

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR–6296–N–01]

**Waivers and Alternative Requirements  
for Implementation of the HOME  
American Rescue Plan (HOME-ARP)  
Program**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the waivers and alternative requirements that apply to a grantee’s use of HOME Investment Partnerships Program funds made available under Section 3205 of the American Rescue Plan Act (ARP) of 2021 (“HOME-ARP”). On September 13, 2021, HUD issued a notice imposing the requirements applicable to the use of HOME-ARP funds (the “HOME-ARP Notice”). At the same time, HUD published an Appendix to the HOME-ARP Notice describing all waivers and alternative requirements applicable to HOME-ARP funds. Consistent with HUD’s responsibility under the HUD Reform Act, HUD is providing additional notice to the public and all interested parties of the HOME-ARP waivers and alternative requirements by republishing the Appendix in this notice.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development at *Virginia.Sardone@hud.gov*, or at telephone number 202–402–4606 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARP) of 2021 (Pub. L. 117–2) into law, which provides over \$1.9 trillion in relief to address the continued impact of the COVID–19 pandemic on the economy, public health, State and local governments, individuals, and businesses. To address the need for homelessness assistance and supportive services, Congress appropriated \$5 billion in ARP funds to the HOME Investment Partnerships Program (HOME) to be administered by HUD to primarily benefit qualifying individuals or families through the following 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 units. The program for the use of the \$5 billion in ARP funds is the HOME-American Rescue Plan or “HOME-ARP.”

Under HOME-ARP, qualifying individuals or families are those that are (1) homeless; (2) at risk of homelessness; (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.

On April 8, 2021, in accordance with ARP, HUD allocated HOME-ARP funds to 651 grantees. The list of grantees and allocation amounts can be found at: <https://www.hud.gov/sites/dfiles/CPD/documents/HOME-ARP.pdf>. On September 13, 2021, HUD issued Community Planning and Development Notice CPD–21–10, *Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (<https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-10cpdn.pdf>) (the “HOME-ARP Notice”), which set forth the requirements for the use of HOME-ARP funds, including criteria for qualifying populations, permissible targeting and preferences, requirements for the funds allocation plan and eligible activities. At the same time, HUD published an Appendix to the HOME-ARP Notice (<https://www.hud.gov/sites/dfiles/OCHCO/documents/cpdWaiverHOMEARP.pdf>) that describes all waivers and alternative requirements applicable to the use of HOME-ARP funds.

**II. Applicable Rules, Waiver, and Alternative Requirements**

Section 3205 of ARP authorizes the Secretary of HUD to waive or specify alternative requirements for any provision of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*) (“NAHA”) or regulation for the administration of funds appropriated to HOME-ARP, other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of HOME-ARP funds. Title II of NAHA is the authorizing statute for HOME and applicable HOME regulations are at 24 CFR part 92.

Consolidated plan requirements for the use of HOME funds are in Title I of NAHA with applicable regulations in 24 CFR part 91.

Pursuant to the Secretary’s HOME-ARP statutory authority and regulatory waiver authority in 24 CFR 5.110, the Secretary is waiving the provisions of NAHA and HOME regulations and imposing the alternative requirements as set forth in the Appendix in this notice. The Secretary has determined that each waiver and alternative requirement described in this notice is necessary to expedite or facilitate the use of HOME-ARP funds. A participating jurisdiction may request additional waivers and alternative requirements from HUD to address specific needs related to its use of HOME-ARP funds.

Principal Deputy Assistant Secretary for Community Planning and Development, James Arthur Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

**Aaron Santa Anna,**

*Federal Liaison for the Department of Housing and Urban Development.*

**Appendix: Waivers and Alternative Requirements**

**Overall Requirements**

*A. Compliance with HOME-ARP Notice.* The requirements in 24 CFR part 92, as revised by this notice, apply to HOME-ARP. All references to compliance with requirements of or in “this part” in 24 CFR part 92 shall mean compliance with the requirements in “24 CFR part 92, as revised by the HOME-ARP Notice, including the Appendix to the HOME-ARP Notice published on HUD’s website, unless specifically stated otherwise herein.”

*B. Substitution of “HOME-ARP” for “HOME.”* All references to “HOME” throughout 24 CFR part 92 shall mean “HOME-ARP” for the use of HOME-ARP funds unless otherwise stated in the HOME-ARP Notice.

*C. Use of “the Act” and “title II of NAHA.”* The definition of “Act” is not revised, however “title II of NAHA” and “Act” are used interchangeably throughout the Appendix in this notice and 24 CFR part 92 and mean the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*

*D. Substitution of “nonprofit organization” for “community housing development organization.”* All references to “community housing development organization” or “CHDO” in 24 CFR part 92, except the definition of CHDO in 24 CFR 92.2, are

waived and revised to “nonprofit organization.”

E. *Matching Contribution Requirements.* The requirements of 24 CFR 92.218 through 24 CFR 92.222 and any other requirements for matching contributions in 24 CFR part 92 shall not apply to HOME-ARP funds, as section 3205(c)(1) of ARP states that the underlying statutory requirement at section 220 of NAHA (42 U.S.C. 12750) does not apply to HOME-ARP funds.

F. *Set-aside for Community Housing Development Organizations (CHDOs).* The requirements of §§ 92.300, 92.301, 92.302, 92.303, 92.452, 92.504(c)(3)(x), and 92.504(c)(7) and any other requirements for amounts set-aside for CHDOs shall not apply to HOME-ARP funds as section 3205(c)(1) of ARP states that the underlying statutory requirements at section 231 of NAHA (42 U.S.C. 12771) do not apply to HOME-ARP funds. In addition, the statutory requirements in sections 232, 233, and 234 of NAHA (42 U.S.C. 12772, 12773, and 12774(a)) for the use of set-aside funds for CHDOs are waived.

G. *Expiration of right to draw funds.* The requirements of 24 CFR 92.500(d) and any other requirements for the 24-month deadline for the commitment of funds shall not apply to HOME-ARP funds as section 3205(c)(1) of ARP states that the underlying statutory requirement at section 218(g) of NAHA (42 U.S.C. 12748) does not apply to HOME-ARP funds.

H. *Homebuyer activities/Existing homeowner requirements.* All statutory requirements for homebuyer or existing homeowner activities in NAHA are waived for the use of HOME-ARP funds because homebuyer/existing homeowner assistance is not an eligible activity under HOME-ARP. Specifically, HUD waives the requirements in sections 212(a)(1), 215(b), 254 of NAHA (42 U.S.C. 12742(a)(1), 12745, 12804) for homeownership, homebuyer, and owner-occupied activities, including the development of affordable housing for homeownership and homeowner rehabilitation. Requirements in §§ 92.205, 92.206, 92.207, 92.217, 24 92.251(c)(3), 92.254, 92.255, 92.258, and 92.504(c)(3)(ii)(B) applicable to homeownership activities shall not apply and are waived.

I. *Other Support for State and Local Housing Strategies and Specified Model Program.* The statutory requirements in section 213 (42 U.S.C. 12743), sections 241 to 245 of NAHA (42 U.S.C. 12781–12785), and sections 251 to 260 (42 U.S.C. 12801–12810) do not apply to HOME-ARP and are waived.

## Waivers and Alternative Requirements

### A. Subpart A—General

The definitions in 24 CFR 92.2 apply to the use of HOME-ARP funds except that HUD waives 24 CFR 92.2 and imposes the following revised definitions as alternative requirements:

*Commitment* means (1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) that meets the minimum requirements for a written agreement in § 92.504(c), as revised by the Appendix in

this notice, and the HOME-ARP Notice. An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. Funds for administrative and planning costs of the HOME-ARP program are committed based on the amount in the program disbursement and information system for administration and planning. The written agreement must be:

(i) With a State recipient or a subrecipient to use a specific amount of HOME-ARP funds to produce affordable housing, acquire and develop non-congregate shelter, provide tenant-based rental assistance, or provide supportive services;

(ii) With a nonprofit organization carrying out HOME-ARP activities to provide funds for operating expenses, in accordance with the HOME-ARP Notice;

(iii) To develop the capacity of nonprofit organizations in the jurisdiction carrying out HOME-ARP activities, in accordance with the HOME-ARP Notice; or

(iv) To commit to a specific local project, as defined in paragraph (2) of this definition and the HOME-ARP Notice.

(2) *Commit to a specific local project* means:

(i) *Rental Housing.*

(A) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME-ARP assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME-ARP funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(C) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME-ARP funds to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the purchaser have

executed a written agreement under which HOME-ARP assistance will be provided for the purchase of rental housing and the property title will be transferred to the purchaser within six months of the agreement date.

(ii) *Non-Congregate Shelter.*

(A) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME-ARP assistance will be provided to the owner for an identifiable project for which development is reasonably expected to begin within 12 months of the date of commitment.

(B) If the project consists of acquisition (without rehabilitation or new construction) of a property and the participating jurisdiction (or State recipient or subrecipient) is either acquiring the property with HOME-ARP funds or providing HOME-ARP funds to a purchaser to acquire the property for use as a non-congregate shelter that is reasonably expected to operate within six months of the date the commitment, the participating jurisdiction (or State recipient or subrecipient) and the property owner or purchaser have executed a legally binding contract for sale of an identifiable property and the property title will be transferred from the property owner to the participating jurisdiction (or State recipient or subrecipient) or purchaser.

(iii) *Tenant-based rental assistance.* If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner, the tenant, or the sponsor of the qualifying household in accordance with the provisions of the HOME-ARP Notice.

(iv) *Supportive Services.* If the project consists of providing supportive services, the participating jurisdiction (or State recipient, or subrecipient) has entered into a legally binding written agreement or contract with the contractor or subrecipient providing services to qualifying households in accordance with the HOME-ARP Notice.

*HOME-ARP funds* mean funds made available under Section 3205 of the American Rescue Plan Act of 2021 (Pub. L. 117–2) through allocations.

*Housing* includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing does not include emergency shelters, congregate or non-congregate shelters (including shelters for disaster victims), or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

*Program income.* Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME-ARP funds. When program income is generated by housing or shelter that is only partially assisted with HOME-ARP funds, the income shall be prorated to reflect the

percentage of HOME-ARP funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME-ARP funds;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME-ARP funds, less costs incidental to generation of the income (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 participating jurisdiction, subrecipient or State recipient);

(3) Payments of principal and interest on loans made using HOME-ARP funds;

(4) Proceeds from the sale of loans made with HOME-ARP funds;

(5) Proceeds from the sale of obligations secured by loans made with HOME-ARP funds;

(6) Interest earned on program income pending its disposition;

(7) Any other interest or return on the investment of HOME-ARP funds permitted under § 92.205(b) or the HOME-ARP Notice; and,

(8) Any operating cost assistance or replacement reserve funds returned to the participating jurisdiction after the required compliance or use period, in accordance with the HOME-ARP Notice.

*Project* means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME-ARP funds as a single undertaking under 24 CFR part 92 and the HOME-ARP Notice. The project includes all the activities associated with the site and building. For HOME-ARP tenant-based rental assistance or supportive services, project means assistance to a qualifying individual or family.

*Project completion* means that all necessary title transfer requirements and construction work, if applicable, have been performed; the project complies with the requirements of the HOME-ARP Notice and applicable requirements of this part, as revised by the Appendix in this notice (including the property standards); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d), project completion occurs upon completion of construction and before occupancy. For HOME-ARP tenant-based rental assistance or supportive services, project completion means the final drawdown has been disbursed for the project.

*Subrecipient* means a public agency or nonprofit organization selected by the participating jurisdiction to receive HOME-ARP funds to administer all or some of the

participating jurisdiction's HOME-ARP programs. A public agency or nonprofit organization that receives HOME-ARP funds solely as a developer or owner of a housing project or non-congregate shelter is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

All other definitions in § 92.2 applicable to HOME-ARP remain unchanged.

### **B. Subpart B—Allocation Formula**

1. *Formula Allocation.* ARP required the Secretary to allocate HOME-ARP funds pursuant to section 217 of NAHA (42 U.S.C. 12747) to grantees that received allocations in fiscal year (FY) 2021 pursuant to that same formula, within 30 days of enactment of ARP. Therefore, section 216(1) (42 U.S.C. 12746(1)) which requires the allocation of funds provided under title II of NAHA in 20 days from the date of enactment of the appropriation and sections 216(10) (42 U.S.C. 12746(10)) and 217(a)(4) (42 U.S.C. 12747(a)(4)) which provide for a threshold reduction do not apply. The requirements in 24 CFR 92.50 and 92.60 apply only to the extent that they do not conflict with this ARP statutory requirement. All regulatory requirements related to the participation threshold amount do not apply to HOME-ARP.

#### *Insular Areas*

2. *Program description.* The requirements in 24 CFR 92.61 are waived to the extent they apply to HOME-ARP funds and HUD imposes the alternative requirement that insular areas must comply with the requirements for participating jurisdictions for the HOME-ARP allocation plan in the HOME-ARP Notice, unless stated otherwise in the HOME-ARP Notice.

3. *Review of program description and certifications.* The requirements for the HOME-ARP allocation plan for participating jurisdictions in the HOME-ARP Notice apply to insular areas, therefore 24 CFR 92.62 is waived to the extent that it conflicts with the following alternative requirements:

(a) *Review of HOME-ARP allocation plan.* The responsible HUD Field Office will review an insular area's HOME-ARP allocation plan and will approve the plan unless the insular area has submitted a substantially incomplete HOME-ARP allocation plan; has submitted a HOME-ARP allocation plan that is inconsistent with the purposes of ARP; has failed to submit information sufficient to allow HUD to make the necessary determinations that the HOME-ARP allocation plan complies with the requirements in the HOME-ARP Notice; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs.

An insular area's allocation plan is inconsistent with ARP if it allocates HOME-ARP funds for uses other than a HOME-ARP eligible activity, as described in the HOME-ARP Notice. An insular area's HOME-ARP allocation plan is substantially incomplete if the insular area does not complete the

required public participation or consultation or fails to describe those efforts in the plan; if the insular area fails to include the required elements outlined in the HOME-ARP Notice, including the amount of HOME-ARP funds for each eligible HOME-ARP activity type; the insular area fails to identify and describe the responsibilities of the subrecipient or contractor administering all of its HOME-ARP award, if applicable; or HUD rejects the insular area's certifications as inaccurate.

If the insular area has not submitted information in its HOME-ARP allocation plan that is satisfactory to HUD to demonstrate compliance with HOME-ARP allocation plan requirements; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the HOME-ARP allocation plan and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory plan.

(b) *Review period.* Within thirty days of receipt of the HOME-ARP allocation plan, the HUD Field Office will notify the insular area if determinations cannot be made based on the information submitted that the HOME-ARP allocation plan complies with HOME-ARP allocation plan requirements, or if the proposed projects or activities are beyond currently demonstrated capability as demonstrated by past performance in housing and community development programs. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its HOME-ARP allocation plan.

(c) *HOME Investment Partnership Agreement.* Upon issuance of the HOME-ARP Notice, HUD will obligate all HOME-ARP grants to insular areas through the signing of the HOME-ARP Grant Agreements by both parties. After obligation, HUD will permit the insular area to use 5 percent of its award for eligible administrative and planning costs in accordance with the HOME-ARP Notice. After submission and acceptance of the insular area's HOME-ARP allocation plan, the remainder of the HOME-ARP funds will be made available to the insular area for expenditure.

4. *Amendments to program description.* HUD waives 24 CFR 92.63 and imposes the following alternative requirement for insular areas:

Insular areas must make a substantial amendment to its HOME-ARP allocation plan for a change in the method of distributing funds; to carry out an activity not previously described in the plan; to change the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan; a change in the guidelines that apply to HOME-ARP funds for other forms of investment (24 CFR 92.61(b)(6)), minority and women business outreach program (24 CFR 92.61(b)(7)), or refinancing (24 CFR 92.61(b)(8)); or a change

in the tenure type of the project or activities; or a funding increase to a project or activity of \$100,000 or 50 percent (whichever is greater). Participating jurisdictions must make the proposed substantial amendment public and provide for a 15-day public comment period prior to submission. Upon completion, participating jurisdictions must submit substantial amendments to HUD in accordance with the process for submitting the HOME-ARP allocation plan as described in Section V.D.

The HUD Field Office will notify the insular area if its HOME-ARP allocation plan, as amended, does not permit a determination that the HOME-ARP allocation plan complies with the requirements in the HOME-ARP Notice, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its HOME-ARP allocation plan.

5. *Applicability of HOME-ARP requirements to insular areas.* The requirements in 24 CFR 92.64 are revised to impose the alternative requirement that insular areas are subject to the same HOME-ARP requirements in the HOME-ARP Notice as participating jurisdictions, and applicable regulatory requirements for insular areas that are not revised by the HOME-ARP Notice. The following exceptions in 24 CFR 92.64, as revised, still apply to insular areas:

(1) Subpart K (Program Administration): References to HOME Investment Trust Fund in 24 CFR 92.500(b), as revised by the HOME-ARP Notice shall be "HOME account" for insular areas. The requirements in 24 CFR 92.502(c) *Local Account* do not apply to insular areas, and instead insular areas must comply with Treasury Circular No. 1075 (31 CFR part 205) and 2 CFR 200.305.

