



## **HOME American Rescue Plan**

### **Non-Congregate Shelter Program Guidelines**

**2023**

## Table of Contents

### THIS DOCUMENT SETS FORTH THE REQUIREMENTS FOR THE STATE'S AWARD-OF HOME ARP FUNDS FOR NON-CONGREGATE SHELTER UNIT PROJECTS

<b>1. SUMMARY</b>	<b>1</b>
<b>2. APPLICATION AND EVALUATION PROCEDURE</b>	<b>1</b>
A. FUNDING AVAILABILITY	2
B. SUBMISSION OF MATERIALS	2
<b>3. PROJECT FUNDING REQUIREMENTS</b>	<b>2</b>
A. ELIGIBILITY CRITERIA	2
B. PROPERTY STANDARDS	3
C. UNIT ALLOCATION	4
D. ADMISSION AND OCCUPANCY	5
E. ELIGIBLE COSTS	5
F. PROHIBITED COSTS	6
G. PROJECT DEVELOPMENT DUE DILIGENCE	7
H. RESTRICTED USE PERIOD	7
I. ENVIRONMENTAL REVIEW REQUIREMENTS	8
J. OTHER FEDERAL REQUIREMENTS	8
<b>4. ONGOING PROJECT REQUIREMENTS</b>	<b>11</b>
A. CONSTRUCTION COMPLETION	11
B. PROJECT COMPLETION	11
C. RESTRICTED USE PERIOD	11
D. REPORTING AND RECORDKEEPING	11
<b>5. STRUCTURE OF TRANSACTION</b>	<b>13</b>
A. LOAN TYPES AND TERMS	13
B. RESERVES AND CASH FLOW DISTRIBUTIONS	13
C. GUARANTEES	14
D. DECLARATION OF LAND USE AND RESTRICTIVE COVENANTS	14
E. WRITTEN AGREEMENT	15

<b>6. UNDERWRITING &amp; SUBSIDY LAYERING REVIEWS</b>	<b>15</b>
A. PROJECT UNDERWRITING	15
B. PROFORMA REQUIREMENTS	17
C. COST LIMITATIONS	17
D. OTHER PUBLIC FUNDING SOURCES	17
E. LENDER TITLE INSURANCE	18
<b>7. CONSTRUCTION PROCESS</b>	<b>18</b>
A. FUND CONSTRUCTION INSPECTIONS	18
B. DAVIS-BACON	18
C. DRAWING FUNDS	19
D. PROJECT CLOSEOUT	21
<b>8. LONG-TERM MONITORING</b>	<b>21</b>

## 1. Summary

The West Virginia Housing Development Fund (the Fund) supports the acquisition and development of non-congregate shelters (NCS) for Qualified Populations (QPs) with its funding allocation from the U. S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME) for eligible HOME American Rescue Plan (HOME ARP) activities. HOME was created under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92. Requirements for HOME ARP funds appropriated under section 3205 of the American Rescue Plan Act of 2021 which will provide homelessness assistance and supportive services, are located at HUD Notice CPD 21-10 (Notice).

An NCS project is one or more buildings that provide private units or rooms as temporary shelter to individuals and families in qualifying populations and does not require the signing of a lease or occupancy agreement.

Pursuant to the HOME ARP Allocation Plan, \$3,000,000 is earmarked for the acquisition and development of NCS. This will expand the supply of decent, safe, sanitary, shelters for QPs.

Pursuant to the HOME ARP Allocation Plan, the Fund anticipates responses to one application cycle will result in HOME ARP funds being committed to eligible activities. However, if the HOME ARP funds are not fully committed following one application cycle, any remaining funds will be re-allocated to Supportive Services, Acquisition and Development of Non-Congregate Shelters, and/or Development of Affordable Rental Housing, based on need.

The Fund's HOME ARP funds will be used to provide financing for NCS projects located in West Virginia. The program will target NCS projects in eligible areas where a current market demand exists for the proposed project. In exchange for low-cost permanent financing, NCS property owners will agree to serve QPs for the restricted use period. Projects are monitored for compliance during the restricted use period. Project developers, owners, and sponsors must coordinate funder's requirements when there are multiple funding sources.

**This document sets forth the requirements for the Fund's awards of HOME ARP funds for Non-Congregate Shelter projects.**

## 2. Application and Evaluation Procedure

The Fund will issue a NCS Project Request for Proposals (RFP). The RFP will outline specific application deadlines, any funding focus (e.g., by project type, population served, etc.), and other special considerations.

