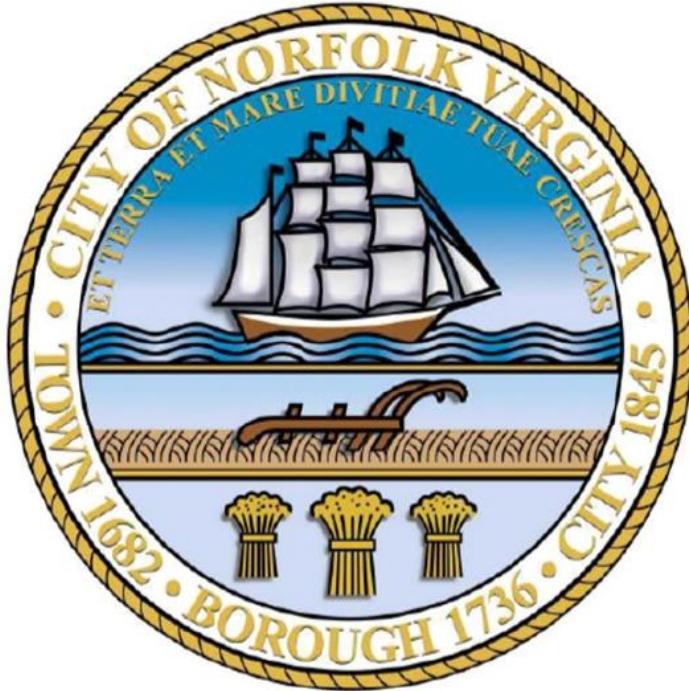


# HUD Entitlement Grants Policies & Procedures Manual



**City of Norfolk  
Department of Housing and Community Development  
Federal Program Management Division  
501-A Boush Street  
Norfolk, VA 23510**

<https://www.norfolk.gov/hudentitlement>

The City of Norfolk receives annual funding from the US Department of Housing and Urban Development for three entitlement programs: The Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG) and HOME Investment Partnerships (HOME) Program. This manual provides important guidance to current and potential subrecipient organizations.

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## Preface

The City of Norfolk receives annual allocations of Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG) and HOME Investment Partnership (HOME) funds from the U.S. Department of Housing and Urban Development (HUD). The Federal Program Management Division within the Norfolk Department of Housing and Community Development (NDHCD) administers these funds to provide decent housing, create suitable living environments, and expand economic opportunities for persons of low- and moderate- income in Norfolk.

The City of Norfolk accepts applications annually for these programs. Interested organizations must apply annually for funding. Applications are typically available in late November, with award decisions announced in May. Contracts run from July 1 to June 30 each year. Interested organizations are encouraged to sign up for program updates and notices for funding availability [here](#).

### Purpose of this Manual

This manual serves as NDHCD's administrative policy and procedure manual for its HUD allocations and is a resource for current subrecipients, as well as interested parties who are contemplating applying for grant funding. It also establishes the framework guiding the operation of the City of Norfolk HUD Entitlement Programs. It provides an approach for making decisions, ensuring the program is operated in a fair and consistent manner, and providing all program participants with an understanding of how the city manages these funds.

This manual includes the key compliance areas all subrecipients and interested parties should understand before applying for funding. It is not exhaustive regarding all considerations affecting the use of these funds. NDHCD reserves the right to add, remove or change policies, procedures, or forms in this manual in accordance with HUD regulations and the amendment process stated in the Citizen Participation Plan. Notwithstanding any information contained herein, where a conflict of language or omission of requirements occurs, the requirements of the Federal Notice and HUD Guidance on these programs, as may be amended from time to time, shall prevail.

### Regulatory Compliance

This manual is not meant to be a substitute for CDBG regulations ([24 CFR 570](#)), ESG regulations ([24 CFR 576](#)), HOME regulations ([24 CFR 92](#)), or related cross-cutting regulations, but as a supplement to them. Additional information and trainings on HUD requirements for each program may be found through HUD's resource website, [HUD Exchange](#).

The NDHCD Federal Program Management Division staff is responsible for the administration of multiple fiscal years of CDBG funding at any given point in the program year. The program year is consistent with the city's fiscal year (July 1-June 30). While this procedural manual covers the administration of a single program year from start to completion, it is important to keep in mind that in any given month, NDHCD staff will be responsible for tasks associated with two (2) or more program years of grant funds. If your project is selected for funding, the City of Norfolk HUD Program Specialist assigned to your project will provide you with additional information and assistance.

For questions related to this manual or program policies and requirements, contact your HUD Program Specialist directly or email the NDHCD Federal Program Management Division at [HUDentitlement@norfolk.gov](mailto:HUDentitlement@norfolk.gov).

## Updates

Information may change for a variety of reasons, including changes in program allocations or priorities, city requirements, and any other regulation updates as published through the Federal Register Notice or HUD Community Planning and Development (CPD) Notices. Users of this manual are encouraged to check for updates on the city's website at <http://www.norfolk.gov/hudentitlement>.