(2) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must require compliance with the requirements in the HOME-ARP Notice, including the Appendix.

(3) Subpart L (Performance Reviews and Sanctions). Section 92.552 does not apply. Instead, 24 CFR 92.65 applies.

Exceptions in § 92.64(a)(1), (4), and (5) do not apply to HOME-ARP for insular areas and are waived. The requirements in 24 CFR 92.64(b), (c), and (d) for insular areas are not revised.

6. *Reallocation.* Section 217 of NAHA (42 U.S.C. 12747) and the regulation at 24 CFR 92.66 for the reallocation of funds for insular areas are waived so that any HOME-ARP funds which are reduced or recaptured from an insular area's allocation will be reallocated by HUD in accordance with 24 CFR part 92, subpart J, as revised by the Appendix in this notice.

### C. Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

1. *Continuous designation as a participating jurisdiction.* 24 CFR 92.106 is

waived and revised to the alternative requirement that once a State or unit of general local government is designated a participating jurisdiction for HOME-ARP, it must remain a HOME-ARP participating jurisdiction for its HOME-ARP period of performance and the requirements of 24 CFR 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with 24 CFR 92.107, as revised by the Appendix in this notice. Once allocated HOME-ARP funds, a HOME-ARP participating jurisdiction does not have to be a participating jurisdiction under the HOME program to remain a participating jurisdiction under the HOME-ARP program.

2. *Revocation of designation as a participating jurisdiction.* The requirements in 24 CFR 92.107(a) apply to HOME-ARP. The requirements in § 92.107(b) and (c) are waived. Reallocation requirements in § 92.107(c) are replaced with the alternative requirements for 24 CFR part 92, subpart J, as revised by the Appendix in this notice.

### D. Subpart D—Submission Requirements

1. *Submission requirements.* HUD waives requirements associated with a comprehensive housing affordability strategy in sections 105 (42 U.S.C. 12705), 106 (42 U.S.C. 12706), 107 (42 U.S.C. 12707), and 216 (42 U.S.C. 12746) of NAHA and 24 CFR 92.150 and imposes the following alternative requirement:

After the date of the HOME-ARP Notice, the participating jurisdiction may execute the HOME-ARP grant agreement with HUD to obligate the participating jurisdiction's HOME-ARP allocation. After obligation and prior to acceptance of a participating jurisdiction's HOME-ARP allocation plan by HUD, the participating jurisdiction may incur eligible administrative and planning costs in accordance with 24 CFR 92.207, as revised by the Appendix in this notice and may expend up to 5 percent of its HOME-ARP funds for eligible administrative and planning costs.

The participating jurisdiction must submit a HOME-ARP allocation plan and related documents in accordance with the HOME-ARP Notice, including the requirements for the content of the HOME-ARP allocation plan, the process of developing and submitting the plan, certifications, consultation, public participation, HUD review, identification of subrecipient or contractor administering all of a participating jurisdiction's HOME-ARP award and its responsibilities, if applicable, and amendments. After a participating jurisdiction's HOME-ARP allocation plan has been accepted by HUD, in accordance with the HOME-ARP Notice, a participating jurisdiction may use its HOME-ARP funds on all eligible costs, including eligible project costs.

If the participating jurisdiction does not submit a HOME-ARP allocation plan or if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP costs incurred by the participating jurisdiction (or its subrecipient or contractor) will be ineligible costs and any HOME-ARP funds expended by the participating jurisdiction

must be repaid to the HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

### E. Subpart E—Program Requirements

1. *Distribution of assistance.* The requirements in section 222 of NAHA (42 U.S.C. 12752) and 24 CFR 92.201 are waived to the extent necessary to impose the following alternative requirements:

a. *Local.* Each participating jurisdiction must, insofar as is feasible, distribute HOME-ARP funds geographically within its boundaries and among different categories of need of qualifying populations, according to the priorities identified in its approved HOME-ARP allocation plan. The participating jurisdiction may only invest its HOME-ARP funds in eligible projects within its boundaries, or in jointly funded projects within the boundaries of contiguous local jurisdictions which serve qualifying populations in both jurisdictions. For a HOME-ARP rental or non-congregate shelter project to be jointly funded, both jurisdictions must make a financial contribution to the project.

b. *State.* Each State participating jurisdiction is responsible for distributing HOME-ARP funds throughout the State according to the State's assessment of the geographical distribution of the needs of the qualifying populations within the State, as identified in the State's approved HOME-ARP allocation plan. The State must distribute HOME-ARP funds to rural areas in amounts that take into account the non-metropolitan share of the State's total qualifying populations and objective measures of rural need, such as poverty and homelessness data, as set forth in the State's approved HOME-ARP allocation plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need. A State that uses State recipients to perform program functions shall require that the State recipients use HOME-ARP funds in accordance with the HOME-ARP Notice and other applicable laws. A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan and HOME-ARP allocation plan.

#### *Eligible and Prohibited Activities*

2. *New Eligible Activities.* In addition to the activities contained in 24 CFR 92.205 and the NAHA, section 3205(a)(1) of ARP has defined the following new eligible activities:

(1) Supportive services to qualifying households that are not already receiving supportive services, including supportive services activities listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(29)); housing counseling; and homeless prevention services; and

(2) The acquisition and development of non-congregate shelter units.

For purposes of implementing the new eligible activities under ARP, HUD has determined that the new eligible activities are not subject to the requirements in section

212 of NAHA (42 U.S.C. 12742) and imposes the requirements for the new eligible activities in the HOME-ARP Notice. As such, the waivers and alternative requirements in this Notice shall not apply to the above-activities unless specified in the HOME-ARP Notice.

3. *Eligible activities.* HUD is providing a waiver of the requirements of section 212(a)(1) and (3) of NAHA (42 U.S.C. 12742(a)(1) and (3)), section 215(b) of NAHA (42 U.S.C. 12745(b)), 24 CFR 92.205(a)(1)–(4), (b)–(e), and 24 CFR 92.209 as follows:

(1) *Ineligible activities.* Homeownership and owner-occupied activities, including assistance to homebuyers, development of affordable housing for homeownership, and homeowner rehabilitation, shall not be eligible activities in which HOME-ARP funds may be invested.

(2) *Costs associated with eligible activities.* HUD is waiving and imposing an alternative requirement to 24 CFR 92.205(a)(1) because the regulation specifies that eligible costs are those set forth in 24 CFR 92.206 through 24 CFR 92.209. The alternative requirement is that eligible costs shall be those costs set forth in 24 CFR 92.206 through 24 CFR 92.209, as modified by the waivers and alternative requirements in this notice.

(3) *Applicability of forms of assistance, minimum amount of assistance, multi-unit projects, and related limited waivers.* As homeownership activities are not eligible activities for HOME-ARP funds, 24 CFR 92.205(b)–(d) are waived to the extent that they applied to assisting homebuyers, homeowners, or the development of housing for homeownership purposes.

(4) *Waiver and alternative requirement of regulations for terminated projects.* As participating jurisdictions are required to have a HOME-ARP Investment Trust Fund Treasury account instead of the local HOME Investment Trust Fund, HUD is providing a limited waiver and alternative requirement of the requirements of 24 CFR 92.205(e) to the extent that 24 CFR 92.252(e) specifies that funds must be paid into the participating jurisdiction's HOME Investment Trust Fund. HOME-ARP funds repaid pursuant to 24 CFR 92.252(e) and the HOME-ARP Notice shall be repaid to the participating jurisdiction's HOME-ARP Investment Trust Fund Treasury account.

4. *Eligible project costs.* HUD waives 24 CFR 92.206 to the extent that it conflicts with the eligible costs for eligible activities identified in the HOME-ARP Notice. In addition, HUD waives 24 CFR 92.206(d)(5) and imposes the following alternative requirement:

For new construction or rehabilitation of HOME-ARP rental housing for qualifying populations, the cost of funding operating cost assistance during the project's compliance period or a capitalized operating cost assistance reserve in accordance with requirements in section VI.B of the HOME-ARP Notice is an eligible cost.

For new construction or rehabilitation of HOME-ARP rental housing units for low-income households, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up

for HOME-ARP units for low-income households (not to exceed 12 months), is an eligible cost. An initial operating deficit reserve may only be used to pay the share of operating expenses, scheduled payments to a replacement reserve, and debt service of the HOME-ARP rental housing units for low-income households. The initial operating deficit reserve must be included in the project's underwriting and the participating jurisdiction must review and approve the initial operating deficit reserve amount in accordance with the participating jurisdiction's standardized underwriting guidelines.

The initial operating deficit reserve must be based on a participating jurisdiction's analysis of projected operating deficits attributable to the HOME-ARP units for low-income households during the period of project rent-up (not to exceed 12 months) and remaining after expected rental revenue and operating expenses are calculated according to the projected lease-up schedule. Any HOME-ARP funds placed in an initial operating deficit reserve that remain unexpended after the period of project rent-up may be retained for reserves for replacement for HOME-ARP units if permitted by the participating jurisdiction.

HUD also waives § 92.206(d)(6) to impose the following alternative requirement: Staff and overhead costs of the participating jurisdiction are those costs directly related to carrying out the project or activity, such as work specifications preparation, loan processing inspections, and other services related to assisting tenants and occupants. Although these project delivery costs may be charged as project costs, these costs cannot be charged to or paid by qualifying households or low-income families.

5. *Eligible administrative and planning costs.* Section 3205(a)(2) of ARP provides that notwithstanding sections 212(c) and (d)(1) of NAHA (42 U.S.C. 12742(c) and (d)(1)), a participating jurisdiction or insular area may use up to fifteen percent of its HOME-ARP allocation for payment of administrative and planning costs of the HOME-ARP program. Therefore, HUD waives sections 212(c) and (d)(1) of NAHA (42 U.S.C. 12742(c) and (d)(1)) and the requirements in 24 CFR 92.207 to the extent it conflicts with the following alternative requirement:

A participating jurisdiction may incur and expend up to fifteen percent of its HOME-ARP allocation for eligible administrative and planning costs. From the obligation date of the participating jurisdiction's HOME-ARP award, as identified in the HOME-ARP Grant Agreement, until the date of HUD's acceptance of the participating jurisdiction's HOME-ARP allocation plan, a participating jurisdiction may incur and expend up to five percent of its HOME-ARP allocation for eligible administrative and planning costs, in accordance with the requirements in the HOME-ARP Notice.

HOME-ARP funds for may not be used to pay costs attributable to the regular HOME Program, including administrative and planning costs.

A participating jurisdiction may provide all or a portion of its HOME-ARP administrative and planning funds to

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

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.

If the participating jurisdiction does not submit a HOME-ARP allocation plan or if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP costs incurred by the participating jurisdiction will be ineligible costs and any HOME-ARP funds expended by the participating jurisdiction must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account, in accordance with 24 CFR 92.503, as revised by the Appendix in this notice. Moreover, if the participating jurisdiction'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 participating jurisdiction'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 participating jurisdiction or the contractor or subrecipient must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account.

*Reasonable administrative and planning costs for the HOME-ARP program include:*

a. *General management, oversight, and coordination.* 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:

1. Salaries, wages, and related costs of the participating jurisdiction's staff. If a participating jurisdiction charges costs to this category, the participating jurisdiction 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 HOME-ARP program administrative assignments. A participating jurisdiction may only use one of these two methods. HOME-ARP 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 any 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.

2. Travel costs incurred for official business in carrying out the HOME-ARP program.

3. HOME-ARP administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services.

4. 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 the HOME-ARP Notice, including the Appendix in this notice, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

5. Costs of administering HOME-ARP TBRA and HOME-ARP supportive services programs.

b. *Staff and overhead.* Staff and overhead costs of the participating jurisdiction related to administering a HOME-ARP project or activity, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants; and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs, at the discretion of the participating jurisdiction; however, these costs (except housing counseling) cannot be charged to or paid by qualifying or low-income individuals and families.

c. *Public information.* 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.

d. *Fair Housing.* Activities to affirmatively further fair housing (AFFH) in accordance with 24 CFR 5.151 and the participating jurisdiction's certification in accordance with 24 CFR 5.152. (HUD's Interim Final Rule entitled, "Restoring Affirmatively Furthering Fair Housing Definitions and Certifications," (86 FR 30779, issued on Jun. 10, 2021) as amended, established the AFFH definition at 24 CFR 5.151 and the certification requirements in 24 CFR 5.152 and became effective on July 31, 2021). Available at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>.

e. *Indirect costs.* 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.

f. *Preparation of HOME-ARP allocation plan.* Preparation of the HOME-ARP allocation plan as required in the HOME-ARP Notice. Preparation includes the costs of public hearing, consultations, and publications.

g. *Other Federal requirements.* Costs of complying with the applicable Federal requirements in 24 CFR part 92, subpart H. HOME-ARP 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 participating jurisdiction.

6. *Eligible community housing development organization (CHDO) operating expense and capacity building costs.* Section 3205(a)(3) of ARP provides that notwithstanding sections 212(a) and (g) of the Act (42 U.S.C. 12742(a) and (g)), a participating jurisdiction or insular area may use up to an additional five percent of its allocation for the payment of operating expenses of community housing development organizations and nonprofit organizations carrying out activities under the HOME-ARP Notice, but only if such funds are used to develop the capacity of the community housing development organization or nonprofit organization in the jurisdiction or insular area to carry out activities authorized under the HOME-ARP Notice; and the community housing development organization or nonprofit organization complies with the limitation on assistance in section 234(b) of NAHA (42 U.S.C. 12774(b)). Therefore, HUD waives sections 212(a) and (g) of the Act (42 U.S.C. 12742(a) and (g)) and 24 CFR 92.208 to the extent they conflict with ARP and the requirements in the HOME-ARP Notice for Nonprofit Operating and Capacity Building Assistance and imposes the following alternative requirements:

A participating jurisdiction may use up to 5 percent of its HOME-ARP allocation to pay operating expenses of community housing development organizations and other nonprofit organizations that will carry out activities with HOME-ARP funds. A

participating jurisdiction may also use up to an additional 5 percent of its allocation to pay eligible costs related to developing the capacity of eligible nonprofit organizations to successfully carry out HOME-ARP eligible activities. Participating jurisdictions may award operating expense assistance or capacity building assistance to a nonprofit organization if it reasonably expects to provide HOME-ARP funds to the organization for the eligible HOME-ARP activities of development and support of rental housing, tenant-based rental assistance, acquisition and development of non-congregate shelter, or supportive services within 24 months of the award.

(1) *Operating Expense Assistance:* Operating expenses are defined as reasonable and necessary costs of operating the nonprofit organization. These costs include employee salaries, wages and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment, materials, and supplies. HOME-ARP funds used for operating expenses must be used for the general operating costs of the nonprofit organization. These operating costs must not have a particular final cost objective, such as a project or activity, or must not be directly assignable to a HOME-ARP activity or project.

(2) *Capacity Building Assistance:* Capacity building expenses are defined as reasonable and necessary general operating costs that will result in expansion or improvement of an organization's ability to successfully carry out eligible HOME-ARP activities. Eligible costs include salaries for new hires including wages and other employee compensation and benefits; costs related to employee training or other staff development that enhances an employee's skill set and expertise; equipment (e.g., computer software or programs that improve organizational processes), upgrades to materials, and supplies; and contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.

(3) *Ineligible Costs:*

(a) No costs related to operating a non-congregate shelter (e.g., allocable overhead and staffing costs, insurance, utilities, etc.) are eligible costs under the HOME-ARP program.

(b) The actual costs of implementing a specific activity or project, including staff costs of the community housing development organization or nonprofit organization to deliver supportive services or administer HOME-ARP tenant-based rental assistance, are considered HOME-ARP project delivery costs or project soft costs and are not eligible operating expense and capacity building costs.

(4) *Limitations on Assistance:* In any fiscal year, operating assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described in the HOME-ARP Notice, for that fiscal year or \$50,000. Likewise, in any fiscal year, capacity building assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described in

the HOME-ARP Notice for that fiscal year or \$50,000. If an organization receives both operating assistance and capacity building assistance in any fiscal year, the aggregate total amount of assistance it may receive is the greater of 50 percent of the organization's total operating expenses for that fiscal year or \$75,000.

7. *Troubled HOME-assisted rental housing projects.* HUD waives 24 CFR 92.210.

8. *Pre-award costs.* The requirements in 24 CFR 92.212 are waived and HUD imposes the alternative requirement that HOME-ARP funds cannot be used for pre-award costs.

