



# **Cabarrus/Iredell/Rowan HOME Consortium**

## **HOME-American Rescue Plan (HOME-ARP) Policy**

**(For HOME-ARP Eligible Projects)**

CITY OF CONCORD

Planning & Neighborhood Development Department

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Concord, North Carolina 28025

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## **I. PURPOSE**

The City of Concord’s Planning & Neighborhood Development Department (P&NDD) administers both federally-funded and City-funded projects to provide decent, safe and affordable housing options for its residents. The purpose of this Policy is to establish the requirements for funds appropriated under section 3205 of the American Rescue Plan Act of 2021 (P.O. 117-2) (“ARP”) for the HOME Investment Partnerships Program (HOME) to provide homelessness assistance and supportive services. The City of Concord is the Lead Entity for the Cabarrus/Iredell Rowan HOME Consortium. This Policy will provide guidance for the City of Concord and the Cabarrus/Iredell/Rowan HOME Consortium concerning this funding.

## **II. BACKGROUND**

As a form of relief to address the continued impact of the COVID-19 pandemic on the economy, public health, State and local governments, individuals, and businesses, President Biden signed ARP into law on March 11, 2021, which included \$1.9 trillion to address the need for homelessness assistance and supportive services. Congress appropriated \$5 billion in ARP funds to be administered through HOME to perform four (4) activities that must primarily benefit qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations. These activities include: (1) development and support of affordable housing, (2) tenant-based rental assistance (TBRA), (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter units.

The HOME-ARP program defines qualifying individuals or families as those that are (1) homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11302(a) (“McKinney-Vento”)); (2) at risk of homelessness, as defined in Section 401 of McKinney-Vento; (3) fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; (4) part of other populations where providing supportive services or assistance would prevent a family’s homelessness or would serve those with the greatest risk of housing instability; or (5) veterans and families that include a veteran family member that meet the criteria in one of (1)-(4) above.

The U.S. Department of Housing and Urban Development (HUD) is authorized to allocate HOME-ARP funds to states, units of general local government, insular areas, and consortia of units of general local government that qualified for an allocation of HOME funds in Fiscal Year (FY) 2021, pursuant to section 217 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 U.S. C. 12701 et seq.) (NAHA”).

## **III. ESTABLISHMENT OF HOME-ARP REQUIREMENTS**

The HOME-ARP program provides funds for homelessness and supportive services assistance under the HOME statute of Title II of NAHA (42 U.S.C. 12721 et seq.) and authorizes the Secretary of HUD to waive or specify alternative requirements for any provisions of NAHA or regulation for the administration of the HOME-ARP) program, except requirements related to fair housing, civil rights, nondiscrimination,

labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary too expedite or facilitate the use of HOME-ARP funds. Pursuant to ARP, the per-unit cost limits (42 U.S.C. 12742€), commitment requirements (42 U.S.C.12748 (g)), matching requirements (42 U.S.C. 12750), and set-aside for housing developed, sponsored, or owned by Community Housing Development Organizations (CHDOs) (42 U.S.C.12771) in NAHA do not apply to HOME-ARP funds.

This Policy describes the requirements applicable to the Participating Jurisdiction's (PJ's) use of HOME-ARP funds. Consolidated Plan requirements for HOME are in Title I of NAHA and 24 CFR Part 91. HOME program regulations are in 24 CFR Part 92. Except as described in HOME-ARP and this Policy, HOME statutory and regulatory provisions apply to a PJ's use of HOME-ARP funds.

#### **IV. DEFINITIONS OF FREQUENTLY USED TERMS**

Affordable Housing: housing that can be purchased for no more than 2.5 to 3 times the total annual household income or housing that allows household costs (rent or mortgage plus utilities) not to exceed 30 percent of household gross income, as defined by the U.S. Department of Housing and Urban Development (HUD).

Area Median Income (AMI): the yearly metric that is calculated by HUD to determine the income eligibility requirements of the eligible households.

Income: any source of monetary compensation that is received, especially on a regular basis, in the form of earned wages or salary, investment earnings, disability, retirement or Social Security income, alimony, child support, public assistance or from any other source.

Project Costs: the total funds that are needed to complete the project or work, including direct and indirect costs, such as assistance provided by the contract; equipment that is purchased solely for project use; utilities for a building that is used solely for the project and no other service; and other direct project costs. For service contracts, projects costs are to be documented as follows:

- Repair costs – subcontractor invoices and receipts for materials.
- Equipment – purchase orders and documentation of expenses in the ledger, including documentation of 100% use by the project.
- Utilities – copies of bills paid for utilities.
- Documentation of 100% of construction costs through project completion.
- Documented proof that no other services are being provided within the building(s) except the services that were included in the initial written agreement.

System Vision Standards: design and construction standards that were created by Advanced Energy in conjunction with the North Carolina Housing Finance Agency. System Vision is an Advanced Energy program that provides training and technical support to improve the health, safety, durability, comfort, and energy efficiency of affordable homes in North Carolina.

## V. USE OF FUNDS TO BENEFIT QUALIFYING POPULATIONS

The HOME-ARP program requires funds to be used primarily to benefit the qualifying populations through the four (4) eligible activities: (1) development and support of affordable housing; (2) tenant-based rental assistance (TBRA); (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter (NCS) units. Recognizing the urgent needs of individuals and families in qualifying populations, HUD is requiring that:

- 100% of HOME-ARP funds used by a PJ for TBRA, supportive services, and acquisition and development of non-congregate shelter units must benefit individuals and families in qualifying populations. Individuals and families in qualifying populations may be assisted by one or more of the HOME-ARP eligible activities, consistent with the requirements in this Policy.
- Not less than 70 percent of affordable rental housing units acquired, rehabilitated, or constructed with HOME-AR) funds by a PJ must be occupied by households in the qualifying populations. Units that are not restricted to occupancy by qualifying populations are subject to income targeting and rent requirements established under the HOME-AR) Rental Program rules and are only permitted in projects with rental units restricted for occupancy by qualifying populations.

HUD recognizes that, because many households in the qualifying populations are unable to pay rents sufficient to cover unit operating costs, PJs and project owners should attempt to obtain Federal or state project-based rental subsidies, if available. Since project-based rental subsidies can be difficult to secure, HUD determined that additional flexibility was necessary to properly structure or underwrite HOME-ARP rental projects to ensure that the projects will remain both affordable and financially viable during the minimum compliance period. One of these flexibilities is permitting up to 30 percent of HOME-ARP rental housing units funded by a PJ to be occupied by low-income households. PJs are encouraged to use this flexibility only when it is required to facilitate development of a HOME-ARP rental project.

PJs must determine and document that households meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not restricted to these populations, that households are low-income.

### A. Development & Support of Affordable Housing

#### Overview:

A PJ may use HOME-ARP funds to acquire, construct and rehabilitate rental housing for occupancy by individuals and families that meet one of the Qualifying Populations defined in *CPD Notice: Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (“the Notice”). HOME-ARP rental housing may include single family or multifamily housing, transitional or permanent housing, group homes, single room occupancy (SRO) units, and manufactured housing.

To promote the development of financially viable housing, PJs may pay the entire amount of eligible costs associated with HOME-ARP rental units, are encouraged to work with local PHAs and state or local agencies to obtain project-based rental assistance and may provide ongoing operating cost

assistance or capitalize a project operating cost assistance reserve to address operating deficits of HOME-ARP units occupied by qualifying households. To promote inclusion of HOME-ARP units in mixed-income housing, up to 30 percent of the units a PJ funds with its HOME-ARP grant may be restricted for occupancy by households that are low-income.

#### **Eligible Activities and Costs:**

- ***Eligible Activities:*** Acquisition, construction, and rehabilitation of affordable rental housing, including reconstruction as defined in 24 CFR 92.2. Acquisition of vacant land or demolition may be undertaken only with respect to a HOME-ARP project for which construction is expected to start within 12 months of commitment.
- ***Eligible Costs:*** HOME-ARP funds may pay for up to 100 percent of the following eligible costs associated with HOME-ARP rental units:
  - Development hard costs include the actual cost of constructing and rehabilitating housing to meet applicable property standards. Eligible development costs also include site improvements, utility connections and costs to construct or rehabilitate laundry and community facilities located within the same building as the HOME-ARP housing;
  - Refinancing of existing debt secured by a HOME-ARP rental project rehabilitated with HOME-ARP funds;
  - Acquisition costs of improved or unimproved real property;
  - Related soft costs including reasonable and necessary costs incurred by the PJ or project owner associated with the financing, development, acquisition, or rehabilitation of HOME-ARP rental housing;
  - Relocation costs as defined in 24 CFR 92.206(f), 24 CFR 92.353, and the Notice;
  - Certain costs related to the payment of construction, bridge, or guaranteed loans, if HOME-ARP is part of original financing; and
  - Operating cost assistance, through a capitalized operating reserve or ongoing operating cost payments, for HOME-ARP units restricted for occupancy by qualifying households.

#### **Beneficiary Requirements:**

- ***Eligible Beneficiaries:*** HOME-ARP funds must primarily benefit individuals and families that meet one of the qualifying populations defined in the Notice. However, not more than 30 percent of the total number of rental units assisted with HOME-ARP funds may be occupied by low-income households as defined in 24 CFR 92.2.
- ***Household Income:*** The following income requirements apply to HOME-ARP households:
  - ***Qualifying Households:*** At initial occupancy and each subsequent year during the minimum 15-year compliance period, the PJ must use the definition of annual income at 24 CFR 5.609 and the process described in the Notice to determine the household's contribution to rent.
  - ***Low-Income Households:*** The PJ must use the definition of annual income at 24 CFR 5.609 and the process described in the Notice to examine the household's income at initial occupancy and each subsequent year during the minimum 15-year compliance period to determine the household's ongoing income eligibility and applicable contribution to rent.
- ***Tenant Contribution to Rent:*** A qualifying household may not contribute to rent more than is affordable based on the PJ's determination of the household's income.

## Project Requirements:

- **Targeting and Occupancy:** Not less than 70 percent of the total number of rental units a PJ assists with HOME-ARP funds must be restricted to occupancy by households that are qualifying households at the time of the household's initial occupancy. Not more than 30 percent of the total number of rental units assisted with HOME-ARP funds by the PJ may be restricted for occupancy by low-income households. A household that met the definition of one or more qualifying populations at initial occupancy remains a qualifying household throughout their period of occupancy irrespective of changes in income or whether they continue to meet a qualifying population definition (e.g., no longer qualify as homeless after being admitted to a HOME-ARP unit).
- **Property Standards:** HOME-ARP rental units must comply with all rental property standards required in 24 CFR 92.251 paragraphs (a), (b), (c)(1) and (2), (e), and (f).
- **Minimum Compliance Period:** HOME-ARP rental units must comply with the HOME-ARP rental requirements for a minimum of 15 years, irrespective of the amount of HOME-ARP funds invested in the project or the activity undertaken. If a project-based rental assistance Housing Assistance Payments (HAP) contract is awarded to a HOME-ARP rental project, the minimum compliance period is the greater of 15 years or the term of the HAP contract.
- **Rent Limitations:** HOME-ARP establishes rent limitations for units restricted for qualifying households and units restricted for low-income households as follows:
  - **Units Restricted for Occupancy by Qualifying Households:** The HOME-ARP rent may not exceed 30 percent of the adjusted income of a household whose annual income is equal to or less than 50 percent of the median income for the area, as determined by HUD (i.e., Low HOME Rents).
  - **Units Restricted for Occupancy by Low-Income Households:** HOME-ARP rental units restricted for low-income households must comply with the rent limitations at 24 CFR 92.252(a).
  - **Additional HOME-ARP Unit Limitations, if applicable:**
    - **Federal/State Project-Based Rental Subsidy:** A HOME-ARP unit that receives Federal or state project-based rental subsidy may charge the rent allowable under the rental subsidy program.
    - **Single Room Occupancy Units (SRO):** If an SRO unit has both sanitary and food preparation facilities, the maximum HOME-ARP rent is based on the zero-bedroom fair market rent. If the SRO unit only has sanitary facilities, the maximum HOME- ARP rent is based on 75 percent of the zero-bedroom fair market rent.
- **Changes in Income and Over Income Households:** A PJ must take action to address over- income households occupying HOME-ARP units as follows:
  - **Qualifying Households:** A qualifying household whose annual income at the time of recertification is above 50 percent of median income for the area but below 80 percent of median income for the area must pay the rent specified in 24 CFR 92.252(a).
  - **Low-Income Households:** A low-income household whose income is above 80 percent of the median income for the area must pay rent that complies with 24 CFR 92.252(i)(2).
- **Lease and Tenant Protections:** Each household that occupies a HOME-ARP assisted unit must execute a lease that complies with the tenant protection requirements prescribed in the Notice.

