

# Environmental Review Record and Section 106 Historic Review User's Guide

Release of Funds Process

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## I. INTRODUCTION AND POLICY

### How To Use This Guide

The intent of this User's Guide is to assist the Indiana Housing and Community Development Authority's (IHCDA) funding applicants and recipients in completing the Environmental Review Record (ERR) and Section 106 Historic Review processes. It should be noted that these are two distinct and separate processes with different guiding regulations. Because both processes are federally required for the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) funding sources, IHCDA has combined the two processes into this User's Guide and the Environmental Review Record (ERR) Workbook. The National Housing Trust Fund (NNHTF), Continuum of Care (CoC), and the Lead Hazard Reduction Demonstration Grant Program (LHRD) requirements are also noted in the guide; some of the requirements may differ from CDBG and HOME.

This User's Guide provides background information about the federally required processes including why the review is necessary, how to perform the review, and other resource information to help you complete the ERR Workbook. The ERR Workbook is the document where applicants and recipients will answer questions and submit supporting documentation regarding the project in order to satisfy the federal requirements for both the Environmental Review and the Section 106 Historic Review. Applicants and recipients filling out the ERR Workbook will need to follow this guide and all appendices in order to fill out the ERR Workbook. Specifically, this guide and Appendix 3, Resources Document, will provide the information necessary to fill out the ERR Workbook.

The following information will be covered in more detail in this manual but are some key points to consider prior to beginning the ERR and Section 106 processes at IHCDA:

- The applicant should always view the ERR and Section 106 processes as feasibility tools during a project's due diligence phase. Therefore, please note that:
  - Projects with any portion of the site in a 100-year flood plain (areas designated as any variation of a Zone A) will not be eligible for IHCDA funding assistance.
  - If a wetland is located on a project site, the project will not be eligible for IHCDA funding assistance.
- The completion of the ERR process is mandatory before taking a physical action on a site or making a commitment or expenditure of HUD or non-HUD funds. You must have a Release of Funds from IHCDA before making any project commitments. Using any portion of federal funds for acquisition, rehabilitation, conversion, leasing, repair or construction before completing the ERR process requires the denial of any federal funds for that project (24 CFR 58.22).
- The ERR Workbook must be completed and turned in with the funding application. A threshold review of the ERR Workbook will occur during the application review process. A full review of the ERR Workbook will occur if the project is approved for funding.
- Applicants should submit the ERR Workbook and all supporting documentation in PDF format and via electronic submission according to the application instructions. If the project is approved for funding, an original signature on the ERR Workbook will be requested by IHCDA staff.
- Scattered site projects (usually Owner-Occupied Repair) will be treated as a Tiered Review. Phase 1, which consists of the ERR Workbook (Exhibits A-F, Findings and Signature Page) and supporting

documentation, are submitted with the IHCDAs application. Phase 2, which consists of an Exhibit G for each site address, is submitted when each site is identified.

- Applicants will not be able to publish their public notice to request Release of Funds until they receive a letter from IHCDAs or its contractor authorizing them to do so.
- Timing from award approval to full Release of Funds will vary depending on the funding source requirements, the funding recipient, project complexity and staff workload. Please plan your project timeline accordingly.

### **Environmental Review Guiding Regulations**

The National Environmental Policy Act of 1969 (NEPA) and “other federal laws and authorities” require that environmental consequences are reviewed and alternatives considered for all federally assisted actions (except those specifically exempted under 24 CFR Part 58.34, as described in this Users Guide) before decisions are made and before actions are taken. Therefore, an environmental review is required as part of the due diligence process. The IHCDAs programs that are subject to this part include CDBG and HOME.

The environmental review is concerned with two complementary findings:

1. Whether the proposed undertaking will have an impact on the environment.
2. Whether the environment will have an impact on the proposed undertaking. For example, is there anything about the environment that would make it an unwise investment of federal funds? In the case of housing, is the environment suitable for human habitation?

Further, applicants should note that the regulation implementing this requirement, 24 CFR Part 50: Protection and Enhancement of Environmental Quality, states as its purpose “protecting, restoring and enhancing environmental quality.” Thus, ideally a proposed undertaking will not just “not harm” the environment but would protect it (by incorporating energy conservation measures, for example) or enhance it (perhaps by physical restoration/rehabilitation).

The applicant should view the environmental review as part of the development’s feasibility analysis and planning process to:

1. Identify the existence of negative impacts on a project.
2. Consider means to mitigate negative impacts.
3. Consider alternatives to the project if needed.
4. When all other options fail, to realize that rejection of the proposed undertaking may be the most prudent action to take.

### **Responsibilities of the Recipient Regarding Environmental Review**

The chief executive officer of the recipient is responsible for ensuring that the environmental review process has been carried out according to the requirements of Section 102 of NEPA and the related provisions in 40 CFR Parts 1500 through 1508, and 24 CFR Part 58, including the related federal authorities listed in 24 CFR 58.5. IHCDAs will review the recipient’s environmental review record (ERR) to ensure that the review was carried out according to the environmental review regulations as provided in 24 CFR Part 58.

## **Release of Funds**

The completion of the ERR process is mandatory before taking a physical action on a site or making a commitment or expenditure of HUD or non-HUD funds.

Using any portion of federal funds for acquisition, rehabilitation, conversion, leasing, repair or construction before completing the ERR process requires the denial of any federal funds for that project (24 CFR 58.22). Therefore, before committing or expending funds on a project (i.e. closing on a piece of property, signing a construction contract, etc.) it is imperative for the applicant to receive either a Release of Funds (ROF) or Pre-agreement Release of Funds letter from IHCD. If this does not happen, IHCD will be unable to provide funding for the project.

The recipient/sub-recipient may execute contracts and begin construction once IHCD has notified the recipient in writing that IHCD has authorized a "Release of Funds" for each budget line item.

For the use of National Housing Trust Fund (NHTF) without another federal source which would trigger Part 50/58, please see the section on NHTF.

## **Conditional Commitment of HOME or CDBG Funds**

A recipient may enter into an agreement for the conditional commitment of HOME or CDBG funds for a specific project prior to the completion of the ERR process. The responsible entity must ensure that any such agreement does not provide the state recipient, sub-recipient or contractor any legal claim to any amount of HOME or CDBG funds to be used for the specific project or site unless and until the site has received environmental clearance. The following language is acceptable in an otherwise appropriately drafted agreement:

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [not for profit, for profit or state recipient] of a release of funds from HUD or IHCD under 24 CFR Part § 58. The parties further agree that the provision of any funds to the project is conditioned on the [not for profit, for profit or local unit of government] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

## **Timing of the ERR Process**

The ERR process is intended to be a project planning tool and should be started early alongside project planning. ERRs will be submitted during the appropriate application funding round with the application. Once an application is approved for funding the ERR documentation will undergo full IHCD review. Applicants will not be able to publish their public notice to request release of funds until they receive a letter from IHCD authorizing them to do so. Timing from award approval to full Release of Funds will vary depending on the funding source requirements, the funding recipient, project complexity and staff workload. Please plan your project timeline accordingly.

## **Pre-Award Release of Funds**

In some very specific instances and with written approval by IHCD, a project may receive a Pre-Award Release of Funds. The Pre-Award Release of Funds is a waiver to begin some work prior to completion of

the full ERR process and the Release of Funds. Some, or all, of the costs associated with the Pre-Award Release of Funds may not be eligible for reimbursement with the IHCD funding source.

Eligible requests include repairs for emergency and/or imminent threat to the occupant and for some “soft” project costs, such as design costs. When the unit to be rehabilitated presents a serious threat to the occupant’s health or safety, it may be necessary to repair or replace the specific items causing the threat prior to completing the entire ERR process. The recipient must submit a written request to their IHCD regional Real Estate Production Analyst for a waiver of the ERR requirements for the specific address only. The request may be submitted in PDF format via email and must contain the following information to be considered:

- Must be in writing on letterhead from the funding recipient’s chief executive officer.
- Must submit documentation from both the engineer and the building commissioner, or similar position(s), to demonstrate it’s a “local determination” that the current status of the building is a health/safety threat and detailing how it is a threat.
- Submit a statement from the architect/builder/engineer certifying that the work will not significantly alter or impeded the preservation of the building.
- For emergency situations the recipient must submit clear, color and detailed photos of the emergency to be addressed with the request.

Although IHCD may allow for eligible emergency repair or soft project costs to occur prior to the completion of the Release of Funds process, the recipient must still complete and submit the ERR as described in this chapter. For further questions the recipient should contact the IHCD Placemaking Manager for assistance.