9. *HOME Funds and Public Housing.* HUD is waiving 24 CFR 92.213(d) to the extent that it requires that HOME funds must be used in accordance with 24 CFR part 92 and the rent requirements in 24 CFR 92.252. Instead, as an alternative requirement, HOME funds must be used in accordance with 24 CFR part 92, as revised by the Appendix in this notice and the HOME-ARP Notice, including the rent requirements contained in each.

10. *HOME prohibited activities and fees.* HUD is waiving provisions in 24 CFR 92.214 and providing alternative requirements related to prohibited activities and fees, as follows:

(1) *Operating Cost Assistance.* 24 CFR 92.214(a)(6) is waived, and 24 CFR 92.214(a)(1) is waived to the extent that it conflicts with the following alternative requirements:

a. A participating jurisdiction may pay ongoing operating assistance or capitalize an operating cost assistance reserve for HOME-ARP-assisted units restricted for occupancy by qualifying populations in a project where the participating jurisdiction determines in its underwriting that the reserve is necessary to maintain the HOME-ARP units' long-term operational feasibility. However, HOME-ARP funds cannot be used for both a capitalized operating cost assistance reserve and ongoing payments for operating cost assistance during the minimum compliance period. The allowable amount of the reserve shall not exceed the amount determined by the participating jurisdiction to be necessary to provide operating cost assistance for HOME-ARP units restricted for occupancy by qualifying populations for the 15-year HOME-ARP minimum compliance period.

b. The operating cost assistance reserve for HOME-ARP units for qualifying households must be held by the project owner in a separate interest-bearing account and sized, based on an analysis of projected deficits remaining after the expected payments toward rent by qualifying households are applied to the units' share of operating costs. Funds in a capitalized operating cost assistance reserve can only be drawn to address operating deficits associated with HOME-ARP units restricted for occupancy by the qualifying populations. The participating jurisdiction must, no less than annually, review the operating cost assistance reserve account to determine that the account is appropriately sized based on the projected operating deficits of units restricted for occupancy by qualifying households. A participating jurisdiction must use the definition of operating costs in the HOME-ARP Notice in its calculation of operating

deficits to determine the amount of HOME-ARP funds needed for an operating cost assistance reserve or when providing operating cost assistance. The participating jurisdiction may require the project owner to enter into a deposit account control agreement for the operating cost assistance reserve where the participating jurisdiction must approve disbursements from the account.

c. The participating jurisdiction must require the project owner to request written approval from the participating jurisdiction prior to disbursing funds from the project operating cost assistance reserve. The participating jurisdiction must review each requested distribution from the operating cost assistance reserve, including supporting documentation, to determine that the distribution is reasonable and necessary to cover the operating deficit associated with units occupied by qualifying households.

d. A participating jurisdiction may provide operating cost assistance to a HOME-ARP rental project to cover an operating deficit associated with HOME-ARP units restricted for occupancy by qualifying households except for when an operating cost assistance reserve is already established for the project. Operating cost assistance reserve and operating cost assistance cannot be provided beyond the HOME-ARP budget period, as described in Section VIII.C.3 of the HOME-ARP Notice. Unexpended operating cost assistance reserve amounts remaining at the end of the minimum compliance period of the HOME-ARP units must be returned in accordance with Section VI.B.23 of the HOME-ARP Notice. During the HOME-ARP minimum compliance period and prior to the end of the HOME-ARP budget period, a participating jurisdiction may invest additional HOME-ARP funds to provide operating cost assistance but is prohibited from investing additional HOME-ARP funds for capital costs except within the 12 months after project completion.

(2) *Eligible Costs for Operating Cost Assistance.* 24 CFR 92.206 and 24 CFR 92.214(a)(9) are waived to the extent that they conflict with the following alternative requirement:

a. For purposes of the operating cost assistance, operating costs include costs for administrative expenses, property management fees, insurance, utilities, property taxes, and maintenance of a unit that is designated as a HOME-ARP-assisted unit and required to be occupied by a qualifying household. Operating costs must be reasonable and appropriate for the area, size, population(s) served, and type of project.

b. Project administrative expenses include payroll costs, which are gross salaries and wages paid to employees assigned to the property, including payroll taxes, employee compensation, and employee benefits; employee education, training, and travel; advertising; and general administrative costs which are costs for goods and services required for administration of the housing, including rental or purchase of equipment, supplies, legal charges, bank charges, utilities, telephone/internet services, insurance, and other administrative costs that

are reasonable and customary for the general administration of a rental unit occupied by qualifying populations. HOME-ARP permits the pro-rated staffing costs of a Resident Services Coordinator to be included in the operating costs allocated to a HOME-ARP unit for low-income or qualifying households if such costs are not already paid by another source. Typically, the role of a Resident Services Coordinator is to arrange community activities for residents and link residents to outside service agencies as needed.

c. Property management fee includes the total fee paid to a management agent by the owner for the day-to-day management of a HOME-ARP rental unit restricted for occupancy by qualifying populations. A management agent must cover its costs of supervising and overseeing operations of a HOME-ARP unit out of the fee they receive.

d. A reserve for replacement must be based on the useful life of each major system and expected replacement cost in a HOME-ARP project. Scheduled payments to a reserve for replacement of major systems included in the operating costs allocated to a HOME-ARP unit restricted for a qualifying household may be made from the operating cost assistance reserve. A reserve for replacement allocated to the HOME-ARP units may also be capitalized in the initial year of the minimum compliance period of the HOME-ARP units. HOME-ARP funds cannot be used to both capitalize a reserve for replacement and provide payments to the reserve for replacement from a capitalized operating reserve during the minimum compliance period.

Supportive services costs are not eligible operating costs of HOME-ARP units, however, qualifying households occupying HOME-ARP rental units may receive supportive services through the HOME-ARP supportive services eligible activity.

(3) *Prohibited fees.* 24 CFR 92.214(b) is waived only to the extent that it conflicts with the alternative requirement that a participating jurisdiction may allow such occupancy fees or charges that are customary and reasonable if such fees or charges comply with 24 CFR 578.77(b).

11. *Alternative requirements for Tenant-based rental assistance.* The requirements of section 212(a)(3) (42 U.S.C. 12742(a)(3)), 24 CFR 92.209, 24 CFR 92.252(d), and 24 CFR 92.504(c)(5) are waived. The following alternative requirements apply:

(1) *General Requirements.* HOME-ARP funds may be used to provide tenant-based rental assistance to qualifying households ("HOME-ARP TBRA"). HOME-ARP TBRA is a form of rental assistance that is attached to the household and not a particular rental unit. Therefore, the HOME-ARP TBRA assisted household may choose to move to another unit with continued HOME-ARP TBRA as long as it continues to meet the program eligibility requirements. If a HOME-ARP TBRA assisted household chooses to move, the rental assistance contract terminates and a new rental assistance contract for the new unit will be executed according to HOME-ARP TBRA requirements. The HOME-ARP TBRA assisted household must notify the

participating jurisdiction before moving in order to receive continued HOME-ARP TBRA.

*a. Tenant Selection.* Only individuals and families in the qualifying populations are eligible to receive HOME-ARP TBRA assistance. Consistent with the alternative requirements listed below and Section IV.C of the HOME-ARP Notice, a participating jurisdiction may use a Continuum of Care's (CoC's) coordinated entry (CE) process, a CE process and other referral agencies, or a waitlist to select qualifying households for HOME-ARP TBRA. Participating jurisdictions may establish a system of preferences that includes a preference for one or more of the qualifying populations, such as homeless. Preferences for one or more of the qualifying populations must be disclosed in the HOME-ARP allocation plan, as required by the HOME-ARP Notice, including the Appendix in this notice. The participating jurisdiction must select qualifying households for HOME-ARP TBRA in accordance with written tenant selection policies and criteria that are based on local housing needs established in the HOME-ARP allocation plan. The participating jurisdiction must follow written tenant selection policies and criteria that:

i. Limit eligibility to households that meet one of the HOME-ARP qualifying populations definitions in accordance with HOME-ARP requirements. Preferences for households in one or more of the HOME-ARP qualifying populations, if any, must comply with the preferences and/or method of prioritization in the participating jurisdiction's HOME-ARP allocation plan and the participating jurisdiction's policies and procedures, if any, and must not violate nondiscrimination requirements in 24 CFR 92.350.

ii. If the participating jurisdiction selects TBRA applicants off a waiting list, it must provide for the selection of households from a written waiting list in the chronological order of their application, insofar as is practicable.

iii. Give prompt written notification to any rejected applicant of the grounds for any rejection, and

iv. Comply with the VAWA requirements as described in 24 CFR 92.359.

v. Finally, the participating jurisdiction may offer, in conjunction with HOME-ARP TBRA assistance, a simultaneous award of services in accordance with Section VI.D of the HOME-ARP Notice, as well as provide particular types of other nonmandatory services that may be most appropriate for persons with a special need or a particular disability.

*(2) Tenant Protections.* Participating jurisdictions must verify that there is an executed lease between the qualifying household that receives HOME-ARP TBRA and the owner of the rental unit or a between a qualifying household that receives HOME-ARP TBRA and a HOME-ARP sponsor with a sublease between the qualifying households and the HOME-ARP sponsor, in accordance with 24 CFR 92.253(a). A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitate the

leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP tenant-based rental assistance by a qualifying household. Participating jurisdictions may permit a HOME-ARP sponsor, as defined in Section VI.B.18 of the Notice, to execute a lease or master lease with a project owner. The HOME-ARP sponsor must then sublease a unit to a qualifying household. The lease between the qualifying household and the rental unit owner or the sublease between the HOME-ARP sponsor and the qualifying household cannot contain any of the prohibited lease terms specified in 24 CFR 92.253(b).

*(3) Eligible Costs.* Eligible costs under HOME-ARP TBRA include rental assistance, security deposit payments, and utility deposit assistance to qualifying households. HOME-ARP funds may be used to pay for up to 100 percent of these eligible costs. A participating jurisdiction may use HOME-ARP TBRA funds to provide loans or grants to qualifying households for security deposits for rental units regardless of whether the participating jurisdiction provides any other HOME-ARP TBRA assistance. The amount of funds that may be provided for a security deposit may not exceed the equivalent of two months' rent for the unit. Utility deposit assistance is an eligible cost only if rental assistance or a security deposit payment is provided with HOME-ARP TBRA. Costs of inspecting the housing are also eligible as costs of HOME-ARP TBRA. Administration of HOME-ARP TBRA is eligible only under general management oversight and coordination at 24 CFR 92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible project costs under HOME tenant-based rental assistance.

*(4) Ineligible Costs.* HOME-ARP TBRA may not be used to pay for the homebuyer program as defined at 24 CFR 92.209(c)(2)(iv).

*(5) Portability of Assistance.* A participating jurisdiction may require the HOME-ARP TBRA assisted household to use HOME-ARP TBRA within the participating jurisdiction's boundaries or may permit the household to use the assistance outside its boundaries consistent with the requirements in 24 CFR 92.209(d).

*(6) Term of Rental Assistance Contract.* The participating jurisdiction must determine the maximum term of the rental assistance contract. The rental assistance contract continues until the end of the rental assistance contract term, as determined by the participating jurisdiction, or until the lease or sublease is terminated, whichever occurs first. The term of the rental assistance contract may be renewed, subject to the availability of HOME-ARP funds. The term of the rental assistance contract must begin on the first day of the term of the lease or sublease.

*(7) Maximum Subsidy.* The participating jurisdiction must establish policies for the allowable maximum subsidy, which may differ from the maximum subsidy requirements at 24 CFR 92.209(h). Participating jurisdictions may provide up to 100 percent subsidy for rent, security deposit

payments, and utility bills. The participating jurisdiction must also establish policies for determining any household contribution to rent based on a determination of the qualifying household's income.

*(8) Rent Standard.* Consistent with 24 CFR 92.209(h)(3), participating jurisdictions must also establish a rent standard for HOME-ARP TBRA by unit size that is based upon local market conditions or the Section 8 Housing Choice Voucher program under 24 CFR part 982. The participating jurisdiction must determine whether the rent for a HOME-ARP TBRA household complies with the rent standard established by the participating jurisdiction for the HOME-ARP program and must disapprove a lease if the rent does not meet the participating jurisdiction's rent standard for HOME-ARP TBRA.

*(9) Housing Quality Standards.* Housing occupied by a household receiving HOME-ARP TBRA must comply with all housing quality standards required in 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 participating jurisdiction may defer to initial and ongoing inspection standards.

*(10) Program Operation.* The participating jurisdiction may operate HOME-ARP TBRA itself or may contract with a PHA or other entity with the capacity to operate a rental assistance program. In either case, the participating jurisdiction or entity operating the program must approve the lease. HOME-ARP TBRA may be provided through an assistance contract with (1) an owner that leases a unit to a qualifying household; (2) the qualifying household; or (3) an owner and the qualifying household in a tri-party contract. In the case of HOME-ARP TBRA provided in coordination with a HOME-ARP sponsor, as described below, the participating jurisdiction may require that payments are made directly to the HOME-ARP sponsor that will make rental payments to the owner on behalf of the qualifying household or require payments directly to the owner of the unit.

*(11) HOME-ARP TBRA with a HOME-ARP Sponsor.* HOME-ARP TBRA may be provided in coordination with a HOME-ARP TBRA sponsor. A HOME-ARP TBRA sponsor is a nonprofit organization that provides housing or services to HOME-ARP TBRA qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA on behalf of a qualifying household. A HOME-ARP sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household. Under HOME-ARP TBRA, a qualifying household may reside in housing leased by a HOME-ARP sponsor if there is a sublease that complies with HOME-ARP lease requirements between the HOME-ARP sponsor and the qualifying household.

*(12) Rental Assistance Contract.* There must be a rental assistance contract between the participating jurisdiction and at least one of the following:

- i. HOME-ARP sponsor;
- ii. Qualifying household; or
- iii. Owner of the housing.

Rental subsidy payments are made on behalf of the HOME-ARP-TBRA household



pursuant to a rental assistance contract. The rental assistance contract continues until the lease is terminated. Regardless of the role of the sponsor, the household has the right to continued HOME ARP TBRA assistance if it chooses to move from the unit.

The HOME-ARP sponsor may only receive the TBRA subsidy directly from the participating jurisdiction on behalf of the qualifying household if the rental assistance contract is between the HOME-ARP sponsor and the participating jurisdiction or the HOME-ARP sponsor and the participating jurisdiction have entered into a written agreement as outlined below. The HOME-ARP sponsor must make rental subsidy payments to the owner on behalf of the qualifying household per the terms and conditions of the HOME-ARP TBRA contract or written agreement with the participating jurisdiction. When the HOME-ARP TBRA qualifying household moves to a new rental unit, the HOME-ARP sponsor is not required to continue its sponsor relationship with the HOME-ARP TBRA-assisted household for the new rental unit but may do so with the consent of the HOME-ARP TBRA household.

The participating jurisdiction must establish policies and procedures regarding termination of HOME-ARP TBRA assistance for qualifying households who are absent from the rental unit where a HOME-ARP sponsor is leasing the rental unit and subleasing to the qualifying household or providing HOME-ARP TBRA rental subsidy payments on behalf of the household.

(13) *Lease and Sublease.* Participating jurisdictions must verify that each household that receives HOME-ARP TBRA assistance has an executed lease that complies with the tenant protection requirements of the HOME-ARP Notice. The lease agreement may be between the project owner and the HOME-ARP TBRA household, or participating jurisdictions may permit a HOME-ARP sponsor to execute a lease for an individual unit or a master lease with an owner for more than one unit restricted for occupancy by HOME-ARP TBRA households. If the lease agreement is between the HOME-ARP sponsor and owner, the HOME-ARP sponsor must execute a sublease agreement with a HOME-ARP TBRA household. The sublease between the HOME-ARP sponsor and the HOME-ARP TBRA household must meet the tenant protection requirements of the HOME-ARP Notice.

(14) *Written Agreement with HOME-ARP Sponsor.* The participating jurisdiction 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 receive the HOME-ARP TBRA subsidy directly from the participating jurisdiction on behalf of the qualifying household. The written agreement must specify the requirements for the HOME-ARP sponsor receiving the HOME-ARP TBRA subsidy on behalf of the qualifying household and the HOME-ARP sponsor's obligation to provide the HOME-ARP TBRA payment to the owner for the unit's required rent.

#### *Income Targeting*

12. *Alternative requirement to HOME rental income targeting requirements.* HUD is waiving section 215(a)(1)(B) and (C) of NAHA (42 U.S.C. 12745(a)(1)(B) and (C)) and 24 CFR 92.216. For HOME-ARP rental units, the following alternative requirements shall apply:

(1) *30 Percent Requirement.* Not more than 30 percent of the total number of rental units assisted with HOME-ARP funds by the participating jurisdiction may be restricted to households that are low-income as defined in 24 CFR 92.2. These units may only be located in projects containing HOME-ARP units restricted for occupancy by qualifying households. The remainder of the total HOME-ARP rental units assisted with HOME-ARP funds by the participating jurisdiction must be restricted for occupancy by qualifying households in accordance with the HOME-ARP Notice.