## **A. Funding Availability**

Upon submission of an RFP for HOME ARP funds, Fund staff will conduct a review and analysis of the project and developer(s) as presented in the proposal. Proposals will be scored based on criteria in the RFP. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of HOME ARP funds. The Fund will, in all instances, commit HOME ARP funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking HOME APR funds prior to the receipt of all other funding sources, may be provided with non-binding Term Sheet. Further, for eligible NCS projects receiving Term Sheets, said Term Sheets may be contingent upon the (1) Approval of the Allocation Plan; (2) the applicant's award from other funding sources, if applicable; (3) the Fund's receipt of the HUD Authority to Use Grant Funds following completion of the Environmental Review process, as applicable; and (4) other items noted in the Term Sheet.

## **B. Submission of Materials**

All HOME ARP NCS project applicants must comply with the submission criteria set forth in the Fund's RFP. The Fund reserves the right to require the submission of additional information as needed to complete project underwriting.

## **3. Project Funding Requirements**

### **A. Eligibility Criteria**

#### **Eligible Applicants**

Developers and owners of NCS projects – including for-profit developers and nonprofit developers– are eligible to apply for HOME ARP funding.

#### **Project Location**

Projects must be located in the State of West Virginia.

#### **Project Types**

Funds will be provided for the acquisition and development of NCS projects. NCS projects may include but are not limited to the acquisition of land and new construction or acquisition and/or rehabilitation of existing structures such as motels, hotels, or other facilities to be used for HOME ARP NCS. While the Fund will entertain any proposals meeting its criteria, in practice most projects will also require other financing sources to cover expenses ineligible for HOME ARP reimbursement.

## **Parameters of HOME ARP Funding**

HOME ARP funds do not have a maximum per unit subsidy. Nevertheless, all project costs must be reasonable and necessary. Funding limitations will be the result of cost reasonableness and HOME ARP funding availability.

### **Monitoring Fees**

The project's estimated annual expense information must include a monitoring fee as specified by the Fund in its RFP.

### **Cost Reasonableness**

Per the requirements of 92.250(b), all project costs must be reasonable, whether or not paid directly with HOME ARP. The Fund will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. Fund staff must be allowed the opportunity to conduct a cost analysis to determine cost reasonableness. RFPs may be determined ineligible if access is not granted or costs are determined to be unreasonable.

### **Identity of Interest**

Owners must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

## **B. Property Standards**

To meet HOME ARP regulations and Fund goals, all NCS units and common areas must meet all applicable State and local codes, ordinances, and requirements and the applicable provisions of HUD's Lead Safe Housing Rules at 24 CFR Part 35. In addition, all NCS projects must meet the following minimum safety, sanitation, accessibility, and privacy standards:

- Must be structurally sound to protect occupants from the elements and not pose any threat to health and safety of the occupants. Construction must meet all local codes. For projects obtaining permits on or after August 1, 2022, the State of West Virginia has adopted and enforces the following codes with amendments:
  - 2018 International Building Code
  - 2018 International Residential Code
  - 2018 International Mechanical Code
  - 2015 International Energy Conservation Code
  - 2018 International Existing Building Code
  - 2018 International Plumbing Code
  - 2018 International Fuel Gas Code
  - 2018 International Property Maintenance Code

- 2020 National Electric Code
- 2013 ANSI/ASHRAE/IESNA Standard 90.1
- 2017 ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities
- All projects must be accessible in accordance section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and implementing regulations at 24 CFR part 35, all as applicable. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project's units designed to be accessible for tenants with mobility impairments and another 2% of the project's units designed to be accessible to tenants with sensory impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide mobility and sensory accessible units in the same percentages.
- Must provide each individual or family with an acceptable, individual room to sleep in which includes adequate space and security for themselves and their belongings.
- Must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of occupants.
- Must have a water supply free of contamination.
- Must have in-unit sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.
- Must provide necessary heating/cooling facilities in proper operating condition.
- Must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances.
- Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- Must provide one working smoke detector and one working carbon monoxide detector (if natural gas appliances are used) in each unit. All smoke and carbon monoxide detectors and alarm systems must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector and one carbon monoxide detector. There must also be a second means of exiting the building in the event of fire or other emergency.