### **Community Housing Development Organization (CHDO) Predevelopment and Seed Money Loans**

Per the federal HOME regulations defined at 24 CFR 92.2 and implemented at 92.300 and 92.500, IHCD is required to reserve no less than 15% of its HOME allocation for CHDOs. A CHDO is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. In order to qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience. More information about IHCD’s CHDO program can be found on IHCD’s website.

One of the advantages of being a CHDO is the access to special HOME funding including project predevelopment and seed money loans. These loans are federal HOME funds and therefore an applicant must complete the ERR process prior to utilizing the funds. Applicants must turn in a completed ERR Workbook at time of submitting their CHDO funding application. The information submitted depends on the type of activities for which the loan will be utilized. Refer to Figure 2. Classification of Activities for Environmental Review and Figure 4. Required ERR Workbook Forms by Classification in the ERR User’s Guide to determine which section(s) of the ERR Workbook for submission.

### **National Housing Trust Fund**

The Environmental Review process for the National Housing Trust Fund (NHTF) differs from the process used for HOME and CDBG. The NHTF Environmental Provisions for new construction and rehabilitation under the Property Standards at 24 CFR 93.301(f)(2) and (2) are similar to HUD’s Environmental Regulations at 24 CFR Parts 50 and 58. NHTF projects are subject to the same environmental concerns

that HUD-assisted projects are subject to. The main difference is that the NHTF Environmental Provisions are outcome-based and exclude consultation procedures that would be applicable if NHTF selection was a federal action. Parts 50 and 58 are process based and include consultation procedures for several laws and authorities where there may be environmental impacts. Due to the outcome-based nature of the NHTF Environmental Provisions and lack of a federal action, compliance with some environmental property standard is streamlined because consultation is not required.

If the project is **only** utilizing NHTF and not CDBG, HOME or another HUD funding source which would require full compliance with Parts 50 and 58, the NHTF process should be used. If the project is utilizing other HUD funding (either from IHEDA or another entity), a full Part 50 or Part 58 environmental review **must** be done.

When a project is only using NHTF funds, there are three primary differences in the review process. First, no level of review is required (CEST/EA). IHEDA will document compliance and will maintain documentation demonstrating that the NHTF project meets the NHTF Environmental Provisions. Second, the public comment period is not required by either the recipient or HUD. Lastly, there is no request for Release of Funds and Certification, and thus, no authority to use grant funds. When the Environmental Review Record is completed, and the project has Section 106 concurrence, IHEDA will notify the recipient that the project meets the requirements under Part 93, and may move forward.

If the project financing only includes NHTF from IHEDA (and not HOME or CDBG/D), the ERR tab in the NHTF application will need to be filled out. That tab does identify items that will need to be included with the application. At a minimum this includes:

1. Flood Plain: Floodmap
2. Farmlands: Map from either of the farmland webpage listed on the form.
3. Airport Zone: EPA map.
4. Wetlands: Map from the FWS website listed on the form.
5. Contamination: Phase I ESA
6. Phase I environmental assessment
7. Section 106 documentation.

IHEDA may have additional questions or clarifications if funded.

Applicants must also fill out the following in the ERR workbook:

1. Exhibit A
2. Exhibit B
3. Exhibit G (just the sections noted below):
  - a. 2-1: Compliance with Applicable Plans
  - b. 2-2: Sole Source aquifers
  - c. 2-4: Endangered species
  - d. 2-5: Wild and Scenic Rivers
  - e. 2-6: Environmental Justice
  - f. 3-2: Explosive and Flammable Operations
  - g. 3-5: Section 106 Historic Properties



#### h. 4-1: Unique features and Areas

If you are applying for HOME as well as HTF, then you must follow the HOME ERR and Section 106 process.

##### **Continuum of Care**

The McKinney-Vento Homeless Assistance Act as Amended by S. 896 HEARTH Act of 2009, enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program—the Continuum of Care (CoC) program. The HEARTH Act codifies into law the CoC planning process, a longstanding part of HUD’s application process to assist homeless persons by providing greater coordination in responding to their needs. It also revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants (ESG) program.

The level of environmental review required for a CoC program project depends on the individual project. Review HUD’s Environmental Review CoC flowchart for your project in order to determine the level needed. Once you determine the level, fill out either the CEST or the Environmental Assessment Form. The flowchart and forms can be found on the HUD Exchange website [here](#). Turn in the completed form to IHCD’s Placemaking Manager.

##### **Project Based Vouchers**

Project-based vouchers (PBVs) are a component of a public housing agency’s (PHA’s) Housing Choice Voucher (HCV) program. The PBV program was enacted in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs under the Quality Housing and Work Responsibility Act of 1998. Significant changes to the program were subsequently enacted in law in 2000, by the Fiscal Year 2001 Appropriations Act, and in 2008, by the Housing and Economic Recovery Act of 2008. The latest statutory changes to the PBV program were enacted recently by the Housing Opportunity Through Modernization Act of 2016 (HOTMA).

Activities under the PBV program are subject to HUD environmental review regulations in 24 CFR parts 50 and 58. An environmental review must be satisfactorily completed before the agreement to enter into a housing assistance payments contract (AHAP) is executed. IHCD may use environmental reviews completed for the development for other federal funding such as HOME as long as they satisfy the HUD requirements. In the event no other funding triggers the environmental review, IHCD must act as the responsible entity and an ERR must be completed with IHCD. Contact the IHCD Placemaking Manager for further information.

##### **Lead Hazard Reduction Demonstration Grant Program**

The Lead Hazard Reduction Demonstration Grant Program (LHRD) is a HUD funding program intended to identify and remediate lead hazards in housing units. Because the program is a HUD program, all LHRD grantees are required to assume the environmental review responsibilities for the NEPA regulations (see page 5) and related laws and authorities as implemented at 24 CFR Part 58 in accordance with Policy Guidance 2000-01, Revised Environmental Review Procedures and Requirements, at [https://www.hud.gov/sites/documents/DOC\\_38160.PDF](https://www.hud.gov/sites/documents/DOC_38160.PDF). As with other federal funding sources in this document, the Section 106 process required by The National Historic Preservation Act of 1996 (see page

20) is required to be followed for all LHRD grantees. The process is separate but incorporated into the one environmental review process for streamlined reviews.

LHRD recipients are subject to the rules and regulations for both NEPA and the Section 106 processes and therefore will be subject to most of the content of this User's Guide. Read the entire User's Guide. The ERR Workbook is the document where applicants will answer questions and submit supporting documentation regarding the project to satisfy the federal requirements for both the ERR and the Section 106 reviews. Applicants filling out the ERR Workbook will need to follow the User's Guide and all appendices in order to fill out the ERR Workbook. Specifically, the User's Guide and Appendix 3 Resources Document, will provide the information necessary to fill out the ERR Workbook.

Inspections and testing of properties for hazards or defects may be conducted before receiving approval of a Request for Release of Funds, as allowed by 24 CFR 58.34(a), Exempt activities, specifically its subparagraph (5). Therefore, grantees may conduct lead-based paint inspections and risk assessments on target housing that is otherwise eligible for lead hazard control work before receiving approval of a Request for Release of Funds. All other restrictions apply. See *Policy Guidance 2008-03, Conducting Lead Inspections and Risk Assessments Prior to Environmental Review/Request for Release of Funds*, at [https://www.hud.gov/sites/documents/DOC\\_38180.PDF](https://www.hud.gov/sites/documents/DOC_38180.PDF).

