (25%) of the total cost of construction.

## **CONFLICT OF INTEREST**

### **Applicability**

All HOME 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 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 HOME 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 a HOME assisted activity (including occupying a HOME-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 HOME 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 and the effectiveness and efficiency of IHFA's operation.

## **PROCUREMENT**

### **Applicability**

All HOME recipients may use their own procurement procedures. These procedures must reflect applicable State and local laws and regulations. HOME 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.

### **Description**

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

### **Ethics in Public Contracting**

HOME 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 HOME 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 that 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 HOME recipient in preparing for negotiations with the contractor to obtain a reasonable price.

In developing the independent cost estimate, the HOME 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 HOME 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 HOME 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 HOME 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**

HOME 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 HOME 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 HOME 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.

All 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. The HOME Recipient will be responsible to try and 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 HOME 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 HOME 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 HOME 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 HOME 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 HOME 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. HOME 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 HOME recipient requests technical qualifications statements from prospective contractors, and then ranks them technically. The HOME 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 HOME 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 HOME 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 non-responsive. 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 HOME 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 HOME 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 HOME 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 HOME Recipient is responsible for notifying IHFA upon selection of a contractor. The HOME 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 HOME 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 payments bonds are described under Section G previously.

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 HOME 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 resoliciting exceeds the defaulted bid. The defaulting bid should not be rejected until after recovery.

### **Affirmative Steps to Encourage Participation by Minority and Women Owned Businesses**

HOME recipients will take all necessary affirmative steps to assure that minority and women owned business enterprises (M/WBEs) and labor surplus area firms are provided with an opportunity to provide goods and services to HOME funded activities.

### **Definitions**

A small business is defined as a business that is independently owned, not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation.

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. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian American, and Hasidic Jewish Americans.

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 M/WBEs, when qualified, on solicitation mailing lists;
- Encouraging M/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 M/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., with M/WBEs.

HOME recipients will also be responsible for assuring completion of an M/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.

### **Minimum Acceptable Outreach Standards**

Section 281 of the National Affordable Housing Act requires HOME recipients to establish an M/WBE outreach program. 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 M/WBE outreach and access to the executive director/chief official;
- Utilization of all available and appropriate public and private sector local resources.

### **Contract Provisions**

A HOME recipient's construction contract must contain all provisions listed below:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases).
2. Termination for cause and for convenience by the recipient including the manner by which it will be affected and the basis for settlement (contracts in excess of \$10,000).
3. Compliance with Equal Employment Opportunity regulations (construction contracts in excess of \$10,000).
4. Compliance with the Copeland "Anti-Kickback" Act (all contracts for construction or repair).
5. Compliance with the Davis-Bacon Act (12 HOME units or more).
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (construction contracts awarded in excess of \$2,000 and contracts in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Access by the grantee (IHFA), the sub-grantee (HOME recipient), HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purposes of making audit, examination, excerpts, and transcriptions.
9. Retention of all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed.
10. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
11. Stipulated Sum Construction Contract, an example would be AIA Document 101 – 1997, Standard Form of Agreement Between Owner and Contractor, where the payment basis is a Stipulated Sum IHFA will hold back a minimum of 5% of the

HOME funds budgeted for construction costs and satisfaction of all contract requirements.

## **CONTRACT/CONSTRUCTION MANAGEMENT**

### **Applicability**

All HOME assisted construction projects

### **Description**

The HOME Recipient will monitor the construction phase of the project to assure that the contractors perform on time and in accordance with the terms, conditions, and specifications of the contract. Failure to closely monitor progress and work performance can result in unnecessary additional costs and time delays for the recipient.

A HOME 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
- 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 HOME 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, the HOME applicant should follow the following procedures:

1. HOME staff and the HOME applicant 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. HOME Staff will issue a Notice to Proceed to the applicant and the HOME 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 don't 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 HOME 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 HOME 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 HOME 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 HOME 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

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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 HOME recipient likewise require immediate work stoppage, but termination costs are negotiated until a satisfactory settlement is reached.

The HOME 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 HOME 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 HOME recipients 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 HOME 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 HOME 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 Sponsor, the Contractor, the Architect shall meet to do an on-site inspection of the work performed and the materials used and/or on site.

IHFA HOME 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 cover, 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.

## **PROJECT SIGN REQUIREMENTS**

### **Applicability**

All HOME assisted projects in excess of \$50,000.

### **Description**

All construction projects in excess of \$50,000 that are undertaken using HOME funds shall have a project sign located prominently at the project site. The sign shall be installed prior to construction and shall be maintained for the duration of the construction period.

