



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All Community Planning and Development Field Office Directors,
Deputy Directors, and Program Managers
MARION MCFADDEN Digitally signed by MARION MCFADDEN
Date: 2022.10.31 14:26:38 -0400

FROM: Marion M. McFadden, Principal Deputy Assistant Secretary, D

SUBJECT: Waivers and Alternative Requirements For Revisions to HOME-ARP
Allocation Plan Requirements and Final Submission Deadline for all
HOME-ARP Allocation Plans

I. BACKGROUND

Section 3205 of the American Rescue Plan Act of 2021 (P.L. 117-2) (“**ARP**”) appropriated \$5 billion in ARP funds for homelessness assistance and supportive services under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) (“**NAHA**”) for the HOME Investment Partnerships Program. The program established for the use of ARP funds is the HOME-American Rescue Plan or “**HOME-ARP**” program.

On September 13, 2021, HUD published Notice CPD-21-10 entitled, “Requirements for the Use of Funds in the HOME-American Rescue Plan Program,” (the “**HOME-ARP Notice**”) which establishes the requirements for the use of HOME-ARP funds. The Appendix of the HOME-ARP Notice, approved on September 8, 2021, describes the waivers and alternative requirements imposed on participating jurisdictions for the use of HOME-ARP funds. References to the HOME-ARP Notice mean all sections of the HOME-ARP Notice, including the Appendix, and any amendments. Participating jurisdictions, including insular areas, must comply with the HOME-ARP Notice and all applicable statutory, regulatory, and alternative requirements.

This Memorandum is transmitted with the CPD Notice, “Revisions to HOME-ARP Allocation Plan Requirements and Final Submission Deadline for all HOME-ARP Allocation Plans” and provides waivers and alternative requirements applicable to all HOME-ARP funds and incorporated into and made part of the Appendix. The waivers and alternative requirements in this Memorandum are effective as of the date of issuance of the above-referenced CPD Notice.

II. AUTHORITY

Section 3205(d)(4) of ARP authorizes the Secretary of HUD to waive or specify alternative requirements for any provision of NAHA or regulation for the administration of HOME-ARP funds, 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.

The Secretary has determined that each waiver and alternative requirement described in this Memorandum is necessary to expedite or facilitate the use of HOME-ARP funds, in accordance with the requirements of ARP.

Pursuant to the Secretary's HOME-ARP statutory authority, the Secretary is waiving the following provisions of NAHA and HOME regulations and imposing the alternative requirements as described below.

III. WAIVER AND ALTERNATIVE REQUIREMENTS

HUD amends the following sections of the Appendix, as described below:

1. Section III.A. is amended to revise the definition of "HOME-ARP Funds" to impose a revised definition as follows:

"HOME-ARP funds means funds made available under Section 3205 of the American Rescue Plan Act of 2021 (P.L. 117-2) through allocations and reallocations."

2. The last paragraphs of section III.D.1., section III.E.5, and section III.K.2 of the Appendix that address if a participating jurisdiction does not submit a HOME-ARP allocation plan or if the PJ's plan is not accepted within a reasonable period of time are removed.

3. HUD removes and replaces all of Section III.J of the Appendix and imposes the waivers and alternative requirements described in the revised subpart:

"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), section 223 of NAHA (42 U.S.C. 12753), 24 CFR 92.66, 24 CFR 92.107, 24 CFR 92.450, 24 CFR 92.451, 24 CFR 92.454, 24 CFR 92.552 are waived to the extent they conflict with the following alternative requirements for reallocations:

(1) During the period of availability of HOME-ARP funds, HUD will reallocate under this subpart:

- a. any HOME-ARP funds allocated to or obligated to a participating jurisdiction that refuses to accept or returns its allocation of HOME-ARP funds.

- b. any HOME-ARP funds remaining in a jurisdiction's HOME-ARP Investment Trust Fund Treasury account after HUD has revoked the jurisdiction's designation as a HOME-ARP participating jurisdiction.
- c. any HOME-ARP funds allocated to a participating jurisdiction or insular area that fails to submit a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice on or before March 31, 2023.

(2) Manner of reallocation.

- a. For a local participating jurisdiction:
 - 1. if the local participating jurisdiction is located in a state that is a HOME-ARP participating jurisdiction that has submitted a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice, HUD will reallocate the funds to that State participating jurisdiction. The State participating jurisdiction, in distributing these funds, must give preference to the use of the reallocated HOME-ARP funds within the local jurisdiction's boundaries; or
 - 2. if the local participating jurisdiction is located in a state that is not a HOME-ARP participating jurisdiction or a State that has not submitted a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice, HUD will reallocate the funds by formula pursuant to 24 CFR 92.454(c), to local participating jurisdictions within the state that have submitted a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice and agree to accept the funds;
- b. For a State participating jurisdiction: HUD shall reallocate all of the State participating jurisdiction's HOME-ARP funds by formula pursuant to 24 CFR 92.454(c) to local participating jurisdictions within the state that have submitted a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice and agree to accept the funds;
- c. For an insular area, HUD shall reallocate all of the insular area's HOME-ARP funds proportionally to the remaining insular areas participating in the HOME-ARP program that have submitted a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice and agree to accept the funds.