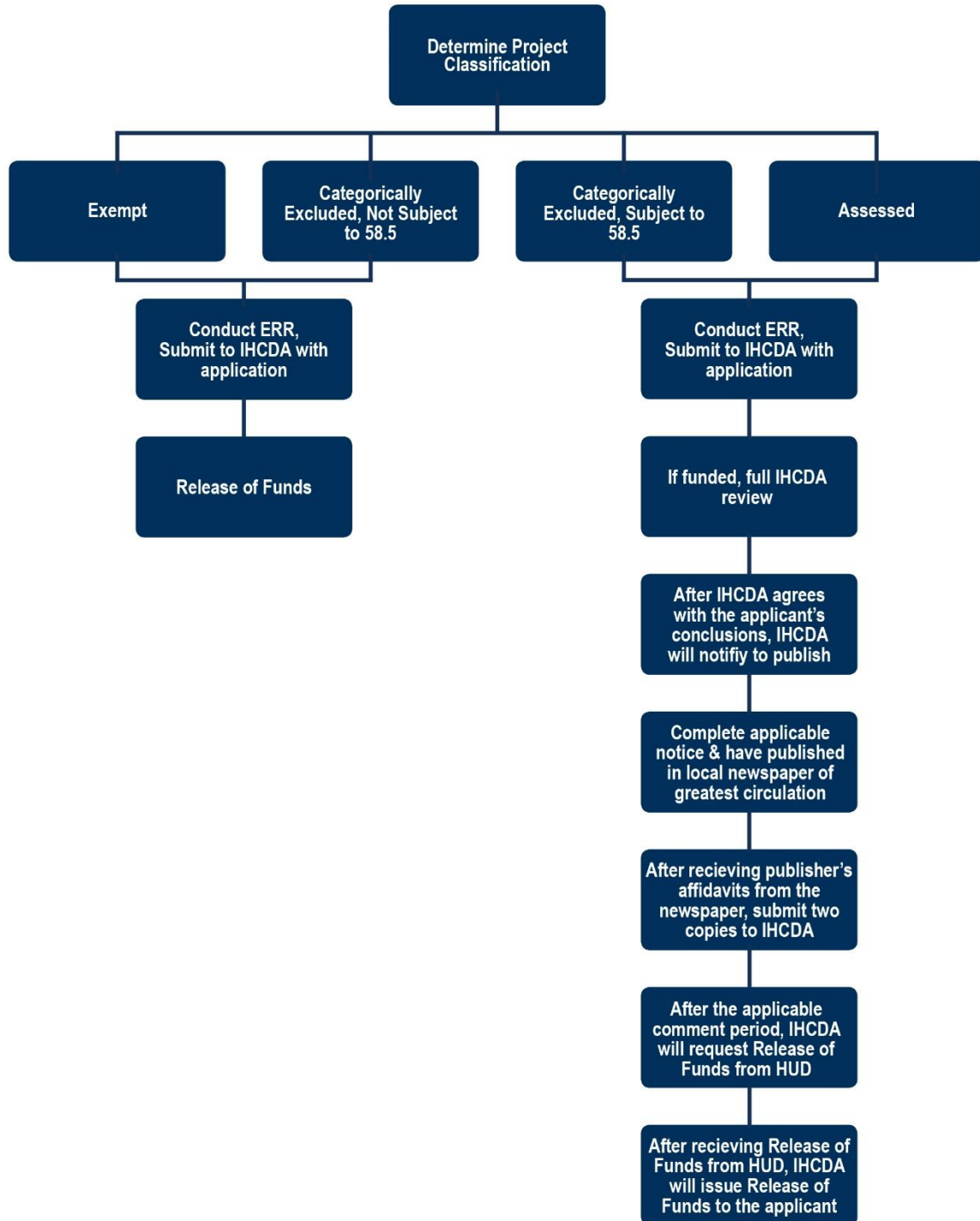
IHCDA will treat units as a Tiered Review. The Tier 1 will be conducted by IHCDA. IHCDA will publish the public notifications on behalf of recipients. Sub-recipients are required to conduct the site-specific Tier 2 and Section 106 review. For the Tier 2, sub-recipients are required to submit to IHCDA's third party contractor the Exhibit G workbook for each address – this includes any signatures and source documentation as required by the ERR workbook. Sub-recipients must also include its own photographs – all photos must be in color, large, labeled and legible. There will be a Section 106 Historic Review process for each site and the questions are contained within Exhibit G of the ERR workbook.

After IHCDA agrees with the applicant's conclusions, IHCDA or its third party contractor will issue the applicant a Phase 2 concurrence letter allowing the award recipient to move forward for the specific site. Once the recipient receives that notification for each specific site, the sub-recipient may begin the undertaking for that site.

Recipients are encouraged to submit complete ERRs as soon as individual sites have been identified. No contracts or commitments of funds may be made to a specific site until after the individual worksheets are approved. It is not necessary to republish after completing the Exhibit G of the ERR workbook for each individual site.

Figure 1. Overview of IHCD A ERR Review Process

## Overview of IHCD A Review Process Based on Project Classification



## II. ENVIRONMENTAL REVIEW PROCESS

### **Define the Project: Identify the Scope of the Project or Undertaking (Aggregation)**

Before the recipient can make a finding regarding the proposal in question, the recipient must first group together and evaluate as a single undertaking all individual activities that are related either geographically or functionally, or are logical parts of a composite of contemplated actions. This grouping of activities is known as aggregation and is more fully defined in the definitions section and at 24 CFR §58.32.

When grouping activities, keep in mind that several sites, each requiring some degree of environmental review, may actually be one HOME or CDBG undertaking (for example, 40 owner-occupied units being rehabilitated could be one HOME or CDBG undertaking). For the environmental review, the recipient must group activities for the entire undertaking. In the case of scattered-site developments, some environmental factors will be considered on a project-wide basis while others will require site-by-site environmental analysis.

If at any time during the period of the HOME or CDBG undertaking it becomes necessary to substantially revise or amend the scope of work, it may be necessary to repeat the environmental review process to assess the impact of proposed changes. In these cases, contact your IHEDA regional Real Estate Production Analyst for guidance.

### **Determining the Classification of the Environmental Review**

The recipient must determine whether the various activities of the undertaking fit the classification of: Exempt, Categorically Excluded - Not Subject to 58.5, Categorically Excluded - Subject to 58.5, or Assessed. The required process in order to obtain the Release of Funds will vary depending upon the classification of the undertaking.

To determine the classification of the undertaking, refer to Figure 2, Classification of Activities for Environmental Review. Also see Figure 3, Examples of Various Undertakings and Their Classifications.

Based on your classification determination, you will sign one of the Certification Exhibits C, D, or E in the ERR Workbook. Only one exhibit will need to be signed. The signature must be original.

**Figure 2. Classification of Activities for Environmental Review**

<p><b>EXEMPT (24 CFR 58.34)</b></p> <p>Activities that have no physical impact on the environment. This includes the following:</p> <ol style="list-style-type: none"> <li>1. Environmental and other studies</li> <li>2. Information and financial services</li> <li>3. Administrative and management activities</li> <li>4. Public services that will not have a physical impact or result in any physical changes</li> <li>5. Inspections and testing of properties for hazards and defects</li> <li>6. Purchase of insurance</li> <li>7. Engineering and design costs</li> <li>8. Technical Assistance and training</li> <li>9. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.</li> <li>10. Payment of principal and interest on loans made or obligations guaranteed by HUD</li> <li>11. Public services that will not have a physical impact or result in any physical changes</li> <li>12. Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances that require compliance with any other federal laws and authorities cited in Sec. 58.5.</li> </ol>	<p><b>CATEGORICALLY EXCLUDED, SUBJECT TO 58.5 [24 CFR 58.35 (a)]</b></p> <p>A category of actions that do not individually or cumulatively have a significant effect on the human environment. Categorically excluded activities include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• typically replace or improve existing facilities or structures, i.e., they retain the original usage of a structure or facility;</li> <li>• do not increase the size or unit density of the structure or facility being improved by more than 20 percent;</li> <li>• do not change land uses (commercial to residential); and</li> <li>• in the case of rehabilitation, the cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.</li> <li>• Acquisition or disposition of a property where the property will be retained for the same use.</li> </ul> <p>Examples of categorically excluded activities are as follows:</p> <ol style="list-style-type: none"> <li>1. Minor rehabilitation of an existing property (multifamily or single family);</li> <li>2. An individual action, such as new construction, major rehabilitation, moving or demolition, on a one to four family dwelling.</li> </ol> <p>[Development of five or more units located within 2,000 feet of each other undertaken as a single action (e.g., a subdivision), is not categorically excluded.]</p>
<p><b>CATEGORICALLY EXCLUDED, NOT SUBJECT TO 58.5 [24 CFR 58.35 (b)]</b></p> <p>HUD has determined that certain activities would not alter any conditions that would require an environmental review or compliance determination under federal laws and authorities cited in §58.5. Examples include:</p> <ol style="list-style-type: none"> <li>1. Tenant-based rental assistance.</li> <li>2. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title. <b>Warning:</b> homebuyer assistance for units not already under construction must be treated as a categorical exclusion requiring compliance with the authorities cited in §58.5.</li> <li>3. Housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact.</li> </ol>	<p><b>ASSESSED [ 24 CFR 58.36]</b></p> <p>Activities which cannot be determined to be exempt under §58.34 or categorically excluded from NEPA under §58.35, or which involve a categorical exclusion with “extraordinary circumstances” under §58.2(a)(3), require that a full Environmental Assessment be conducted.</p> <p>An EA, using an Environmental Review Worksheet, is normally required for five or more units only if the sites are 2,000 feet apart or less and/or there are more than four units on a site. This includes:</p> <ol style="list-style-type: none"> <li>1. New construction of five or more residential units;</li> <li>2. Major rehabilitation and reconstruction of five or more residential units;</li> <li>3. Conversion of non-residential land use to residential land use; and</li> <li>4. Acquisition of vacant land for development when five or more units are involved.</li> </ol>

### Figure 3: Examples of Various Undertakings and Their Classifications

#### **Example 1:**

An architectural firm it hired to design HOME-assisted new construction town homes.