Project signs will need to be coordinated with IHFA's Communications Department and Grant Programs Department. Contact Grant Programs for further sign instruction.

## LEAD-BASED PAINT

### Applicability

All HOME-assisted units built prior to 1978

### Description

A lead-based paint assessment must be conducted on all homes built prior to 1978 when receiving down-payment and/or closing costs, rehabilitation and/or renovation funds. If, according to the certified Risk Assessment there are lead hazards, anyone who's compensated work disturbs paint in housing built prior to 1978, including residential rental property owners/managers, general contractors; special trade contractors such as painters, plumbers, carpenters, and electricians must follow the Lead Based Paint Pre-Renovation Education Rule.

### The Lead-Based Paint Pre-Renovation Education Rule

The Rule requires distribution of the Lead Pamphlet "Renovate Right", for pre-renovation education to owners and occupants before the start of any renovation/rehab activity that entails compensation. The activity must begin within 60 days of the date the pamphlet is delivered. Activities include most repairs, remodeling, including replacing windows, and maintenance/repair activities that disturb more than two square feet or less of paint per component per activity.

Only a Certified Visual Inspector/Risk Assessor can determine a housing unit and/or its components are lead-free. To help with this process, IHFA will cover usual and customary fees for the Lead-Based Paint Risk Assessment and the first clearance test, through a grant program.

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

1. Distribute a Lead Pamphlet to the housing owner and/or occupants before renovation starts.
2. Obtain confirmation of receipt of lead Pamphlet from the owner and occupants or a certificate of mailing from the post office.
3. For work in common area of multi-family housing, distribute renovation notices to tenants.
4. Retain records for 3 years.

### Notification Requirements

**Lead Hazard Information Pamphlet- IHFA** must certify delivery to all purchasers, occupants, and owner-occupants of pre-1978 housing. The brochure "Renovate Right" pre-renovation education, issued by EPA, HUD, and the Consumer Product Safety Commission (CPSC). Documentation of delivery of pamphlet is required.

### Disclosure

Under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, all property owners (both subsidized and market rate) must disclose the presence of lead-based paint and provide prospective homebuyers/occupants with any existing documentation of known lead-based paint hazards in the dwelling unit.

### Lead Hazard Evaluation

Lead hazard evaluation methods involve examination of a dwelling to check for lead-based paint hazards. Under the new regulation, a grantee must perform a lead hazard evaluation for every activity. Evaluation methods include one or more of the following: Visual Assessment, Paint Testing or XRF analyzer. As an alternative to performing lead hazard evaluation activities, a grantee may presume that lead-based paint and/or lead-based paint hazards are present. If any work is performed, safe work practices and clearance are still required.

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Grantees must ensure that owners, occupants, or purchasers are notified of defective paint surfaces discovered during the evaluation.

### **IHFA Requirements for Evaluation**

All targeted properties will need, at minimum, a visual assessment conducted by a Certified Visual Inspector. If there are noticeable repairs or chipped/peeling paint a Risk Assessment will need to be complete by a Certified Risk Assessor. Tenants and potential homeowners must receive the EPA/HUD Residential Lead-Based Paint Disclosure.

### **Real Estate Agents Responsibility:**

Must notify sellers and landlords of their obligations under the rules;

- Sellers and landlords must disclose the proper information to lessees, buyers, and tenants.
- Sellers must give purchasers or lessees the opportunity to conduct an inspection or risk assessment. This must be conducted by a Certified Visual Inspector or Certified Risk Assessor.
- Lease and sales contracts contain the appropriate notification and disclosure language as well as proper signatures.
- Seller must allow a homebuyer ten days to have the dwelling assessed for lead-based paint hazards. The assessment will be conducted by a Certified Risk Assessment/Visual Inspector if both parties agree, the time frame may be negotiated.

Real Estate Agent responsibility if Seller or Landlord fails to comply:

- The agent is responsible for informing the seller of his or her obligations under this rule.
- Agent is not responsible for information withheld by seller.

What to do when the Homebuyer elects to evaluate the home

Required Documents:

- Request for EPA Certified Lead-Based Paint Risk Assessment
- Disclosure of Information of Lead-Based Paint
- Sales Contract with Addendum Release of Lead-Based Paint Evaluation Contingency
- Lender Certification that applicant's income is at or below 80% of area median income
- Down Payment and Closing Cost Assistance Form

When IHFA has received the Notice to Continue, it will be processed and results will be forwarded to the Entity requesting the inspection, with a copy to the potential Homebuyer.