(2) *Low-Income Households.* The HOME-ARP rental units occupied by low-income households must be occupied by low-income households and bear a rent no greater than the lesser of:

a. The Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or

b. A rent equal to 30 percent of the income of a family at 65 percent of median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit.

13. *HOME tenant-based rental assistance income targeting requirements.* HUD is waiving section 212(a)(3)(A)(ii) of NAHA (42 U.S.C. 12742(a)(3)(A)(ii)) and 24 CFR 92.216 requirements for income targeting of HOME tenant-based rental assistance and imposing an alternative requirement that all persons assisted with HOME-ARP TBRA must be qualifying households upon admission.

#### **F. Subpart F—Project Requirements**

1. *Maximum per-unit subsidy amount and the waiver and alternative requirement for underwriting and subsidy layering.* The requirements of 24 CFR 92.250(a) shall not apply to HOME-ARP funds because section 3205 (c)(1) of ARP states that the underlying statutory requirements for cost limits in section 212(e) of NAHA (42 U.S.C. 12742(e)) do not apply to HOME-ARP funds. Additionally, the underwriting and subsidy layering requirements in 24 CFR 92.250(b) shall not apply to HOME-ARP rental project activities and are waived. Lastly, the requirements of section 212 of NAHA (42 U.S.C. 12742) and 24 CFR 92.214(a) are waived to the extent that they conflict with the alternative requirements below. HUD is specifying the following alternative requirements:

(1) *Underwriting and Subsidy Layering Guidelines.* Participating jurisdictions must develop standardized underwriting guidelines for HOME-ARP rental projects. These guidelines must provide for underwriting that accommodates and is appropriate for different types of projects. All participating jurisdictions are required to develop and implement standardized underwriting guidelines for HOME-ARP that require the following:

a. An examination of the sources and uses of funds for the project and a determination that costs are reasonable. In examining a project's proposed sources and uses, a participating jurisdiction must determine the amount of HOME-ARP development subsidy required to fill the gap between other committed funding sources and the cost to develop the project.

b. An assessment of the current market demand for the proposed project. For HOME-ARP units for qualifying households, a market assessment is not required. Rather, the participating jurisdiction can demonstrate that there is unmet need among qualifying populations for the type of housing proposed through CoC data, public housing and affordable housing waiting lists, point-in-time surveys, housing inventory count, or other relevant data on the need for permanent housing for the qualifying populations. For projects containing units restricted for occupancy by low-income households or market-rate households, the participating jurisdiction must conduct a market assessment in accordance with 24 CFR 92.250(b)(2). A third-party market assessment completed by the developer or another funder meets this requirement, but the participating jurisdiction must review the assessment and acknowledge in writing that it accepts the assessment's findings and conclusions. The market assessment and the participating jurisdiction's written acknowledgement must be retained for recordkeeping purposes.

c. Review of and determination that the developer's experience and financial capacity are satisfactory based on the size and complexity of the project. When assessing the developer, the participating jurisdiction must review, at minimum, prior experience with similar projects and the current capacity to develop the proposed project. When determining whether the developer has the financial capacity to undertake the project, the participating jurisdiction should examine financial statements and audits to determine the developer's net worth, portfolio risk, pre-development funding, and liquidity.

d. Firm written financial commitments for the project.

e. A careful review of the project's operating budget, including the assumptions, projections of a project's net operating income, and reasonably expected increases in revenue and expenses during the minimum compliance period, to determine if any HOME-ARP-funded operating cost assistance is necessary and if applicable, an operating cost assistance reserve is sized appropriately. Operating income of the project must be sufficient to cover operating expenses through the minimum compliance period. For HOME-ARP units for qualifying households, the proforma or projections should include any anticipated ongoing operating cost assistance or draws from an operating cost assistance reserve, if applicable, that will offset operating deficits associated with those units to demonstrate sufficient operating support. If project-based vouchers or project-based rental assistance will be awarded, this analysis must include that rental assistance revenue because operating cost assistance cannot be used for

units for qualifying households with project-based vouchers or project-based rental assistance. A participating jurisdiction's underwriting standards may permit projects to generate reasonable net operating income throughout the minimum compliance period. However, HOME-ARP operating cost assistance may only be used to offset operating deficits, in accordance with the requirements of the HOME-ARP Notice. Net operating income resulting from HOME-ARP operating cost assistance is not permitted and must be prohibited in the written agreement between the participating jurisdiction and the owner.

f. An assessment of the project's overall viability through the minimum compliance period based on the households (*i.e.*, qualifying households, low-income households, market-rate households) it will serve.

(2) *Developer Fee.* A developer fee is a permitted development cost under the HOME-ARP program, but the participating jurisdiction must review the fee and determine that it is reasonable. A participating jurisdiction may set limits on the developer fee and other fees (*e.g.*, asset management fee, property management fee) to be paid by HOME-ARP funds that differ from other funding sources (*e.g.*, Low-Income Housing Tax Credit underwriting standards).

(3) *Underwriting and Subsidy Layering Review Standards.* Before the HOME-ARP funds can be committed to a HOME-ARP rental project, participating jurisdictions must evaluate the project to determine the amount of HOME-ARP capital subsidy and operating cost assistance necessary to provide quality affordable housing that meets the requirements of the HOME-ARP Notice and is financially viable for the minimum 15-year HOME-ARP compliance period. The participating jurisdiction must evaluate the project in accordance with underwriting and subsidy layering guidelines it has developed for HOME-ARP projects.

(4) *Underwriting and Subsidy Layering Commitment Requirements.* The participating jurisdiction's project underwriting must include an in-depth review of underlying project assumptions, development sources and uses, and projected operating income and expenses, and the project's long-term financial viability to determine the project's need for HOME-ARP assistance while preventing over-subsidization of the project. Participating jurisdictions must take a holistic approach to underwriting that examines the overall feasibility of the entire project to determine that the property will be financially sustainable for the duration of the 15-year HOME-ARP compliance period.

For projects that will receive operating cost assistance through a capitalized operating cost assistance reserve or on-going operating cost assistance for a specific period, the on-going operating cost assistance or operating cost assistance reserve must be included in the underwriting. Unless placed into an operating cost assistance reserve, operating cost assistance committed to a project for a specific period cannot be provided beyond the budget period, as described in Section VIII.C.4 of the HOME-ARP Notice. HOME-

ARP units that have commitments for project-based rental assistance must be underwritten with the projected rental assistance and not with operating cost assistance. An operating cost assistance reserve must be sized based on an analysis of projected operating deficits remaining after the expected payments toward rent by qualifying households are applied to the HOME-ARP unit's share of actual operating costs. However, the participating jurisdiction, through its underwriting, must also determine that the HOME-ARP capital and operating subsidies do not result in over-subsidization of the project.

2. *Property Standards.* The property standards in 24 CFR 92.251 shall apply to all HOME-ARP rental activities except that:

The requirements in 24 CFR 92.251(c)(3) shall not apply and are waived because homeownership is not an eligible activity for HOME-ARP funds.

HOME-ARP rental units must comply with the ongoing property condition standards of 24 CFR 92.251(f) throughout the compliance period as demonstrated by an on-site inspection within 12 months of project completion and an on-site inspection at least once every three years thereafter as required by 24 CFR 92.504(d)(1)(ii).

3. *Lease-up of HOME-ARP rental units.* The requirement in 24 CFR 92.252 that states that HUD will require the participating jurisdiction to repay HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion is waived. Instead, as an alternative requirement, if the HOME-ARP units are not occupied by eligible qualifying households or low-income households, in accordance with the unit restrictions, within six months following project completion, the participating jurisdiction, as applicable, must submit to HUD information on its efforts to coordinate with a CoC, homeless service providers, social service and other public agencies to fill units for qualifying households or must submit marketing information and, if appropriate, a marketing plan to fill units for low-income households. The participating jurisdiction must repay any HOME-ARP funds invested in units that are not rented to eligible qualifying or low-income households within 12 months of project completion.

4. *Rent limitations, initial rent schedule, and utility allowances for HOME-ARP rental housing.* The requirements in 24 CFR 92.252(a)-(d) are waived and the following alternative requirements shall apply:

(1) *Rent limitations for units restricted for occupancy by Qualifying Households.* In no case can the HOME-ARP rents 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, with adjustments for number of bedrooms in the unit. HUD will publish the HOME-ARP rent limits on an annual basis.

Notwithstanding the foregoing, a unit that receives a Federal or state project-based rental subsidy and is occupied by a very low-income household that pays as a contribution to rent no more than 30 percent of the household's adjusted income, may charge the

rent allowable under the Federal or state project-based rental subsidy program (*i.e.*, the tenant rental contribution plus the rental subsidy allowable under that program). If a household receives tenant-based rental assistance, the rent is the rent permissible under the applicable rental assistance program (*i.e.*, the tenant rental contribution plus the rental subsidy allowable under that rental assistance program).

The rent limits for HOME-ARP qualifying populations include the rent plus the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

(2) *Rent limitations—low-income households.* HOME-ARP rental units occupied by low-income households must comply with the rent limitations in 24 CFR 92.252(a) (*i.e.*, the lesser of the Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or a rent equal to 30 percent of the income of a family at 65 percent of median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit). Notwithstanding the foregoing, when a household receives assistance from a Federal tenant-based rental assistance (*e.g.*, housing choice vouchers), the rent is the rent permissible under the applicable rental assistance program (*i.e.*, the tenant rental contribution plus the rent subsidy allowable under the rental assistance program). The rent limits for low-income households apply to the rent plus the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

(3) *Rent limitations—Single Room Occupancy (SRO) Units.* A HOME-ARP rental project may consist of SRO units. For the purposes of HOME-ARP rental activities, a SRO unit is defined as a unit that is the primary residence of the occupant(s) and must at least contain sanitary facilities but may also contain food preparation facilities. A project's designation as a SRO cannot be inconsistent with the building's zoning and building code classification. If the SRO units have both sanitary and food preparation facilities, the maximum HOME-ARP rent is based on the zero-bedroom fair market rent. If the SRO unit has only sanitary facilities, the maximum HOME-ARP rent is based on 75 percent of the zero-bedroom fair market rent. The rent limits for SRO units must also include the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

(4) *Initial Rent Schedule and Utility Allowance.* The participating jurisdiction must establish maximum allowances for utilities and services and update the allowances annually. The participating jurisdiction may adopt the utility allowance schedule of the PHA. The participating jurisdiction must review and approve the HOME-ARP rents proposed by the owner, subject to the HOME-ARP rent limitations. For HOME-ARP units where the tenant is paying utilities and services (*e.g.*, trash collection), the participating jurisdiction must determine that the rent for the unit does not exceed the maximum rent minus the monthly allowance for utilities and services.

5. *Affordability requirements and limited waiver and alternative requirement to period of affordability requirements.* The requirement that affordability restrictions must remain in place for the amount of time in the table specifying the minimum period of affordability in 24 CFR 92.252(e) is waived. HUD is specifying that as an alternative requirement, HOME-ARP-assisted rental units must comply with the requirements of the HOME-ARP Notice in serving the qualifying households and, to the extent applicable, low-income households, for a minimum period of 15 years, irrespective of the amount of HOME-ARP funds invested in the project or the development activity being undertaken. Additionally, HUD is specifying the following alternative requirements to the use restriction requirements in 24 CFR 92.252(e)(1):

(1) Units restricted for occupancy by qualifying populations must be occupied by households that meet the definition of a qualifying population at the time of initial occupancy. The household's contribution toward rent during this period must be affordable in accordance with the HOME-ARP Notice. The rents for these units must comply with the rent limitations established in the HOME-ARP Notice, including the rent provisions specified in 24 CFR 92.252(i)(2) for households whose income increases above 80 percent of area median income and whose contribution to rent complies with the requirements in Section VI.B.15 of the HOME-ARP Notice.

(2) Units available for low-income households must be continuously occupied by households who are income eligible. The rents for these units must comply with the rent limitations established in the HOME-ARP Notice, including the rent provisions specified in 24 CFR 92.252(i)(2) for households whose income increases above 80 percent of area median income.

(3) If a project-based rental assistance Housing Assistance Payments (HAP) contract is awarded to a HOME-ARP rental project, a participating jurisdiction must impose a minimum compliance period that is the greater of 15 years or the term of the HAP contract. Participating jurisdictions are also encouraged to extend restrictions for occupancy of the HOME-ARP units in accordance with the requirements in this section to match eligible HAP contract renewals.

6. *Adjustment of HOME rent limits for an existing project.* The requirements of 24 CFR 92.252(g) are waived.

7. *Tenant income restrictions and tenant rental contribution requirements for HOME-ARP rental projects and limited waiver and alternative requirements.* The requirements at 24 CFR 92.203 and 24 CFR 92.252(h) and (i) shall apply except that they are waived to the extent that they differ from the following alternative requirements:

(1) *Household income at Initial Occupancy—Qualifying Households.* The participating jurisdiction must require all HOME-ARP rental units be restricted for occupancy by eligible households throughout the minimum compliance period. Qualifying households are eligible for admission to

HOME-ARP rental units solely by meeting the definition of one of the qualifying populations (*i.e.*, HOME-ARP does not impose income restrictions on units restricted for qualifying populations). If there is no income requirement in the qualifying population's definition, a participating jurisdiction is not required to perform an initial determination of household income except as necessary to determine an affordable rental contribution by the qualifying household or to establish eligibility for another funding source in the unit that imposes income restrictions (*e.g.*, LIHTC).

(2) *Household income in Subsequent Years—Qualifying Households.* Each year during the compliance period, starting 1 year after initial occupancy, the participating jurisdiction must use the definition of annual income as defined in 24 CFR 5.609 to examine the income of qualifying households to determine the household's contribution to rent. For low-income households, the participating jurisdiction must use the definition of annual income as defined in 24 CFR 5.609 to examine the household's income at initial occupancy and each subsequent year during the compliance period to determine the household's ongoing income eligibility and applicable rental contribution.

a. *Qualifying populations.* For purposes of establishing the qualifying household's rental contribution after initial occupancy, a participating jurisdiction must examine a HOME-ARP qualifying household's income using 24 CFR 92.203(a)(1)(i) or (iii), starting 1 year after initial occupancy. Each year during the minimum compliance period, the owner must examine the household's annual income in accordance with any one of the options in 24 CFR 92.203(a)(1) specified by the participating jurisdiction. A project owner who re-examines household income through a statement and certification in accordance with 24 CFR 92.203(a)(1)(ii), must examine the income of each household, in accordance with 24 CFR 92.203(a)(1)(i), every sixth year of the compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with 24 CFR 92.203(a)(1)(ii) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.

b. *Over-income—Temporary noncompliance.* HOME-ARP-assisted units restricted for low-income households continue to qualify as HOME-ARP rental housing despite a temporary noncompliance caused by increases in the incomes of existing households if actions satisfactory to HUD are taken so that all vacancies are filled in accordance with HOME-ARP requirements until the noncompliance is corrected.

c. *Changes in income—Qualifying households.* A household that met the definition of one of the HOME-ARP qualifying populations at initial occupancy and whose annual income at the time of income re-certification is above 50 percent of median income for the area but at or below 80 percent of the median income for the area

must pay the rent specified in 24 CFR 92.252(a).

d. *Changes in income—Low-income Households or Qualifying households.* A household that is not low-income at the time of income re-certification (*i.e.*, whose income is above 80 percent of the median income for the area) must pay rent that complies with the over income regulatory requirements at 24 CFR 92.252(i)(2).

e. *Household income—Low-income Households.* In accordance with 24 CFR 92.252(h), the income of each low-income household must be determined initially in accordance with 24 CFR 92.203(a)(1)(i), and each year following the initial determination during the minimum compliance period in accordance with any one of the options in 24 CFR 92.203(a)(1) specified by the participating jurisdiction. An owner who re-examines household income through a statement and certification in accordance with 24 CFR 92.203(a)(1)(ii), must examine the income of each household, in accordance with 24 CFR 92.203(a)(1)(i), every sixth year of the minimum compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with 24 CFR 92.203(a)(1)(ii) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.

f. *Alternative Requirement for Households Assisted by Other Programs.* Notwithstanding the alternative requirements specified above or the provisions of 24 CFR 92.203, if a family is applying for or living in a HOME-ARP-assisted rental unit, and the unit is assisted by a Federal or State project based rental subsidy then a participating jurisdiction must accept the public housing agency, section 8 project owner, or Continuum of Care recipient or subrecipient's determination of the family's annual income and adjusted income under that program's and does not need to obtain source documentation in accordance with 24 CFR 92.203(a)(1) or calculate the annual income of the family. If a family is applying for or living in a HOME-ARP-assisted rental unit, and the family is assisted by a Federal tenant-based rental assistance program (*e.g.*, housing choice vouchers, etc.) then a participating jurisdiction may choose to accept the rental assistance provider's determination of the family's annual and adjusted income under that program's rules without need for review under 24 CFR 92.203(a)(1).