*Classification:*

The use of HOME funds is exempt under 58.34(a)(8).

#### **Example 2:**

A not for profit has been awarded HOME funds to provide down payment assistance and closing costs to homebuyers.

*Classification:*

Such use of funds is categorically excluded from the requirements of NEPA [§58.35(b)(5)] as long as the unit is existing or currently under construction, as this activity is not subject to any of the statutes cited under this section.

#### **Example 3:**

A multifamily building rehabilitated under the HOME program at a cost of \$450,000. The rehabilitation conducted did not involve a change of land use or a change in unit density by more than 20 percent. The replacement cost of the structure as determined by the insurance company providing coverage is \$1,500,000.

*Classification:*

The project is categorically excluded - subject to 58.5. The project includes physical action and is therefore subject to additional related Federal laws and authorities. However, as the amount of the rehabilitation work is only 30% of the replacement cost [ $\$450,000/\$1,500,000$ ]. The level of rehabilitation work allowed before the 75% maximum level is reached is \$1,125,000 [ $\$1,500,000*75\%$ ] without reaching the level of Assessed activities.

#### **Example 4:**

A housing developer borrows \$2,000,000 in HOME funds to acquire a single parcel of 10 acres of land and construct 30 units of rental housing.

*Classification:*

Such a project is neither exempt nor categorically excluded from NEPA. The size of the project exceeds the thresholds of categorically excluded activities under §58.35(a)(4). Additionally, the proposed use of HOME funds for the project is not composed entirely of “soft costs” associated with exempt activities listed in §58.34. Consequently, the responsible entity must perform an Environmental Assessment in accordance with §58.36, as detailed at §58.40, before committing funds.

## Environmental Review Record (ERR) Workbook

The recipient must compile a written record of the environmental review completed under 24 CFR Part 58 for each undertaking. This written record is known as the Environmental Review Record (ERR) and is submitted as the ERR Workbook and the accompanying supporting documents. The ERR Workbook can be completed using this User's Guide as well as the Resources document. It must be submitted to IHCD A in accordance with the process in this User's Guide. Submissions to IHCD A must be submitted at time of funding application but are no longer required to be submitted in hard copy. IHCD A will now accept an electronic version of the ERR Workbook and all other supporting documentation.

In addition, the ERR must be made available for public review as a part of the Release of Funds process. Therefore, it is important that a recipient be diligent about meeting all procedural requirements. Private citizens and organizations can object to the Release of Funds for HOME and CDBG undertakings on certain procedural grounds relating to the environmental review (24 CFR § 58.75).

The ERR Workbook must include a thorough project description, including all activities that the recipient has determined to be part of the undertaking, as defined in 24 CFR § 58.2(a)(3) and 58.32. The project description is important because it determines the level of review, it is the basis for informing the public about the action and it is the basis for monitoring compliance. If funds are used for something not included in the project description, it could be in violation of § 58.22.

The ERR must include:

1. **Required Forms.** The ERR Workbook forms required to be submitted to IHCD A will vary depending on the classification of the proposed undertaking. To determine the required forms by classification, refer to Figure 4, Required Forms by Classification.
2. **Source Documentation.** Required source documentation is described in each section of the ERR Workbook and will include:
  - a. Maps;
  - b. Written determinations from government entities as required by 24 CFR Part 58;
  - c. Photographs;
  - d. Other source documentation as required by each section of the ERR Workbook.
3. **Signatures.** You must include three signatures\* in order for your submission to be considered complete.
  - a. Summary Page of the ERR Workbook;
  - b. Exhibit C, D, or E of the ERR Workbook. Only one of these will be filled out and signed depending on the classification of the project;
  - c. Findings and Signatures page of the ERR Workbook.

\*Note that if a project is funded, IHCD A or its consultant will request originals of these signatures.

It is the recipient's responsibility to complete the ERR Workbook and to compile the ERR documentation for submittal to IHCD A. According to the authority granted by HUD [§58.4 & 58.18], IHCD A, or its appointed delegate, is responsible to review and approve each step of the ERR process completed by the recipient.

**Figure 4. Required ERR Workbook Forms by Classification**

<b>Exempt</b>	<b>Categorically Excluded, Not Subject to 58.5</b>	<b>Categorically Excluded Subject to 58.5</b>	<b>Assessed</b>
<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit C, Certificate of Exemption for HUD Funded Projects</li> <li>➤ Signature Page (original signature required)</li> <li>➤ Exhibit G, Environmental Review Workbook                             <ul style="list-style-type: none"> <li>➤ Part 1, Requirement for ALL HUD-Assisted Activities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit D, Certificate of Categorical Exclusion, Not Subject to 58.5</li> <li>➤ Signature Page</li> <li>➤ Exhibit G, Environmental Review Workbook                             <ul style="list-style-type: none"> <li>➤ Part 1, Requirement for ALL HUD-Assisted Activities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit E, Certificate of Categorical Exclusion, Subject to 58.5</li> <li>➤ Exhibit F, Contact Sheet</li> <li>➤ Findings</li> <li>➤ Signature Page</li> <li>➤ Exhibit G, Environmental Review Workbook*                             <ul style="list-style-type: none"> <li>➤ Part 1, Requirement for ALL HUD-Assisted Activities</li> <li>➤ Part 2, Compliance Factors, General</li> <li>➤ Part 3, Compliance Factors, Site Specific</li> </ul> </li> </ul> <p style="margin-top: 20px;">*For tiered scattered-site CDBG OOR or HOME projects: Submit the OOR specific Exhibit G for each address and the OOR priority list for each address once those addresses are identified. See next section.</p>	<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit F, Contact Sheet</li> <li>➤ Findings Page</li> <li>➤ Signature Page</li> <li>➤ Exhibit</li> <li>➤ Exhibit G, Environmental Review Workbook*                             <ul style="list-style-type: none"> <li>➤ Part 1, Requirement for ALL HUD-Assisted Activities</li> <li>➤ Part 2, Compliance Factors, General</li> <li>➤ Part 3, Compliance Factors, Site Specific</li> <li>➤ Part 4, Environmental Assessment</li> </ul> </li> </ul>



## **Floodplains, Floodways, and Wetlands**

IHCDA will not fund projects that are located in a floodway or that have any portion of the project site in a 100-year flood plain. If the project site has any area that is designated as any variation of Zone A or as a floodway, then the project is ineligible for IHCDA funding. Re-platting and/or re-parceling a site out of any variation of Zone A will not be allowed. Instead, consult with and follow FEMA procedures to change the flood designation. This process should be completed prior to submitting a funding application to IHCDA.

For sites within the shaded Zone X or sites outside of Zone A but without a Base Flood Elevation (BFE; this information will be indicated on the FEMA map), then the potential adverse impacts of being directly adjacent to a flood prone area must be minimized. Therefore, the applicant must demonstrate to IHCDA that the following design modifications are included in the project scope. The information must be submitted with the ERR Workbook upon funding application to IHCDA. These requirements can also be found in the ERR Workbook.

- Flood minimization techniques like permeable surfaces, storm water capture and reuse, and/or green roofs.
- New construction and substantial improvement projects must be elevated at or

above the 100-year floodplain.

- The inclusion of early warning systems and emergency evacuation plans.

If your project involves new construction and has either mapped wetlands or potential wetlands, the project is not eligible for IHCDA funding. If your project involves site excavation, installation of wells or septic systems, grading, placement of fill, draining, dredging, channelizing, filling, diking, impounding, and any related activities, and has either mapped wetlands or potential wetlands, you must consider project alternatives, including a new site. STOP project work immediately and contact the IHCDA Placemaking Manager for next steps.