IHFA will pay for the evaluation and the first clearance test, if necessary. If there is evidence of lead-based paint, the decision will be up to the potential homebuyer as to whether to negotiate with the seller for payment of paint stabilization, interim control, or abatement of the lead-based paint, or to withdraw from the contract.

If the homebuyer decides to proceed with the repairs, the work must be performed using Safe Work Practices and by a Qualified or Certified Worker, depending on the scope of work.

A listing of approved Certified Lead-Based Paint Inspectors and Certified Visual Inspection can be found at: <http://cfpub.epa.gov/flpp/search.cfm>

**Down-payment assistance will not be approved for properties built before 1978 ("Target" Housing) IF a lead-based paint hazard exists without first being corrected.**

If the property is defined as Target Housing, then the Federal Regulations require that before the purchaser is obligated under any contract to purchase the property, the Seller or the Real Estate agent, if one is used, shall:

- Provide buyer an EPA approved information pamphlet “Protect Your Family From Lead in Your Home”
- Disclose to the buyer the presence of any known lead-based paint, or any known lead-based paint hazards in such housing, and provide to the purchaser any lead hazard evaluation report available to the seller.
- Permit the purchaser a 10-day period (unless mutually agreed upon to a different time period) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.
- Any repairs done subsequent to the listing of the targeted property must be done in accordance with safe work practices and obtaining clearance.

Unless the Buyer waives his right to a lead inspection, a copy of the Inspection Report and a copy of the Release of the Contingency must accompany any application for Down-Payment Closing Cost Assistance.

### **When Lead is NOT Present**

If Certified Lead Assessment is approved, IHFA will send a Notice to Proceed, along with a Debarment Clearance and Categorical Exclusion. IHFA will also provide Closing Documents, Deed of Trust, and Note.

### **Lead Hazard Evaluation Methods**

**Visual Assessment-** For deteriorated paint consists of a visual search for cracking, scaling, peeling, or chipping paint. A visual assessment **does not** evaluate for the presence of lead. A Certified Risk Assessor, Certified Visual Assessor, Housing Quality Standards (HQS) inspector can perform an assessment.

**Paint Testing-** Testing painted surfaces to determine if they contain lead-based paint, using methods such as an XRF analyzer or laboratory analysis. A Certified Lead inspector or Risk Assessor performs the paint testing.

**Risk Assessment-** A Risk Assessment is a comprehensive investigation and report of a housing unit to identify lead-based paint hazards that include paint testing, dust and soil sampling, as well as a visual evaluation. A Risk is a written report with recommendations for actions. A Certified Risk Assessor must conduct the assessment.

### **If Lead-Based Paint is Found**

If the Risk Assessment reveals Lead paint hazards are present, the Agency will be required to:

- Submit copies of Final Bid. The bid must include:
  - Detailed itemization of each rehabilitation cost
  - Clear and accurate description of the rehab plans and specs
  - Detailed listing of the procedures for the paint stabilization, interim control, or abatement of the lead-based paint
- Any rehabilitation, renovation, repair work completed must include mitigating existing lead-based paint hazards or hazards resulting from disturbing lead-based paint while making needed repairs
- All rehabilitation, renovation, repairs must be completed in accordance with HUD Lead Safe Housing Regulations (see 24 CFR part 35) and performed by Qualified or Certified Workers
- Bids must include copies of worker certifications, either by EPA and/or by HUD

- Written proof that the Homeowner/homebuyer has agreed to the total rehabilitation cost (Construction Contract & Agreement)

## **ASBESTOS**

Undertaking rehabilitation where asbestos is present is subject to increasing regulations at all levels of government. Careless or illegal handling of asbestos containing materials (ACMs) can subject rehabilitation contractors, workers, and building occupants to health hazards, and can place the contractor, manager, and owners in a position of serious civil and possibly 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 a HOME assisted project, an assessment may protect the HOME recipient from being in violation of the law, or subject to any lawsuits.

## **SITE AND NEIGHBORHOOD STANDARDS**

New construction of rental housing assisted with HOME 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 983.6(e).
  - 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.

## **ACCOUNTABILITY AND FINANCIAL MANAGEMENT**

### **Applicability**

All HOME assisted projects

### **Description**

Recipients of HOME funds must be able to identify and track every HOME dollar received from IHFA, including identification of the use of HOME funds. Financial records must be kept for each loan received to facilitate recording, audit, and closeout.

## **LIMITED ENGLISH PROFICIENCY REQUIREMENTS**

### **Applicability**

All HOME 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.

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