8. *Tenant selection in HOME-ARP rental housing projects.* Except for affirmative marketing requirements in 24 CFR 92.351 and VAWA requirements, the requirements in 24 CFR 92.252(k) and 24 CFR 92.253(d) are waived to the extent that they differ from the following alternative requirements:

(1) *Use of Coordinated Entry System or Project-Specific Waitlists.* In accordance with Section IV.C of the HOME-ARP Notice, participating jurisdictions must determine whether an owner may use a CoC's 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 populations in accordance with the HOME-ARP Notice. The participating jurisdiction 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 other referral agency refers an applicant that is placed on the waiting list for that project or activity in chronological order. Participating jurisdictions will make this determination on a project-by-project basis. Regardless of which method is selected, in all cases, the participating jurisdiction must use a project-specific waitlist when selecting households to occupy units restricted for occupancy by low-income households. Any preferences among qualifying households must be disclosed in the HOME-ARP allocation plan through the participating jurisdiction's public participation process in accordance with Section V.C of the HOME-ARP Notice. The written agreement between the participating jurisdiction and the project owner must specify the method the owner must use for selecting qualifying households for admission to HOME-ARP units.

The owner of a HOME-ARP rental project must adopt and follow written tenant selection policies and criteria for HOME-ARP units that:

a. Limit eligibility to households that meet one of the HOME-ARP qualifying populations definitions or low-income households in accordance with HOME-ARP requirements. Preference for households must comply with the participating jurisdiction's preferences and the participating jurisdiction's policies and procedures for applying the preferences, if any, and must not violate nondiscrimination requirements in 24 CFR 92.350.

b. Do not exclude an applicant with a voucher under the Section 8 Housing Choice Voucher Program (24 CFR 982), or an applicant participating in a HOME, HOME-ARP or other Federal, state, or local tenant-based rental assistance program because of the status of the prospective tenant as a holder of such a certificate, voucher, or comparable tenant-based assistance document.

c. Limit eligibility or gives a preference to a particular qualifying population or segment of the qualifying population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's HOME-ARP allocation plan). A preference for households in one or more of the HOME-ARP qualifying populations must comply with the participating jurisdiction's determined preference(s) and the participating jurisdiction's policies and procedures for applying the preference(s), if any;

d. Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350. If the participating jurisdiction requires the use of a project-specific waitlist to select qualifying households and/or low-income households for occupancy of HOME-ARP units, provide for the selection of households from a written waiting list in the chronological order of their application, insofar as is practicable.

e. Give prompt written notification to any rejected applicant of the grounds for any rejection, and

f. Complies with the VAWA requirements as described in 24 CFR 92.359.

(2) *Use of preferences for Qualifying Households.* Any preferences for qualifying households must be disclosed in the HOME-ARP allocation plan through the participating jurisdiction's public participation process. The written agreement between the participating jurisdiction and the project owner must specify the method the owner must use for prioritizing applicants for admission to HOME-ARP units.

9. *Tenant protections in HOME-ARP rental units.* The requirements of Section 225 of NAHA (42 U.S.C. 12755) and 24 CFR 92.253(a)–(c) shall apply to HOME-ARP rental projects except to the extent that they differ from the following alternative requirements:

(1) *Use of Master Leases.* Section 225 of NAHA (42 U.S.C. 12755) and 24 CFR 92.253(a) are waived to the extent that they are interpreted as barring an owner from leasing a unit to a nonprofit organization that would sublease that unit to a qualifying household or to the extent that it is interpreted as barring an owner of a HOME-ARP unit from executing a master lease with a nonprofit organization for HOME-ARP units restricted for occupancy by qualifying households. As an alternative requirement, an owner may execute a lease or master lease with a nonprofit organization, known as a HOME-ARP sponsor. A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA by a qualifying household. Participating jurisdictions may permit a HOME-ARP sponsor to lease a HOME-ARP unit from an owner or execute a master lease with the owner of a HOME-ARP project for HOME-ARP units restricted for occupancy by qualifying households. The HOME-ARP sponsor may then sublease the HOME-ARP rental unit to the qualifying household. The sublease between the HOME-ARP sponsor and the qualifying household must comply with the rent limitations and tenant protection requirements of the HOME-ARP Notice, including the Appendix in this notice.

(2) *Termination of tenancy.* HUD is applying the requirements of 24 CFR 92.253(c) to termination of tenancy and, as an alternative requirement, also applying the protections of 24 CFR 92.253(c) to termination of Master Leases that effectuate the tenancy of qualifying households. HUD is also specifying the following alternative requirement for termination of tenancy for qualifying households in projects that capitalized operating cost assistance reserves or where there is a current contract for the participating jurisdiction to provide operating cost assistance to the project. In those cases, an owner may not terminate the tenancy or refuse to renew the lease of a qualifying household because of the household's inability to pay rent during the compliance period. A qualifying household's

inability to pay rent shall mean that the qualifying household cannot pay more than 30 percent of the qualifying household's income toward rent, based on an income determination made by the participating jurisdiction in the last 30 days.

To terminate or refuse to renew tenancy for any household occupying a HOME-ARP unit, the owner must serve written notice upon the tenant (and the HOME-ARP sponsor if the lease is between an owner and sponsor), specifying the grounds for the action at least 30 days before termination of tenancy. In the case of a sublease, to terminate or refuse to renew tenancy of a qualifying household, the HOME-ARP sponsor, in accordance with the policy established by the participating jurisdiction, must notify the participating jurisdiction in advance of serving written notice to the qualifying household and must serve written notice upon the qualifying household at least 30 days before termination of tenancy, specifying the grounds for the action.

(3) *Prohibited Lease Terms.* The requirements in 24 CFR 92.253(b) that prohibit owners from placing certain terms in their lease agreements shall continue to apply. HUD is also specifying an alternative requirement that the prohibited lease terms in 24 CFR 92.253(b) may not be placed into a sublease between a HOME-ARP sponsor and a qualifying household.

#### G. Subpart G—Community Housing Development Organizations

The requirements in sections 232, 233, 234(a) of NAHA (42 U.S.C. 12772, 12773, 12774(a)) and 24 CFR 92.300, 92.301, 92.302, and 92.303 are waived and do not apply to HOME-ARP.

#### H. Subpart H—Other Federal Requirements

1. *Nondiscrimination, affirmative marketing, and minority outreach program requirements.* The requirements of 24 CFR 92.350 and 24 CFR 92.351 shall apply to all HOME-ARP activities, including Non-Congregate Shelter and Supportive Services activities. Section 3205, section 3205 (d)(4) of the ARP states that the Secretary may not waive or specify alternative requirements for any provision or regulation related to fair housing or nondiscrimination.

2. *Environmental review requirements and labor standards.* The requirements of 24 CFR 92.352 and 24 CFR 92.354 shall apply to all eligible HOME-ARP activities, including Non-Congregate Shelter and Supportive Services activities. Section 3205 (d)(4) of ARP states that the Secretary may not waive or specify alternative requirements to labor standards and environment.

3. *Applicability of lead-based paint requirements.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K, M, and R apply to HOME-ARP-assisted activities.

For the HOME-ARP Non-Congregate Shelter activity, a project must comply with 24 CFR part 35, subpart K when the HOME-ARP activity is acquisition only. HOME-ARP NCS projects that involve rehabilitation of

pre-1978 facilities, whether the rehabilitation is funded with HOME-ARP or other funds, must comply with the requirements of 24 CFR part 35, subpart J.

4. *Conflicts of interest requirements.* The requirements of 24 CFR 92.356 shall apply to all participating jurisdictions, State recipients, and subrecipients engaging in any HOME-ARP activities. For purposes of implementing HOME-ARP provisions for Non-Congregate Shelters, owners and developers of HOME-ARP Non-Congregate Shelters shall be subject to 24 CFR 92.356(f). The following alternative requirements shall apply to all participating jurisdictions, State recipients, and subrecipients engaging in any HOME-ARP activities.

(1) *Written Standards of Conduct.* Consistent with current regulations, participating jurisdictions, State recipients, and subrecipients must maintain written standards of conduct covering the conflicts of interest and organizational conflicts of interest requirements under the HOME-ARP Notice and 2 CFR 200.318. In addition to current regulatory requirements, HUD is requiring that all participating jurisdictions, State recipients and subrecipients maintain written standards of conduct that also provide for internal controls and procedures to ensure a fair and open selection process for awarding HOME-ARP funds pursuant to the HOME-ARP Notice. These standards must include provisions on if and how CoC board members may participate in and/or influence discussions or resulting decisions concerning the competition or selection of an award or other financial benefits made pursuant to the HOME-ARP Notice, including internal controls on when funds may be awarded to the organization that the member represents.

(2) *Organizational Conflicts of Interest.* The provision of any type or amount of HOME-ARP TBRA or supportive services may not be conditioned on an individual's or family's acceptance or occupancy of a shelter or housing unit owned by the participating jurisdiction; State recipients; the subrecipient; or a parent, affiliate, or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent, affiliate, or subsidiary of the subrecipient, administer financial assistance that includes rental payments, utility deposits, security deposits, and/or first and last month's rent pursuant to the HOME-ARP Notice. All contractors of the participating jurisdiction, State recipients, or subrecipient must comply with the same requirements that apply to subrecipients under this section.

(3) *Requesting Exceptions to Organizational Conflicts of Interest.* Any request for an exception to the organizational conflicts of interest provisions in the HOME-ARP Notice shall be in writing and shall be considered by HUD only after the participating jurisdiction or State recipient has provided the following:

a. A written disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(4) *Granting Exceptions to Organizational Conflicts of Interest.* HUD shall determine whether to grant an exception to the organizational conflicts of interest on a case-by-case basis when it determines that the exception will serve to further the purposes of HOME-ARP. HUD shall consider the following factors, as applicable, in determining whether to grant such an exception:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether undue hardship will result to the participating jurisdiction, State recipient, subrecipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict;

c. Whether conditioning approval on changes to the participating jurisdiction, State recipient, or subrecipient's policies or procedures can adequately address the organizational conflict of interest; and

d. Any other factors relevant to HUD's determination, including the timing of the requested exception.

5. *Applicability of displacement, relocation, and acquisition requirements and waiver of one-for-one replacement requirements.* The requirements of 24 CFR 92.353, which also implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (42 U.S.C. 4201 *et seq.*) (URA), the URA's implementing requirements at 49 CFR part 24, and section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304) and its implementing regulations at 24 CFR part 42, shall apply to all projects receiving HOME-ARP funds except for the following waiver and alternative requirement. For purposes of the one-for-one replacement housing requirements of section 104(d)(2)(A)(i) and (ii) and (d)(3) (42 U.S.C. 5304(d)(2)(A)(i) and (ii) and 42 U.S.C. 5304(d)(3)) and 24 CFR 42.375, lower-income dwelling units shall not include single-room occupancy (SRO) units or residential hotel or motel units in jurisdictions where those units are considered dwelling units under state or local law.

6. *Regulations on consultant activities.* The requirements of 24 CFR 92.358 are not waived.

7. *Violence Against Women Act Requirements.* The requirements of 24 CFR 92.359 are not waived.

#### I. Subpart I—Technical Assistance

Applicability of requirements on provision of Technical Assistance in support of HOME-ARP activities. The requirements of 24 CFR 92.400 are waived and shall not apply to the extent that they restrict the Department's ability to provide Technical Assistance funds allocated to the Department under section 3205(d)(2) of ARP without competition, and to the extent that their application of Subpart C of NAHA (42 U.S.C. 12781 *et seq.*) would restrict capacity building to affordable

housing activities rather than the broader set of eligible HOME-ARP activities.

#### J. Subpart J—Reallocations

Reallocation of HOME-ARP Funds. The requirements of section 216 of NAHA (42 U.S.C. 12746), section 217 of NAHA (42 U.S.C. 12747), 24 CFR 92.66, 24 CFR 92.107, 24 CFR 92.450, 24 CFR 92.451(a), 24 CFR 92.452, 24 CFR 92.453 and 24 CFR 92.454 shall not apply to HOME-ARP funds and are waived to the extent they differ from the following alternative requirements for reallocations:

(1) *Participating Jurisdictions.* For any participating jurisdiction that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the participating jurisdiction's unspent HOME-ARP funds to the State jurisdiction in accordance with 24 CFR 92.451(b) and (c).

(2) *State Jurisdictions.* For any State jurisdiction that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the State jurisdiction's unspent HOME-ARP funds in accordance with 24 CFR 92.451(b) and (c).

*Insular areas.* For any insular area that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the insular area's unspent HOME-ARP funds proportionally to the remaining insular areas participating in the HOME-ARP program.

(3) *Annual Reallocation.* Reallocations of funds pursuant to the above waivers and alternative requirements shall be performed annually, if practicable.

#### K. Subpart K—Program Administration

1. *The HOME Investment Trust Fund.* The requirements in 24 CFR 92.500 apply to HOME-ARP, except § 92.500(b) is waived and the following alternative requirement is imposed:

*Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under HOME-ARP and funds reallocated to the participating jurisdiction under subpart J of 24 CFR part 92.

The requirements in section 218(c)(2) of NAHA (42 U.S.C. 12748(c)(2)), 24 CFR 92.500(c)(2), (d)(1)(i)–(iii), and (d)(2) are waived and do not apply to HOME-ARP.

2. *HOME Investment Partnership Agreement.* The requirements in 24 CFR 92.501 are waived and the following alternative requirements are imposed:

Allocated and reallocated HOME-ARP funds will be made available pursuant to a HOME-ARP Grant Agreement. The agreement requires that HOME-ARP funds invested in HOME-ARP activities are repayable if the activity does not comply with the requirements in the HOME-ARP Notice and any subsequent amendments.

After the date of the HOME-ARP Notice, the participating jurisdiction and HUD may enter into a HOME-ARP Grant Agreement for the use of its HOME-ARP allocation pursuant to the HOME-ARP Notice. After the obligation date identified in the HOME-ARP Grant Agreement, a participating jurisdiction may use up to 5 percent of its HOME-ARP award for eligible administrative and planning costs in 24 CFR 92.207. The participating jurisdiction may not incur any costs or expend any funds for costs other than administrative and planning costs before the HOME-ARP allocation plan is accepted by HUD as described in the HOME-ARP Notice.

If the participating jurisdiction does not submit a HOME-ARP allocation plan, if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, or if the subrecipient or contractor administering a participating jurisdiction's entire HOME-ARP award is not included in the HOME-ARP allocation plan, in accordance with the HOME-ARP Notice, all HOME-ARP costs incurred by the participating jurisdiction (or its subrecipient or contractor) are ineligible costs and any HOME-ARP funds expended by the participating jurisdiction must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

3. *Program disbursement and information system.* The requirements in 24 CFR 92.502(b) are waived to the extent they conflict with the alternative requirement that HOME-ARP investments for acquisition, new construction, or rehabilitation of housing or non-congregate shelter, the provision of tenant-based rental assistance, and the provision of supportive services must be set up as projects in the Integrated Disbursement and Information System. The requirements in 24 CFR 92.502(c)(3) are waived and do not apply to HOME-ARP.

4. *Program income and repayments.* A participating jurisdiction must comply with the requirements for program income and repayments in the HOME-ARP Notice. The requirements in 24 CFR 92.503 apply to the use of HOME-ARP funds, except that the requirements in § 92.503(a)(2), (b)(3), (c)(3), (c)(4), and (d) are waived and the following alternative requirements apply:

(1) *Program income.* If a jurisdiction is not a participating jurisdiction in HOME or HOME-ARP when the HOME-ARP program income is received, the funds must be remitted to HUD and reallocated, in accordance with 24 CFR 92.454 and the HOME-ARP Notice.

(2) *Repayments.* A participating jurisdiction must repay HOME-ARP funds to the HOME Investment Trust Fund Treasury account. If the jurisdiction is not a participating jurisdiction for HOME or HOME-ARP at the time the repayment is made, the funds must be remitted to HUD and reallocated, in accordance with 24 CFR 92.454 and the HOME-ARP Notice.

5. *Participating jurisdiction responsibilities; written agreements; on-site inspection.* HUD waives 24 CFR 92.504, except for those provisions that reference the requirements of 24 CFR 92.350, 24 CFR

92.351, and 24 CFR 92.359, and imposes the following alternative requirements for § 92.504:

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME-ARP-ARP program, ensuring that HOME-ARP funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with HOME-ARP Notice, to ensure that the requirements of this part are met.

(b) *Executing a written agreement.* Before disbursing any HOME-ARP funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME-ARP funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME-ARP program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of the HOME-ARP Notice.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. The written agreement must contain the applicable minimum provisions for a written agreement in the HOME-ARP Notice based on the project or activity (e.g., HOME-ARP rental housing, non-congregate shelter, tenant-based rental assistance, or supportive services) and the basic requirements and minimum provisions by role described in this section.