## **Special Instructions for Scattered Site Projects [for Categorically Excluded Subject to 58.5 and Assessed]**

When the project involves scattered sites, the recipient does not need to wait until all sites are identified to complete and submit the ERR Workbook and receive ROF. In this case, the ERR will be considered a Tiered Review and will be completed in two phases, as described in Figure 5, ERR Process for Scattered Site Projects. Phase 1 is the area-wide review. The recipient will complete all the forms that can be completed once the undertaking is identified. This is the ERR Workbook that will be submitted with the funding application. In Phase 2 the recipient will complete and submit the ERR Workbook pages that are specific to an individual site as those sites are identified and ready.

Publication should take place following Phase 1 of this process but will only occur once you have received a letter from IHCDA or its consultant allowing you to publish. It is not necessary to republish after completing the Exhibit G of the ERR Workbook for each individual site. Republication is only necessary if you've been notified by IHCDA that the original publication was incorrect for any reason.

Recipients are encouraged to submit complete ERRs as soon as individual sites have been identified. No contracts or commitment of funds may be made to a specific site until after the individual site worksheets are approved with the issuance of concurrence letter by IHCD or its consultant.

### **Owner Occupied Repair Projects**

Owner Occupied Repair (OOR) projects have fewer applicable environmental concerns and consequently they have a separate Exhibit G of the ERR Workbook that contains site specific information. ERR Workbook preparers should read the guidance carefully that accompanies the OOR Exhibit G to be certain that the abbreviated form is applicable. There will be a Section 106 Historic Review process for each site and the questions are contained within the OOR Exhibit G of the ERR Workbook.

OOR projects are also subject to the IHCD OOR Priority List when developing the scope of work. Each home address must have its own Exhibit G and its own OOR Priority List. This priority checklist and photographs for each priority item in the scope of work must be included for each site with the Exhibit G documentation. Each priority list item must have its own photo. All photos will be in color, large, labeled and legible. Please refer to the Resource Document for further instructions.

### **HOME Homebuyer Scattered Site Projects**

For some HOME homebuyer scattered site projects, a tiered review may be permissible on a case-by-case basis. Tiered reviews for HOME homebuyer scattered site projects are allowable only if the development is Categorically Excluded in classification. Please contact the IHCD Placemaking Manager for consultation.

**Figure 5: ERR Process for Scattered Site Projects**

<b>Categorically Excluded Subject to 58.5</b>	<b>Categorically Excluded Subject to 58.5 - Owner Occupied Repair</b>	<b>Assessed</b>
<b><i>For Phase 1* submit:</i></b>	<b><i>For Phase 1* submit:</i></b>	<b><i>For Phase 1* submit:</i></b>
<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit E, Certificate of Categorical Exclusion, Not Subject to 58.5</li> <li>➤ Signature Page</li> </ul> <p>*Submit during application phase.</p>	<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Exhibit E, Certificate of Categorical Exclusion, Not Subject to 58.5</li> <li>➤ Signature Page</li> </ul> <p>*Submit during application phase.</p>	<ul style="list-style-type: none"> <li>➤ Exhibit A, Environmental Review Record Summary Page</li> <li>➤ Exhibit B, Environmental Review Record Checklist</li> <li>➤ Signature Page</li> <li>➤ Findings Page</li> </ul> <p>*Submit during application phase.</p>
<b><i>For Phase 2* submit:</i></b>	<b><i>For Phase 2* submit:</i></b>	<b><i>For Phase 2* submit:</i></b>
<ul style="list-style-type: none"> <li>➤ Exhibit G, Environmental Review Workbook</li> <li>➤ Parts 1-3 Compliance Factors, Site-Specific</li> </ul> <p>*Submit as each site is identified.</p>	<ul style="list-style-type: none"> <li>➤ OOR Exhibit G, Environmental Review Workbook for each address</li> <li>➤ OOR priority list for each address</li> </ul> <p>*Submit as each site is identified.</p>	<ul style="list-style-type: none"> <li>➤ Exhibit G, Environmental Review Workbook</li> <li>➤ Parts 1-3, Compliance Factors, Site-Specific</li> <li>➤ Part 4, Environmental Assessment</li> </ul> <p>*Submit as each site is identified.</p>

**Contacting Other Entities**

In some cases, the ERR Workbook directs the recipient to request comment on the proposal from other entities, such as local, state, or federal agencies.

To help these entities respond effectively to your request for comment, we suggest that your letter include a thorough description of the undertaking and a map to show the undertaking's location. Also include the source of all funds. This includes private financing, state and federal funds (including CDGB or HOME), funding agencies (IHCDA, et.al.), and how best to contact you.

If there is more than one state or federal funding program or agency involved in an undertaking, a single review may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies.

A Contact Sheet is provided in Exhibit F of the ERR Workbook to assist you in tracking your correspondence with the appropriate agencies. The contact sheet should be submitted to IHCDA along with the all other ERR Workbook documentation. If you have contacted the applicable agencies as directed by the ERR Workbook and/or Resource Document instructions, and you have not heard from them within 30 days, you

may submit the ERR Workbook without their comments. You must include a copy of your correspondence to show your effort to solicit their comment.

For single site projects, only one letter of determination will be necessary. For scattered site projects, letters for each site will be sent or received.

### **Findings [for Categorically Excluded Subject to 58.5 and Assessed]**

Both Assessed activities and activities which are Categorically Excluded, Subject to 58.5, are required to complete the Findings page. The Findings are intended to be a thoughtful consideration of the information gathered in completing the ERR.

For projects which are Categorically Excluded, Subject to 58.5, the focus of the Findings is on compliance.

For Assessed projects, the Findings also include an assessment of:

1. Feasible ways to eliminate or minimize adverse environmental impacts;
2. Alternatives to the project, if necessary;
3. An Assessment of one of the following:
  - a. Finding of No Significant Impact (FONSI)
  - b. Finding of Significant Impact, thereby requiring the execution of an Environmental Impact Statement (EIS).

### **Environmental Impact Statements (EIS)**

An environmental impact statement is a complex analysis required for proposed activities that would have a significant impact on the human environment in accordance with section 102(2)(C) of the National Environmental Policy Act. EIS thresholds stated at §58.37(a) and (b)(2) include:

1. Projects determined by a previously written environmental assessment, to have a potentially significant impact on the human environment; and
2. Projects involving 2,500 or more units being: removed, demolished, converted, rehabilitated, or constructed.

If you determine that an EIS is required, please contact the IHCDM Placemaking Manager for the procedures.

### **Overview of ERR Review Process by Classification**

#### *EXEMPT AND CATEGORICALLY EXCLUDED, NOT SUBJECT TO 58.5*

1. Complete the ERR Workbook, including:
  - a. All forms required by Figure 4, Required Forms by Classification.
  - b. Source documentation as required by the ERR Workbook forms.
  - c. Signatures as required by ERR Workbook.
    - i. If project is funded, IHCDM or its consultant will request original signatures.
2. Submit an electronic copy of the ERR Workbook with funding application.

3. If application is awarded IHCDAs funds, IHCDAs consultant will begin review of submitted ERR materials.
4. Receive correspondence for additional information, if applicable.
5. It is not necessary to publish a public notice. Once all information is acceptable to IHCDAs or its assignee, then a Release of Funds letter will be sent by IHCDAs or its assignee.

*CATEGORICALLY EXCLUDED, SUBJECT TO 58.5 AND ASSESSED*

HOME SINGLE SITE PROJECTS

1. Complete the ERR Workbook, including:
  - a. All forms required by Figure 4, Required Forms by Classification.
  - b. Source documentation as required by the ERR Workbook forms.
  - c. Signatures as required by the ERR Workbook forms.
    - i. If project is funded, IHCDAs or its consultant will request original signatures.
2. Submit an electronic copy of the ERR Workbook and all supporting documentation with funding application.
3. If application is awarded IHCDAs funds, IHCDAs consultant will conduct full review of submitted ERR materials.
4. Receive correspondence for additional information, if applicable.
5. Receive letter authorizing to publish appropriate Notice of Intent to Request Release of Funds.
6. Complete applicable notice and publish in the local newspaper of greatest circulation. See Section IV of this Users Guide for more information on notices. Sample notices are provided in Appendix 5 of this Users Guide.
7. Forward one electronic copy of the public notice and one electronic copy of the publisher's affidavit to IHCDAs consultant. The entire public notice must be included and legible. Keep all originals for your records.
8. IHCDAs or its consultant will send HUD the Request of Release of Funds, if applicable.
9. Once recipient receives the Release of Funds letter and a fully executed copy of their award agreement from IHCDAs, the recipient may begin their undertaking (project).