### **C. Unit Allocation**

If applicable and in general, HOME ARP units will be "floating units" and evenly distributed among the unit types in the development. If the project's units are not comparable, "fixed units" must be designated. In the case of projects with comparable units, the Fund will designate units as HOME ARP assisted in proportion to the percentage of HOME ARP investment in the transaction. For example, if HOME ARP represents 80% of the project's total HOME ARP eligible cost, at least 80% of each unit type will be designated as HOME ARP assisted units.

## **D. Admission and Occupancy**

HOME ARP NCS units may only be occupied by individuals or families that meet the criteria for one or more of the QPs. Where applicable, occupancy of NCS units by qualifying populations must be in accordance with the requirements in the Preferences Among Qualifying Populations, Referral Methods, and Subpopulations section (Section IV.C) of the Notice. The QPs must not be charged occupancy fees or other charges to occupy a HOME ARP NCS unit unless the Fund determines and approves such fees and charges to be customary and reasonable and the charges comply with 24 CFR 578.77(b).

To ensure that access to HOME ARP NCS by qualifying populations is effectively integrated with other assistance and services, project owners are encouraged to incorporate each HOME ARP NCS into the CE established by the CoC(s) for the area the NCS project is funded to serve, provided that the CE is used in accordance with the Preferences Among Qualifying Populations, Referral Methods, and Subpopulations section (Section IV.C) of the Notice. Whether or not packaged with NCS funding, HOME ARP supportive services may also be provided as needed to qualifying individuals and families served by the HOME ARP NCS project in accordance with the requirements contained in the Supportive Services section (Section VI.D) of the Notice.

No individual or family may be denied admission to or removed from a HOME ARP NCS unit on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the individual or family meets the criteria of one of the qualifying populations.

## **E. Eligible Costs**

Costs funded with HOME ARP funds must be eligible according to HOME Final Rule 24 CFR 92.206. The following additional limitations also apply:

- HOME ARP shall not be used for luxury improvements according to 24 CFR 92.205.
- HOME ARP funds shall not be used for non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures. HOME ARP funds may be used for community space or common laundry facilities included in residential buildings.
- HOME ARP funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g., water or sewer tap) is an eligible cost.

HOME ARP funds may be used for actual costs of acquiring NCS or developing HOME ARP NCS as follows:

- Acquisition Costs: Costs to acquire improved or unimproved real property.



- Demolition Costs: Costs of demolishing existing structures for the purpose of developing HOME ARP NCS.
- Development Hard Costs: Costs identified in 24 CFR 92.206(a) to rehabilitate or construct HOME ARP NCS units, except costs must be for meeting the physical standards established in the Property Standards section above.
- Site Improvements: Costs to make improvements to the project site, including installation of utilities or utility connections, and the construction or rehabilitation of laundry, community facilities, on-site management, or supportive service offices.
- Related Soft Costs: Reasonable and necessary costs incurred by the Fund and owner associated with the financing, acquisition, and development of NCS projects, including costs identified in 24 CFR 92.206(d) with the following exceptions:
  - Costs to provide information services such as affirmative marketing to prospective homeowners and tenants are not eligible.
  - Costs of funding an initial operating deficit reserve are not eligible.
  - Costs of project-specific assistance to community housing development organizations, including technical assistance and site control loans or seed money loans as specified in 24 CFR 92.301 are not eligible.
- Replacement Reserve: Costs to capitalize a replacement reserve to pay the reasonable and necessary costs of replacing major systems and their components whose useful life will end during the restricted use period. Major systems include structural support, roofing, cladding, and weatherproofing, plumbing, electrical and HVAC. The costs of replacing major systems must be determined through a Capital Needs Assessment and documented in writing, which will assess the remaining useful life of major systems expected upon completion of the NCS project. The costs of a replacement reserve must be included in the project budget in the written agreement along with a list of major systems to be replaced with the reserve and projected replacement schedule during the restricted use period (i.e., reserve for replacement analysis). Pursuant to the Notice, capitalizing a Replacement Reserve Account is only permitted for rehabilitation projects.

## **F. Prohibited Costs**

HOME ARP funds may not be used to:

- Pay any operating costs of a the NCS project.
- Provide additional HOME ARP investment in a the NCS project during the restricted use period, except that additional HOME ARP funds, if available, can be invested in the project up to one year after project completion in IDIS for eligible costs.
- Provide non-Federal matching contributions required under any other Federal program.
- Provide assistance for uses authorized under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (Public Housing Capital and Operating Funds).
- Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low-Income Housing Mortgages).
- Pay for the acquisition of property owned by the Fund, if applicable.

