



April 16, 2021

Mr. Arthur Jemison  
Principal Deputy Assistant Secretary  
Community Planning and Development  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, DC 20410

Dear Mr. Jemison:

The American Rescue Plan (ARP), signed into law on March 11, establishes an important new \$5 billion homelessness assistance and supportive services program to be administered through the HOME Investment Partnerships (HOME) program by Participating Jurisdictions (PJs). This new program, referred to herein as HOME-ARP, is essential for helping persons experiencing homelessness and other at-risk households, who are especially vulnerable now due to the public health and economic impacts of the COVID-19 pandemic. We congratulate you for announcing the allocations participating states and localities will receive to administer this program.

The National Council of State Housing Agencies (NCSHA)<sup>1</sup> and our state Housing Finance Agency members look forward to working with the U.S. Department of Housing and Urban Development (HUD) on the implementation of HOME-ARP. Most state HFAs serve as HOME state PJs, and thus will be key partners for HUD in ensuring the success of this program.<sup>2</sup>

While Congress authorized this new program through the existing HOME program, it recognized that not all HOME statutory and regulatory requirements will be applicable to HOME-ARP. Thus, Congress provided HUD broad authority to waive statutory and regulatory provisions to expedite and facilitate the use of these funds for the intended population. To that end, this letter provides NCSHA's recommendations to HUD related to the implementation of HOME-ARP, including the needed statutory and regulatory waivers and suspensions, as well as

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<sup>1</sup> NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

<sup>2</sup> Forty-seven NCSHA members are their state's PJ or state subrecipient.

other important policies that are, as called for in the statute, “necessary to expedite or facilitate the use of amounts available” for this new program.

NCSHA urges HUD to act expeditiously to provide guidance and issue an actionable field memo in the interim that will allow PJs to quickly implement this important program. Homelessness rates — already increasing before the onset of the pandemic — undoubtedly have been exacerbated since the onset of the COVID-19 virus.

## **Regulatory Suspensions and Statutory Waivers for HOME-ARP**

### Operating Deficit Reserves

We expect most qualifying individuals and families under HOME-ARP to be extremely-low income with limited, if any, ability to pay rent. For this reason, cash flow from rent collection is likely to be insufficient to cover project operating costs, let alone any debt service. Absent a rental assistance contract, permanent supportive housing or other housing developed using this program will need some other means of covering operating costs for the full affordability period.

For these reasons, HUD should allow PJs to use HOME-ARP funds to capitalize an operating deficit reserve for HOME-ARP-assisted units. Funds from an operating deficit reserve account would cover the difference between the rents paid by qualifying individuals and families and the actual cost of operating the project, including providing services essential to the building’s successful operation.

PJs should be allowed to size the operating fund so that it may be used to cover operating costs as necessary through the full compliance period. Moreover, funds should be considered expended once the account has been funded for purposes of meeting the HOME expenditure deadline.

### Qualifying Individuals or Families

NCSHA urges HUD to allow PJs the maximum flexibility to serve the eligible population referred to in §3205(b)(4), which states, “populations where providing supportive services or assistance under section 212(a) of the Act would prevent the family’s homelessness or would serve those with the greatest risk of housing instability.” We believe Congress included this eligible population so PJs would be able to serve those at risk of homelessness or with the greatest risk of housing instability even if they do not meet the narrow definition of homeless or at risk of homelessness, as defined in the McKinney-Vento Homeless Assistance Act, or fall into one of the other two eligible population groups.

NCSHA urges HUD to allow PJs to set their own criteria for which individuals and families meet this definition, as long as these criteria are included in the PJ's Annual Action Plan (as is consistent with the Emergency Solutions Grant (ESG) program). To assist PJs develop these criteria, HUD should provide as guidance a non-exhaustive set of criteria from which PJs could build their eligibility requirements.

NCSHA is developing recommendations on guidance criteria for HUD to consider, which we will share in a follow-up letter.

### Service Provider Master Leases

The HOME statute and regulations require a lease to be between the owner of rental housing and the tenant. This requirement does not allow an owner/developer to provide a "master lease" to a nonprofit service provider, through which the service provider sublets units to its clients. This is a common and successful supportive housing model, allowing the service provider to interface directly with the tenants, as most owners/developers do not have the service expertise needed by the vulnerable populations who require permanent supportive housing.

Given the high service needs of the population eligible for HOME-ARP, HUD should provide flexibilities for PJs on the HOME requirement that a lease be executed as an agreement between the owner and the tenant, thus allowing for the master lease model. Moreover, PJs should be able to provide HOME-ARP funding to service providers to help them cover the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to persons experiencing homelessness.

### Compliance Period

Because emergency shelters as described in §3205(a)(4)(B) and §3205(a)(4)(D) do not typically generate rental income from individuals staying in the shelter, shelters are dependent on operating funds — a fundamentally different model from the rental housing that HOME has historically funded.

We expect PJs will need to use HOME-ARP resources to provide operating assistance to shelters. However, because those resources will be available only for the temporary life of this program, the availability of operating funds beyond this period cannot be certain. Therefore, operators may be unwilling to commit to a long affordability period for projects under these eligible activity categories. The compliance period for activities under this section should closely mirror that of ESG. NCSHA recommends a compliance period of no longer than five years for these eligible activity categories.

In addition, §3205(a)(4) allows for the acquisition of non-congregate shelters, with the possibility of converting these to permanent housing at a later date. In this scenario, we urge HUD to allow the initial period, when the units serve as non-congregate shelter units, to count toward fulfillment of the compliance period for the eventual permanent housing, without requiring the affordability period clock to start again upon the conversion. This will allow PJs to respond nimbly to evolving community needs.