- **Master Leasing and Use of a HOME-ARP Sponsor:** A HOME-ARP sponsor – a nonprofit organization that provides housing or supportive services to qualifying households – may execute a lease for a HOME-ARP unit or a master lease for multiple units in a project. The HOME-ARP sponsor may then sublease the HOME-ARP rental unit to a qualifying household.
- **Coordinated Entry and Project-Specific Waitlists:** On a project-by-project basis, a PJ must decide whether a project owner may use a Continuum of Care’s (CoC) Coordinated Entry (CE), a CoC’s CE and other referral sources, or a project-specific waitlist to select qualifying households for HOME-ARP units restricted for occupancy by qualifying households. A project owner must use a project-specific waitlist to select low-income households to occupy units restricted for occupancy by low-income households.

**Oversight and Management:**

A PJ is responsible for the day-to-day management and oversight of its HOME-ARP program including but not limited to the following:

- **Underwriting and Subsidy Layering:** A PJ must establish underwriting and subsidy layering guidelines for determining the appropriate amount of HOME-ARP funds, including any operating cost assistance provided to maintain the financial viability of the HOME-ARP project through the 15-year minimum compliance period.
- **Enforcement of Rental Requirements:** A PJ must impose the HOME-ARP rental requirements through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws, or other mechanism approved by HUD.
- **Project Completion, Occupancy and Noncompliance:** A PJ must repay any HOME-ARP funds invested in units that are 1) not completed within 4 year of project commitment, 2) not rented to eligible qualifying or low-income households within 12 months of project completion, or 3) terminated before completion or otherwise not compliant with the HOME-ARP rental requirements.
- **Management and Oversight of Operating Cost Assistance Reserve:** A PJ must require any HOME-ARP funds expended for project operating cost assistance reserves be held by a project owner in a separate interest-bearing account with review and written approval from the PJ prior to any disbursement of HOME-ARP funds from the operating cost assistance reserve account. The PJ must, no less than annually, review the operating cost assistance reserve account to determine that it is appropriately sized based on projected deficits for units restricted for occupancy by qualifying households.

**B. Tenant-Based Rental Assistance (TBRA)**

**Overview:**

HOME-ARP funds may be used to provide tenant-based rental assistance (“HOME-ARP TBRA”) to individuals and families that meet one of the Qualifying Populations defined in the *CPD Notice: Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (“the Notice”). A PJ may assist a qualifying household by providing payments towards housing and housing-related costs, such as rent, security deposits, utility deposits, and utility costs. Because HOME-ARP TBRA is



attached to the qualifying household and not a particular rental unit, the household may choose to move to another unit with continued assistance as long as the new unit meets the applicable property standards. HOME-ARP TBRA may be provided in coordination with a non-profit HOME-ARP sponsor that facilitates a qualifying household's use of HOME-ARP TBRA. The HOME-ARP sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household or may sublease a unit to the qualifying household.

#### **Eligible Costs:**

- **Eligible Costs:** HOME-ARP funds may be used to provide rental assistance, security deposit assistance, utility deposits, and utility payments to qualifying households. HOME-ARP may pay up to 100% of these costs for a qualifying household.

#### **Project Requirements:**

- **Portability of Assistance:** A PJ may require the HOME-ARP TBRA assisted household to use the assistance within the PJ's boundaries or may permit the household to use the assistance outside its boundaries as outlined at 24 CFR 92.209(d).
- **Term of Rental Assistance Contract:** The PJ must determine the maximum term of HOME- ARP TBRA assistance contracts and whether contracts will be renewable.
- **Maximum Subsidy:** The PJ must establish policies for the allowable maximum subsidy, which may differ from the maximum subsidy requirements at 24 CFR 92.209(h). PJs may provide up to 100 percent subsidy for rent, security deposit payments, and utility bills. The PJ must also establish policies for determining any household contribution to rent.
- **Rent Reasonableness:** The PJ must determine whether the rent is reasonable in comparison to rent for other comparable unassisted units and must disapprove a lease if the rent is not reasonable.
- **Housing Quality Standards:** Housing must comply with all housing quality standards required at 24 CFR 982.401 (or successor inspection standards issued by HUD) unless the tenant is residing in a HOME or HOME-ARP unit, in which case the PJ may defer to initial and ongoing inspection standards for the housing.
- **Use of a HOME-ARP Sponsor:** A HOME-ARP sponsor – a nonprofit organization that provides housing or supportive services to qualifying households – may facilitate the leasing of a HOME- ARP rental unit or the use and maintenance of HOME-ARP TBRA. A sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household.

#### **PJ Management and Oversight:**

- **Rental Assistance Contract:** HOME-ARP TBRA must be provided through a rental assistance contract with the PJ and (1) an owner that leases a unit to a qualifying household; (2) the qualifying household, (3) a HOME-ARP sponsor or (4) an owner and the qualifying household in a tri-party contract.
- **Lease and Sublease:** PJs must require and verify that there is an executed lease between the qualifying household and the owner of the rental unit or a between an owner and a HOME- ARP sponsor with a sublease between the qualifying households and the HOME-ARP sponsor that complies with tenant protection requirements in accordance with 24 CFR 92.253(a). PJs may

permit a HOME-ARP sponsor to execute a lease with an owner for an individual unit or a master lease for more than one unit restricted for occupancy by HOME- ARP TBRA households.

- **Written Agreement with HOME-ARP Sponsor:** The PJ must enter into a written agreement with the HOME-ARP sponsor if the HOME-ARP TBRA rental assistance contract is not with the HOME-ARP sponsor and the HOME-ARP sponsor will be receiving the HOME-ARP TBRA subsidy directly from the PJ.

### C. Supportive Services

#### Overview:

A PJ may use HOME-ARP funds to provide a broad range of supportive services to individuals and families that meet one of the qualifying populations as defined in *CPD Notice: Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (“the Notice”). Supportive services may be provided to individuals and families who are not already receiving the services outlined in the Notice through another program. PJs may establish a separate supportive services activity or activities or may combine supportive services with other HOME- ARP activities.

#### Eligible Services and Costs:

**Eligible Supportive Services:** There are three categories specifically included as supportive services under HOME-ARP:

- **McKinney-Vento Supportive Services:** McKinney-Vento Supportive Services under HOME- ARP are adapted from the services listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (“**McKinney-Vento Supportive Services**”) (42 U.S.C.11360(29)).
- **Homelessness Prevention Services:** HOME-ARP Homelessness Prevention Services are adapted from certain eligible homelessness prevention services under the Emergency Services Grant (ESG) regulations at 24 CFR Part 576.
- **Housing Counseling Services:** Housing counseling services under HOME-ARP are those consistent with the definition of housing counseling and housing counseling services defined at 24 CFR 5.100 and 5.111, respectively, except that homeowner assistance and related services are not eligible HOME-ARP activities.

**Eligible Costs of Supportive Services for Qualifying Individuals and Families:** HOME-ARP funds may be used to pay eligible costs associated with the HOME-ARP supportive services activity in accordance with the requirements of the Notice.

#### **Eligible Costs Associated with McKinney-Vento and Homelessness Prevention Supportive Services:**

- All qualifying households are eligible to receive supportive services under the HOME-ARP supportive services activity. Eligible costs associated with McKinney-Vento supportive services and homelessness prevention supportive services include:
  - Costs of child care;
  - Costs of improving knowledge and basic educational skills;
  - Costs of establishing and/or operating employment assistance and job

- training programs
- Costs of providing meals or groceries
- Costs of assisting eligible program participants to locate, obtain and retain housing
- Costs of certain legal services
- Costs of teaching critical life management skills
- Financial assistance costs, including:
  - Rental application fees
  - Security deposits
  - Utility deposits
  - Payment of rental arrears

*Please consult Notice CPD-21-10 for a full list and description of eligible costs.*

- The costs of homelessness prevention services are only eligible to the extent that the assistance is necessary to help program participants regain stability in their current permanent housing or move into other permanent housing to achieve stability in that housing.
- PJs must establish requirements documenting an eligible cost as McKinney-Vento supportive services to an individual or family in a qualifying population, homelessness prevention services, or Housing Counseling.

**Eligible Costs Associated with Housing Counseling:** Costs associated with housing counseling services as defined at 24 CFR 5.100 and 5.111 are eligible. Costs may only be paid under HOME- ARP if housing counseling services are provided by HUD-certified housing counselors and organizations.

- **Eligible costs include:**
  - Staff salaries and overhead costs of HUD-certified housing counseling agencies related to directly providing eligible housing counseling services to HOME- program participants
  - Development of a housing counseling workplan
  - Marketing and outreach
  - Intake
  - Financial and housing affordability analysis
  - Action plans that outline what the housing counseling agency and the client will do to meet the client's housing goals and that address the client's housing problem(s)
  - Follow-up communication with program participants
- Costs for the provision of services to existing homeowners related to homeownership and mortgages to existing homeowners are not eligible under HOME-ARP.
- If a program participant is a candidate for homeownership, costs associated with pre- purchase homebuying counseling, education and outreach are eligible under HOME-ARP.

**Oversight and Management:**

A PJ is responsible for the day-to-day management and oversight of its HOME-ARP program including but not limited to the following:

- **Oversight of Eligible Costs:** All supportive service costs paid for by HOME-ARP must comply with the requirements of the Notice and Uniform Administrative Requirements at 2 CFR Part 200, Subpart E, Cost Principles that require costs be necessary and reasonable.

- **No Duplication of Services:** PJs are responsible for establishing requirements that allow a program participant to receive only the HOME-ARP services needed so there is no duplication of services or assistance in the use of HOME-ARP funds for supportiveservices.
- **Termination of Assistance:** The PJ may terminate assistance to a program participant who violates program requirements or conditions of occupancy.

#### D. Non-Congregate Shelter Units

##### **Overview:**

HOME-ARP funds may be used to acquire and develop non-congregate shelter (HOME-ARP NCS) for individuals and families that meet one of the Qualifying Populations defined in the CPD Notice: *Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (“the Notice”). NCS provides private units or rooms as temporary shelter to individuals and families and do not require occupants to sign a lease or occupancy agreement. This activity may include the construction of new structures or the acquisition and/or rehabilitation of existing structures (such as motels, nursing homes, or other facilities) to be for use as HOME-ARP NCS. The Notice establishes requirements applicable to HOME-ARP NCS.

##### **Eligible Activities and Costs:**

- **Eligible Activities:** HOME-ARP funds may be used to acquire, rehabilitate, or construct NCS units to serve individuals and families Qualifying Populations.
- **Eligible Costs:** HOME-ARP funds may be used for:
  - **Acquisition Costs:** Costs to acquire improved or unimproved real property for use as or development of HOME-ARP NCS.
  - **Demolition Costs:** Costs to demolish existing structures for the purpose of developing HOME-ARP NCS.
  - **Development Hard Costs:** Costs to rehabilitate or construct HOME-ARP NCS units to meet the HOME-ARP minimum habitability standards. Costs to make improvements to the project site, including installation of utilities or utility connections, laundry facilities, community facilities, on-site management, or supportive service offices.
  - **Related Soft Costs:** Reasonable and necessary costs incurred by the PJ, subrecipient, or project owner associated with financing, acquisition, and development of HOME-ARP NCS projects.
  - **Replacement Reserve:** Costs to capitalize a replacement reserve to cover reasonable and necessary costs of replacing major systems and their components.
- **Ineligible Costs:** HOME-ARP funds may not be used to pay ongoing costs of operating HOME-ARP NCS or to convert NCS to housing.