- Pay delinquent taxes, fees, or charges on properties to be assisted with HOME ARP NCS funds.
- Fund a replacement reserve for newly construction NCS projects.
- Pay for any cost that is not eligible under the Notice.

### **G. Project Development Due Diligence**

NCS projects must meet the requirements of the Notice for the restricted use period. Consequently, the Fund’s underwriting will include a thorough review to determine that the NCS project’s acquisition and/or development is/are financially feasible for the continued operation for the length of the restricted use period. Therefore, the Fund’s underwriting will also include whether the NCS project has secured or has a high likelihood of securing operating funding because operating costs cannot be paid with HOME ARP.

Pursuant to the Notice and 24 CFR 92.250(b)(2), the developer/owner must submit:

- Evidence of appropriate skills and experience related to the development of shelters or similar facilities.
- Evidence of prior experience with operating shelters.
- An acquisition or development budget, timeline, and sources and uses statement for the acquisition and/or development of the project be submitted for review.
- A proposed operating budget, including secured sources for operating costs and any operating gap that will require additional assistance. If there is a gap in the operating budget, the owner must submit a plan for securing additional private, local, state, or Federal funding sufficient for successful operation of the project. The plan must be acceptable to and approved by the Fund.

### **H. Restricted Use Period**

NCS projects must comply with the restricted use period specified in the Notice. Restricted use period requirements will be imposed through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws. If applicable, the use restriction will not identify the NCS property is prioritized for victims of domestic violence, dating violence, sexual assault, stalking or human trafficking.

The restricted use period begins at project completion and must be imposed for at least the following periods:

- New Construction: Newly constructed HOME ARP NCS units must be operated as HOME ARP NCS units for QPs for a restricted use period of 15 years, regardless of the amount of HOME ARP funds invested in the project.

- Rehabilitation: HOME ARP NCS units which receive any amount of HOME ARP funds for rehabilitation but are not designated as new construction by the Fund must be operated as HOME ARP NCS units for qualifying populations for a restricted use period of 10 years.
- Acquisition Only: Units acquired for use as HOME ARP NCS that do not require rehabilitation for occupancy must serve the qualifying populations for a restricted use period of 10 years.

## **I. Environmental Review Requirements**

Federally assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with Fund staff prior to entering into a purchase agreement or submitting an application.

All HOME ARP assisted projects shall be implemented in accordance with environmental review regulations as defined in 24 CFR Part 58.

The Fund shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF), as applicable, from HUD. The applicant is responsible for cooperating with the Fund in the environmental review process and providing information necessary for the Fund to fulfill its responsibilities under Part 58 and other applicable regulations.

Submitting an application for HOME ARP funds triggers environmental review requirements under 24 CFR Part 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a project proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF), as applicable, by the U. S. Department of Housing and Urban Development.

Developers are prohibited from undertaking or committing or expending any funds (including non-federal funds) to any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the Fund.

## **J. Other Federal Requirements**

### **Nondiscrimination and Equal Opportunity**

The following federal nondiscrimination and equal opportunity guidelines apply to all NCS projects and affect both development and operation:

- i. The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.;
- ii. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;
- iii. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
- iv. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146;
- v. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;
- vi. Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75;
- vii. Executive Order 11246, as amended by Executive Orders 11375, [[Page 41]] 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966- 1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
- viii. Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971- 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development);
- ix. Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). The nondiscrimination provisions of Section 282 of the National Affordable Housing Act of 1982; and
- x. The Equal Access Rule, 24 CFR 5.105(a)(2), requiring that assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

### **Uniform Relocation Act (URA)**

All NCS projects fall under the requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to

the seller identifying the transaction as a voluntary sale not under the threat of eminent domain. To ensure compliance with URA applicants should:

- Consult the Tenant Relocation portion of the RFP application to understand the requirements of URA prior to submitting an application involving an occupied property; and
- Review the Relocation Handbook at [The HOME Investment Partnerships Program | WVHDF](#) for additional information and template notices.

### **Labor Standards**

Labor standards, including Davis-Bacon federal prevailing wage requirements shall apply to all NCS projects with 12 or more units assisted with HOME ARP funds. See [The HOME Investment Partnerships Program | WVHDF](#) for Davis-Bacon forms.

### **Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan**

Developers must maintain an MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project. See [The HOME Investment Partnerships Program | WVHDF](#) for the MBE/WBE Report.

