

Frequently Asked Questions on the HTFC HOME Local Program Administrator (LPA) Environmental Review

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SPECIFIC REVIEW QUESTIONS:

ASBESTOS:

1. **If the non-profit LPA (also known as the owner’s agent) hires a contractor to conduct rehabilitation work on a home, are they responsible for an Asbestos Containing Materials survey?**

No, the responsibility then falls to the contractor – [NYS Department of Labor 12 NYCRR Part 56.5.1 \(a\)](#)

2. **Does every home proposed to be rehabilitated require an ACM survey? Does the survey require a certified asbestos inspector? Is a survey required of the entire structure, even though we are only conducting rehabilitation on a portion of the building?**

A survey of friable and non-friable ACM, conducted by an EPA certified asbestos inspector, is required if any rehabilitation will be conducted. A NYS licensed home inspector, that is not certified by EPA for ACM inspection, is not acceptable. Only the area to be rehabilitated (also known as the affected portion) is required to be surveyed. See [12 NYCRR Part 56-5.1 \(e\)](#)

3. What building components typically contain ACM?

Equipment insulation (including boilers, tank insulation, piping and fitting insulations), surface treatments for fireproofing, roofing materials (felts, shingles, insulation board, transite), floor tile, cove base, caulks, joint compound and glazing compound, among others. See [12 NYCRR Part 56.5.1 \(f\)](#) Note that this list is not inclusive.

4. What is an LPA required to state on the Site Specific Statutory Checklist for ACM? What documentation am I required to submit?

In the case of 1 or 2 unit buildings, the LPA is required to state that the work will be contracted out. If the LPA is not contracting out the work, they must cause a survey to be conducted. HTFC does not expect to receive copies of the ACM survey, since the survey may not be conducted prior to the LPA requiring site specific approval. Also include a statement that any asbestos related work will comply with 12 NYCRR Part 56.

HUD ENVIRONMENTAL STANDARDS:

5. HUD Environmental Standards in [24 CFR Part 58.5 \(I\)](#) state that qualified environmental professionals must undertake investigations to determine that all properties be free of hazardous materials. What is a qualified environmental professional? Are NYS Licensed Home Inspectors qualified?

HTFC utilizes the American Society for Testing and Materials Standard (ASTM) E-1527-05 to define “qualified environmental professional” as:

- A person who holds a Baccalaureate or higher degree in a relevant science or engineering field plus the equivalent of five years relevant work experience OR
- A person who holds a current engineer’s or professional geologist license or registration from a state, tribe or U.S. territory OR
- An official of the site locality’s Building Department with expertise in assessing environmental conditions OR
- A person who has the equivalent of ten years relevant work and field experience in performing environmental site assessments.

Environmental professional means a person who possesses sufficient education, training, and experience to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases

on or at a property. Licensed Home Inspectors would only be qualified if they have the training, work experience and/or education combination to qualify them to make determination as to hazardous materials. A home inspector's license alone does not make an inspector a qualified environmental professional.

6. What if the Qualified Environmental Professional notes a hazard or area of concern with a particular property?

The environmental professional would make recommendations to the LPA on what step to take next, if any. HTFC expects the LPA to prepare a letter on their letterhead, to be submitted with the Site Specific Statutory Checklist, outlining the action that will be taken to remediate the situation. Rejecting the site from the program is also an option for the LPA.

7. What is the difference between a Phase I Environmental Site Assessment (ESA) and the review required for HUD Environmental Standards?

A Phase I ESA is required for all properties that are to be acquired by the LPA and contain 5 units or more. A Phase I ESA addresses site liability, by conducting a site visit and preparing a report that includes a narrative section of the findings, database printouts of prior spill and hazardous waste sites, records review of site history with recommendations for testing or further study should an environmental condition be uncovered. These documents can be up to 100 pages or more and can cost upwards from \$1,500 per site. Phase I ESAs do not include soil or groundwater sampling.

HUD Environmental Standards for 4 or fewer units requires a site visit by a qualified environmental professional and a brief report stating the site is not located on or near any hazardous materials or contamination. These reports should include recommendations if any concerns are reported. Costs range upwards from \$130 per site.