##### **Admission and Occupancy:**

- HOME-ARP NCS units may only be occupied by individuals or families that meet the criteria for one or more of the Qualifying Populations.
- Program participants may not be charged occupancy fees or other charges to occupy a HOME-ARP NCS unit unless the PJ determines such fees and charges are customary and reasonable and the charges comply with 24 CFR 578.77(b).

- PJs are encouraged to incorporate HOME-ARP NCS units into the CE established by the CoC(s) for the area the NCS is funded to serve, if the CE complies with the requirements established in the HOME-ARP Notice.
- HOME-ARP supportive services may also be provided, if needed, to Qualifying Populations served by the NCS.

**Project Requirements:**

- **Property and Habitability Standards:** At project completion, HOME-ARP NCS units and common areas must meet all applicable State and local codes, ordinances, and requirements and HUD’s Lead Safe Housing Rules at 24 CFR Part 35. Project classification as acquisition only, rehabilitation, or new construction is determined by the PJ’s local code requirements based on specific work to be performed. Projects must meet HOME-ARP NCS ongoing property standards throughout the restricted use period.
- **Restricted Use Period:** HOME-ARP NCS projects must comply with HOME-ARP requirements during the restricted use period established in the HOME-ARP Notice.

<i>New Construction:</i>	<i>15 years</i>
<i>Rehabilitation:</i>	<i>10 years</i>
<i>Acquisition Only:</i>	<i>10 years</i>

- **Use as NCS:** The NCS may remain as HOME-ARP NCS for the restricted use period or may be used as NCS under the Emergency Shelter Grant (ESG) program.
- **Conversion to Housing:** ARP permits HOME-ARP NCS units to be converted into permanent housing under the Continuum of Care (CoC) program or permanent affordable housing during the restricted use period in accordance with requirements established in the Notice. No HOME-ARP funds may be used for conversion.
  - **Minimum Use Period:** All HOME-ARP NCS projects must be operated as NCS for a minimum period of time prior to conversion. The minimum use period prior to conversion varies based on the original HOME-ARP NCS eligible activity undertaken and the amount of funds invested in the project.
  - **Permanent Affordable Housing:** During the restricted use period, but only after the HOME-ARP NCS minimum use period, a PJ may provide written approval to convert the project from HOME-ARP NCS to permanent affordable housing (e.g., affordable multifamily rental housing, transitional housing) in accordance with the requirements prescribed in the PJ’s written agreement with the HOME-ARP NCS owner.
  - **CoC Permanent Housing:** During the restricted use period, but only after the HOME-ARP NCS minimum use period has been met, a PJ may permit conversion of a HOME-ARP NCS project to permanent housing under 24 CFR 578.43 (acquisition) and/or 24 CFR 578.45 (rehabilitation) of the CoC program regulations. Conversions must comply with any conversion requirements established in the PJ’s written agreement with the HOME- ARP NCS owner. If conversion is planned, the HOME-ARP NCS use restrictions must remain in place until the project is approved for CoC funding and the required CoC restrictions are imposed on the property.

## **PJ Management and Oversight:**

- **Project Development Due Diligence:** Before awarding HOME-ARP funds to a HOME-ARP NCS project, PJs must determine that acquisition and/or development is financially feasible. The PJ is responsible for maintaining continued operation of the NCS and must consider whether the HOME-ARP NCS project has secured or has a high likelihood of securing operating funding, because operating costs cannot be paid with HOME-ARP.

PJs must assess HOME-ARP NCS projects, including a review of information from the owner and/or developer that demonstrates the project’s financial feasibility throughout the restricted use period.

Before committing funds, PJs should also determine whether the owner intends to continue operating the project as HOME-ARP NCS or emergency shelter NCS under ESG for the restricted use period or plans to convert the HOME-ARP NCS to housing after the minimum use period has been met. In such instances, the PJ should consider the physical design needs of an eventual conversion in its evaluation of the HOME-ARP NCS project.

### **a. Target Households and Eligibility Requirements**

The HOME-ARP program requires that funds be used to primarily benefit individuals and families in the following specified “qualifying populations.” Any individual or family who meets the criteria for these populations is eligible to receive assistance or services funded through HOME-ARP without meeting additional criteria (e.g., additional income criteria). All income calculations to meet income criteria of a qualifying population or required for income determinations in HOME- ARP eligible activities must use the annual income definition in 24 CFR 5.609 in accordance with the requirements of 24 CFR 92.203(a)(1).

#### **A. Qualifying Populations**

##### **1. Homeless, as defined in 24 CFR 91.5 *Homeless* (1), (2), or (3):**

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - (ii) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
  - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

- (2) An individual or family who will imminently lose their primary nighttime residence, provided that:
  - (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - (ii) No subsequent residence has been identified; and
  - (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
  - (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment;

**2. At risk of Homelessness**, as defined in 24 CFR 91.5 *At risk of homelessness*:

- (1) An individual or family who:
  - (i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;
  - (ii) Does not have sufficient resources or support networks, e.g., family, friends,

faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(l) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(l)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as “homeless” under this section but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

**3. Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined by HUD.**



For HOME-ARP, this population includes any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking. This population includes cases where an individual or family reasonably believes that there is a threat of imminent harm from further violence due to dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return or remain within the same dwelling unit. In the case of sexual assault, this also includes cases where an individual reasonably believes there is a threat of imminent harm from further violence if the individual remains within the same dwelling unit that the individual is currently occupying, or the sexual assault occurred on the premises during the 90-day period preceding the date of the request for transfer.

**Domestic violence**, which is defined in 24 CFR 5.2003 includes felony or misdemeanor crimes of violence committed by:

- 1) A current or former spouse or intimate partner of the victim (the term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship);
- 2) A person with whom the victim shares a child in common;
- 3) A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- 4) A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving HOME-ARP funds; or
- 5) Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Dating violence** which is defined in 24 CFR 5.2003 means violence committed by a person:

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship;
  - b. The type of relationship; and
  - c. The frequency of interaction between the persons involved in the relationship.

**Sexual assault** which is defined in 24 CFR 5.2003 means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

**Stalking** which is defined in 24 CFR 5.2003 means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) Fear for the person's individual safety or the safety of others; or
- 2) Suffer substantial emotional distress.

**Human Trafficking** includes both sex and labor trafficking, as outlined in the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7102). These are defined as:

- 1) *Sex trafficking* means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
  - 2) *Labor trafficking means* the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
4. **Other Populations** where providing supportive services or assistance under section 212(a) of NAHA (42 U.S.C. 12742(a)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability. HUD defines these populations as individuals and households who do not qualify under any of the populations above but meet one of the following criteria:

- (1) **Other Families Requiring Services or Housing Assistance to Prevent Homelessness** is defined as households (i.e., individuals and families) who have previously been qualified as "homeless" as defined in 24 CFR 91.5, are currently housed due to temporary or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness.
- (2) **At Greatest Risk of Housing Instability** is defined as household who meets either paragraph (i) or (ii) below:
  - (i) has annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e., is paying more than 50% of monthly household income toward housing costs);
  - (ii) has annual income that is less than or equal to 50% of the area median income, as determined by HUD, **AND** meets one of the following conditions from paragraph (iii) of the "At risk of homelessness" definition established at 24 CFR 91.5:
    - (A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;
    - (B) Is living in the home of another because of economic hardship;
    - (C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

- (D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;
- (E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;
- (F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or
- (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan.

**Veterans and Families that include a Veteran Family Member** that meet the criteria for one of the qualifying populations described above are eligible to receive HOME-ARP assistance.

## **B. Use of Funds to Benefit Qualifying Populations**

ARP states that funds must be used to primarily benefit the qualifying populations through the four eligible activities: (1) TBRA, (2) development and support of affordable housing, (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter (NCS) units. Recognizing the urgent needs of individuals and families in qualifying populations, HUD is requiring that:

- 100% of HOME-ARP funds used by a PJ for TBRA, supportive services, and acquisition and development of non-congregate shelter units must benefit individuals and families in qualifying populations. Individuals and families in qualifying populations may be assisted by one or more of the HOME-ARP eligible activities, consistent with the requirements in Notice CPD-21-10.
- Not less than 70 percent of affordable rental housing units acquired, rehabilitated, or constructed with HOME-ARP funds by a PJ must be occupied by households in the qualifying populations. Units that are not restricted to occupancy by qualifying populations are subject to income targeting and rent requirements established under the HOME-ARP Rental Program rules and are only permitted in projects with rental units restricted for occupancy by qualifying populations.

HUD recognizes that, because many households in the qualifying populations are unable to pay rents sufficient to cover unit operating costs, PJs and project owners should attempt to obtain Federal or state project-based rental subsidies, if available. Since project-based rental subsidies can be difficult to secure, additional flexibility may be necessary to structure and underwrite projects so that they remain both affordable and financially viable. HUD is providing PJs with additional flexibilities in Notice CPD-21-10. to structure and underwrite HOME-ARP rental projects so they remain financially viable during the minimum compliance period. One of these flexibilities is permitting up to 30 percent of HOME-ARP rental housing

units funded by a PJ to be occupied by low-income households. PJs are encouraged to use this flexibility only when it is required to facilitate development of a HOME-ARP rental project.

PJs must determine and document that households meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not restricted to these populations, that households are low-income.

## **C. Preferences Among Qualifying Populations, Referral Methods, and Subpopulations**

### **1. Preferences**

The HOME-ARP program establishes the qualifying populations that are eligible for assistance with HOME-ARP funds. A PJ may establish reasonable preferences among the qualifying populations to prioritize applicants for HOME-ARP projects or activities based on the PJ's needs and priorities, as described in its HOME-ARP allocation plan. For example, a PJ may set a preference among qualifying individuals and families for a HOME-ARP non-congregate shelter for individuals and families who are homeless; fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; and veterans and families with a veteran family member that meet the criteria of one of these prior qualifying populations, consistent with its HOME-ARP allocation plan.

The PJ must comply with all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a) when applying preferences through its referral methods. Persons who are eligible for a preference must have the opportunity to participate in all HOME-ARP activities of the PJ in which they are eligible under Notice CPD-21-10, including activities that are not separate or different, and cannot be excluded because of any protected characteristics or preferential status.

*Targeted assistance:* If HOME-ARP funds are used for TBRA, the PJ may establish a preference for individuals with special needs or persons with disabilities among the HOME- ARP qualifying populations. Within the qualifying populations, participation may be limited to persons with a specific disability only, if necessary, to provide effective housing, aid, benefit, or services that would be as effective as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv). The PJ may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) within the qualifying populations only if the specific category is identified in the PJ's HOME-ARP allocation plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

### **2. Referral Methods for Projects or Activities**

A PJ may use the referral methods described below to administer HOME-ARP assistance to qualifying individuals and families. Regardless of the referral method used by the PJ, HUD holds the PJ responsible for determining and documenting that beneficiaries meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not

restricted to qualifying populations, that beneficiaries are low-income.

A PJ may use the coordinated entry or coordinated entry process (CE) of a continuum of care (CoC) for referrals for projects and activities as described below. Under 24 CFR 578.3, a CE is a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals within a defined area. HUD requires each CoC to establish and operate a CE with the goal of increasing the efficiency of local crisis response systems and improving fairness and ease of access to resources, including mainstream resources. A PJ may permit a CoC CE to collect information and documentation required to determine whether an individual or family meets the criteria of a HOME-ARP qualifying population at any point in the coordinated entry process, (i.e., after or concurrently with the assessment and intake processes) as long as that information is not used to rank a person for HOME-ARP assistance other than as specified by the preferences or method of prioritization established by the PJ, in accordance with HOME-ARP requirements. If the PJ uses CE, the PJ cannot require HOME- ARP victim service providers to use the CE but may permit them to do so.