### **Section 3**

To comply with Section 3 regulations, the developer must, to the greatest extent feasible, ensure employment and training opportunities arising in connection with the Section 3 project is provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located [24 CFR 75.19(a)(1)]. See [The HOME Investment Partnerships Program | WVHDF](#) for Section 3 forms.

### **Excluded Parties**

The Fund will not fund NCS projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Furthermore, the owner may not contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

The System for Award Management (SAM) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at <https://sam.gov/content/home>.

## **4. Ongoing Project Requirements**

### **A. Construction Completion**

Upon achieving construction completion, the NCS project must begin operating as an active shelter within six months of the date of construction completion.

### **B. Project Completion**

Project Completion for a NCS project means:

- All necessary title transfer requirements and construction work has been performed;
- The project complies with the requirements of the Notice, including the HOME ARP NCS property standards, as evidenced by the Fund's final inspection;
- The project is actively operating as a HOME ARP NCS;
- Final drawdown of HOME ARP funds has been disbursed; and
- Project completion information has been entered into IDIS.

### **C. Restricted Use Period Inspections**

Pursuant to the Notice, the Fund will conduct annual inspections to verify the NCS project meets the minimum property standard established in these Guidelines. When deficiencies are identified, they must be corrected in a timely manner.

### **D. Reporting and Recordkeeping**

To allow for effective oversight of funded projects and document compliance with applicable HOME ARP requirements, all projects must submit periodic reports to the Fund. While this section outlines standard reporting requirements, the Fund reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME ARP requirements or Fund policy. Additionally, the Fund reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

i. Owners are required to report quarterly during the development phase and lease-up phase. Quarterly reports will be due on the 15<sup>th</sup> of the month following the end of the prior quarter (e.g., by April 15<sup>th</sup> reports on the first quarter are due).

- During the construction phase, owners must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.

ii. Annual Reports shall be required for all HOME ARP projects and shall include Annual Occupancy information and examples of marketing materials.

iii. The Fund may require more frequent reporting due to findings identified during annual monitoring or findings identified during quarterly reports submitted during the development and lease-up phases.

iv. All HOME ARP projects shall be required to submit annual budgets to the Fund for review and approval. Additionally, all projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year. For small projects where the cost of a project-specific audit is deemed by the Fund to be burdensome, the Fund may accept a statement of financial condition with prior approval by the manager of Asset Management.

v. Owners and developers shall allow the Fund, HUD, State of West Virginia, the Comptroller General of the United States (aka the GAO), and all other pertinent federal or State agencies or their designated representative the right to inspect records and property.

vi. Owners must annually submit any updates to their and Affirmative Fair Housing Marketing Plan and must maintain records of annual efforts to affirmatively further fair housing in accordance with 24 CFR 92.351 for HOME ARP. Updates must clearly detail all changes.

vii. Owners must annually report to the Fund on compliance with the provisions of the Violence Against Women Act (VAWA) as applied through 24 CFR 92.359 for HOME ARP including records related to any emergency transfer requests and their disposition.

viii. The Fund may periodically require owners to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the Fund. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the compliance period, the owner must, at the Fund's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by the Fund, the owner (or the Guarantors) must replenish the Replacement Reserve Account within six months.

## **5. Structure of Transaction**

### **A. Loan Types and Terms**

The Fund will provide HOME ARP funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written Fund approval.

The Fund's HOME ARP loan is intended as construction/permanent financing. Proceeds of the HOME ARP loan will only be released in conjunction with approved monthly construction draws and/or submission of invoices for approved soft costs and satisfaction of all requirements outlined below.

Generally, the Fund's underwriting for the HOME ARP loan will:

- i. Have a term of 15 years based on the restricted use period for the project;
- ii. Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, whichever occurs first; and
- iii. Be secured with a Deed of Trust, promissory note, and appropriate UCC liens. The Deed of Trust will be recorded in the appropriate county and generally may be subordinate only to an amortizing permanent first mortgage and a temporary bank construction loan, all of which must be approved by the Fund, if applicable.