MISCELLANEOUS SITE SPECIFIC REVIEW QUESTIONS:

8. What are the site specific review requirements for funding that comes from CDBG or the municipality?

While it is understood that funding from these sources may be combined with HOME LPA funds from HTFC, the site specific requirements for these entities are up to their own certifying officer. Their review processes and requirements are separate and distinct from HTFC.

9. How long will it take to receive approval for a site specific review?

It could be as short a same day turn-around or up to several weeks depending upon EAU workload and the completeness of the checklist.

10. Are municipalities required to submit the site specific statutory checklist to HTFC?

No. Municipalities are the responsible entity in this case and they are required to carry out the environmental review according to their own process. If you are a non-profit HOME LPA or consultant preparing the environmental review for a municipality, you should conduct the review according the municipality procedures. See question number 19 below.

11. What if an LPA conducted a programmatic review for down payment assistance with moderate rehabilitation, but once a specific site is selected, they determine to only provide down payment assistance? What part of the site specific checklist does the LPA complete?

The LPA will only be required to complete section 4.1 of the site specific checklist since they are only providing down payment assistance for that property. The LPA must note at the top of the checklist under the “comments” section that they will only be conducting down payment assistance on this site.

12. What if an LPA already conducted the work, but have yet to submit a set-up request?

The set-up request will be rejected until the site specific review is approved by HTFC. If the LPA started or completed the project, they must still submit a site specific checklist, however a note at the top of the checklist under the “comments” section should state that the work was already or is currently being completed. HTFC will require the LPA to document how each relevant issue was addressed. If they did nothing to address a specific issue, that must be stated on the checklist. The site will be approved and the project can be set- up.

CLARIFICATION 3/2/2011: It has come to our attention that this question has caused confusion among several groups with program awards prior to 2010.

The answer to Question 12 is valid ONLY if the LPA started or completed a project on a specific site between July 1, 2009 and March 30, 2010. If an LPA initiated work on a site after March 30, 2010, without a site specific environmental clearance memo, the site will be found to be ineligible.

13. Will HTFC accept a Historic determination from a local municipality for a specific site?

No, HTFC is obligated under federal law to consider impacts to historic resources for any buildings 50 years or older that receive federal funds. While there may be a local review requirement from the municipality, only a determination from the NY State Historic Preservation Officer is adequate for HTFC.

- 14. The municipality has already conducted a NEPA review for the property we are assisting. Can this be used to satisfy the HTFC site specific review?**

It may be adequate. You will still need to fill out and submit a site specific statutory checklist for each site, but you may reference the municipality review where appropriate. Each submittal will be handled on a site-by-site basis to determine if the municipal review is acceptable to HTFC.

PROGRAMMATIC REVIEW QUESTIONS:

- 15. Can an LPA start demolition of a program site before they obtain Environmental Clearance from HTFC? All they want to do is remove Asbestos Containing Materials and start some minor demolition. The LPA will be using non-HUD funds for this work.**

HUD regulations are very clear on this point. No physical alteration to any program site can occur until the program has received environmental clearance from (HUD) HTFC. The LPA must complete an acceptable ERR, publish the public notice and receive the clearance letter and approval on the site specific review from HTFC before any site disturbing activities can occur on the site, even if those activities are financed with non-HUD funds. This is known as ‘Choice Limiting Actions’ and can be found at [24 CFR Part 58.22](#).

- 16. What does an LPA need to do to begin the environmental review process?**

The LPA must complete the Environmental Review Record (ERR), which is a packet of documents related to the HUD environmental review. For blank documents and instructions, see the [Environmental Review Procedures for Local Program Administrator \(LPA\) Programs](#)

- 17. The Environmental Review Procedures for Local Program Administrator (LPA) Programs, have two different types of public notices. Which one should our program use?**

If your program is Categorically Excluded according to ERR Section 2.3, use the sample Notice of Intent to Request Release of Funds (NOIRROF) in Appendix F of the [Environmental Review Procedures for Local Program Administrator \(LPA\) Programs](#). This section includes two different boilerplate notices, depending on whether you are a non-profit organization or a municipal government.

If your program requires an Environmental Assessment, use the sample Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds, (Appendix G [Environmental Review Procedures for Local Program Administrator \(LPA\) Programs](#)) depending on whether you are a non-profit organization or a municipal government.