The PJ must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in 24 CFR 5.105(a) and any other applicable fair housing and civil rights laws and requirements when using the following referral methods:

**i. Use of Expanded CE in HOME-ARP**

Under this referral method, a PJ may use a CE established by a CoC operating within its boundaries for one or more projects or activities if the CE accepts all HOME-ARP qualifying populations eligible for those activities or projects, in accordance with the preferences and prioritization, if any, established or approved by the PJ in its HOME-ARP allocation plan and imposed through the PJ's written agreements.

Before using a CoC's CE, PJs should consider whether the CE covers the same service area as the HOME-ARP project or activity that would use that CE. At a minimum, the PJ must establish policies and procedures that describe the relationship of the geographic area(s) served by the project or activity to the geographic area(s) covered by the CoC CE and address how the CE will provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

The PJ must require a project or activity to use CE along with other referral methods (as provided in section ii below) or to use only a project/activity waiting list (as provided in section iii below) if:

1. the CE does not have a sufficient number of qualifying individuals and families to refer to the PJ for the project or activity;
2. the CE does not include all HOME-ARP qualifying populations; or,
3. the CE fails to provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

**ii. Use of CE with Other Referral Methods**

The PJ may use a CoC CE with additional referrals from outside organizations or project-specific waiting lists consistent with HOME-ARP requirements. If using this referral method, the PJ must establish or approve any preferences or prioritization criteria applied by a CoC CE or other referral sources. The PJ may also use a waiting list to receive referrals from a CoC CE and other referral agencies for a project or activity, where a CoC CE or referral agency refers an applicant that is placed on the waiting list for that project or activity in chronological order.

If applicable, a PJ must establish policies and procedures for applying a PJ's established preferences and method of prioritization, if any, when accepting direct referrals from a CoC CE and other referral agencies and must document that such the policies and procedures were followed for each applicant served.

**iii. Use of a Project/Activity Waiting List**

The PJ may establish a waiting list for each HOME-ARP project or activity. All qualifying individuals or families must have access to apply for placement on the waiting list for an activity or project. Qualifying individuals or families on a waiting list must be accepted in accordance with the PJ's preferences, if any, consistent with Notice CPD-21-10 or, if the PJ did not establish preferences, in chronological order, insofar as practicable.

**3. Limiting Eligibility to Subpopulations**

PJs must follow all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, section 504 of Rehabilitation Act, HUD's Equal Access Rule, and the Americans with Disabilities Act, as applicable.

HOME-ARP rental housing or NCS may be limited to a specific subpopulation of a qualifying population identified in Section IV.A. of Notice CPD-21-10, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.*, the housing may be limited to homeless households and at risk of homelessness households, veterans and their families, victims of domestic violence, dating violence, sexual assault, stalking or human trafficking and their families).

Recipients may limit admission to or provide a preference for HOME-ARP rental housing or NCS to households who need the specialized supportive services that are provided (*e.g.*, domestic violence services). However, no otherwise eligible individuals with disabilities or families including an individual with a disability who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

Consistent with the statutory authority under ARP, HOME-ARP NCS may be converted to permanent housing under the CoC program or used as shelters under the ESG program, when all program and fair housing and nondiscrimination requirements are met. As such, HOME-ARP NCS may need to limit eligibility to households that are homeless and/or at risk of homelessness if the shelter will be converted to permanent housing under the CoC program or used as an emergency shelter in the ESG program.

**b. Period of Affordability/Restricted Use Period**

The period of affordability/restricted use period begins at project completion as defined in **Notice CPD-21-10** and must be imposed for at least the following periods:

- a. **New Construction**: Newly constructed HOME-ARP NCS units must be operated as HOME-ARP NCS units for qualifying populations for a restricted use period of 15 years, regardless of the amount of HOME-ARP funds invested in the project.
- b. **Rehabilitation**: HOME-ARP NCS units which receive any amount of HOME-ARP funds for rehabilitation but are not designated as new construction by the PJ's state or local building code requirements must be operated as HOME-ARP NCS units for qualifying populations for a restricted use period of 10 years.
- c. **Acquisition Only**: Units acquired for use as HOME-ARP NCS that do not require rehabilitation for occupancy must serve the qualifying populations for a restricted use period of 10 years.
- d. PJs may impose longer restricted use periods but must require the project remain financially viable for the extended period.

**c. Compliance & Monitoring Requirements**

During the course of a project, monitoring shall be implemented through periodic on-site visits so that any problems that may occur will be resolved as soon as possible. The goal of monitoring is to assist and support recipients in complying with applicable State, Federal, and Local requirements and in implementing their project activities in a timely manner.

The Consortium Members are required to maintain complete financial and program files and to comply with program reporting requirements. Recipients must also provide citizens with reasonable access to records pertaining to the use of funds.

**Technical Assistance Visit:** A technical assistance visit is an informal visit. The intent of this meeting is to share information that will enable the Consortium Members to meet the various State and Federal requirements for their grant. A technical assistance visit could consist of explanations of project start-up requirements and the establishment of program files. The Consortium Members must demonstrate compliance with applicable regulations and document this by maintaining accurate and complete records and files. The filing system must provide a historical account of The Consortium Members' activities, be easy to use, and centrally located.

**Monitoring Visit:** A monitoring visit is more formal than a technical assistance visit. The monitoring visit is utilized to determine if the project is being conducted in compliance with applicable Federal and State laws and requirements. The review also determines The

Consortium Members' ability to implement the program in a timely manner.

The monitoring visit consists of a review of project files, records and documentation, and may include a visit to the project site. The Consortium Members should have all records, files, and documentation available for review at the monitoring visit. If other public agencies, attorneys, or consultants have assisted in program implementations, these records must be available for review at the locality for the monitoring visit. Failure to produce such records upon request will result in issuance of either a program "concern" or "finding" of non-compliance, and will jeopardize the organization's eligibility for future HOME project funding. The issuance of a program "concern" or "finding" may, at the discretion of the City of Concord's staff, result in recapture of funds provided by the Cabarrus/Iredell/Rowan HOME Consortium.

### **Project Completion Deadline and Terminated Projects**

As required in 24 CFR §92.205(e), the City of Concord's staff must be able to execute a written agreement with the Consortium Members for the project within 12 months of July 1 of the year in which funding is awarded. The Consortium Members must typically be able to complete the project and expend all funds within two (2) years of the execution of the written agreement.

When HOME funds are expended for projects that are terminated before completion, for whatever reason, the HOME funds that have been expended are ineligible and must be repaid. The Consortium Members must terminate any project that does not meet the HOME requirements for affordable housing (i.e., affordability provisions, income targeting, property standards, etc.) and repay HOME funds that are expended for the project.

### **Corrective and Remedial Actions**

The inability to properly execute the terms of the contract and/or maintain records in the prescribed manner may result in a finding that the Consortium Member has failed to meet the applicable requirement of the contract. Remedial actions may include technical assistance to bring the project into compliance, or recapture of HOME funds.

### **HOME-assisted Development Projects must meet the following standards:**

- **New construction:** New construction is required to meet all state and local codes and ordinances plus the Model Energy Code and all Handicapped Accessibility requirements. While new single-family homes are not required to comply with Section 504 accessibility standards, if the applicant for the housing is disabled, the home must meet their accessibility needs. Where it is practical to do so, new single-family homes should be constructed to be accessed by a person with mobility impairments and adaptable to the needs of future residents seeking to age in place. New construction of rental housing must meet HOME site and neighborhood standards, as described below.
- **Acquisition (no rehabilitation):** Acquired housing must meet applicable state and local housing quality standards, if relevant standards exist, including lead-based paint hazard requirements. If none exist, then acquired housing must comply with Section 8 Housing Quality Standards.



Construction contracts and construction documents must be provided in adequate detail and reviewed by The Consortium Members to ensure that the documents address minimum housing and property standards, as well as city and/or state code requirements. Applicants must also provide written cost estimates prior to execution of construction contracts to ensure that costs are reasonable.

## VI. Administration & Planning

The PJ may expend, for payment of reasonable administrative and planning costs, up to 15 percent of its HOME-ARP allocation. Reasonable administrative and planning costs for the HOME-ARP program include:

1. Reasonable costs of overall HOME-ARP program management, coordination, monitoring, and evaluation. Such HOME-ARP costs include, but are not limited to, necessary expenditures for the following:
  - a. Salaries, wages, and related costs of the PJ's staff. If a PJ charges costs to this category, the PJ may either include the entire salary and related costs allocable to the HOME-ARP program of each person whose *primary* responsibilities with regard to the HOME-ARP program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administrative assignments. A PJ may only use one of these two methods. Program administration includes:
    - i. Developing systems and schedules for complying with HOME-ARP program requirements, including systems to prevent a duplication of benefits among beneficiaries of HOME-ARP activities;
    - ii. Developing interagency agreements and agreements with entities receiving HOME-ARP funds;
    - iii. Monitoring HOME-ARP activities for progress and compliance with HOME-ARP program requirements;
    - iv. Preparing HOME-ARP reports and other documents related to the HOME-ARP program for submission to HUD;
    - v. Coordinating the resolution of audit and monitoring findings on HOME-ARP activities;
    - vi. Evaluating HOME-ARP program results against stated objectives in the HOME-ARP allocation plan, and
    - vii. Managing or supervising persons whose primary responsibilities with regard to the HOME-ARP program include such assignments as those described above.
  - b. Travel costs incurred for official business in carrying out the HOME-ARP program.
  - c. Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services.
  - d. Other costs for goods and services required for administering the HOME-ARP program, such as: rental or purchase of equipment, insurance, information systems necessary to track and implement beneficiaries of HOME-ARP activities in accordance with the requirements of Notice CPD-21-10, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

- e. Costs of administering HOME-ARP TBRA and HOME-ARP supportive services programs.
2. Staff and overhead costs of the PJ directly related to carrying out a HOME-ARP project, in accordance with 24 CFR 92.207(b).
3. The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME-ARP funds.
4. Activities to affirmatively further fair housing (AFFH) in accordance with 24 CFR 5.151 and the PJ's certification as required under Notice CPD-21-10 and 24 CFR 5.152. The AFFH definition in HUD's Interim Final Rule entitled, "Restoring Affirmatively Furthering Fair Housing Definitions and Certifications" (86 FR 30779, June 10, 2021), as amended, at 24 CFR 5.151, and the AFFH certification requirement, at 24 CFR 5.152, available at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>.
5. Indirect costs may be charged to the HOME-ARP program under a cost allocation plan prepared in accordance with 2 CFR part 200, subpart E, as amended.
6. Preparation of the HOME-ARP allocation plan as required in Notice CPD-21-10. Preparation includes the costs of public hearing, consultations, and publications.
7. Costs of complying with the applicable Federal requirements in 24 CFR part 92, subpart H. Project-specific environmental review costs may be charged as administrative or project costs in accordance with 24 CFR 92.206(d)(8) and is at the discretion of the PJ.

Funds available under the HOME-ARP appropriation for administration and planning may not be used to pay costs attributable to the regular HOME Program.

PJs may provide all or a portion of its HOME-ARP administrative funds to subrecipients and contractors that are administering activities on behalf of the PJ (e.g., CoC entity, other non-Federal entity), in accordance with the requirements in Notice CPD-21-10. However, from the obligation date of the HOME-ARP funds in the HOME-ARP Grant Agreement and prior to HUD's acceptance of the PJ's HOME-ARP allocation plan, a subrecipient or contractor to the PJ may only incur and expend HOME-ARP funds for eligible administrative and planning costs if the subrecipient or contractor is responsible for the use of the PJ's entire HOME-ARP award and has executed a HOME-ARP written agreement that complies with 24 CFR 92.504 and Notice CPD-21-10. The PJ must also identify the subrecipient or contractor administering the PJ's entire HOME-ARP award and describe the subrecipient or contractor's responsibilities in the PJ's HOME-ARP allocation plan.

All costs must comply with the Cost Principles contained in subpart E of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, as amended (Uniform Administrative Requirements).