CDBG OOR SCATTERED SITE PROJECTS

1. Complete the ERR Workbook, including:
  - a. Forms as described in Figure 5: ERR Process for Scattered Site Projects, under *Phase 1*.
  - b. Source documentation as required by the forms.

- c. Signatures as required by the forms.
    - i. If project is funded, IHCD A or its consultant will request original signatures.
2. Complete Steps 2-7 as indicated for Single Site Projects.
  3. As individual sites are identified, complete and submit the Exhibit G ERR Workbook for the sites, including:
    - a. Forms as described in Figure 5: ERR Process for Scattered Site Projects, under *Phase 2*.
    - b. Source documentation as required by the ERR Workbook.
    - c. Signatures as required by the ERR Workbook.
    - d. If an OOR award, the OOR Priority List and all required photos.
  4. After IHCD A's consultant agrees with the applicant's conclusions, the consultant will issue the applicant a Phase 2 Concurrence Letter allowing the award recipient to move forward for the specific site.
  5. Once the recipient receives the Phase 2 Concurrence Letter for each specific site, the recipient may begin the undertaking (project) for that site.

#### HOME HOMEBUYER SCATTERED SITE PROJECTS

Please note that due to the potential differences in tiered HOME Homebuyer projects, the ERR information required may be different for each project. Therefore, the projects will be evaluated on a case-by-case basis and the following information is for planning purposes only. Please consult with IHCD A or its consultant before preparing the ERR Workbook for HOME Homebuyer projects.

1. Complete the ERR Workbook, including:
  - a. All forms required by Figure 4, Required Forms by Classification.
  - b. Source documentation as required by the ERR Workbook forms.
  - c. Signatures as required by the ERR Workbook forms.
    - i. If project is funded, IHCD A or its consultant will request original signatures.
2. Submit an electronic copy of the ERR Workbook and all supporting documentation with funding application.
3. If application is awarded IHCD A funds, IHCD A's consultant will conduct full review of submitted ERR materials.
4. Receive correspondence for additional information, if applicable.
5. Receive letter authorizing to publish appropriate Notice of Intent to Request Release of Funds.
6. Complete applicable notice and publish in the local newspaper of greatest circulation. See Section IV of this User's Guide for more information on notices. Sample notices are provided in Appendix 5 of this User's Guide.

7. Forward one electronic copy of the public notice and one electronic copy of the publisher's affidavit to IHEDA's consultant. The entire public notice must be included and legible. Keep all originals for your records.
8. IHEDA or its consultant will send HUD the Request of Release of Funds, if applicable.
9. Once recipient receives the Release of Funds letter and a fully executed copy of their award agreement from IHEDA, the recipient may begin their undertaking (project).
10. As additional individual sites are identified, complete and submit the Exhibit G ERR Workbook for the sites, including:
  - a. Forms as described in Figure 5: ERR Process for HOME Homebuyer Scattered Site Projects, under *Phase 2*.
  - b. Source documentation as required by IHEDA or its consultant and the ERR Workbook.
  - c. Signatures as required by the ERR Workbook.
11. After IHEDA's consultant agrees with the applicant's conclusions, the consultant will issue the applicant a Phase 2 Concurrence Letter allowing the award recipient to move forward for the specific site.
12. Once the recipient receives the Phase 2 Concurrence Letter for each specific site, the recipient may begin the undertaking (project) for that site.

### III. SECTION 106 HISTORIC PRESERVATION REVIEW

The National Historic Preservation Act of 1966 requires agencies to consider the impact of their federally funded projects on historic properties. This process is commonly known as “the Section 106 review”. The Section 106 review has its own guiding regulations and is distinct and separate from the environmental review process. The Section 106 implementing regulations are at 36 CFR Part 800 but are incorporated by reference into the environmental review process at 24 CFR Parts 58 and 50. Therefore, IHCDCA combines the Section 106 review into the environmental review process.

The Section 106 process is federally required for the Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), and National Housing Trust Fund (NNHTF) funding sources, therefore all projects receiving those funds from IHCDCA must complete the Section 106 review as part of the ERR Workbook and must receive Section 106 clearance before signing contracts or spending IHCDCA dollars. The Section 106 review process is explained here in this section of this User’s Guide and the historic preservation review questions can be found as part of the ERR Workbook. Also refer to the Resource Document in order to complete the Section 106 review.

#### **Section 106 Review Process (Federal Funds)**

At IHCDCA the federal Section 106 review process for projects funded with federal funds is initiated with the submission of the ERR Workbook. (Refer to the State Historic Review Process section for projects funded with state funds). The general steps are: identify the property, submit the scope of work, determine the Area of Potential Effect (APE), research the history and possible significance of buildings, structures, and objects within the APE, and determine possible effects. Not all required steps and documentation are referred to below, so it is imperative that you refer to the Resources document for step-by-step guidance in completing the Section 106 review.

For tiered projects (usually scattered site and/or OOR projects), the Section 106 process will occur as each site is identified, during Phase 2 part of the ERR Review.

As part of the Section 106 Historic Review process, IHCDCA is required to submit all new construction projects to the Indiana Department of Natural Resources’ State Historic Preservation Office (SHPO) for archaeology review. SHPO is statutorily required to complete this review within 30 days. Please plan your project timeline accordingly.

It should be noted that the Section 106 process is not the same process used for the Federal Historic Preservation Tax Incentives program (commonly known as “historic tax credits”). Projects utilizing the historic tax credits and federal HUD funding will undergo separate and sometimes similar reviews. The timing of Section 106 concurrence may be impacted by the use of historic tax credits so adjust your project timeline accordingly. For more information about the historic tax credits visit <https://www.nps.gov/tps/tax-incentives.htm> or contact the Indiana Department of Natural Resources, Historic Preservation and Archaeology division. <http://www.in.gov/dnr/historic/3680.htm>

#### *Area of Potential Effects*

How to determine and make a map of the APE is described in the Resources document, however, generally: “The area of potential effects is the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area



of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” [36 C.F.R. § 800.16(d)]

The APE is the area around the undertaking/project that could contain historic properties effected by your undertaking/project. This is different and usually larger than the project site. Typically the APE will be the area viewed when standing at the highest point of your project site. There is always an APE, on every project.

#### *Determination of Effect*

The culmination of the Section 106 review process is the determination, or finding, of possible effects your project will have on historic structures, either because your site is a historic or potentially historic structure or there are historic or potentially historic structures within the APE. The Responsible Entity makes the determination of effect. A letter of finding/determination of effect must come from the Responsible Entity.

For NFP/FP applicants the Responsible Entity is IHCD. Once all appropriate documentation is received NFP/FP applicants will receive a letter of determination of effect from the Environmental Officer or assignee.

LUG applicants are considered the Responsible Entity and a letter of determination of effect must come from an official for the local government applying for funds. Once the determination of effect along with the appropriate documentation is received the LUG will receive a letter of concurrence from the Environmental Officer. Possible findings are one of the following: No Historic Properties Affected, No Adverse Effect, or Adverse Effect.

- *No Historic Properties Affected/No effect* - No resources can be found within the area of potential effect therefore the project will have no effect.
- *No Adverse Effect*- used if there are historic properties within the APE boundaries that will not be altered in such a manner that it will diminish the integrity of the properties’ characteristics qualifying it for inclusion in the National Register
- *Adverse Effect*- used if there are historic properties in the APE that will be altered in such a manner that it will diminish the integrity of the properties’ characteristics qualifying it for inclusion in the National Register. Adverse effects may include: physical destruction of, or damage to a property, alterations that are not consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, removal of the property from its historic location, change in the use or character of physical features or setting, introduction of visual, atmospheric or audible elements, neglect which causes deterioration.

#### *Completion of the Section 106 Process*

The Section 106 process is considered complete when there is concurrence with the determination of effect. A letter of concurrence means that the Section 106 process for your project has been reviewed and IHCD agrees with your determination. All applicants must receive a letter from IHCD signifying either the determination of effect or a concurrence to a determination for the process to be complete.

For non-profit and for-profit applicants, IHCD, or its assignee, will send a letter of concurrence for the determination of effects for each project address. The Section 106 process is then considered complete.

For Local Units of Government (LUGs), the LUG will provide a letter of determination of effect from the Chief Executive Officer in the ERR Workbook submission. Once the LUG applicant receives a letter of concurrence from IHCD or its assignee for that address, then the Section 106 process will be complete for that address.