## Chapter 1: CDBG Overview

### Program Overview

The primary objective of the CDBG program is the development of viable urban communities through the provision of decent housing, a suitable living environment and expanded economic opportunities principally for persons of low-and moderate-income (LMI), defined as a person residing in a household with income at or below 80% of area median income adjusted for household size (AMI).

The CDBG program regulations found at 24 CFR Part 570 govern the city's use of program funds. To ensure that CDBG primarily benefits LMI people, HUD requires that at least 70% of CDBG funds spent on activities other than program administration benefit LMI. CDBG income limits can be accessed here through HUD's website [here](#).

### Community Development Block Grant Overview

<b>Program Primary Objective</b>	The primary objective of the CDBG program is the development of viable urban communities through the provision of decent housing, a suitable living environment and expanded economic opportunities principally for persons of low-and moderate-income, defined as a person residing in a household with income at or below 80% of area median income adjusted for household size (LMI).
<b>National Objective</b>	To achieve these objectives, the CDBG program includes a wide variety of eligible activities that may be implemented if a given activity meets one of three National Objectives: <ul style="list-style-type: none"><li>• Benefiting low- and moderate-income persons;</li><li>• Preventing and eliminating slum or blight; and</li><li>• Meeting an urgent need.</li></ul> To ensure that CDBG primarily benefits LMI people, HUD requires that at least 70% of CDBG funds spent on activities other than program administration benefit LMI. This requirement may be met during a one, two, or three-year certification period that is specified in the Annual Action Plan certifications.

<b>Program Regulations</b>	<p>The CDBG program regulations found at 24 CFR Part 570 govern the city's use of program funds. The regulations are divided into several subparts, including the following subparts that are applicable to the city and its subrecipients:</p> <ul style="list-style-type: none"> <li>• Subpart A – General Provisions</li> <li>• Subpart C – Eligible Activities</li> <li>• Subpart D – Entitlement Grants</li> <li>• Subpart J – Grant Administration</li> <li>• Subpart K – Other Program Requirements</li> <li>• Subpart M – Loan Guarantees (Section 108 Loan Guarantee Program)</li> <li>• Subpart O – Performance Reviews</li> </ul> <p>Subrecipients should also be familiar with the Uniform Administrative Requirements at 2 CFR 200.</p>
<b>CFDA</b>	<p>The Catalogue of Federal Domestic Assistance (CFDA) Number for CDBG entitlement programs is <b>14.218</b>.</p>
<b>Program Year</b>	<p>July 1 to June 30</p>

## Eligible Applicants

**Subrecipients.** A subrecipient, as defined by 24 CFR 570.500(c), is a public or private nonprofit agency, authority, or organization, or a for-profit agency assisted under 24 CFR 570.201(o) receiving CDBG funds from the grantee or another subrecipient designated by a grantee to receive CDBG funds to carry out CDBG-eligible activities.

**Nonprofits.** Private Nonprofits are usually, but not always, corporations, associations, agencies, or faith-based organizations with nonprofit status under the Internal Revenue Code (Section 501(c)(3)). Private For-Profit Entities may qualify as subrecipients when carrying out authorized economic development activities ([24 CFR 570.201\(o\)](#)).

**Community-Based Development Organizations (CBDOS)** may be designated as a subrecipient to carry out special activities such as economic development or new housing construction on behalf of the grantee ([24 CFR 570.204](#)).

## National Objective

The CDBG program outcomes must achieve one of three national objectives:

1. Benefiting low- and moderate-income persons;
2. Preventing and eliminating slum or blight; or
3. Meeting an urgent need.

## Chapter 2: Meeting a National Objective

### Benefiting Low- and Moderate-Income Persons (LMI).

There are four ways an activity can meet the LMI national objective:

- Low/Mod Area (LMA)
- Low/Mod Limited Clientele (LMC)
- Low/Mod Housing (LMH)
- Low/Mod Jobs (LMJ)

#### I. Low- and Moderate-Income Area (LMA)

LMA activities benefit all residents of a particular area. The area must be comprised of 51% or more LMI households and is also primarily residential. The benefits of this type of activity are available to all residents in the area regardless of income.

For example, projects such as a public facility improvement or a soup kitchen must consider all those who will benefit from the activity and if the service area is comprised of 51% or more LMI households.

To determine if a service area will meet the LMA national objective the applicant must provide the census tract(s) for the project. Refer to Appendix D for more on mapping the census tract(s).

Applicants who qualify under the LMA national objective are expected to maintain documentation demonstrating the boundaries of the service area, the basis for determining those boundaries, the percentage of Low/Mod Income persons in the service area, and the residential zoning determination.

More information on documenting LMA can be found [here](#) .

#### II. Low- and Moderate-Income Limited Clientele (LMC)

An LMC activity provides benefits to a specific group of persons who directly use the CDBG-funded service or facility. To meet the LMC National Objective, at least 51% of the beneficiaries of each activity must be members of low- to moderate-income households. Most public service activities use one of the LMC subcategories. To qualify under any of the LMC subcategories, a limited clientele activity must meet one (1) of the following criteria:

- Benefit a clientele that is generally presumed to be principally LMI
- Require documentation on family size and income
- Have income eligibility requirements limiting the activity to LMI persons only; or
- Be of such nature and location that it can be concluded that clients are primarily LMI.