Once HUD obligates the HOME-ARP funds, as described in Section VIII.C.2 of Notice CPD-21-10, the PJ may incur and expend up to 5 percent of its HOME-ARP allocation on eligible administrative and planning costs, as described in this section and 24 CFR 92.207. Before HUD's acceptance of the PJ's HOME-ARP allocation plan, the PJ is only permitted to incur and expend HOME-ARP funds on eligible administrative and planning costs.

If the PJ does not submit a HOME-ARP allocation plan or if the PJ's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP administrative and planning costs incurred by the PJ will be ineligible costs and any HOME-ARP funds expended by the PJ must be repaid to the PJ's HOME Investment Trust Fund Treasury account, in accordance with guidance issued by HUD. Moreover, if the PJ's HOME-ARP allocation plan does not identify or include a description of the responsibilities of the subrecipient or contractor that is responsible for the PJ's entire HOME-ARP award, if applicable, the administrative and planning costs incurred or expended by the subrecipient or contractor will also be ineligible and any HOME-ARP funds expended by the PJ's subrecipient or contractor must be repaid to the PJ's HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

## **VII. Overarching program regulations and requirements**

The City of Concord and all subrecipients and participating jurisdictions will adhere to this requirement according to the stipulations that are enforced by the U.S. Department of Housing and Urban Development.

### **A. Fair Housing and Civil Rights**

Agencies must comply with federal, State, and local fair housing and civil rights laws, regulations, and Executive Orders, including Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq); the Fair Housing Act (42 U.S.C. 3601-3602); Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259); and the Age Discrimination Act of 1975, as amended (42 U.S. C. 6101-6107).

Discrimination in the provision of housing is prohibited on the basis of a protected class; federal and North Carolina State protected classes include:

- Race
- Color
- National Origin
- Religion
- Disability
- Sex
- Familial Status

### **B. Affirmative Marketing and Outreach**

All Consortium Members must undertake outreach efforts in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach, and access to the Program.

The Consortium Members must inform potential applicants of the program via flyers, public notices, local media articles, or meetings with Subrecipient staff. The marketing information will include basic eligibility requirements, a general description of the Program, and the appropriate Fair Housing logo.

The Consortium Members' marketing approach must address: (1) how the program will be announced (i.e., through media and other sources); (2) where applications will be taken (i.e., at one site or more); (3) when applications will be accepted (i.e., daily, during normal working hours, or extended hours for a specified period); and (4) the method for taking applications (i.e., in person, by mail).

The Consortium Members must maintain a file that contains all marketing efforts (i.e., copies of newspaper ads, memos of phone calls, copies of letter, etc.) The records, which help assess the results of these actions, must be available for inspection.

The Consortium Members also has an obligation to assure that information about the program reaches the broadest possible range of potentially qualified applicants.

To further fair housing objectives, The Consortium Members should identify those households that have been determined to be "least likely to apply," and determine what special outreach activities, including placing advertising in minority-specific media, will ensure that this population is fully informed about the program. The Consortium Members should work with the Consortium to assure that all marketing initiatives and materials adequately reflect the available assistance types.

### **C. Conflict of Interest**

In the procurement of property and services by the Consortium Members, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. Any person who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may not have an interest in any contract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, board member, loan committee member, elected official or appointed official of a participating jurisdiction or a Consortium Member that is receiving HOME funds.

The Consortium Members shall ensure that officers, employees, agents or consultants will not occupy any HOME assisted affordable housing units in the project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the CHDO who occupies a housing unit as the project manager or maintenance worker.

As lead agency for the Consortium, the City of Concord may provide an exception to the provisions listed above on a case-by-case basis when the Consortium Members determine that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the Consortium Member's HOME-assisted project. For the City and the Consortium Members to provide this exception, the Consortium Members must make a written request and the City and the Consortium Members will make its determination based on the following factors:

- a. Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such

- person to receive generally the same interests or benefits as are being made available or provided to the group;
- b. Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
  - c. Whether the tenant protection requirements of Section 92.53 are being observed;
  - d. Whether the affirmative marketing requirements of Section 92.351 are being observed and followed; and
  - e. Any other factor relevant to the City and the Consortium's determination, including the timing of the requested exception.

The Consortium Members must maintain a written code of standards of conduct that will govern the performance of its officers, employees, or agents engaged in the award and administration of contracts funded with federal dollars.

#### **D. Program Accessibility**

Section 504 of the Rehabilitation Act of 1973 requires that a HOME-funded activity, when viewed in its entirety, is usable and accessible to persons with disabilities. The obligation to provide accessible units, in accordance with 24 CFR 8.22 and 8.23 is broader and includes the following:

All program activities, including public hearings, homebuyer briefings, counseling sessions, and meetings should be held in locations that are accessible to persons with disabilities.

Information about all programs and activities should be disseminated in a manner that is accessible to persons with disabilities. Auxiliary aids and special communication systems should be used for program outreach, public hearings related to housing programs, and other program activities.

Reasonable steps should be taken to provide information about available accessible units to eligible persons with disabilities. Homebuyer projects are not required to produce accessible units, but reasonable accommodations during the application process are required for any buyers with accessibility needs. Program advertising should acknowledge that the program will work with households with accessibility needs. Should a successful homebuyer applicant have a need for a unit with an accessible design, the program must accommodate those needs.

Information about the accessibility requirements of HOME-funded multifamily housing is included in the rental housing section of this manual.

#### **E. Equal Opportunity**

Federally-funded housing projects/programs are subject to Executive Order 11246, as amended, which prohibits agencies from discriminating against employees or applicants for employment on the basis of race, color, religion, national origin, citizenship status, unfair documentary practices regarding employment verification, sex, age, and disability. These requirements are included in all contracts with agencies.

- **Section 3 of the Housing and Urban Act of 1968 (Section 3):**

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance is directed to low- and very low-income persons to the greatest extent feasible. In accordance with the Section 3 Plan, solicitation of Section 3 businesses is required during procurement for any construction contract of \$100,000 or more and is

encouraged for contracts of lesser amounts. The Section 3 Plan also requires contractors/subcontractors to follow a specific hiring plan in order to target Section 3 residents.

- **Women- and Minority-Owned Business Enterprises:**

The Consortium Members are required to take affirmative actions to allow Women- and Minority-Owned Business Enterprises (WMBE) to benefit from federal funds. The Consortium Members passes this requirement on to funded agencies, which must make a good faith effort to employ WMBE firms when implementing projects/programs. These efforts can include advertising for professional services or construction contractors in minority publications, notifying WMBE firms directly of employment opportunities, or requiring that contractors hire WMBE subcontractors. Solicitation of MBE firms is required during procurement for any construction contract of \$50,000 or more.

## **F. Non-Discrimination**

No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under any program or activity funded in whole or in part with HOME funds on the basis of religion or religious affiliation, age, race, color, creed, gender, sexual orientation, marital status, familial status, physical or mental disability, gender identity or expression of a person, national origin, ancestry, military status, or other arbitrary cause.

## **G. Reasonable Accommodations for Persons with Disabilities**

Employers receiving HOME funds may not discriminate against prospective or current employees with disabilities. Employers must remove physical and administrative barriers to employment and make reasonable accommodations for employees with known disabilities.

If a subrecipient has 15 or more employees, it must designate a Section 504 Coordinator and notify program participants and employees of its non-discrimination policies.

## **H. Business Enterprises Owned by Minorities, Women and Disadvantaged Business Enterprises**

The Cabarrus/Iredell/Rowan HOME Consortium encourages participation by business enterprises owned by minorities and women, and disadvantaged business enterprises (M/W/D-BE). Contracts for the procurement of services should be awarded to the maximum extent possible to M/W/D-BE. Section 24 CFR 84.44(b) of the Uniform Administrative Requirements outlines recommended steps for achieving participation goals.

## **I. The Uniform Act and Section 104 (d)**

HOME-assisted projects are subject to the Uniform Relocation and Assistance and Real Property Acquisition Polices Act of 1970, as amended (URA) (42 U.S.C. 4601-4655), and the government wide implementing regulations issued by the Federal Highway Administration at 49 CFR part 24. In addition, projects that include demolition or conversion of low-income housing are subject to Section 104(d) (also called the Barney Frank amendment).

### **Acquisition**

The URA requirements apply to any and all real property acquisition for a project that receives any amount of HOME funding, regardless of whether the funds are used to purchase the property or for

other project costs. The regulations may apply to any acquisition for which a purchase offer was made at any time after the date the applicant first *intended* to apply for HOME funds for the project.

Agencies are exempt from complying with most acquisition requirements of the Uniform Act (Subpart B) *only* if an identified site can be acquired “voluntarily” in accordance with Section 49 CFR § 24.101 of Subpart B.

A “voluntary” acquisition requires the Agency (buyer) to inform the seller, prior to executing an agreement to purchase:

- That it does not have the power of eminent domain (buyers with eminent domain authority, must agree not to use it, and must not have specific site needs);
- That it will not be able to purchase the property if negotiations fail to result in an amicable agreement; and
- Of the buyer’s estimate of fair market value (FMV) of the property to be acquired.

**Estimating Fair Market Value:**

An appraisal is not required to establish the FMV of a property, but there must be documentation that includes an explanation, with reasonable evidence, of the basis for the estimate. A Comparative Market Analysis is acceptable for this purpose.

**Section 104(d)**

Section 104(d) of the Housing and Community Development Act of 1974, as amended (104(d)) requirements apply when HOME assistance is used for a project involving demolition or conversion.

Section 104(d) has two (2) distinct components:

- ***One for One Replacement:*** Requires one-for-one replacement of lower-income dwelling units that are demolished or converted to another use. For Section 104(d) purposes, “conversion” is defined as: Altering a housing unit that would rent at or below the fair market rent (FMR) so that it is used for non-housing purposes, rents for above the FMR or is used as an emergency shelter.
- ***Relocation of Lower-Income Tenants:*** Requires relocation assistance for displaced lower-income residential tenants and does not provide protection or assistance for persons with incomes above the Section 8 Low Income Limit.

**Housing Replacement**

The City of Concord has adopted a “Residential Anti-displacement and Relocation Assistance Plan”, which addresses the Section 104(d) requirement for one-for-one replacement of low-income housing units:

Consortium Members may replace all occupied and vacant occupiable low- and moderate- income dwelling units demolished or converted to a use other than as low- and moderate- income housing as a direct result of activities assisted with HOME funds.

Replacement units do not need to be provided by the same fund recipient whose project resulted in the housing loss. Consortium Members will count any net gain in units achieved through the investment of HOME funds as having met the one-for-one replacement requirement.

## **Relocation**

The Cabarrus/Iredell/Rowan HOME Consortium strongly discourages the permanent displacement of low-income households by project and programs. The URA stipulates the content and timing of notices for residents of properties to be acquired with HOME funds. If residents will be displaced by the project, they must receive moving cost reimbursement, relocation assistance payments, and relocation assistance services. If an otherwise feasible and fundable project does necessitate permanent or temporary displacement and relocation, the relocation must be carried out in strict compliance with the URA. Prior to selection for funding, the Agency must demonstrate that:

- Both personnel and budget resources are available to implement relocation, and
- Such projects must have qualified County-approved relocation personnel as part of the development team.

A pre-application conference with staff is required for any project which may involve relocation to ensure that the Agency understands the URA requirements and that proper relocation notices are given.

No relocation may be initiated prior to funding award except with the prior written approval of the Consortium Member. If relocation is required, a detailed **Relocation Plan** must be submitted with an application for HOME funds.

## **Temporary Relocation**

All conditions of temporary relocation must be reasonable and the tenant shall be provided with reimbursement for all reasonable out-of-pocket expenses incurred in connection with temporary relocation.

The tenant shall receive advisory services, including written notice of the date and approximate duration of the temporary relocation, address of suitable temporary unit, and the terms and conditions under which the tenant may lease and occupy the building/complex upon completion of the project.

**Temporary relocation may not extend beyond one year before the person is returned to his or her previous unit or location.** Any residential tenant who has been temporarily relocated for more than one (1) year must be offered all permanent relocation assistance, which may not be reduced by the amount of any temporary relocation assistance previously provided.