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with 24 CFR 92.201(b). The written agreement must require the State recipient to comply with State's requirements, including underwriting, refinancing guidelines, and applicable requirements described in the HOME-ARP Notice.

(i) *Use of the HOME-ARP funds.* The agreement with a State recipient must describe the amount and use of the HOME-ARP funds to administer one or more HOME-ARP programs, including the type and number of projects to be funded, tasks to be performed, a schedule for completing the tasks, duration of the agreement, and a budget for each program. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction or State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require projects assisted with HOME-ARP funds to meet the requirements of the HOME-

ARP Notice, as applicable, and must require repayment of the funds if the project does not meet the requirements for the specified time period.

(iii) *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient or subrecipient to comply with applicable uniform administrative requirements described in 24 CFR 92.505, as revised by the Appendix to the HOME-ARP-ARP Notice.

(v) *Project requirement.* The agreement must require compliance with requirements in the HOME-ARP Notice, in accordance with the type of project assisted. The agreement must state whether the State is permitting a preference for a qualifying population or segment of a qualifying population. The written agreement must contain provisions requiring the method of tenant selection to be used in accordance with the requirements of the HOME-ARP Notice.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with the HOME-ARP Notice and all Federal laws and regulations described in subpart H of 24 CFR part 92, except that the State recipient does not assume the State's responsibilities for release of funds under 24 CFR 92.352 and the intergovernmental review process in 24 CFR 92.357 does not apply to the State recipient. If HOME-ARP funds are provided, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the VAWA requirements under 24 CFR 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with 24 CFR 92.351.

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME-ARP funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing or non-congregate shelter requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing or non-congregate shelter. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The applicable requirements as

described in the HOME-ARP Notice must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME-ARP requirements. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.339.

(xi) *Written agreement.* Before the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, HOME-ARP owners, sponsors, or tenants (or landlords) receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities that meets the requirements of this section and the HOME-ARP Notice.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (e.g., whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement. The duration of the agreement must comply with the requirements of the HOME-ARP Notice.

(xiii) *Fees.* The agreement must prohibit the State recipient and its subrecipients, community housing development organizations, and nonprofit organizations from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME-ARP program, except as permitted by 24 CFR 92.214, as revised by the Appendix to the HOME-ARP Notice.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME-ARP programs to produce affordable housing, non-congregate shelter, or provide tenant-based rental assistance or supportive services. The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for underwriting, refinancing guidelines, and requirements described in the HOME-ARP Notice.

The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME-ARP funds.* The agreement with a subrecipient must describe the amount and use of the HOME-ARP funds to administer one or more HOME-ARP programs, including the type and number of projects to be funded, tasks to be performed, a schedule for completing the tasks, duration of the agreement, and a budget for each program. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction or State to effectively monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the State recipient or subrecipient to comply with applicable uniform administrative requirements described in 24 CFR 92.505 as revised by the Appendix to the HOME-ARP Notice.

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with HOME-ARP Notice and all Federal laws and regulations described in subpart H of 24 CFR part 92, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under 24 CFR 92.352 and the intergovernmental review process in 24 CFR 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry environmental review responsibilities before HOME-ARP funds are committed to a project. If HOME-ARP funds are being provided, the agreement must set forth all obligations the participating jurisdiction imposes on the subrecipient in order to meet the VAWA requirements under 24 CFR 92.359, including notice obligations and obligations under the emergency transfer plan.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with 24 CFR 92.351.

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME-ARP funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME-ARP funds.

(viii) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.339.

(x) *Written agreement.* Before the subrecipient provides HOME-ARP funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, HOME-ARP owners, sponsors, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that meets the requirements of this section

and the HOME-ARP Notice. The agreement must state if repayment of HOME-ARP funds or recaptured HOME-ARP funds must be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(xi) *Fees.* The agreement must prohibit the subrecipient and any community housing development organizations from charging servicing, origination, or other fees for the costs of administering the HOME-ARP program, except as permitted by 24 CFR 92.214, as revised by the Appendix to the HOME-ARP Notice.

(3) *For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant).* The participating jurisdiction may preliminarily award HOME-ARP funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME-ARP funds to the project must meet the requirements of "commit to a specific local project" in the definition of "commitment" in 24 CFR 92.2, as revised by the Appendix to the HOME-ARP Notice and contain the following:

(i) *Use of the HOME-ARP funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project or the legal description of the property if a street address has not been assigned to the property, the use of the HOME-ARP funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement to achieve project completion and compliance with the HOME-ARP requirements;

(ii) *Affordability.* The agreement must require projects assisted with HOME-ARP funds to meet the requirements of the HOME-ARP Notice, as applicable, and must require repayment of the funds if the project does not meet the requirements for the specified time period;

(iii) *Project requirements.* The agreement must require compliance with requirements in the HOME-ARP Notice, in accordance with the type of project assisted. The agreement must state whether the State is permitting a preference for a qualifying population or segment of a qualifying population. The written agreement must contain provisions requiring the method of tenant selection to be used in accordance with the requirements of the HOME-ARP Notice;

(iv) *Property standards.* The agreement must require the housing or shelter to meet the property standards established in the HOME-ARP Notice upon project completion. The agreement must also require owners of rental housing or shelter assisted with HOME-ARP funds to maintain the project in compliance with the HOME-ARP Notice for the duration of the affordability period;

(v) *Other program requirements.* The agreement must require the owner or

developer to carry out each project in compliance with the following requirements of the HOME-ARP Notice:

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with 24 CFR 92.351.

(B) The federal requirements and nondiscrimination established in 24 CFR 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with 24 CFR 92.353 and the HOME-ARP Notice.

(D) The labor requirements in 24 CFR 92.354.

(E) The conflicts of interest provisions prescribed in the HOME-ARP Notice.

(F) If HOME-ARP funds are being provided, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under 24 CFR 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements;

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the HOME-ARP rental housing or non-congregate shelter requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The applicable requirements in the HOME-ARP Notice must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement;

(viii) *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed;

(ix) Omitted;

(x) *Duration of the agreement.* The agreement must specify the duration of the agreement in accordance with the HOME-ARP Notice. If the project assisted under this agreement is rental housing, the agreement must be in effect through the compliance period required by the participating jurisdiction, but in no case less than the minimum compliance period in the HOME-ARP Notice;

(xi) *Fees.* The agreement must prohibit project owners from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, rental project owners may charge reasonable application fees to prospective tenants may charge parking fees to tenants

only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or some of the participating jurisdiction's HOME-ARP programs or specific services for one or more programs, the contract must include at a minimum the following provisions:

(i) *Use of the HOME-ARP funds.* The agreement must describe the use of the HOME-ARP funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in 24 CFR part 92 and the HOME-ARP Notice that are applicable to the participating jurisdiction, except 24 CFR 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decision making, and action under 24 CFR 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering. If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under 24 CFR 92.359, including any notice obligations and any obligations under the emergency transfer plan.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract in accordance with the HOME-ARP Notice. Generally, the duration of a contract should not exceed two years.

(5) *HOME-ARP owner tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a HOME-ARP owner, sponsor, or tenant, the written agreement, including the rental assistance contract or security deposit contract, must comply with the HOME-ARP Notice.

(6) *Community housing development organization or nonprofit organization receiving assistance for operating expenses.* The agreement must describe the use of HOME-ARP funds for operating expenses; e.g., salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization or nonprofit organization is not also receiving funds for a HOME-ARP project, the agreement must provide that the community housing development organization or nonprofit organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this

expectation is based and the consequences of failure to receive funding for a project.

(7) waived and omitted.

(8) *Technical assistance provider to develop the capacity of community housing development organizations or nonprofit organizations in the jurisdiction.* The agreement must identify the specific nonprofit organization(s) to receive capacity building assistance. The agreement must describe the amount and use (scope of work) of the HOME-ARP funds, including a budget, a period of performance, and a schedule for completion.

(9) *Supportive Services Providers.* If participating jurisdictions are using a supportive services provider, participating jurisdictions must document in their written agreement with supportive service providers whether they are authorizing McKinney-Vento supportive services, homelessness prevention services, Housing Counseling services or some combination of the three.

Only the supportive services that are authorized in the written agreement may be provided to program participants and only program participants that are eligible for those supportive services may be served. As such, supportive services providers must demonstrate through their documentation that the individuals served were eligible to receive the supportive services that were authorized under the written agreement in order for those costs to be eligible.

While all qualifying households are eligible to receive supportive services under this activity, the participating jurisdiction must establish requirements for documenting eligible costs for an individual or family in a qualifying population (as defined in Section IV.A of the HOME-ARP Notice) as McKinney-Vento supportive services, homelessness prevention services, or Housing Counseling.

If a person is homeless, then the person is eligible to be provided the supportive services as McKinney-Vento supportive services for the costs allowable in Section VI.D.4.c below. If a person is housed and the supportive services are intended to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing to achieve stability in that housing then the person is eligible for homelessness prevention services for the costs allowable in Section VI.D.4.c.i below. Housing Counseling services may be provided regardless of whether a person is homeless or currently housed.

(d) *On-site inspections and financial oversight.*

(1) *Inspections.* The participating jurisdiction must inspect each rental housing project at project completion and during the compliance period to determine that the project meets the property standards of 24 CFR 92.251. The participating jurisdiction must inspect each non-congregate shelter at project completion and as needed, during the restricted use period, to determine that the project meets the property standards, in accordance with the HOME-ARP Notice.

(i) *Completion inspections.* Before completing the project in the disbursement and information system established by HUD,



the participating jurisdiction must perform an on-site inspection of HOME-ARP rental housing or non-congregate shelter to determine that all contracted work has been completed and that the project complies with the property standards, as described in the HOME-ARP Notice.

(ii) *Ongoing periodic inspections of HOME-ARP-assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-ARP assisted rental housing to determine compliance with the property standards of 24 CFR 92.251 and to verify the information submitted by the owners in accordance with the requirements of 24 CFR 92.252, as revised by the Appendix to the HOME-ARP Notice. The inspections must be in accordance with the inspection procedures that the participating jurisdiction establishes to meet the inspection requirements of 24 CFR 92.251.

(A) The on-site inspections must occur within 12 months after project completion and at least once every 3 years thereafter during the compliance period.

(B) If there are observed deficiencies for any of the inspectable items in the property standards established by the participating jurisdiction, in accordance with the inspection requirements of 24 CFR 92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months. The participating jurisdiction may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (e.g., paid invoice for work order) rather than re-inspection. Health and safety deficiencies must be corrected immediately, in accordance with 24 CFR 92.251. The participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies.

(C) The property owner must annually certify to the participating jurisdiction that each building and all HOME-ARP-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction to meet the requirements of 24 CFR 92.251.

(D) Inspections must be based on a statistically valid sample of units appropriate for the size of the HOME-ARP-assisted project, as set forth by HUD through notice. For projects with one-to-four HOME-ARP-assisted units, participating jurisdiction must inspect 100 percent of the HOME-ARP-assisted units and the inspectable items (site, building exterior, building systems, and common areas) for each building housing HOME-ARP-assisted units.

(iii) *Annual inspections.* Tenant based rental assistance (TBRA). All housing occupied by tenants receiving HOME-ARP tenant-based rental assistance must meet the standards in 24 CFR 982.401 or the successor requirements as established by HUD. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-ARP-assisted TBRA to determine compliance with these standards.

(2) *Financial oversight.* During the period of affordability, the participating jurisdiction must examine at least annually the financial condition of HOME-ARP-assisted rental projects with 10 units or more to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

6. *Applicability of uniform administrative requirements.* The requirements of 24 CFR 92.505 apply to the use of HOME-ARP funds, except HUD waives 24 CFR 92.505 to the extent that it conflicts with the following:

The requirements of 2 CFR part 200, as amended, apply to participating jurisdictions, State recipients, and subrecipients receiving HOME-ARP funds, except for the following provisions: 24 CFR 200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in 24 CFR 92.257), 200.312, 200.329, 200.333, and 200.334. The provisions of 2 CFR 200.305 apply as modified by 24 CFR 92.502(c) and the HOME-ARP Notice. If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, as revised by the HOME-ARP Notice, the definitions in 24 CFR part 92, as revised by the HOME-ARP Notice, govern. Moreover, if there is a conflict between the provisions of 2 CFR part 200 and the provisions of the HOME-ARP Notice, the provisions of the HOME-ARP Notice govern.

Where regulations in 24 CFR part 92 refer to specific regulations of 2 CFR part 200 that were or are renumbered or revised by amendments to 2 CFR part 200, the requirements that apply to the use of HOME-ARP funds are the applicable requirements in 2 CFR part 200, as amended, notwithstanding the renumbered regulatory reference.

7. *Confidentiality.* 24 CFR 92.504 and 24 CFR 92.508(a)(3) are waived only to the extent that they conflict with the following alternative requirements:

*Confidentiality Requirements.* The participating jurisdiction, subrecipients, owners, contractors, must develop, implement, and maintain written procedures to require that:

a. All records containing personally identifying information of any individual or family who applies for and/or receives HOME-ARP assistance will be kept secure and confidential;

b. The address or location of any NCS or HOME-ARP rental housing exclusively for individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as necessary where making the address or location public does not identify occupancy of the NCS or HOME-ARP rental housing, when necessary to record use restrictions or restrictive covenants in accordance with Section VI.B or VI.E, or with written authorization of the person or entity responsible for the operation of the NCS or HOME-ARP rental housing; and

c. The address or location of any program participant that is a fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as provided under a privacy policy of the participating

jurisdiction consistent with state and local laws and any other grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

Documenting status of a qualifying population that is fleeing or attempting to flee domestic violence, dating violence, stalking, sexual assault, or human trafficking:

i. If an individual or family qualifies because the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking then acceptable evidence includes an oral or written statement by the qualifying individual or head of household seeking assistance that they are fleeing that situation. An oral statement may be documented by either: A written certification by the individual or head of household; or a written certification by a victim service provider, intake worker, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or an intake worker in any other organization from whom the individual or family sought assistance.

The written documentation need only include the minimum amount of information indicating that the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking and need not include any additional details about the conditions that prompted the individual or family to seek assistance.

All entities assisted by HOME-ARP funds must develop, implement, and maintain written procedures to require that:

a. All records containing personally identifying information of any individual or family who applies for and/or receives HOME-ARP assistance will be kept secure and confidential;

b. The address or location of any NCS or HOME-ARP rental housing exclusively for individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as necessary where making the address or location public does not identify occupancy of the NCS or HOME-ARP rental housing, when necessary to record use restrictions or restrictive covenants in accordance with Section VI.B or VI.E, or with written authorization of the person or entity responsible for the operation of the NCS or HOME-ARP rental housing; and

c. The address or location of any program participant that is a fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as provided under a privacy policy of the participating jurisdiction consistent with state and local laws and any other grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

Documenting status of a qualifying population that is fleeing or attempting to flee domestic violence, dating violence, stalking, sexual assault, or human trafficking:

a. If an individual or family qualifies because the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human

trafficking then acceptable evidence includes an oral or written statement by the qualifying individual or head of household seeking assistance that they are fleeing that situation. An oral statement may be documented by either:

- i. A written certification by the individual or head of household; or
- ii. a written certification by a victim service provider, intake worker, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or an intake worker in any other organization from whom the individual or family sought assistance.

The written documentation need only include the minimum amount of information indicating that the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking and need not include any additional details about the conditions that prompted the individual or family to seek assistance.

8. *Recordkeeping.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of the HOME-ARP Notice. The recordkeeping requirements in 24 CFR 92.508 apply to HOME-ARP, except § 92.508(a)(2) for program records, (a)(3) for project records, (a)(4) for financial records, and § 92.508(c) for period of record retention are waived and HUD imposes the following alternative requirements for program, project, financial, and period of record retention:

(1) *Program Records:*

a. Records evidencing that all HOME-ARP funds used by a participating jurisdiction for TBRA, supportive services, and acquisition and development of non-congregate shelter units benefit individuals and families in qualifying populations.

b. Records evidencing that not less than 90 percent of affordable rental housing units acquired, rehabilitated, and/or constructed with HOME funds by a participating jurisdiction are occupied by households in the qualifying populations.

c. Records documenting compliance with the 15 percent limitation on administrative and planning costs.

d. Records documenting compliance with the 5 percent limitation on CHDO and non-profit operating and capacity building costs.

e. The underwriting and subsidy layering guidelines adopted in accordance with Section VI.B.10 of the HOME-ARP Notice that support the participating jurisdiction's HOME-ARP allocation plan certification.

f. If existing debt is refinanced for multifamily rehabilitation projects, the HOME-ARP refinancing guidelines established in the HOME-ARP Allocation Plan.

g. If HOME-ARP funds are used for TBRA, records supporting the participating jurisdiction's written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance

with Section VI.C.7 and 8 of the HOME-ARP Notice.

h. *Confidentiality.*

i. The participating jurisdiction's written policies and procedures for maintaining confidentiality of qualifying households as individuals or families fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking in accordance with Section VIII.H

ii. The participating jurisdiction's written policies and procedures for maintaining confidentiality in compliance with the VAWA protections contained in 24 CFR part 5, subpart L.