(3) If amounts are available for reallocation, HUD will make reallocations pursuant to section J.(2) of this subpart when HUD has determined such amounts are sufficient to

warrant making a reallocation or at least once during the period HOME-ARP funds are available for obligation. Except for reallocations under section J.(2)a.1., the minimum amount of a reallocation shall be determined by HUD prior to the reallocation, considering the amounts available.”

5. The waiver and alternative requirements in Section III.K.4. of the Appendix are replaced as follows:

“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)(2), (b)(3), (c), and (d) are waived and the following alternative requirements apply:

(1) *Program income.* If a jurisdiction is not a participating jurisdiction in HOME nor a participating jurisdiction for HOME-ARP when the HOME-ARP program income is received, the funds must be remitted to HUD. If the funds are remitted during the period of availability of HOME-ARP funds, HUD will reallocate the funds, in accordance with subpart J of the Appendix. If the funds are remitted to HUD after the period of availability of HOME-ARP funds, any HOME-ARP funds remitted to HUD will be cancelled and not available for reallocation for any purpose.”

(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 nor a participating jurisdiction for HOME-ARP at the time the repayment is made, the funds must be remitted to HUD. If the funds are remitted during the period of availability of HOME-ARP funds, HUD will reallocate the funds, in accordance with subpart J of the Appendix. If the funds are remitted to HUD after the period of availability of HOME-ARP funds, any HOME-ARP funds remitted to HUD will be cancelled and not available for reallocation for any purpose.”

6. Section III.M.3. is revised to add the following alternative requirement:

“(13) *Amendments to HOME-ARP Allocation Plans For Reallocations.* A participating jurisdiction or insular area must amend its HOME-ARP allocation plan to include any reallocated HOME-ARP funds in accordance with the HOME-ARP Notice and its citizen’s participation plan. This means that if the amount of reallocated funds added to the plan would trigger a substantial

amendment under the PJ's citizen participation plan, then the PJ or insular area must engage in the process for a substantial amendment in section V.C.6. of the HOME-ARP Notice.”

7. Section III.M. of the Appendix is revised by adding the following paragraph:

“7. Final Submission Deadline for HOME-ARP allocation plans and Repayment Requirements.

Section 105(a) (42 U.S.C. 12705(a)), section 108 (42 U.S.C. 12708), section 216 (42 U.S.C. 12746), section 217 (42 U.S.C. 12747), section 218 (42 U.S.C. 12748), section 219 (42 U.S.C. 12749), section 223 (42 U.S.C. 12753) of NAHA, and 24 CFR 92.66, 24 CFR 92.104, 24 CFR 92.107, 24 CFR 92,150, 24 CFR 92.450, 24 CFR 92.451, 24 CFR 92.452, 24 CFR 92.453, 24 CFR 92.454, 24 CFR 92.500, 24 CFR 92.501, section III.L.2. of this Appendix, and 24 CFR 92.552 are waived to the extent they conflict with the following alternative requirements:

All participating jurisdictions must submit a HOME-ARP allocation plan to HUD in accordance with the HOME-ARP Notice on or before March 31, 2023. Failure to submit a HOME-ARP allocation plan by the final submission deadline of March 31, 2023 will result in the automatic loss of a participating jurisdiction’s or insular area’s HOME-ARP allocation. Therefore, if a participating jurisdiction or insular area fails to meet the March 31, 2023 deadline, all of the participating jurisdiction’s or insular area’s HOME-ARP funds will be subject to automatic recapture by HUD without opportunity for hearing.

If a participating jurisdiction or insular area does not submit a HOME-ARP allocation plan on or before the final deadline of March 31, 2023, any funds expended by the participating jurisdiction or insular area for HOME-ARP costs, including those incurred by a subrecipient or contractor, will be ineligible costs. Therefore, any expended HOME-ARP funds must be repaid to the HOME Investment Trust Fund Treasury account with non-Federal funds on or before May 30, 2023 and any repaid funds will be subject to automatic recapture by HUD upon deposit into the Treasury account without opportunity for a hearing.

If a participating jurisdiction or insular area never submits a plan that is accepted by HUD as substantially complete and consistent with the purposes of ARP, the participating jurisdiction or insular area must repay any HOME-ARP funds expended with non-Federal funds to its HOME Investment Trust Fund Treasury account within 60 days of HUD’s final disapproval of the PJ’s HOME-ARP allocation plan.”