If the project requires tenants to be temporarily relocated off site, a detailed **Temporary Relocation Plan** is required.

## **J. Violence Against Women Act Reauthorization Act (VAWA) of 2022**

VAWA is a federal law originally enacted in 1994, as amended ([34 U.S.C. 12291 et seq.](#)), that protects individuals who are survivors of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, sexual orientation, or gender identity. These protections also apply to individuals with disabilities, including those with mental health disabilities, and people of color that also are disproportionately impacted by problematic laws and policies. It includes protections for survivors and others who are applying for or residing in covered housing programs. VAWA 2022 reauthorizes, amends, and strengthens VAWA. It added to, and did not replace, the existing VAWA housing protections for survivors. Covered housing providers must continue to provide VAWA protections as



required by law. On March 15, 2022, President Biden signed into law the [Consolidated Appropriations Act of 2022](#), which included the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022).

Many of the amendments enacted as part of VAWA 2022 took effect on October 1, 2022. On January 4, 2023, the U.S. Department of Housing and Urban Development (HUD) published a notice in the Federal Register (VAWA 2022 Notice<sup>4</sup>) in which HUD: (1) describes how the VAWA 2022 amendments affect HUD's programs; and (2) seeks comment on certain provisions.

Under this new provision, there are some additional requirements and obligations for HOME recipients, which include: (1) reporting to HUD problematic local laws and policies of the jurisdiction and those of the subrecipients that impose penalties that are being enforced, and (2) Certifying that the jurisdictions are in compliance or will be in compliance within 180 days of submitting the report to HUD. The goal is to prevent adoption of these laws, policies, and programs and address harms that may have occurred. A copy of the VAWA 2022 Notice is available online at:

<https://www.federalregister.gov/documents/2023/01/04/2022-28073/the-violence-against-women-act-reauthorization-act-of-2022-overview-of-applicability-to-hud-programs>

See HUD 1 Public Law 117-103, <https://www.congress.gov/117/plaws/publ103/PLA> for guidance that affects Home Investment Partnerships Program (HOME) recipients concerning the Right to Report Crime and Emergencies from One's Home law in the Violence Against Women Act (VAWA) Reauthorization of 2022 ([34 U.S.C. 12495](#)). For further guidance concerning VAWA 2022, also see 34 U.S.C. 12491, 24 C.F.R. part 5, subpart L, and 24 CFR part 576.409 (ESG) and part 578.99(j) (CoC program).

#### **K. Build America, Buy America Act (BABA)**

The Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021, focuses on maximizing the federal government's use of services, goods, products, and materials produced and offered in the United States. BABA established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. BABA also established the Buy America Preference (BAP) for iron, steel, manufactured products, and construction materials used in covered infrastructure projects to be produced in the United States. BABA applies to all expenditures by a Federal agency to a non-federal entity for an infrastructure project, including construction, alteration, maintenance, or repair.

The HUD Community Planning and Development (CPD) programs that are impacted by BAP include CDBG, CDBG-CV, HOME and HOME-ARP. Agencies may waive the domestic content procurement preference if (1) a waiver is in the public interest, (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or satisfactory quality, or (3) the application of the domestic content preference would increase the cost of the overall project by more than 25 percent. Public Law 117-58, §70912(3): <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

## **L. National Standards for the Physical Inspection of Real Estate (NSPIRE)**

In May 2016, in response to instructions from Congress, the Department of Housing and Urban Development (HUD) initiated an effort to consolidate, update, and enhance the Housing Quality Standards (HQS) and the Uniform Physical Condition Standards (UPCS). The aim was to establish a unified inspection protocol for public housing and voucher units. After dedicating seven years to this goal, HUD has published the NSPIRE Final Rule, titled the Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate. This rule introduces HUD's modern approach to defining and evaluating housing quality while aiming to reduce regulatory burdens. The overarching objective is to prioritize health, safety, and functional defects over appearance, focusing on the areas that impact residents the most, their homes. Further information can be found in the Federal Register at <https://www.federalregister.gov/documents/2023/05/11/2023-09693/economic-growth-regulatory-relief-and-consumer-protection-act-implementation-of-national-standards>.

The NSPIRE Final Rule will be implemented in two phases. Starting on July 1, 2023, Public Housing will transition to NSPIRE, followed by the Multifamily Housing programs, Housing Choice Voucher (HCV), Project Based Voucher (PBV) programs, and the Community Planning and Development programs on October 1, 2023. Under this new requirement, which takes effect on HUD programs must use the new NSPIRE inspection framework for all units assisted with acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services (24 CFR 574.300(b)(3)); new construction (24 CFR 574.300(b)(4)); project or tenant-based rental assistance (24 CFR 574.300(b)(5)); and operating costs (24 CFR 574.300(b)(8)). Additional information can be found in the Federal Register. <https://www.federalregister.gov/documents/2023/07/07/2023-14362/national-standards-for-the-physical-inspection-of-real-estate-and-associated-protocols-scoring>. All NSPIRE Score Calculator features are based on the Proposed NSPIRE Scoring Notice ([88 FR 18268](#)) and Proposed NSPIRE Standards Notice located at [https://www.hud.gov/sites/dfiles/PIH/documents/6092-N-02nspire\\_propose-standards.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/6092-N-02nspire_propose-standards.pdf).

## **M. Financial Management**

The Consortium Members that receive HUD funds must abide by the financial management requirements of the Federal Office of Management and Budgets found at 2 CFR part 200.

### **Audit Requirements**

The Consortium Members also must follow OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

### **IDIS Drawdowns**

A separation of duties has been established by the Cabarrus/Iredell/Rowan HOME Consortium, the City of Concord's Finance Department, and the City of Concord as the designated Lead Entity for the Consortium, in order to provide proper checks and balances from grant set-up, project and activity set-up, sub-funding, sub-granting and drawdown process in the following manner:

### **IDIS Administrator Procedures:**

- The City of Concord submits completed IDIS Access Request Forms in the IDIS system to gain approval for access by function for all Consortium Members' projects.
- The City of Concord also maintains drawdown request vouchers with copies of deposit transactions and payment disbursement documentation.

### **Program Income**

Some housing activities generate program income, which must be disbursed before seeking reimbursement/draw down of additional HOME funds. Program income is defined as "gross income received by the Consortium Members, or an agency, which was generated from the use of HOME funds or HOME matching contributions." Income generated by housing projects or programs would typically fall into one of the following categories:

- ***Income from the use or rental of HOME-assisted real property*** owned by the Consortium Members, or a public or nonprofit agency that is selected by the Consortium Members to operate a portion of its housing program minus the costs of generating the income.
- ***Payments of principal and/or interest on loans*** made with HOME funds.
- ***Proceeds from the sale of real property*** that was purchased or rehabilitated with HOME funds.

For example, funds for housing are often provided as low-interest or deferred payment loans. The loan repayments are considered as program income. The federal regulations require that:

- Program income be spent before drawing funds from the Consortium's HOME account;
- Program income be spent only for eligible activities; and
- Written agreements with agencies that will generate program income must specify whether program income must be returned to the Consortium's HOME account or be used by the Consortium Members for an eligible activity.

Program Income does not include gross income from the use, rental, or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the Consortium's HOME account or the Consortium Members. The Consortium Members are required to track and report program income that is generated during each fiscal year to the City of Concord's staff.

### **N. Procurement**

All projects must comply with the most restrictive of the applicable federal or state, competitive procurement regulations or costs may not be reimbursable.

Federal procurement requirements at 2 CFR Part 200 apply to all non-profit organizations actions as a subrecipient and to all public entities. The owners/sponsors/developers are not subject to the federal procurement requirements.

Nonprofit organizations receiving HOME funds must comply with the procurement requirements of 24 CFR Part 84, with the exception of currently certified CHDOs undertaking CHDO-eligible projects (as stated in HUD CPD Notice 97-11).

Procurement requirements are provided in the Consortium Members' funding notices and written agreements. The Consortium Members are encouraged to contact the City of Concord's staff if they have any questions regarding the procurement requirements that apply to a specific project. The Consortium Members will be expected to provide a copy of their procurement policies and procedures that meet applicable federal and state requirements. If a project includes any construction or rehabilitation, a required component of a completed application for funding will be a written description of how the Agency intends to procure prime or general contractors, subcontractors, architects, engineers, consultants, etc. in a competitive manner.

For construction or facility improvement projects exceeding \$100,000, minimum Federal requirements located in 24 CFR 85.36 or 84.48(c) for bid guarantees, performance bonds, and payment bonds must be met. Prior to publishing a Notice of Bid Opening in the local newspapers, as a minimum requirement, and through other approved forms of communication mediums, each Consortium Member must review and approve all bid documents to ensure that all federal, state, and program requirements are included.

Only contractors and subcontractors that are not federally barred or suspended and have current State of North Carolina business licenses with current Workers' Compensation accounts, including proper insurance and bonding, can work on capital construction projects. The Consortium Members will check the status of the general contractor and all subcontractors for federal debarment and suspension, licensing, insurance, bonding, and Workers' Compensation accounts for capital construction projects. The Consortium Members also are responsible for checking the licensing and debarment status for owner-occupied housing rehabilitation and minor home repair clients.

The Cabarrus/Iredell/Rowan HOME Consortium's subrecipients are subject to the procurement requirements of 24 CFR parts 84 and 85 as well as state and local laws and regulations. Subrecipients will be monitored annually to ensure compliance with these regulations. Owners and developers, including CHDO's, are not subject to federal procurement requirements.

### **Contractor Procurement**

The Consortium Members must require all subrecipients to obtain a minimum of two (2) bids on planned repairs, based on the preliminary work write-up prepared by the municipality, county code enforcement or the Consortium Members' inspector. Bids are to be returned on the specific due date. Subrecipient staff will record the total amount of the bid and the date and time the bid was received. The subrecipient will evaluate the bid documents to determine which bids are eligible. Bids are considered eligible when the following conditions are met:

- The submitting contractor currently meets all program requirements and is not debarred or suspended from participating in the HOME Owner-Occupied Rehabilitation Program.
- The contractor is not currently on probation, suspended or debarred by the state licensure board.
- The total dollar amount of the bid is within 10% of the total cost listed on the initial work write-up prepared for or by the Consortium Member.

### **O. Environmental Review Requirement**

Prior to entering into a contract with a Consortium Member, the City of Concord, as the Lead Entity for the Consortium, will review and approve a federal Environmental Review in compliance with the

National Environmental Policy Act (NEPA) and other related federal and state environmental laws. No choice-limiting activities may be undertaken by the applicant for HOME funds during the time between the submission of the application and the completion of the Environmental Review (prior to the receipt by the Consortium Member and the City of Concord of the Authority to Use Grant Funds from HUD).

Tenant-Based Rental Assistance is categorically excluded and not subject to §58.5 authorities. Each Consortium Member will document this determination, provide a complete copy of the Environmental Review Record to the City of Concord's staff for review and approval, and keep the document in the Environmental Review Records files.

### **Phase 1 Environmental Site Assessment**

Development projects must provide a Phase 1 Environmental Site Assessment (ESA) at the time of application to ensure that any environmental hazards are recognized and mitigated. The Phase I ESA should be prepared in accordance with the requirements of ASTM E-1527 "Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process," and must clearly document compliance with 24 CFR 58.5(i)(2) or 50.3(i). Each assessment will include limited surveys of lead-based paint, asbestos, mold, and wetlands as applicable. If any hazards are identified, they will be abated or mitigated before occupancy. The Phase I ESA must be dated six months or less from the due date of the Consortium application. If, at the time that the Consortium Member undertakes the federal Environmental Review, the Phase I ESA is more than six months old, an update will be required. If the Phase I ESA is more than a year old at the time that the Consortium Member undertakes the federal Environmental Review, a new Phase I ESA must be completed. Development projects must also meet state requirements under the State Environmental Policy Act (SEPA) and federal environmental review requirements under the National Environmental Policy Act (NEPA) as applicable.