(2) *Project Records:* Participating jurisdictions are required to retain the following records for HOME-ARP-assisted projects, as specified by activity type.

a. A full description of each project assisted with HOME-ARP funds, including the location (address of project), form of HOME-ARP assistance, and the units, families, or qualifying households assisted with HOME-ARP funds, subject to the confidentiality requirements in the HOME-ARP Notice.

b. The source and application of funds for each project, including supporting documentation in accordance with 2 CFR 200.302; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-ARP-eligible development costs of each HOME-ARP-assisted unit as defined in the HOME-ARP Notice.

c. Records (*i.e.*, written agreements) demonstrating compliance with the written agreement requirements in Section VIII.B. of the HOME-ARP Notice.

d. Records (*e.g.*, inspection reports) demonstrating that each HOME-ARP rental project meets the property standards in Section VI.B.11 of the HOME-ARP Notice at project completion and through the applicable minimum compliance period. In addition, during a HOME-ARP rental project's minimum compliance period, records demonstrating compliance with the property standards and financial oversight pursuant to 24 CFR 92.504(d) and the operating cost assistance reserve management and oversight required by Section VI.B.22 of the HOME-ARP Notice.

e. Records (*e.g.*, inspection reports) demonstrating that each unit occupied by a qualifying household receiving HOME-ARP TBRA, meets the housing quality standards of Section VI.C.9 of the HOME-ARP Notice at initial occupancy and throughout the household's term of assistance.

f. Records (*e.g.*, inspection reports) demonstrating that each NCS project meets the property and habitability standards of Section VI.E.7., of the HOME-ARP Notice at project completion and throughout the applicable restricted use period.

g. Records demonstrating that each qualifying household is eligible for HOME-ARP assistance based on the requirements of the ARP and Section IV of the HOME-ARP Notice.

h. Records demonstrating that each household qualifying as homeless, records that meet the requirements in 24 CFR 576.500(b)(1), (2), (3), or (4), as applicable

(except that youth aged 24 and under must not be required to provide third-party documentation to show they are homeless to receive any shelter, housing, or services for which ESG or CoC Program funds may be used to supplement the HOME-ARP assistance);

i. Records demonstrating that each household qualifying as "at risk of homelessness," records that meet the requirements in 24 CFR 576.500(c)(1) or (2), as applicable, and include the following documentation of annual income:

(i) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents for the assets held by the household and income received over the most recent period for which representative data is available before the date of the evaluation (*e.g.*, wage statement, unemployment compensation statement, public benefits statement, bank statement);

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the household received over the most recent period for which representative data is available; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the household of the amount of income the household received for the most recent period representative of the income that the household is reasonably expected to receive over the 3-month period following the evaluation.

j. Records demonstrating compliance with the household income requirements in accordance with Section VI.B.12 of the HOME-ARP Notice for each HOME-ARP rental project.

k. Records demonstrating that each HOME-ARP rental and NCS project meets the minimum compliance period or restricted use period described in Sections VI.B.17 and VI.E.9 respectively, of the HOME-ARP Notice.

l. Records demonstrating that for each HOME-ARP rental housing unit or for each household receiving HOME-ARP TBRA, compliance with the tenant protection requirements of Sections VI.B.18 and VI.C. 2, respectively, of the HOME-ARP Notice. For HOME-ARP TBRA or rental projects under a master lease, the participating jurisdiction must retain records demonstrating that a master lease for housing leased by a HOME-ARP sponsor and each sublease between a qualifying household and HOME-ARP sponsor complies with the tenant and participant protections of 24 CFR 92.253 and the HOME-ARP Notice. Records must be kept for each household.

m. Records demonstrating compliance with the return of the HOME-ARP rental capitalized operating cost assistance reserve and/or the NCS replacement reserve at the end of the compliance or restricted use period in accordance with Sections VI.B.23

and VI.E.10 respectively, of the HOME-ARP Notice.

n. Records demonstrating that each HOME-ARP rental and each NCS project meets the underwriting and subsidy layering or due diligence requirements of Section VI.B.10 or VI.E.6 of the HOME-ARP Notice.

o. Records demonstrating that each HOME-ARP rental housing project meets the rent limitations of Sections VI.B.13 and VI.B.15 of the HOME-ARP Notice for the 15-year minimum compliance period. Records must be kept for each household assisted.

p. Records demonstrating that each multifamily HOME-ARP rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with 24 CFR 92.206(b).

q. Records demonstrating that a site and neighborhood standards review was conducted for each HOME-ARP rental housing project involving new construction under Section VI.B. of the HOME-ARP Notice to determine that the site meets the requirements of 24 CFR 983.57(e)(2) and (e)(3), in accordance with 24 CFR 92.202.

r. Records demonstrating that any conversion of HOME-ARP NCS complies with the requirements established by Section VI.E. of the HOME-ARP Notice, including that conversion of NCS only occurred after the end of the applicable minimum use period defined in Section VI.E.11.

s. For all HOME-ARP NCS projects the following documents must be maintained, as applicable:

(i) Purchase contract, closing documents, settlement statement and title work for acquisitions.

(ii) Appraisal or other estimation of value to justify acquisition expenditure.

(iii) Architectural and engineering contracts and completed designs, plans, and specifications for rehabilitation and new construction activities.

(iv) Invoices, pay requests, and proof of payment for all project expenditures.

(v) Proof of insurance.

(vi) Project and program audits.

t. For all HOME-ARP Supportive Services projects pursuant to McKinney-Vento or Homelessness Prevention Supportive Services:

(i) Records demonstrating which types of Supportive Services the participating jurisdiction is offering program participants.

(ii) Records, where applicable, demonstrating compliance with the termination of assistance requirement as described in section VI.D.5. of the HOME-ARP Notice.

(iii) Records of all solicitations of and agreements with subrecipients and contractors, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable including any findings and corrective actions required.

(iv) Records of all procurement contracts and documentation of compliance with the procurement requirements in 2 CFR part 200, subpart D, and Section VIII.D of the HOME-ARP Notice.

(v) Records evidencing the use of the written procedures required under Section

VI.D.2 and records evidencing compliance with Section IV.C.2.

(vi) Records of all leases, subleases, and financial assistance agreements for the provision of rental payments, documentation of payments made by the participating jurisdiction to owners, HOME-ARP sponsor, or qualifying households for the provision of financial assistance for rental payments, and supporting documentation for these payments, including dates of occupancy by qualifying individuals and families.

(vii) Records that document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(viii) Records of the types of services provided under the participating jurisdiction's program and the amounts spent on these services.

(ix) Records demonstrating subrecipient compliance with the recordkeeping requirements in Section VIII.F. of the HOME-ARP Notice.

u. For all HOME-ARP Housing Counseling Services projects as defined in 24 CFR part 5, each participating housing counseling agency must maintain a recordkeeping and reporting system in accordance with 24 CFR 214.315 and 24 CFR 214.317. The system must permit HUD to easily access all information needed for a performance review.

v. For all HOME-ARP-assisted nonprofit operating expense and capacity building assistance activities:

(i) Records concerning the use of funds for nonprofit operating expense and capacity building assistance must be maintained to enable HUD to determine whether the participating jurisdiction has met the requirements of Section VI.F. of the HOME-ARP Notice.

(ii) Written agreements between the participating jurisdiction and the nonprofit organization providing nonprofit operating expense assistance or capacity building assistance must be retained for five years after the agreement terminates.

(3) *Financial records:*

a. Records, in accordance with 2 CFR 200.302, identifying the source and application of HOME-ARP funds. Identification must include, as applicable, the Assistance Listing program title and number (formerly Catalogue of Federal Domestic Assistance), Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

b. Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by the HOME-ARP Notice, including deposits, disbursements, balances, supporting documentation and any other information required by IDIS.

c. Records identifying the source and application of program income and repayments.

d. Records demonstrating adequate budget control and other records required by 2 CFR 200.302, including evidence of periodic account reconciliations.

(4) *Program administration records:*

a. Records demonstrating compliance with the written agreements required by Section VIII.B. of the HOME-ARP Notice.

b. Records demonstrating compliance with the applicable uniform administrative requirements required by Section VIII.D. of the HOME-ARP Notice.

c. Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(5) *Records concerning other Federal requirements:*

a. Equal opportunity and fair housing records.

(i) Data on the extent to which each racial and ethnic group, and single-headed households by gender of household head have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME-ARP funds.

(ii) Documentation that the participating jurisdiction submitted a certification that it will affirmatively further fair housing consistent with 24 CFR 5.152 (HUD's Interim Final Rule entitled "*Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*," (86 FR 30779, June 10, 2021), as amended established the AFFH definition, codified at 24 CFR 5.151 and the AFFH certification, codified 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>)

(iii) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements of 24 CFR 92, Subpart H.

b. Affirmative marketing and MBE/WBE records.

(i) Records demonstrating compliance with the affirmative marketing procedures and requirements of 24 CFR 92.351.

(ii) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME-ARP funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

c. Records demonstrating compliance with the environmental review requirements of 24 CFR 92.352, 24 CFR part 58, and the HOME-ARP Notice including flood insurance requirements.

d. Records demonstrating compliance with the requirements of 24 CFR 92.353 and the provisions of Section VII.F. of the HOME-ARP Notice regarding displacement, relocation, and real property acquisition, including but not limited to:

(i) project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 24 CFR 92.353(c)(2)(i)(A), moving into the

property on or after the date described in 24 CFR 92.353(c)(2)(i)(A), and occupying the property upon completion of the project;

(ii) Lists of all individuals or families occupying hotels and motels and other nonresidential properties acquired, rehabilitated, and/or demolished and newly constructed to become HOME-ARP NCS or HOME-ARP rental housing that qualify for assistance under the HOME-ARP Notice as members of a qualifying population, as well as records indicating whether such persons were assisted by the HOME-ARP program by the participating jurisdiction following the closure of the nonresidential properties because of HOME-ARP activities;

(iii) Lists of all individuals or families occupying HOME-ARP NCS that were converted during the required use period that qualify for assistance under the HOME-ARP Notice, as well as records indicating whether moving costs or advisory services were provided as part of HOME-ARP administrative costs or under the HOME-ARP supportive services activity in Section VI.D of the HOME-ARP Notice, and records indicating whether such persons were assisted by the HOME-ARP program by the participating jurisdiction following the conversion of the HOME-ARP NCS units.

(iv) Documentation that the participating jurisdiction has and followed a RARAP in accordance with 24 CFR 92.353 and 24 CFR 42.325.

e. Records demonstrating compliance with the labor requirements of 24 CFR 92.354, including contract provisions and payroll records.

f. Records demonstrating compliance with the lead-based paint requirements of 24 CFR part 35, subparts A, B, J, K, M and R, as applicable.

g. Records supporting compliance with conflict of interest requirements in 24 CFR 92.356, as revised by Section VII.H. of the HOME-ARP Notice, as well as documentation of any exceptions granted by HUD or a state participating jurisdiction, as applicable, to the conflict of interest provisions in 24 CFR 92.356, as revised by Section VII.H. of the HOME-ARP Notice.

h. Records demonstrating compliance with debarment and suspension requirements in 24 CFR part 2424.

i. Records concerning intergovernmental review, as required by 24 CFR 92.357.

j. Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

k. Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(6) *State Recipients and Subrecipients:* A participating jurisdiction that distributes HOME-ARP funds to State recipients or subrecipients must require the State recipients or subrecipients to keep the records required by paragraphs 1. program records, 2. project records, 3. financial records, 4. program administration records, and 5. records concerning other federal

requirements of this Section of the Notice, and such other records as the participating jurisdiction determines to be necessary to enable the participating jurisdiction to carry out its responsibilities under the HOME-ARP Notice. The participating jurisdiction need not duplicate the records kept by the State recipients or subrecipients. The participating jurisdiction must keep records concerning its annual review of the performance and compliance of each State recipient and subrecipient as required under 24 CFR 92.504(a).

(7) *Period of record retention:* All records pertaining to HOME-ARP funds must be retained for five years, except as provided below.

a. For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

b. For HOME-ARP TBRA projects, records must be retained for five years after the period of rental assistance terminates.

c. Written agreements must be retained for five years after the agreement terminates.

d. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.

e. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(8) *Access to records:* The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws and any other applicable grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

The participating jurisdiction, subrecipient, contractor, or owner may create a program participant identifier code or number that can be used on a file and maintained internally, in such a way that the number itself does not inadvertently identify the program participant, (*i.e.* no use of initials, date of birth, or other pieces of information that might suggest who the program participant is.) The “key” or “cypher” for the program participant identifier code would itself be confidential and would not leave the provider. In the circumstance of HUD programs, the Unique Personal Identification Number which is generated within the comparable database could be used with auditors to identify records of services to distinct individuals, subject to the below requirement.

HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of

the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts. If a provider of services or operator of an NCS is subject to state or local laws or other federal grant programs that require that HUD not be given access to records detailing PII of victims, then auditors or evaluators may be given access to representative files without any sharing of individual identifying information.

(9) *Performance reports.* Requirements in 24 CFR 92.509 are waived and HUD imposes the requirements in the Reporting and Performance Reports section in the HOME-ARP Notice as an alternative requirement.

The participating jurisdiction must submit reports in a format and at such time as prescribed by HUD. In addition, HUD and Office of the Inspector General (OIG) staff must be given access, upon reasonable notice, to all information related to the selection, award, and use of HOME-ARP funds.

Each participating jurisdiction must enter the required HOME-ARP data elements timely in IDIS.

1. For HOME-ARP rental activities, the participating jurisdiction must enter complete project completion information when it completes the activity in IDIS, except the assisted units can be marked vacant until they are occupied by eligible households.

2. For HOME-ARP NCS activities, the participating jurisdiction must enter complete project completion information when it completes the activity in IDIS. In addition, the participating jurisdiction must report the disposition of any HOME-ARP-assisted NCS activity that is converted to another eligible use at the time of conversion.

3. For HOME-ARP TBRA activities, the participating jurisdiction reports beneficiary information in IDIS at the time assistance is provided.

4. For HOME-ARP Supportive Services activities, the participating jurisdiction must report in IDIS quarterly, by the 30th day after the end of each calendar quarter, on the number of homeless and not homeless households assisted with supportive services and, housing counseling, and/or homelessness prevention including the race and ethnicity, household size, and household type of the households assisted.

HUD will issue guidance about reporting on HOME-ARP activities in the participating jurisdiction’s consolidated annual performance and evaluation report (CAPER) required under 24 CFR 91.520, at a later date.

#### **L. Subpart L—Performance Reviews and Sanctions**

1. *Performance reviews.* HUD waives 24 CFR 92.550 and imposes the following alternative requirements:

HUD will review the performance of each participating jurisdiction in carrying out its responsibilities for the use of HOME-ARP funds and its compliance with the requirements of the HOME-ARP Notice. Such reviews may take the form of remote or on-site monitoring, review of IDIS data or reports, assessment of documents requested from the participating jurisdiction, subrecipient, or other entity carrying out

HOME-ARP activities, and inquiries resulting from external audit reports, media reports, citizen complaints, or other sources of relevant information.

HUD may also review a participating jurisdiction's timely use of HOME-ARP funds for eligible activities, including the progress of expenditures for individual projects or activities, the requirement to place a project in service in accordance with requirements in the HOME-ARP Notice, and compliance of HOME-ARP rental housing and NCS with the 4-year deadline for completing projects.

If HUD preliminarily determines that a participating jurisdiction has not met a requirement of the HOME-ARP Notice or an applicable requirement of the HOME regulations at 24 CFR part 92, HUD will communicate its determination in writing and provide the participating jurisdiction with the opportunity to demonstrate, based on substantial facts, documentation, and data, that it has done so. HUD may extend any time period it provided to the participating jurisdiction to demonstrate its compliance if upon request of the participating jurisdiction, HUD determines that it is infeasible for the participating jurisdiction to provide a full response within the prescribed period.

If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or 24 CFR 92.552.

2. *Corrective and remedial actions.* HUD waives 24 CFR 92.551 and imposes the following alternative requirements:

Corrective or remedial actions for a performance deficiency (*e.g.*, failure to meet a provision of the HOME-ARP Notice or an applicable provision of 24 CFR part 92) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence. HUD may impose corrective or remedial actions including but not limited to the following:

1. HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

a. Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

b. Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

c. Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME-ARP funds for the activities;

d. Reprogramming HOME-ARP funds that have not yet been expended from affected activities to other eligible activities;

e. Reimbursing its HOME-ARP grant in any amount not used in accordance with the requirements of the HOME-ARP Notice;

f. Suspending disbursement of HOME-ARP funds for affected activities; and

g. Establishing procedures to ensure compliance with HOME-ARP requirements.