Generally, the Fund will offer the following potential repayment structures:

- i. For projects without senior amortizing loans, HOME ARP will be structured as an amortizing loan with a term equal to the restricted use period. Based upon the Fund's underwriting evaluation, payments may be based on a longer amortization period with a balloon payment due at maturity if a project cannot be expected to fully amortize the loan; or
- ii. For projects with senior amortizing loans, HOME ARP will be structured as fully amortizing, partially amortizing, and/or a cash flow contingent loan typically payable from cash flow. Projects unable to fully amortize the HOME ARP loan during the loan term will have a minimum 50% cash flow payment unless otherwise approved by the Fund. If a project cannot be expected to fully amortize the loan, terms may include a balloon payment due at maturity.

### **B. Reserves and Cash Flow Distributions**

To preserve the ongoing viability of projects, the Fund will require the establishment and maintenance of various reserves. In general, reserves will be held by the Fund and must remain in place so long as the project's HOME ARP loan is outstanding or for the duration of the restricted use period, whichever is longer. Reserves will include:



i. An operating reserve intended to protect against unexpected operating deficits;

ii. A replacement reserve intended to fund future capital and rehabilitation needs. Initial reserve deposit requirements are noted in the underwriting standards below, and the Fund may modify reserve requirements during the restricted use period based on periodic capital needs assessments.

iii. At the Fund's option, a preservation reserve account may be created and funded with annual deposits equal to 50% of surplus cash (i.e., cash flow). The preservation reserve is intended to assist in the future preservation, refinancing, or repayment of the HOME ARP transaction.

iv. As may be required based on specific or unique project features, additional specialty reserves may be required, such as for tenant services, abnormal security costs, etc.

If applicable, the Fund must also approve any distributions of surplus cash, which among other items, will require that all reserves be fully funded, the project be in compliance with all federal requirements, the project not be in default, and that the project retain sufficient liquidity following the distribution.

### **C. Guarantees**

Unless otherwise determined by the Fund, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project's ownership entity will be required to provide the following guarantees:

i. Continuing Guaranty including provisions guaranteeing construction completion of the project.

ii. Performance and Repayment Guaranty including provisions guaranteeing environmental compliance and compliance with HOME ARP guidelines.

iii. Replacement Reserve Guaranty to ensure annual deposits to a Replacement Reserve for the project in an amount consistent with the loan documents and/or covenant running with the land.

Guarantees shall be joint and several and must remain in effect throughout the restricted use period.

### **D. Declaration of Land Use and Restrictive Covenants**

Each HOME ARP funded project must maintain Land Use and Restrictive Covenants enforcing HOME ARP and Fund guidelines, as applicable. The Land Use and Restrictive Covenants will be

separately recorded and will remain in place for the restricted use period even if the HOME ARP loan is prepaid. The following guidelines must be enforced through Land Use and Restrictive Covenants:

- i. Owner will be owner in fee simple of the property;
- ii. Property is not subject to additional liens or encumbrances that the Fund has not agreed to;
- iii. The Fund must approve any transfer of the property, and such approval will be in the Fund's sole discretion;
- iv. Provisions to enforce ongoing requirements for project compliance through the HOME ARP restricted use period, including:
  - The length of the restricted use period;
  - Property standards to be enforced;
  - Marketing and occupancy requirements; and
  - Recordkeeping and reporting requirements.

**In the event the Fund's HOME ARP loan is subordinate to other debt, the HOME ARP-covenant must be recorded senior to all liens and encumbrances associated with the project financing, including any loans senior to the Fund's HOME ARP loan, and structured to survive any foreclosure by a senior lien.**

#### **E. Written Agreement**

In addition to any financing documents, owners of HOME ARP financed projects must sign a HOME ARP Written Agreement with the Fund. The Written Agreement will identify requirements for compliance with the HOME ARP regulations, and the Fund's requirements and will remain in effect in the event of any prepayment of the HOME ARP loan.

### **6. Underwriting & Subsidy Layering Reviews**

Please see the *HOME ARP Underwriting and Subsidy Layering Guidelines for Rental and NCS Projects* for more information.

#### **A. Project Underwriting**

All HOME ARP project applications must include an assessment of the current market demand for the proposed project. The market must include:

- The demonstration of an unmet need among qualifying populations(s) for the type of NCS proposed through relevant data, which may include but is not limited to: a gap analysis,

CoC data, public housing and affordable housing waiting lists, point-in-time surveys, and/or housing inventory count.

- An analysis of local market trends, a clear definition of the market area from which the occupants can reasonably be expected to be drawn, and an analysis of the demand, supply, and competition.
- Be dated no greater than six months prior to the RFP submission date and data sources must be clearly defined.