### **P. Public Records**

Materials and information submitted to or received by the Consortium Members are subject to public disclosure unless otherwise exempt from disclosure under the North Carolina General Assembly's G.S. §132. No assurances can be given that any materials provided can be protected from public review and copying.

### **Recordkeeping and Retention of Records**

Records related to HOME-funded projects and programs must be retained for at least five (5) years. For rental and homeownership development projects, general records must be kept for five (5) years after project completion, and tenant/homeowner data must be maintained for the most recent five (5) years, until five years after the conclusion of the affordability period.

### **Q. Additional General Policies and Procedures for Development Projects**

The remaining provisions in this chapter apply to HOME-funded rental housing development, rental housing acquisition (no rehabilitation), and homebuyer development projects, collectively referred to as "Development Projects."

## **Applicant Standards**

Requests for HOME Development Funds will need to demonstrate, with a reasonable level of assurance, that the sponsoring organization is fiscally sound and has reliable systems to manage and account for public funds. The following documents will be submitted at the Consortium Member's request:

- Complete audit reports for each of the past two (2) years for the applicant, including an OMB circular A-133 supplement as appropriate, any audit findings, corrective action plan, management letter and agency response.
  - If the applicant organization has not been audited, financial statements for each of the past two (2) fiscal years and a year-to-date statement certified by the applicant's Chief Financial Officer. Financial statements will include balance sheets and cash flow, revenue, and long-term debt statements.
- Nonprofit organizations must submit an IRS Form 990 for the prior two (2) years.
- Outstanding HOME Annual, Close-out or Monitoring Reports.

Applicants must demonstrate that the skills and experience of the development team and the property management team, and the capacity of the organization are appropriate to the size and complexity of the project. If the applicant does not have prior experience in affordable housing development or has not had experience within the past ten (10) years, they must partner with a development consultant experienced in affordable housing development.

Applicants will need a signed board resolution or board minutes authorizing submittal of a written request for funding. If selected for funding, the organization's board must designate in writing the person(s) authorized to execute agreements on behalf of the organization.

## **Eligible Development Costs**

HOME development funds may be used for, but are not limited to:

- Site preparation or improvement, including demolition if construction begins within 12 months
- Securing buildings
- Construction materials and labor
- Onsite improvements in keeping with surrounding projects, including sidewalks, utility laterals, etc. Offsite infrastructure is not eligible as a HOME expense.
- Relocation costs, including moving costs, replacement housing costs, advisory services, and staff costs related to relocation assistance
- Financing fees
- Credit reports
- Title binders and insurance
- Recording fees and transaction taxes
- Legal and accounting fees, including project audit costs
- Appraisals
- Architectural and engineering fees
- Environmental reviews
- Developer fees (subject to a limit)
- Permit fees
- System development charges
- Affirmative marketing, initial leasing and marketing costs
- Initial operating deficit reserve during lease-up: limited to 18 months (new construction projects only)

- Homebuyer counseling to purchasers of HOME-assisted housing units only

### **Appraisal and Real Property Acquisition**

If the applicant is proposing the purchase of real property and/or building(s), a full appraisal must support the purchase price. Appraisals and acquisition must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. The URA generally applies to federally-funded projects involving acquisition, rehabilitation, or demolition, and requires compliance with following the real property acquisition process, unless the project meets the requirements of 49 CFR 24.101(b)(1)-(5).

Applicants must follow the procedures for a Voluntary Acquisition under the URA. Prior to making an offer for the property, the applicant must, in writing, advise the owner of the property that federal funds may be involved in the purchase of the property, let the owner know that the applicant does not have the power of eminent domain and that it will be unable to acquire the property if negotiations fail to result in agreement, and provide the owner with what it currently believes to be the market value of the property. If the applicant has not yet completed an appraisal of the property at the time of the offer, the statement of market value provided to the seller must have a reasonable basis (e.g., assessed value).

The request for HOME funding must include a current appraisal. An appraisal must be dated no more than 12 months prior to the funding request submission date. A letter updating an appraisal completed more than 12 months prior to the funding request submission date will be accepted. The appraisal must be conducted by someone with a current general appraisal certificate in the State of North Carolina.

### **Minimum Property Standards**

#### **New Construction Projects**

All new construction projects within the Consortium service areas will meet local codes, ordinances and zoning requirements for the municipality or county in which the project is located. Projects also must comply with the *N.C. State Building Codes that are applicable to new construction, residential, and existing structures*, which the Cabarrus/Iredell/Rowan HOME Consortium has adopted as its construction performance standards. Housing must meet all applicable requirements upon project completion.

All new construction HOME-assisted projects will also meet the requirements described below:

- **Accessibility.** All housing will meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multi-family dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).
- **Disaster mitigation.** Where relevant, housing must be constructed to mitigate the impact of

potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with municipal, county, State ICC or IFC codes, or such other requirements as HUD may establish.

- **Written cost estimates, construction contracts and construction documents.** The Cabarrus/Iredell/Rowan HOME Consortium will ensure that construction contracts and construction documents describe the work to be undertaken in adequate detail to conduct inspections. The Cabarrus/Iredell/Rowan HOME Consortium Members must review and approve written cost estimates for construction and determine that costs are reasonable.
- **Construction progress inspections.** The Consortium Members conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents (draw requests).

### **Rehabilitation Projects**

For existing single-family rental properties assisted with the Consortium Members' HOME funds, the unit must meet local codes, ordinances and zoning requirements for the municipality or county in which the project is located. Projects must also comply with the *N.C. Building Code and the Concord Development Ordinance*, and must address the major systems of the unit in the following manner:

#### **Structural support**

- If the initial inspection by the Consortium Members or the approved designee shows any evidence of foundation, sill, joist or other structural support damage these items must be corrected as part of the initial rehabilitation of unit prior to lease.

#### **Roofing**

- If deemed as not meeting the five-year threshold of useful life, the roofing, including all wood sheathing, framing, boxing and fascia that is identified as compromised (rotted, missing, etc.) must be replaced along with the shingles.
- If the roofing is deemed as meeting the five-year threshold of useful life, any specifically-identified issues (damaged fascia, guttering, boxing, etc.) must be corrected as part of the initial rehabilitation of the unit prior to lease.
- All attics must be vented.

#### **Cladding and Weatherproofing (e.g., windows, doors, siding)**

- If initial inspection by the Consortium Members, or approved designee, shows any evidence of specified damage, the items must be corrected as part of the initial unit rehabilitation prior to lease.
- If existing windows are single-pane and determined to be in working order, the Consortium Member/developer/subrecipient must ensure that all windows have been properly sealed, both inside and out, to remove any potential air leakage.



## **Plumbing and Water Heater**

- All plumbing issues identified in the initial inspection by the Consortium Members or approved designee must be corrected.
- If the water heater is deemed as not meeting the five (5) year threshold of useful life, it must be replaced.
- Water heaters must be placed in drain pans with drain piping plumbed to disposal point as per the latest approved addition of the International Plumbing Code, only if located in living space.
- Pipe all Water Heater Temperature & Pressure (T&P) relief valve discharges to disposal point as per the latest approved edition of the International Plumbing Code.

## **Electrical**

- If deemed as not meeting the five-year threshold of useful life, the electrical system must be replaced as part of the initial rehabilitation of the unit prior to lease.
- If deemed as meeting the five (5) year threshold of useful life, any specifically-identified issues associated with the wiring must be corrected prior to lease.
- Wall switch-controlled Energy Star rated overhead lighting is required in all rooms.
- Each bedroom and hallway, etc. must have, as required by Code (local, state or Federal) a hard-wired or battery back-up smoke detector.

## **Heating, Ventilation, and Air Conditioning**

- If the unit is not properly insulated, a minimum of R19 insulation must be installed under all living space flooring and a minimum of R-38 insulation must be installed above all living space ceilings.
- If the heating or air conditioning systems do not meet the five (5) year threshold of useful life, they must be replaced with a proper-capacity, high efficiency system with proper seer capacity for heated and cooled space.

## **Site and Neighborhood Standards**

A site for newly-constructed housing must meet the following site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- The site must promote greater choice of housing opportunities.
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

## **Lead-Based Paint**

The Lead-Based Paint Regulations described in 24 CFR Part 35 require that lead hazard evaluation and reduction activities be carried out for all single and multi-family residences constructed prior to 1978 that receive HOME Program assistance. Applications for rehabilitation funds for existing buildings constructed prior to 1978 must include a lead hazard evaluation by appropriate lead-certified personnel.

If lead-based paint is present in the unit, the written funding request also must include a detailed lead hazard reduction plan, in accordance with the regulations, and separately identify within the rehabilitation budget, the costs associated with the reduction of lead hazards in accordance with the regulation and guidelines.

All HOME program fund allocations are contingent upon the applicant agreeing to complete lead hazard reduction, evidenced by a clearance report performed by appropriate lead-certified personnel. The Cabarrus/Iredell/Rowan HOME Consortium permits use of HOME funds for lead-based paint testing, assessment, abatement and the clearance report. In a multi-family project where HOME Program funds will be used for only a portion of the units, lead-based paint requirements apply to ALL units and common areas in the project.

## **Accessibility**

- All housing must meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, also must meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

## **Disaster Mitigation**

- Where relevant, the Cabarrus/Iredell/Rowan HOME Consortium requires housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements.

## **Compliance with State/Local Codes, Ordinances, and Zoning Requirements**

- The Cabarrus/Iredell/Rowan HOME Consortium standards require that rehabilitated housing meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

## **Uniform Physical Condition Standards**

- The Cabarrus/Iredell/Rowan HOME Consortium will use the Uniform Physical Conditions Standards (UPCS), HUD’s prescribed physical inspection procedures. UPCS requires that upon completion, all HOME assisted projects and units will be decent, safe, sanitary and in good repair.

### **Capital Needs Assessments**

- For multifamily rental housing projects of 26 or more total units, the Consortium Members will determine all work to be performed on the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment.

### **Construction Documents and Cost Estimates**

- The City of Concord’s staff will ensure that work to be undertaken meets the Cabarrus/Iredell/Rowan HOME Consortium rehabilitation standards. The construction documents (i.e., written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the Consortium Members’ standards. The Consortium Members will review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

### **Frequency of Inspection**

- The Consortium Members must conduct an initial property inspection to identify the deficiencies that must be addressed. The Consortium Members’ and the City of Concord’s inspectors will conduct progress and final inspections to determine that work was done in accordance with work write-ups.
- All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements.
- The Consortium Members will document compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards, HOME funds will not be used to acquire the property unless it is rehabilitated to meet the standards.
  - The Consortium Members will adhere to the following guidelines:
    - On-site inspections will be performed within one (1) year following project completion and every one to three (3) years during the affordability period.
    - Property owners must annually certify to the Consortium Members that each building and all HOME assisted units in the project are suitable for occupancy.
    - For projects with one (1) to four (4) HOME assisted units, 100% of the HOME assisted units will be inspected for site, building exterior, building systems, and common areas for each building that houses HOME assisted units.

### **Downpayment Assistance**

- Existing housing acquired for homeownership, using down payment assistance, must be decent, safe, sanitary, and in good repair using the Consortium Members' established standards or HUD's UPCS, whichever is more stringent.
- The Consortium Members' inspector will inspect the housing and document this compliance requirement based upon an inspection conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards, HOME funds will not be used to acquire the property unless it is rehabilitated to meet the standards.
- The amount available for down payment assistance is determined by each Consortium Member.

### **Ongoing Property Condition Standards for Rental Housing**

- As with all other types of HOME assisted housing, the Consortium Members' established construction standards will be used to ensure that owners of all rental housing maintain the housing as safe, decent, sanitary and in good repair throughout the affordability period.

### **Inspection Procedures**

- The Consortium Members will establish written inspection procedures. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures also must describe how frequently the property will be inspected.