2. HUD may also:

a. Change the method of payment from an advance to a reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made;

b. Determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the use of HOME-ARP funds in accordance with 2 CFR 200.208; and

c. Take other remedies that may be legally available, including remedies under 2 CFR 200.339 and 200.340.

3. The requirements in 24 CFR 92.551(c)(2) are also revised to the updated regulatory references to 2 CFR part 200, as amended, that have been renumbered.

#### **M. Consolidated Submissions for Community Planning and Development Programs (24 CFR PART 91)**

1. *Consultation requirements for HOME-ARP allocation plan.* 24 CFR 91.100 and 24 CFR 91.110 are waived and the following alternative requirements shall apply to HOME-ARP allocation plan submissions.

(1) Before developing its HOME-ARP allocation plan, a participating jurisdiction must consult with agencies and service providers whose clientele include the HOME-ARP qualifying populations to identify unmet needs and gaps in housing or service delivery systems. In addition, a participating jurisdiction should use consultation to determine the HOME-ARP eligible activities currently taking place within its jurisdiction and potential collaborations for administering HOME-ARP. This consultation will provide a basis for the participating jurisdiction's strategy for distributing HOME-ARP funds for eligible activities to best meet the needs of qualifying populations.

(2) At a minimum, a participating jurisdiction must consult with the CoC(s) serving the jurisdiction's geographic area, homeless and domestic violence service providers, public housing agencies (PHAs), public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities. State participating jurisdictions are not required to consult with every PHA or CoC within the state's boundaries; however, local participating jurisdictions must consult with all PHAs and CoCs within the jurisdiction's boundaries. In its plan, a participating jurisdiction must describe its consultation process, list the organizations consulted, and summarize the feedback received from these entities.

2. *Public participation requirements for HOME-ARP allocation plan.* Section 105 of NAHA (42 U.S.C. 12705), section 107 of NAHA (42 U.S.C. 12707), 24 CFR 91.105, 24 CFR 91.115, and 24 CFR 91.401 are waived and the following alternative requirements shall apply to HOME-ARP allocation plan submissions by participating jurisdictions.

(1) Participating jurisdictions must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submitting the HOME-ARP allocation plan to HUD, participating jurisdictions must provide residents with reasonable notice and an opportunity to

comment on the proposed HOME-ARP allocation plan of no less than 15 calendar days. The participating jurisdiction must follow its adopted requirements for "reasonable notice and an opportunity to comment" for plan amendments in its current citizen participation plan except for where it conflicts with the requirements of the HOME-ARP Notice, including the Appendix in this notice. In addition, participating jurisdictions must hold at least one public hearing during the development of the HOME-ARP allocation plan prior to submitting the plan to HUD.

(2) For the purposes of HOME-ARP, participating jurisdictions are required to make the following information available to the public:

a. The amount of HOME-ARP funds the participating jurisdiction will receive, and

b. The range of activities the participating jurisdiction may undertake.

(3) A participating jurisdiction must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan. In its plan, a participating jurisdiction must describe its public participation process, including any efforts made to broaden public participation and summarize the comments or views received. In its plan, the participating jurisdiction must also include a summary of comments received through the public participation process and any comments or views not accepted and the reasons why.

(4) Throughout the HOME-ARP allocation plan public participation process, the participating jurisdiction must follow its applicable requirements and procedures for effective communication, accessibility, and reasonable accommodation for persons with disabilities and providing meaningful access to participation by limited English proficient (LEP) residents that are in its current citizen participation plan.

3. *Alternative requirement to the Contents of the Consolidated Plan for Local Governments, States, Consortia, and Insular Areas.* The requirements of section 105(a), (b), (d)–(g) of NAHA (42 U.S.C. 12705(a), (b), (d)–(g)), section 107 of NAHA (42 U.S.C. 12707), 24 CFR part 91, subparts C and D are waived for HOME-ARP allocation plan submissions except to the extent that such provisions allow for the submission of the HOME-ARP allocation plan as part of a participating jurisdiction's annual action plan submission for Fiscal Year 2021. 24 CFR 91.505 is also waived. 24 CFR 91.500 shall apply except as modified by alternative requirements stated below. The following alternative requirements shall apply to the contents, submission, and review of the HOME-ARP allocation plan.

(1) *General Requirement.* The HOME-ARP allocation plan must describe the distribution of HOME-ARP funds and the process for soliciting applications and/or selecting eligible projects. The plan must also identify any preferences being established for eligible activities or projects. However, participating jurisdictions are not required to identify specific projects that will be funded in the HOME-ARP allocation plan.

(2) *Needs Assessment and Gaps Analysis.* A participating jurisdiction must evaluate the

size and demographic composition of qualifying populations within its boundaries and assess the unmet needs of those populations. In addition, a participating jurisdiction must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A participating jurisdiction should use current data including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services. A participating jurisdiction should identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing. A participating jurisdiction must consider the housing and service needs of qualifying populations, including but not limited to:

1. Sheltered and unsheltered homeless populations;
2. Those currently housed populations at risk of homelessness;
3. Other families requiring services or housing assistance to prevent homelessness; and
4. Those at greatest risk of housing instability or in unstable housing situations.

A participating jurisdiction should include data in its HOME-ARP allocation plan that describes the qualifying populations. In addition, participating jurisdictions must include a narrative description that:

- a. Identifies the characteristics of housing associated with instability and an increased risk of homelessness if the participating jurisdiction will include such conditions under HUD's definition of "other populations" as established in Section IV.A.2.g. of the HOME-ARP Notice;
- b. Identifies the participating jurisdiction's priority needs for qualifying populations; and
- c. Explains how the participating jurisdiction determined the level of need and gaps in its shelter and housing inventory and service delivery systems.

(3) *HOME-ARP Activities.* The HOME-ARP allocation plan must describe how a participating jurisdiction will distribute HOME-ARP funds in accordance with its priority needs. The plan must describe the participating jurisdiction's method for soliciting applications for funding and/or selecting developers, service providers and/or subrecipients and whether the participating jurisdiction will administer eligible activities directly. If the participating jurisdiction will provide any portion of its HOME-ARP administrative funds to a subrecipient or contractor prior to HUD's acceptance of the participating jurisdiction's HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the participating jurisdiction's entire HOME-ARP grant, the plan must identify the subrecipient or contractor and describe its role and responsibilities in administering all of the participating jurisdiction's HOME-ARP program.

Participating jurisdictions must indicate in the HOME-ARP allocation plan the amount

of HOME-ARP funding that is planned for each eligible HOME-ARP activity type, including administrative and planning activities. In addition, a participating jurisdiction must demonstrate that any planned funding for non-profit operating assistance, as described in Section VI.F of the HOME-ARP Notice, non-profit capacity building, and administrative costs is within statutory limits. A participating jurisdiction must also include a narrative description about how the characteristics of its shelter and housing inventory and service delivery system and the needs identified in the participating jurisdiction's gap analysis provided a rationale for its plan to fund eligible activities.

(4) *HOME-ARP Production Housing Goals.* The HOME-ARP allocation plan must estimate the number of affordable rental housing units for qualifying populations that a participating jurisdiction will produce or support with its HOME-ARP allocation. The plan must also include a narrative about the specific affordable rental housing production goal that the participating jurisdiction hopes to achieve and describe how it will address the participating jurisdiction's priority needs.

(5) *Preferences.* The HOME-ARP allocation plan must identify whether the participating jurisdiction intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project. For example, participating jurisdictions may include a preference for:

- a. Homeless individuals and families as defined in the ESG and CoC Programs;
- b. Individuals with special needs or persons with disabilities among qualifying individuals and families; or
- c. A specific category of qualifying individuals and families (e.g., chronically homeless as defined in 24 CFR 91.5).

Participating jurisdictions are not required to describe specific projects to which the preferences will apply in the HOME-ARP allocation plan. However, a participating jurisdiction must explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or category of qualifying population, consistent with participating jurisdiction's needs assessment and gap analysis. The participating jurisdiction must also describe how it will still address the unmet needs or gaps in benefits and services of the other qualifying populations that are not included in a preference through the use of HOME-ARP funds.

Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). The participating jurisdiction 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 establishing preferences or methods of prioritization.

(6) *HOME-ARP Refinancing Guidelines.* If a participating jurisdiction intends to use

HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, it must state its refinancing guidelines in accordance with 24 CFR 92.206(b)(2). The guidelines must describe the conditions under which the participating jurisdiction will refinance existing debt for a HOME-ARP rental project. At a minimum, the guidelines must:

- a. Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity.
- b. Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.
- c. State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.
- d. Specify the required compliance period, whether it is the minimum 15 years or longer.
- e. State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including the Community Development Block Grant program.

(7) *Substantial Amendments to the HOME-ARP Allocation Plan.* Participating jurisdictions must make a substantial amendment to the HOME-ARP allocation plan for changes in the method of distributing funds; to carry out an activity not previously described in the plan; or to change the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan. In addition, the requirements for substantial amendments at 24 CFR 92.63 apply to the HOME-ARP allocation plan for insular areas.

Participating jurisdictions are not required to make a substantial amendment to describe individual projects selected for funding if the eligible activity is included in the participating jurisdiction's plan. Participating jurisdictions must make the proposed substantial amendment public and provide for a 15-day public comment period prior to submission. Upon completion of the public comment period, participating jurisdictions must submit substantial amendments to HUD in accordance with the process for submitting the HOME-ARP allocation plan as described in Section V.D.

(8) *Certifications and SF-424.* Participating jurisdictions must submit the required certifications in accordance with the requirements in the HOME-ARP Notice, including the following:

1. Affirmatively Further Fair Housing;
2. Uniform Relocation Act and Anti-displacement and Relocation Plan;
3. Anti-Lobbying;
4. Authority of Jurisdiction;
5. Section 3; and,
6. HOME-ARP specific certification that a participating jurisdiction will only use

HOME-ARP funds for eligible activities and eligible costs.

Participating jurisdictions must also submit the SF-424, SF-424B and SF-424D with the HOME-ARP allocation plan.

(9) *HOME-ARP Submission and the eCon Planning Suite.* Upon completion of the HOME-ARP allocation plan, a participating jurisdiction must submit the HOME-ARP allocation plan to HUD. To submit the HOME-ARP allocation plan, participating jurisdictions must follow the process to make an amendment to the Fiscal Year (FY) 2021 annual action plan. Once the FY 2021 annual action plan is reopened, a participating jurisdiction must upload a Microsoft Word or PDF version of the plan as an attachment next to the "HOME-ARP allocation plan" option on the AD-26 screen (for participating jurisdictions FY 2021 annual action plan is a Year 2-5 annual action plan) or the AD-25 screen (for participating jurisdictions whose FY 2021 annual action plan is a Year 1 annual action plan that is part of the 2021 consolidated plan), unless instructed by HUD to follow a different submission procedure. Participating jurisdictions are not required to make any other edits to the FY 2021 annual action plan or applicable consolidated plan screens in the eCon Planning Suite. For more information on how to upload an attachment in the eCon Planning Suite, participating jurisdictions can refer to the eCon Planning Suite Desk Guide.

(10) *HUD Review of the HOME-ARP Allocation Plan.* The participating jurisdiction must submit its HOME-ARP allocation plan to HUD for review in accordance with 24 CFR 91.500, as revised by this alternative requirement. Unless instructed otherwise by HUD, the HOME-ARP allocation plan will be considered received by HUD when the SF-424 is submitted electronically, which means that it is uploaded in the eCon Planning Suite as an attachment on AD-25 or AD-26 screen, as applicable, and the action plan status is changed to "Submitted for Review." HUD will review a participating jurisdiction's HOME-ARP allocation plan to determine that it is:

1. Substantially complete, and
2. Consistent with the purposes of ARP.

HUD may disapprove a participating jurisdiction's HOME-ARP allocation plan in accordance with 24 CFR 91.500(b). HUD may also disapprove a HOME-ARP allocation plan or a portion of a plan if HUD determines that the plan is inconsistent with the purposes of ARP or substantially incomplete. A participating jurisdiction's plan is inconsistent with ARP if it includes allocates HOME-ARP funds for uses other than a HOME-ARP eligible activity, as described in the HOME-ARP Notice. A participating jurisdiction's plan is substantially incomplete if:

a. The participating jurisdiction does not complete the required public participation or consultation or fails to describe those efforts in the plan;

b. The participating jurisdiction fails to include the required elements outlined in the HOME-ARP Notice, including the amount of HOME-ARP funds for each eligible HOME-ARP activity type;

c. The participating jurisdiction fails to identify and describe the responsibilities of the subrecipient or contractor administering all of its HOME-ARP award, if applicable; or,

d. HUD rejects the participating jurisdiction's HOME-ARP certification as inaccurate.

In accordance with Section 105(c) of NAHA (42 U.S.C. 12705(c)) and 24 CFR 91.500(a), if the participating jurisdiction's HOME-ARP allocation plan is not disapproved within 45 days, then the plan is deemed approved 45 days after HUD receives the plan, and HUD shall notify the participating jurisdiction that the plan is accepted.

(11) *Plan Disapproval.* If HUD determines that the plan is substantially incomplete or that the plan is inconsistent with ARP, HUD will notify the participating jurisdiction in writing with the reasons for disapproval, in accordance with 24 CFR 91.500(c). If a participating jurisdiction's plan is disapproved, the participating jurisdiction may revise or resubmit the plan for HUD review within 45 days after the first notification of disapproval. HUD will respond to accept or disapprove the resubmitted plan within 30 days of receiving the revisions or resubmission.

(12) *Making the HOME-ARP Allocation Plan Public.* Once HUD notifies a participating jurisdiction that the plan is accepted, the participating jurisdiction must make the final HOME-ARP allocation plan available to the public in accordance with the same requirements in the participating jurisdiction's current citizen participation plan that are followed to make the participating jurisdiction's adopted consolidated plan and substantial amendments available to the public, including the availability of materials in a form accessible to persons with disabilities and translated materials in different languages to accommodate LEP persons, upon request.

4. *Tenant preferences in HOME-ARP.* The requirements of Section 225(d) of NAHA (42 U.S.C. 12755(d)), 24 CFR 91.220(l)(2)(vii), 24 CFR 91.320(k)(2)(vii), 24 CFR 92.209(c), 24 CFR 92.252(k), 24 CFR 92.253(d), and 24 CFR 92.504(c)(3)(iii) shall not apply to HOME-ARP projects where they conflict with the following alternative requirements:

A participating jurisdiction may establish reasonable preferences among the qualifying populations to prioritize applicants for HOME-ARP projects or activities based on the participating jurisdiction's needs and priorities, as described in its HOME-ARP allocation plan.

For example, a participating jurisdiction 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 participating jurisdiction 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 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 participating jurisdiction in which they are eligible under the HOME-ARP Notice, 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 participating jurisdiction 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, if necessary, to provide effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv). The participating jurisdiction 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 if the specific category is identified in the participating jurisdiction'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.

5. *Referral Methods for Projects or Activities.* A participating jurisdiction 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 participating jurisdiction, HUD holds the participating jurisdiction 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 participating jurisdiction may use the CE of a 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 participating jurisdiction 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 CE 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 participating jurisdiction, in accordance with HOME-ARP requirements. If the participating jurisdiction uses CE, the participating jurisdiction cannot

require HOME-ARP victim service providers to use the CE but may permit them to do so.

*(1) Use of Expanded CE in HOME-ARP.*

Under this referral method, a participating jurisdiction 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 participating jurisdiction in its HOME-ARP allocation plan and imposed through the participating jurisdiction's written agreements.

Before using a CoC's CE, participating jurisdictions should consider whether the CE covers the same service area as the HOME-ARP projects or activities that would use that CE. At a minimum, the participating jurisdiction 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 participating jurisdiction must require a project or activity to use CE along with other referral methods (as provided in section b below) or to use only a project/activity waiting list (as provided in section c below) if:

- i. The CE does not have a sufficient number of qualifying individuals and families to refer to the participating jurisdiction for the project or activity;
- ii. The CE does not include all HOME-ARP qualifying populations; or,
- iii. 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.

*(2) Use of CE with Other Referral Methods.*

The participating jurisdiction 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 participating jurisdiction must establish or approve any preferences or prioritization criteria applied by a CoC CE or other referral sources. The participating jurisdiction 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 in chronological order.

If applicable, a participating jurisdiction must establish policies and procedures for applying a participating jurisdiction'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.

*(3) Use of a Project/Activity Waiting List.*

The participating jurisdiction 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 participating jurisdiction's preferences, if any, consistent with the HOME-ARP Notice or, if the participating jurisdiction did not establish preferences, in chronological order, insofar as practicable.

*6. Limiting Eligibility to Subpopulations.*

Participating jurisdictions 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 the HOME-ARP Notice, 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.

[FR Doc. 2021-22046 Filed 10-8-21; 8:45 am]

**BILLING CODE 4210-67-P**