All HOME ARP project applications must include the three most recent audited financial statements (if unavailable, then the three most recent tax returns, company prepared statements, and/or personal financial statements) of the developer(s), ownership entity, guarantors, and project, if applicable, and will be subject to the Fund's evaluation of fiscal soundness as required by 24 CFR 92.250(b)(2).

Generally, project underwriting will also include:

- i. All operating expenses will be underwritten with an inflation factor of at least 3%.
- ii. All HOME ARP projects must maintain an acceptable Debt Coverage Ratio (DCR) for the restricted use period.
- iii. Proposals must include justification of operating costs that includes a comparison to similar projects in the local market.
- iv. Unless otherwise approved by the Fund, the operating budget must include a minimum deposit of \$350 per unit per year for the Replacement Reserve, and it must be funded and maintained for the full restricted use period and reflected in the operating expenses for the full 10- or 15- year projection of expenses, as applicable. Replacement Reserve deposits will be inflated at 3% annually.
- v. If required by the Fund, projects must include a capitalized operating reserve equal to six (6) months of underwritten operating expenses, amortizing debt service, and required reserve deposits. If drawn, the operating reserve must be replenished prior to distributions of cash flow. The operating reserve is intended to protect against unplanned operating deficits. If the Fund's underwriting projections anticipate deficits within the applicable restricted use period, an operating deficit reserve must be capitalized as well.
- vi. Applicant must provide the amounts and terms for the construction financing, permanent financing, and if applicable, owner equity information. Unless otherwise approved by the Fund, amortizing permanent financing that will be senior to the Fund's HOME ARP loan may not mature prior to the expiration of the HOME ARP restricted use period.

## **B. Proforma Requirements**

The Fund requires submission of a project proforma in a format provided by the Fund.

Costs and fees are to be paid to the Fund as permitted by the HOME ARP program. The HOME ARP program allows the Fund to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. Applicants must include allowances for the Fund's project-related soft costs, the amount for which will be published in the annual RFP.

Similarly, applicants must include, as part of the operating budget, an allowance for the Fund's ongoing monitoring fees as specified in the annual RFP.

## **C. Cost Limitations**

All project costs must be reasonable and necessary whether directly paid with HOME ARP funding or another source. The Fund reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME ARP projects will be subject to the following specific cost limitations:

i. The developer fee is calculated based upon project type activity (acquisition, rehabilitation, and/or new construction), and presence of identity of interest. The developer fee schedule is included in the *HOME ARP Underwriting and Subsidy Layering Guidelines for Rental and NCS Projects*.

ii. Maximum allowable builder General Requirements, Overhead, and Profit are 6%/2%/6%, respectively. The builder line item percentages are calculated on the construction contract price which cannot include construction contingency. If the Fund's Inspector approves a Change Order for use of construction contingency, the same percentages for builder line items apply.

iii. The Fund does not permit a contingency to be included within a property's construction estimate or construction contract, unless such contingency is required in writing by HUD, another governmental agency, or an independent third party.

iv. The acquisition line item on the project budget may only reflect the lesser of the actual acquisition purchase price or the current as-is market value as supported by an independent third-party appraisal, prepared by a state-licensed appraiser.

## **D. Other Public Funding Sources**

Owners must disclose all other firm commitments for funding with the initial HOME ARP NCS RFP to the Fund at the time of application and upon receiving any additional commitments of

funding. The Fund will conduct a subsidy layering review as part of the underwriting process for any project that includes other sources. Using its underwriting criteria, the Fund will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HOME ARP funds awarded, requirements that excess (surplus) cash is deposited to a reserve account, or increases in annual payments on the HOME ARP loan.

The Fund will consider adjusting its underwriting in consultation with other funders, if applicable, to the project. The Fund retains, at its sole discretion, the power to decide whether to accept alternative standards.

#### **E. Lender Title Insurance**

Lender title insurance is required for projects that have received a commitment of HOME ARP funding.

### **7. Construction Process**

#### **A. Fund Construction Inspections**

The Fund will provide HOME ARP funds in the form of construction and/or permanent financing only. The Fund must be provided with the G-702/703 and supporting documentation and Developer/Owner must provide reasonable notice of any changes to scheduled monthly draw inspections during the construction period. Fund staff will participate in all draw reviews and conduct inspections to ensure that the project is progressing, and that work completed is consistent with all applicable HOME ARP requirements.