### **Contractor Procurement**

The Consortium Members must require all subrecipients to obtain a minimum of two (2) bids on planned repairs, based on the preliminary work write-up prepared by the municipality, county code enforcement or the City's inspector. Bids are to be returned on the specific due date. Subrecipient staff will record the total amount of the bid and the date and time the bid was received. The subrecipient will evaluate the bid documents to determine which bids are eligible. Bids are considered eligible when the following conditions are met:

- The submitting contractor currently meets all program requirements and is not debarred or suspended from participating in the HOME Owner-Occupied Rehabilitation Program.
- The contractor is not currently on probation, suspended or debarred by the state licensure board.
- The total dollar amount of the bid is within 10% of the total cost listed on the initial work write-up prepared for or by the City of Concord.

### **Compliance and Monitoring**

During the course of a project, monitoring shall be implemented through periodic on-site visits so that any problems that may occur will be resolved as soon as possible. The goal of monitoring is to assist and support recipients in complying with applicable State, Federal, and Local requirements and in implementing their project activities in a timely manner.

The Consortium Member is required to maintain complete financial and program files and to comply with program reporting requirements. The Consortium Member must also provide citizens with reasonable access to records pertaining to the use of funds.

**Technical Assistance Visit:** A technical assistance visit is an informal visit. The intent of this meeting is to share information that will enable the Consortium Member to meet the various State and Federal requirements for its grant. A technical assistance visit could consist of explanations of project start-up requirements and the establishment of program files. The Consortium Member must demonstrate compliance with applicable regulations and document this by maintaining accurate and complete records and files. The filing system must provide a historical account of the Consortium Member's activities, be easy to use, and centrally located.

**Monitoring Visit:** A monitoring visit is more formal than a technical assistance visit. The monitoring visit is utilized to determine if the project is being conducted in compliance with applicable Federal and State laws and requirements. The review also determines the Consortium Members' ability to implement the program in a timely manner.

The monitoring visit consists of a review of project files, records and documentation, and may include a visit to the project site. All records, files, and documentation should be available for review at the monitoring visit. If other public agencies, attorneys, or consultants have assisted in program implementation, these records must be available for review for the monitoring visit. Failure to produce such records upon request will result in issuance of either a program "concern" or "finding" of non-compliance, and will jeopardize the organization's eligibility for future HOME project funding. The issuance of a program "concern" or "finding" may, at the discretion of the City of Concord's staff, result in the recapture of funds provided by the City of Concord.

#### **Project Completion Deadline and Terminated Projects**

As required in 24 CFR §92.205(e), the Consortium Members' staff must be able to execute a written agreement with the subrecipient for the project within 12 months of July 1 of the year in which funding is awarded. The subrecipient must typically be able to complete the project and expend all funds within two (2) years of the execution of the written agreement.

When HOME funds are expended for projects that are terminated before completion, for whatever reason, the HOME funds that have been expended are ineligible and must be repaid. The Consortium Members must terminate any project that does not meet the HOME requirements for affordable housing (i.e., affordability provisions, income targeting, property standards, etc.) and repay HOME funds that are expended for the project.

#### **Corrective and Remedial Actions**

The inability to properly execute the terms of the contract and/or maintain records in the prescribed manner may result in a finding that the Consortium Member has failed to meet the applicable requirement of the contract. Remedial actions may include technical assistance to bring the project into compliance, or recapture of HOME funds.

#### **HOME-assisted Development Projects must meet the following standards:**

- *New construction:* New construction is required to meet all state and local codes and ordinances plus the Model Energy Code and all Handicapped Accessibility requirements.

While new single-family homes are not required to comply with Section 504 accessibility standards, if the applicant for the housing is disabled, the home must meet their accessibility needs. Where it is practical to do so, new single-family homes should be constructed to be accessed by a person with mobility impairments and adaptable to the needs of future residents seeking to age in place. New construction of rental housing must meet HOME site and neighborhood standards.

- ***Acquisition (no rehabilitation):*** Acquired housing must meet applicable state and local housing quality standards, if relevant standards exist, including lead-based paint hazard requirements. If none exist, then acquired housing must comply with Section 8 Housing Quality Standards.

Construction contracts and construction documents must be provided in adequate detail and reviewed by the Consortium Members to ensure that the documents address minimum housing and property standards, as well as city and/or state code requirements. Applicants also must provide written cost estimates prior to the execution of construction contracts to ensure that costs are reasonable.

#### **R. Section 504 Barrier Removal Standards for Multifamily Housing**

For new construction of rental or owner-occupied multifamily projects of four or more units, a minimum of 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2%, at a minimum, of the units (but not less than one (1) unit) must be accessible to individuals with sensory impairments. The total number of units in a HOME-assisted project, regardless of whether they are all HOME-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are HOME-assisted, the accessible units may be either HOME-assisted or non- HOME-assisted. The standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards, although deviations are permitted in specific circumstances. Accessible units must be, to the maximum extent feasible, distributed throughout the projects and sites and must be available in a sufficient range of sizes and amenities so as not to limit choice.

Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals. When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.

#### **S. Prevailing Wages and Labor Standards Requirements**

Labor standards requirements may impact the cost of construction work and should be factored in during the development of the project budget. The labor standards processes may require additional reporting and documentation during construction. Monitoring for compliance with labor standards requirements will be performed by the Consortium Members.

Applicants should assume that state prevailing wage rates will apply and build the requisite costs into all project development budgets, unless they obtain a determination otherwise from the North Carolina

Department of Labor (NCDOL). Applicants are advised to consult with the NCDOL and/or private legal counsel prior to applying for funding to determine whether prevailing wages must be paid and, if so, whether commercial or residential rates apply.

If an applicant receives a loan that is incurring interest, is not forgivable, and is required to be repaid in full, such loan in and of itself is not expected to trigger a requirement that prevailing wages be paid on the project. However, if the applicant is receiving other public funds and/or is a public entity (e.g., housing authority), it may be required to pay state prevailing wages on the project. A definitive determination regarding the applicability of state Prevailing Wage law can only be obtained from the NCDOL.

Federal Davis Bacon prevailing wages apply to all projects with 12 or more HOME-assisted units regardless of whether HOME funds were used for construction or other projects costs. When triggered, Davis Bacon wages apply to the entire project. When federal funds trigger prevailing wages determined under the Davis-Bacon Act in a project, the higher of either the State Residential Prevailing Wage Rates (unless modified as stated below) or Davis- Bacon wage rates will apply to each job classification, unless applicable law requires otherwise. In cases where Davis-Bacon wages are triggered, Davis-Bacon monitoring procedures are followed.

**Related Acts:**

- The Contract Work Hours and Safety Standards Act (CWHSSA) requires contractors and subcontractors to pay laborers and mechanics one and one-half (1.5) times their standard rate of pay for all hours worked in excess of 40 hours in a workweek.
- The Copeland Anti-Kickback Act prohibits a contractor or subcontractor from coercing an employee into giving up any part of their earned wages.

**Debarred Contractors**

Prior to entering into a contract with contractor or subcontractor, the Consortium Member must verify that they are not listed in the Federal publication of debarred, suspended and ineligible contractors. HOME funds may not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of a contractor during a period of debarment, suspension, or ineligibility.

**T. Section 3 Economic Opportunity**

Section 3 requirements apply to recipients of Housing and/or Community Development Assistance exceeding \$200,000 combined from all sources in any one year, per 24 CFR §135. Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction. All contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3. The purpose of Section 3 to ensure that employment (e.g., new hires) and other economic opportunities generated by this HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons.

## U. Subsidy Layering and Underwriting Guidelines

The Consortium must determine that no more than the necessary and allowable amount of HOME funds (in combination with other governmental funds), are invested in projects. The procedure for making this determination is the layering review.

The layering review will be conducted for those projects that include state or other public funds. It will take place as part of the review of applications for funding and again at the time of funding commitment. The review will consider the sources and uses of funds proposed for a project, the reasonableness of project development costs, the proposed project operating costs, and the amount of cash flow generated over time.

Subsidy layering also applies to homebuyer units with multiple government funding awards.

Before committing funds to a project, the Consortium Members must evaluate the project in accordance with the following guidelines that determine a reasonable level of profit or return on the owner's or developer's investment in a project.

- ***Reasonable Costs:***
  - Rental Development Projects: Rental development project costs are considered reasonable if they are within the Total Development Cost (TDC) Limits set by the North Carolina Housing Finance Agency. If the project exceeds these limits, the owner or developer will be required to submit a waiver request that identifies project characteristics that create cost levels above these limits.
  - Homebuyer Projects: No housing purchase value, constructed or after-rehabilitation, may exceed 95 percent of the median purchase price of owner-occupied homes or exceed the maximum per unit HOME investment value.
- ***Debt Coverage Ratio for Rental Projects:*** Projects must have an overall Debt Coverage Ratio (DCR) that provides a cushion against risk that may result from unforeseen circumstances, including higher than anticipated vacancy rates. Deferred loans are not considered in the DCR calculation during the deferral period, only the year when they become due and payable. The annual contributions to operating and replacement reserves must be included in the operating expenses when calculating the DCR. Projects should have an overall DCR of at least 1.10:1. The Consortium Members reserve the right, during contract development, to direct the use of excess cash flow when a project has an overall DCR greater than 1.20:1.
- ***Developer Fee:*** A reasonable maximum developer fee is ten percent (10%). For projects serving homeless, special needs populations or with 12 or fewer units, a reasonable developer fee is 15 percent (15%).
- ***Project Contingencies:*** If a Consortium Member is providing funds for construction of housing, a 10% contingency for new construction is required, with the right to request an exception, if needed.
- ***Market Demand:*** Applicants must, at a minimum, describe efforts to identify properties that are within the proposed project's market area and are available to the target population. A third-party market study must accompany the application if the project involves low-income housing tax credits or if another funder requires a market study. Market studies are not required for the following projects:
  - Projects for persons with Developmental Disabilities (DD)
  - Projects for persons with chronic mental illness (CMI)
  - Projects for homeless persons
  - Domestic violence (DV) projects
  - Special needs projects for persons with chronic substance abuse issues combined with homelessness and/or other conditions requiring intensive support services



If the project does not meet any of the above criteria, a market study is required. The market study must be submitted with an application for funding if the applicant has site control. If site control has not been obtained, the market study must be submitted upon receipt of site control.

- **Vacancy Rates:** Applicants should use a 5% residential vacancy rate for rental projects and a 10% non-residential vacancy rate when preparing their operating pro forma. Exceptions will be allowed if adequate justification is provided, such as in the case of very small or special needs projects.

## **V. Costs Associated with the Administration of Development Projects**

The Consortium Members incur the costs associated with the oversight and administration of individual development projects, including both those that occur during the development phase (e.g., environmental review, underwriting, subsidy layering analysis, loan processing, and construction inspection/oversight) and those that occur during the affordability periods (e.g., monitoring and inspections). The Consortium Members may charge these costs to individual projects.

The costs incurred during the development phase will be included in the project's per-unit subsidy and match calculations, but they will not be included in any indebtedness incurred by The Consortium Members and thus are not included in the loan amount.

Costs incurred during the affordability periods will be charged as they are incurred by The Consortium Members. The Consortium Members must include the estimated monitoring costs as an allowable operating expense in their operating budget for the project.

## **W. Mixed-Use Projects**

The Cabarrus/Iredell/Rowan Home Consortium funds may be used in developing mixed-use structures that contain residential and other uses (i.e., retail space, commercial office space, spaces for the provision of services). The inclusion of non-residential spaces for the exclusive use of the residents does not create a mixed-use project. Residential spaces include common area, corridors, stairways, laundry areas, storage areas, office space for management of the building, entry ways and lobbies.

HOME funds may only be used for costs associated with the residential portion of the building. The costs must represent a portion of the total development cost that does not exceed the proportion of residential space in the entire project.

## **X. Summary**

The HOME-American Rescue Plan (HOME-ARP) Policy was implemented in response to the City's need to define its process, and the guidelines for the Cabarrus/Iredell/Rowan HOME Consortium, to assist individuals or households who are homeless, at risk of homelessness, and other vulnerable populations, by providing rental assistance, supportive services and non-congregate shelter, to reduce homelessness and increase housing stability within the Cabarrus/Iredell/Rowan Home Consortium's jurisdictions.