### The Acquisition and Development of Non-Congregate Shelter Units

§3205(a)(4) allows HOME-ARP funding to be used to acquire and develop non-congregate shelter units, a portion of which may remain non-congregate shelter units or be converted to permanent housing. We urge HUD to make clear in its guidance that costs associated with the development of common space, such as laundry facilities, meeting rooms, child care facilities, computer facilities, etc., even those that may not be in the same building, should be fully eligible under this program without the need for cost allocation determination. HUD should waive 24 CFR § 92.205(d)(1) cost allocation determination requirements.

### Environmental Review

While the HOME-ARP statute provides HUD broad waiver authority of HOME statutory requirements, it does not allow waiver of environmental requirements. However, HUD may still take certain steps to ensure that environmental requirements are not unnecessarily onerous and time-consuming, especially in light of the need to expedite action due to the emergency nature of the pandemic. Thus, NCSHA recommends HUD do the following:

- Provide guidance on the level of rehabilitation activity that will trigger an environmental review. For example, Appendix B of the Office of Lead Hazard Control and Healthy Homes Older Adults Home Modification Grant Program Notice of Funding Opportunity ([FR-6400-N069](#)) provides examples of maintenance repair activities that would not require an environmental review and examples of rehabilitation repair activities considered a replacement of all or most parts of an entire system, thus triggering an environmental review. We urge HUD similarly to provide examples in its HOME-ARP guidance.
- Be flexible in relation to activities that can be undertaken before the completion of an environmental review. Under current HUD guidance, HOME PJs may not use public or private funds or make any legally binding commitments until environmental clearance has been achieved. Such actions are considered “choice-limiting activities” and make a project ineligible for HOME funding. HUD should specify that certain activities would not be considered choice-limiting activities — for example, if a PJ uses non-HUD funds to pay for hotel rooms for households and later decides to provide

HOME-ARP funds to a developer to purchase and convert said hotel to a non-congregate shelter or permanent housing, paying for the hotel rooms should not be considered a choice-limiting activity. In the same vein, HUD should also provide a non-exhaustive list of actions that would be considered “choice limiting” for the purposes of the environmental review process specific to HOME-ARP.

### Program Income

Should a HOME-ARP project generate any program income, that income should go into the PJ’s general HOME program account and not have to be accounted for separately and used only for new HOME-ARP activities. This will create ease of accounting, especially as HOME-ARP is a temporary program and eventually will wind down. Program rules for the Community Development Block Grant (CDBG) made available under the CARES Act (CDBG-CV) and the Neighborhood Stabilization Program (NSP), in which HUD eventually allowed NSP program income to go into a grantee’s general CDBG account, both provide precedence for this approach.

### Streamlined State/Local Coordination

PJs administering HOME-ARP will need to have significant capacity to successfully run a program that will be used for financing the development of shelters and permanent supportive housing and for providing services for persons experiencing homelessness — activities not currently eligible for funding under HOME. Not all local PJs may have that capacity or an interest in administering these funds, and they may prefer to allow their state PJ to administer these dollars on their behalf. Thus, we encourage HUD to provide a streamlined process by which a local PJ may transfer its funds to the state PJ without requiring an onerous subgranting arrangement.

HUD should also consider encouraging local PJs and HOME consortia to coordinate with the state PJ on a statewide strategy and best practices.

### Extension of Waivers and Suspensions of Certain HOME Program Requirements

Last year HUD used its existing authority under the HOME statute to provide grantees relief from program deadlines and requirements in response to the COVID-19 pandemic. As HUD considers its authority under §3205(d)(4), NCSHA recommends applying the temporary relief provided by the pair of April 10, 2020, memoranda, revised and extended by the set of memoranda issued on December 4, 2020, on the availability of waivers and suspensions of HOME Program Requirements and HOME-Assisted Tenant-Based Rental Assistance (TBRA) for Emergency and Short-Term Assistance to HOME-ARP.

Second, HUD should consider extending through September 30, 2025, the following suspensions and waivers for PJs implementing HOME-ARP:

- HOME Program and HOME TBRA Citizen Participation Reasonable Notice and Opportunity to Comment
- HOME-Assisted TBRA Consolidated Plan – HOME Certification, Analysis of Local Market Conditions, and Citizen Participation
- HOME Program and HOME TBRA Income Documentation
- Eligible TBRA Costs and Maximum TBRA Subsidy
- Term of Rental Assistance Contract

Substantial Amendments to the Consolidated Plan and Annual Action Plans

It has been the experience of HOME PJs that field offices execute grant agreements on different timelines. To maximize the timely execution of funds, in addition to the extension of the suspension and regulatory waivers for certain Consolidated Plan requirements referenced above, HUD's review and approval of any substantial amendment(s) to a Consolidated Plan related to HOME-ARP should be completed as soon as possible, or be deemed approved with the grant agreement executed within 45 days of HUD's receipt of the amended Consolidated Plan/Annual Action Plan from PJs. HUD should also consider directly accessing reports for these plans through IDIS to minimize grantee burden.

Given the breadth of the need, the dire consequences of inaction, and the limited time allowed under the statute to expend these funds, we urge HUD to provide guidance and the necessary and appropriate waivers as soon as possible so PJs can start planning how to implement this new program. We look forward to working with you throughout this process and are available to discuss our recommendations with you anytime. Please do not hesitate to reach out to me if you have any questions.

Sincerely,



Garth Rieman  
Director of Housing Advocacy and Strategic Initiatives

Cc: Kevin Bush, Deputy Assistant Secretary for Grant Programs  
Virginia Sardone, Director, Office of Affordable Housing Programs  
Richard Cho, Senior Advisor for Housing Services, Office of the Secretary