Completed and concurred reviews will be recognized by IHCD for a period of up to three years, provided that the project and scope remains the same. If you are submitting a ERR Workbook for a site that has already undergone review and concurrence, please submit the original forms and any letters from IHCD or its assignee. If any factors of the project changed (scope of work, source of funds, etc.) a new review may be necessary.

#### *Section 106 Concurrence and Release of Funds*

Concurrence with the Section 106 review does not necessarily indicate that a project has obtained ROF. For single site projects, Section 106 concurrence is necessary before request for ROF occurs. For scattered site projects, a project may have ROF already however, no work may occur for that address before there is a Section 106 concurrence letter. Always make sure you have ROF for the project and/or address before starting work or signing contracts for the project.

#### **State Historic Review Process (Development Fund)**

If you are requesting the IHCD Affordable Housing and Community Development Fund (Development Fund), then the following information and instructions for historic review apply to your project. For all projects funded in whole or in part by State funds (e.g. Development Fund) a review process separate from the Section 106 review is triggered by Indiana Code [IC 14-21-1-18]. This statute requires that any historic site or historic structure owned by the state; or historic site or historic structure listed on the state or national register; may not be altered, demolished, or removed by a project funded, in whole or in part, by the state unless the review board has granted a Certificate of Approval (CofA).

#### *Projects Funded with Only State Funds*

Consultation occurs between the Indiana State Historic Preservation Office (SHPO), the funding agency, and the applicants to determine if listed properties will be altered, demolished or removed by the proposed project. If it is determined that historic resources listed on the state or national registers will be adversely impacted, the applicant will need a CofA from the State Historic Review Board. The CofA review takes at least 30 days once it is submitted to SHPO.

#### *Projects Funded with State and Federal Funds*

Consultation occurs between the Indiana SHPO, the funding agency, and the applicants to understand the impact of developments on historic resources. In order to expedite reviews and eliminate redundancy in reviews, if a project is receiving both State funds (Development Fund) and Federal funds, then the Indiana SHPO will perform both the CofA review and the Federal Section 106 concurrently. If it is determined that any sites or structures listed on the state or national registers will be adversely impacted and the project will require a CofA hearing from the State Historic Review Board, the applicant may not close on any IHCD loans or receive any IHCD grant funding until all State and Federal requirements met.

#### *Steps to the Historic Review Process*

The first step in the State Historic Review Process for State funds is to determine if the project site or if the project structure is listed or eligible for listing in the National Register of Historic Places or if it is listed on the State register. Applicants and recipients of the Development Fund must include maps of the project

area and maps from DNR's Indiana Historic Buildings, Bridges, and Cemeteries Map to show proof of these determinations. Refer to the Appendix 3 Resources Document, pages 11-12, for specific directions on how to how to research your property on the map tool and to Appendix 9 for example maps to include. If the project site or if the project structure is listed or eligible for listing in the National Register of Historic Places or if it is listed on the State register, then IHCDCA will request more information in order to submit a Certificate of Approval (CofA) application to SHPO on behalf of the Development Fund recipient. Information on that process is found in the next section.

#### *Certificate of Approval Process*

If the project site or the project structure(s) is listed or eligible for listing in the National Register of Historic Places or if it is listed on the State register, then IHCDCA will submit a Certificate of Approval (CofA) application to SHPO on behalf of the Development Fund recipient. The [Indiana Historic Preservation Review Board](#) meets quarterly (January, April, July and October) to hear and approve Certificates of Approval. All applications for a CofA must be received by the SHPO no later than forty (40) days prior to the review board meeting. IHCDCA will submit the application on the applicant's behalf, however, be aware of the timeline in order to plan your project accordingly.

It is imperative that the State Historic Review Process is completed and a CofA obtained, if necessary, before scheduling a loan closing, executing contracts, or entering into any other commitments of the Development Fund or other funds. Projects may not initiate demolition, rehabilitation, or construction activities prior to a CofA approval. This includes all site preparations and ground disturbing activities including infrastructure, grading, etc. Failure to follow the procedures will likely result in no State or Federal funding from IHCDCA.

#### **IV. FORMS & TIMING OF NOTICE**

For recipients utilizing federal funds, the environmental review process is not complete until a Release of Funds (ROF) is requested and received from HUD. That process entails publishing a proscribed public notice in order to notify the public and to receive public comments. When necessitated by the funding source regulations, IHCD and/or its consultant will send proof of publication along with an official Request for Release of Funds to HUD. The recipient will be notified of ROF when it receives the fully signed award documents from IHCD Real Estate Production staff.

The form and timing of notice differs by:

- The classification of the project (Categorically Excluded Subject to 58.5 or Assessed); and
- The source of funds.

There are sample, boilerplate notices in Appendix 5. Which notice to use depends on the funding source and the classification of the project. The information in this User's Guide (Figure 2) and the completion of the ERR Workbook will help you determine the classification of your project.

DO NOT publish your public notice until you receive a letter notifying you to do so from IHCD or its consultant. If all project information in the notice is not correct, the recipient may be required to republish.

Be sure to use the correct public notice found in this User's Guide. Be specific and correct in describing your project for the public notice. You must list all addresses (not a range) and you must list the correct type and amount of funds for your project. Failure to publish a notice without current and correct information will require republication and will delay your project.

Recipients must submit two items to show for proof of publication: a publisher's affidavit and a copy of the published notice. These may be submitted electronically via email to IHCD's consultant. The entire public notice must be visible in the copy or it will be rejected.

#### **CATEGORICALLY EXCLUDED, SUBJECT TO 58.5**

Projects which are Categorically Excluded Subject to 58.5 need only publish a Notice of Intent to Request Release of Funds (NOI/RROF). The *NOI/RROF* indicates the recipient's intention to submit a Request for Release of Funds no sooner than 7 days following the publication of the notice. This gives the public or any interested entities at least 7 days to submit comments locally before any other action is taken.

The notice further establishes a minimum of 15 days during which the public may comment to IHCD, after IHCD has received the request. IHCD must then wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to requesting release of funds from HUD.

#### **ASSESSED**

Assessed projects must publish a NOI/RROF but also a Finding of No Significant Impact (FONSI). For Assessed projects, IHCD provides a Combined Notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact (NOI/RROF/FONSI) as provided for under 24 CFR 58.44.

The *NOI/RROF/FONSI* states the "Finding of No Significant Impact" and indicates the recipient's intention to submit to IHCD a Request for Release of Funds no sooner than 15 days following the publication date. This

gives the public or any interested entities at least 15 days to submit comments locally before any other action is taken.

The notice further establishes a minimum of 15 days during which the public may comment to IHCD, after the request has been received. IHCD must then wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to requesting release of funds from HUD.

### **SAMPLE NOTICES PROVIDED IN THIS USER'S GUIDE**

Boilerplate sample notices are provided for the award recipient's use. The sample notices are available in Appendix 5 of this User's Guide. Each notice has bolded information that should be changed to project specific information by the recipient prior to publishing.

For Categorically Excluded Subject to 58.5:

- 1) Notice of Intent to Request Release of Funds for HOME and CDBG funded projects\*
  - a. Not-for-Profit (NFP)
- 2) Notice of Intent to Request Release of Funds for CDBG funded projects
  - a. Not-for-Profit (NFP) or For-Profit (FP)
  - b. Local Unit of Government (LUG)
- 3) Notice of Intent to Request Release of Funds for HOME funded projects
  - a. Local Unit of Government (LUG)
  - b. Not-for-Profit (NFP) or For-Profit (FP)
- 4) Notice of Intent to Request Release of Funds for HOME funded tiered projects
  - a. Not-for-Profit (NFP) or For-Profit (FP)
- 5) Notice of Intent to Request Release of Funds for HOME and Supportive Housing Program funded projects
  - a. Not-for-Profit (NFP) or For-Profit (FP)
- 6) Notice of Intent to Request Release of Funds Supportive Housing Program funded projects
  - a. Not-for-Profit (NFP) or For-Profit (FP)

For Assessed Projects:

- 7) Combined notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact for HOME and CDBG funded projects\*
  - a. Not-for-Profit (NFP) or For-Profit (FP)
- 8) Combined notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact for CDBG-D funded projects\*\*
- 9) Combined notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact for CDBG funded projects
  - a. Local Unit of Government (LUG)
- 10) Combined notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact for HOME funded projects
  - a. Local Unit of Government (LUG)
  - b. Not-for-Profit (NFP) or For-Profit (FP)

\*If there is a possibility that your project might use both CDBG and HOME as a funding source, then use a combined CDBG and HOME notice to avoid having to republish for another funding source.