#### **B. Davis-Bacon**

When Davis-Bacon applies to a project (for projects with 12 or more HOME ARP assisted units), the Fund must be provided with compliance documentation throughout the construction period, even when HOME ARP is provided as a permanent loan following the completion of construction. Prior to commencing construction, the Fund must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the Fund and allow access to the site and workers for the purpose of completing worker interviews.

The Fund will accept Form WH-347 or similar internal forms from the contractor. Form WH-347 and instructions for completing it may be accessed at <https://www.dol.gov/whd/forms/wh347instr.htm>.

## C. Drawing Funds

The Fund's HOME ARP Loan is intended as construction and/or permanent financing. Proceeds of the HOME ARP loan will only be released as reimbursement for eligible project costs.

A. Conditions of Construction Draws: Proceeds of the HOME ARP loan will only be released to Owner for actually incurred HOME ARP eligible project costs. The obligation of the Fund to approve any draw or to make any disbursement of HOME ARP funds is subject to the satisfaction of the following conditions at the time of making such disbursement.

- i. Draws will not be processed if the Owner is in default.
- ii. The Project shall not have been materially damaged by fire or other casualty.
- iii. The Fund shall have received evidence satisfactory to the Fund that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- iv. Owner shall have submitted at least five (5) days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by the Fund including, without limitation, the following:
  - a. Current Contractor Tracking Form and lien waivers, which are to be dated no less than five (5) days precedent to the date of the requested disbursement.
  - b. Evidence satisfactory to the Fund that the Project and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental impact statement is required or that such environmental impact statement has been properly filed and approved.
  - c. Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
  - d. Such other supporting evidence as may be requested by the Fund or its agents to substantiate all payments which are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
  - e. The Fund shall have determined that all HOME ARP requirements pertaining to the disbursement of funds have been met, including, but not limited to, the monitoring of Davis-Bacon compliance, as applicable.

- f. The Fund shall have received a current inspection report from a Fund inspector that verifies satisfactory completion of work to HOME ARP standards.
- g. The Fund shall have received a current/updated title endorsement and/or lien waivers.
- h. No determination shall have been made by the Fund that the undisbursed amount of the loan is less than the amount received to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

B. Conditions of Final Disbursement: In addition to the requirements set forth above, the Fund shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities and streets and correction of defects in workmanship and/or materials.

i. A certificate of occupancy, if applicable, a certificate of substantial completion, if applicable, the builder's warranty, and a final approved construction report from the Fund's Technical Services Department for the Project.

ii. Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME ARP units.

iii. Evidence satisfactory to the Fund that the Project has been completed lien free and substantially in accordance with the plans and specifications.

iv. Review and final settlement of the cost certification.

v. Such other supporting evidence as may be requested by the Fund or its agent to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.

vi. Lease-up of all HOME ARP designated units, submission of tenant data necessary to complete the Project in HUD's IDIS system, and the Fund's approval of income determinations for HOME ARP assisted tenants.

vii. A determination by the Fund that all HOME ARP requirements pertaining to the initial development of the Project have been met, including but not limited to, the monitoring of Davis-Bacon compliance, as applicable.

C. Limitation on Draw Requests

i. In all cases, Owner may not request disbursement of HOME ARP funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.

ii. No disbursements for materials stored will be made by the Fund unless Owner shall advise the Fund of its intention to so store materials prior to their delivery. The propriety of disbursements for materials stored shall be determined at the Fund's sole discretion.

iii. If all or a portion of the developer's fee is not budgeted to be paid with HOME ARP funds, 10% of total HOME ARP funds will be held as retainage until submission and approval of all items in Section B above.

#### **D. Project Closeout**

Owners are required to submit demographic data for the occupants of all HOME ARP funded units, as required by HUD. Owners must be aware that the restricted use period does not begin for HOME ARP funded units until all project costs are processed, all demographic data is verified by Fund staff, and the project is entered as completed in the HUD Integrated Disbursement and Information System (IDIS).

#### **8. Long-Term Monitoring**

Following project closeout, the Fund will monitor the project for ongoing compliance with HOME ARP requirements. The Fund will conduct on-site monitoring visits as required by HOME ARP regulations at 24 CFR 92.504(d)(1). The purpose of these visits will include, at minimum, reviews of project records and inspection of the premises including common areas and NCS units.

The Fund may conduct such reviews annually. However, the Fund reserves the right to conduct site visits more or less frequently based on changes to HOME ARP regulations, Fund policy, or based on evidence of compliance deficiencies in a prior monitoring visit.