18. We are a non-profit organization under contract with a county government to conduct a homebuyer's program on their behalf. Who is the Responsible Entity?

In this case, the Responsible Entity is the County. It has two obligations: 1) to classify the project and prepare an Environmental Review Record (ERR), and 2) to certify to HTFC that procedural requirements of the federal regulations have been met.

Sometimes a non-profit organization or private consulting firm provides services to a municipality such as filing an application, preparing public notices, and/or managing program funds. In these cases, the municipal government is the applicant for grant funds and is the Responsible Entity to certify the environmental review to HTFC. The non-profit or private firm may assist the municipality in preparing public notices and certification materials, but a municipal official or authorized representative must still be responsible for decisions made in the environmental review, and sign the Request for Release of Funds (RROF) as Certifying Officer.

19. The LPA provides only financial assistance to first-time homebuyers. Doesn't that mean they are exempt from completing the Statutory Checklist and publishing a public notice?

Not necessarily. The National Environmental Policy Act requires the environmental review to address all activities associated with a federally-sponsored action, even if non-HUD funds, for instance, are used for rehabilitation. This is known as project aggregation. If a homebuyer's assistance program will be used for purchase of properties where repairs are required (e.g., a private mortgage lender or Housing Quality Standards requires certain repairs to be made), both sections 4.1 and 4.2 of the Statutory Checklist must be completed for the program and a public notice must be published. For a homebuyer's program to be exempt for down payment assistance only, financial assistance must be applied to existing for-sale properties or homes already under construction, which are able to be occupied in their existing or finished condition.

20. Our program is not considering any properties in a historic district. Why do we still need to send the State Historic Preservation Office (SHPO) form?

HTFC is obligated under federal law to consider impacts to historic resources for all projects that receive federal funds. Properties not currently within a historic district, or listed on the State or National Registers of Historic Places, may still have architectural or cultural characteristics that might make them eligible for such listing. If SHPO determines that a property is eligible, the property is protected under federal law as much as if it were actually listed. For more

information about SHPO rules and regulations, see http://nysparks.state.ny.us/shpo/environ/freq_ques.htm.

21. **The maximum cost for rehabilitation of single family homes in an LPA program is \$10,000. Therefore, under no circumstances will the cost of repairs exceed the threshold which requires the 8-step floodplain process. Does the LPA still need to determine the flood zone for properties they will rehabilitate?**

Yes. HUD prohibits all financial assistance for activities that disturb the regulatory floodway, which is that portion of the floodplain reserved to allow discharge of a 100-year flood event. Therefore, even for a minor rehabilitation project, it must be determined if the building is in a flood zone. Also, properties in the flood hazard area may be subject to local regulation through the community's participation in the National Flood Insurance Program. Property owners should be made aware of the risks of occupying property in a flood hazard area. Finally, although it is not required to employ Federal Emergency Management Agency design standards when minor rehabilitation is conducted on a home in a flood hazard area, it is prudent to consider some level of flood risk reduction for these homes, such as elevation of utilities two feet above the 100-year flood level.

22. **What regulations regarding lead-based paint (LBP) apply to our LPA rehabilitation program?**

Because HOME LPA rehabilitation programs may deal with residential buildings built prior to 1978, it is likely that lead-based paint (LBP) will be found during rehabilitation projects. HUD regulations at [24 CFR Part 35](#), require LBP hazard reduction as part of HUD-sponsored rehabilitation. After August 10, 2001, LPA programs are required to perform specified [lead hazard reduction activities](#) as part of rehabilitation, depending upon the cost per unit. Allowances are made for projects where historic preservation requirements apply.

In addition, the [EPA Renovation, Repair and Painting rule](#), which became effective in 2010, requires any contractor performing renovation that disturb lead-based paint in facilities built before 1978 to be certified. NOTE: The EPA Renovation, Repair and Painting Rule requiring all contractors to get lead certified is NOT a substitute for the HUD Part 35 regulations.

23. **Can an LPA program simply exclude those properties that require complicated environmental review, such as homes eligible for historic designation, or those in the flood hazard area?**

It is acceptable to exclude certain activities or properties from the review. However, this may limit the range of services available to your community and conflict with the goals of your program.

Last updated in September 2011