\*\*If you are a Not-for-Profit or For-Profit awarded CDBG funds under a limited-time program such as Disaster Recovery Grants, then use the CDBG-D notice for NFP or FP.

### **OTHER FORMS OF NOTICE**

The recipient may wish to utilize additional efforts to inform the public, announcing the availability of the ERR for review. Such extra efforts could include holding public meetings or hearings locally or maintaining mailing lists of persons interested in a particular action and notifying them of the availability of the ERR for local review and comment. For some projects that require additional permitting may be required to hold additional public comment times or hearings. Please include that information in your ERR documentation.

### **PUBLIC NOTICE TIMELINES**

All required minimum time periods are counted as calendar days. The first day of a time period begins on the day following the publication date of any notice (24 CFR § 58.21).

NOI = Notice of Intent / RROF = Request for Release of Funds / FONSI = Finding of No Significant Impact

Example Timeline – Categorically Excluded Subject to 58.5 (NOI/RROF only):

March 15th	Publication date of <i>NOI/RROF</i>
March 16th - 22nd	Minimum 7-day local comment period
On or about March 23rd	Recipient forwards two original tear sheets and a publisher's affidavit as proof of publication to IHCD
March 24th - April 7th	IHCD 15-day comment period
On or about April 8th	IHCD requests Release of Funds from HUD. (If LUG recipient, IHCD may issue Release of Funds without an additional HUD review period.)
April 9 <sup>th</sup> -22 <sup>nd</sup>	HUD comment period
On or about April 23	IHCD receives Release of Funds from HUD

Example Timeline – Assessed Project (Combined NOI/RROF/FONSI):

March 15th	Publication date of <i>NOI/RROF/FONSI</i>
March 16th - 30th	Minimum 15-day local comment period
On or about March 31st	Recipient forwards two original tear sheets and a publisher's affidavit as proof of publication to IHCD

April 1st - April 15th

IHCDA 15-day comment period

On or about April 16th

IHCDA requests Release of Funds from HUD

(If LUG recipient, IHCDA may issue Release of Funds without an additional HUD review period.)

April 17<sup>th</sup>-30<sup>th</sup>

HUD comment period

On or about May 1

IHCDA receives Release of Funds from HUD

## V. DEFINITIONS

**Aggregation** – (also called Project Aggregation) The concept of evaluating as a single project all individual activities that are related either on a geographical or functional basis, or are logical parts of a composite or contemplated actions. Project aggregation must include both HUD/IHCDA and non-HUD/IHCDA funds. Ex: Acquisition dollars + Demolition dollars + Construction dollars = Aggregate project dollars/costs

**Area of Potential Effect (APE)** – In the Section 106 process, “The area of potential effects is the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” [36 C.F.R. § 800.16(d)]

The APE is the area around the undertaking/project that could contain historic properties effected by your undertaking/project. This is different than the project site. Typically the APE will be the area viewed when standing at the highest point of your project site. There is always an APE, on every project.

**Certificate of Approval (CofA)** - Approval by the state historic review board for state funds (ex: the IHCDA Development Fund) to be used to alter, demolish, or remove an historic site or historic structure that is owned by the state or is listed individually or in a listed district in either the Indiana Register of Historic Sites and Structures or the National Register of Historic Places.

**Certifying Officer** - The official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13. For all programs this is the Executive Director of IHCDA.

**Consulting Party** – In the Section 106 process, “Individuals and organizations with a demonstrated interest in the project due to the nature of their legal and economic relation to the undertaking or affected properties, or their concern with the undertaking’s effect on historic properties” [36 CFR § 800.2] Consulting parties generally include: applicants, professional consultants, and government agencies with jurisdiction over the project.

**County Interim Reports** - Published surveys of potential historic resources within the counties. Interims include maps, site information, identification of possible historic districts and cataloging of potentially eligible properties and ratings of their qualities that may make them eligible: Non-Contributing, Contributing, Notable and Outstanding.

**Development Site(s)** – The location(s) where work will occur. The street address, city or town, township and county of the project area.

**Environmental Impact** - Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, caused or induced in whole or in part, directly or indirectly, by a proposed undertaking.

**ERR** – Environmental Review Record; also short for the Environmental Review Record Workbook.



**Findings/Determination of Effect in the Section 106 process** – the outcome of proposed project; what effect the project will have on historic properties:

- *No Historic Properties Affected/No effect* - No resources can be found within the area of potential effect therefore the project will have no effect.
- *No Adverse Effect*- used if there are historic properties within the APE boundaries that will not be altered in such a manner that it will diminish the integrity of the properties’ characteristics qualifying it for inclusion in the National Register
- *Adverse Effect*- used if there are historic properties in the APE that will be altered in such a manner that it will diminish the integrity of the properties’ characteristics qualifying it for inclusion in the National Register. Adverse effects may include: physical destruction of, or damage to a property, alterations that are not consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, removal of the property from its historic location, change in the use or character of physical features or setting, introduction of visual, atmospheric or audible elements, neglect which causes deterioration.

**Finding of No Significant Impact (FONSI)** – A document briefly presenting the reasons why an action, not otherwise categorically excluded or exempt, will not have a significant effect on the human environment and for which an Environmental Impact Statement, therefore, will not be prepared. The FONSI must include the environmental assessment (or summary of it) and note any other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

**Floodplain** - “Floodplain” means the Special Flood Hazard Area (SFHA) identified on the flood maps published by the National Flood Insurance Program (NFIP) by the Federal Emergency Management Agency (FEMA).

**Historic Property** – Any prehistoric, or historic, district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The National Register criteria should be applied to determine the eligibility of a property. For purposes of the State review historic property also refers to those resources that are listed on the Indiana Register of Historic Sites and Structures. Typically aged 50 years or older, with some exceptions.

**HUD** – The Office of Housing and Urban Development

**Human Environment** - Interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environment effects are interrelated, then the EIS will discuss all of these effects on the human environment.

**LHRD** – Lead Hazard Reduction Demonstration grant program. It is a HUD program to assist states, cities, counties/parishes, Native American Tribes or other units of local government in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing.

**LUG** – Local Unit of Government

**Memorandum of Agreement (MoA)** - In the Section 106 process, the legal contract outlining mitigation measures to be carried out. On the occasion where the project will result in an Adverse Effect, a Memorandum of Agreement will be drawn to minimize or mitigate those adverse effects.

**NHTF** – National Housing Trust Fund grant program. Also referred to as HTF or Housing Trust Fund.

**NOI/RROF** - Notice of Intent to Request Release of Funds.

**OOR** – Owner-Occupied Repair grant program. A CDBG program administered by IHCD that funds eligible repairs on owner-occupied homes.

**Project** - An activity or group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective [24 CFR 58.2(a)(4)]. Used interchangeably with “undertaking” in this User’s Guide.

**Project Classification** – In the ERR Review Process, this is the result of defining the level of environmental review that must be completed prior to receiving federal funding. Based on the proposed activities in the project, the project will be classified as either Exempt, Categorical Exclusion Not Subject to 58.5, Categorical Exclusion Subject to 58.5, or Assessed. If projects are Assessed, then a finding of either No Significant Impact or a Finding of Significant Impact must be made.

**Responsible Entity** – The local unit of government when it is the recipient under the program. For not-for-profit or other entities the State (IHCD) is the Responsible Entity. [58.2(a)(7)]

**ROF** - Release of Funds.

**RROF** - Request for Release of Funds.

**Section 106 Historic Preservation Review** – Also referred to as Section 106. The process to review effects on historic resources by undertakings with federal funds. Enabled with the National Historic Preservation Act of 1966. Any project receiving federal funding, licensing, permits, or approval must consider the impact on historic properties. While it is its own review process, at IHCD the Section 106 process is incorporated into the environmental review process.

**SHPO** - State Historic Preservation Office. In Indiana the State Historic Preservation Office is the Department of Natural Resources (DNR), Division of Historic Preservation and Archaeology (DHPA).

**Tiered Review** – The ERR process is conducted in a two-step phased process. The first phase is the area-wide review and, at IHCD, is submitted with the funding application. The second phase is the site specific portion of the ERR Workbook (and the IHCD OOR Priority List) and is submitted for review once each site is identified.

**Undertaking** - A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried

out with Federal financial assistance; and those requiring a Federal permit, license or approval. Used interchangeably with “project” in this User’s Guide.