*Presumed LMI Benefit:* activities that are exclusively presumed low income must benefit any combination of the following groups: abused children, elderly persons, battered spouses, severely disabled adults, homeless persons, illiterate adults, persons with aids, migrant farm workers, and the elderly.

#### **Household Documentation**

The city and its subrecipients must collect and retain documentation showing that the activity is designed to be used exclusively by one of these presumed low-income groups, and the clientele meet the definition of one of those groups. For example, a subrecipient administering a CDBG-funded Senior

Services program should retain a copy of a photo I.D. or birth certificate showing each beneficiary is at least 62 years of age. A subrecipient providing homeless services should retain evidence of the individual's or family's homeless status through self-certification or third-party documentation.) HUD publishes annual income limits adjusted for family size for each region annually. Such information must be collected even if an activity is limited exclusively to LMI individuals.

If the beneficiaries of a particular activity do not fall into one of the presumed low-income groups, then information on **family size and income** must be collected to document that at least 51% of the beneficiaries are persons whose family income does not exceed the income limits adjusted for family size.

Subrecipients must collect and retain documentation showing the size and annual income of the family of each person receiving the CDBG benefit. The income of each family member must be considered, not just the person receiving the benefit. Examples of income documentation include paystubs, tax returns, Social Security letters, etc.

#### **Nature and Location**

In limited circumstances, an activity may be of such **nature** and in such **location** that it can be reasonably concluded that the activity's clientele will primarily be low- and moderate-income people. An example would be a day care center that exclusively serves residents of a public housing complex.

The city will carefully examine such activities and receive HUD's written approval before attempting to meet the LMC National Objective in this manner.

#### **Preventing and Eliminating Slum or Blight**

The second of the CDBG national objectives is the preventing or eliminating slum or blight. The principal focus of that objective is to eliminate major slums and other areas of blight within the community and prevent the return of blight to the treated areas.

In developing the criteria for qualifying under this national objective, HUD has taken considerable care to ensure that eligible activities clearly eliminate objectively determinable signs of slums or blight in a designated slum or blighted area or are strictly limited to eliminating specific instances of blight outside such an area ("spot blight").

### III. Low- and Moderate-Income Housing (LMH)

The Low- and Moderate-Income Housing (LMH) subcategory is like the LMC subcategory, but the performance measure used is **households** instead of individuals.

Section §570.208(a)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures (including homeownership assistance) may qualify as benefiting LMI Households only to the extent that the housing is occupied by LMI Households.

**Household** means all persons occupying a housing unit. The occupants may be a family; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

The LMH subcategory is only satisfied if the housing unit will be occupied by an LMI household upon completion of the activity. The housing can be either owner- or renter-occupied and can be either a single-family or multifamily units.

When the housing is rented, the unit must be occupied by an LMI household at affordable rents as defined in the city's Consolidated or Annual Plan.

### **Housing Occupancy**

An assisted housing activity under the LMH subcategory is determined using the following general rules:

- All assisted single unit structures must be occupied by LMI households;
- An assisted two-unit structure (duplex) must have at least one unit occupied by an LMI household; and
- An assisted structure containing more than two units must have at least 51% of the units occupied by LMI households.

### **LMH Documentation**

Applicants must keep the following to demonstrate compliance under this subcategory:

- A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-unit structure assisted and the number of those units which will be occupied by Low/Mod Income Households after assistance.
- Total cost of the activity, including both CDBG and non-CDBG funds.
- Income and household documentation for the LMI household, and
- The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted.

## IV. Low- and Moderate-Income Jobs (LMJ)

An LMJ activity creates or retains permanent jobs, at least 51% of which, on a full-time equivalent (FTE) basis, are either held by LMI individuals or are considered available to LMI individuals. This objective is usually associated with economic development activities.

### **Job Created or Retained**

The following requirements must be met for jobs to be considered created or retained.

- For activities that create jobs, there must be documentation indicating that at least 51 percent of the jobs will be held by, or made available to, LMI persons; and
- For activities that retain jobs, there must be sufficient information documenting that the jobs would have been lost without the CDBG assistance and that one or both of the following applies to at least 51 percent of the jobs:
  - The job is held by a LMI person; or
  - The job can reasonably be expected to turn over within the following two years and steps will be taken to ensure that the job will be filled by, or made available to, a LMI person.

The following requirements apply for jobs to be considered available to or held by LMI persons.

- Created or retained jobs are only considered to be available to LMI persons when:
  - Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
  - The city and the assisted business take actions to ensure that LMI persons receive first consideration for filling such jobs.
- Created or retained jobs are only considered to be held by LMI persons when the job is held by a LMI person.

To determine if the preceding requirements are met, a person may be presumed to be LMI if:

- He/she resides in a census tract/block numbering area that has a 20-percent poverty rate (30- percent poverty rate if the area includes the central business district); and the area evidence pervasive poverty and general distress (as determined and documented by HUD); or
- He/she lives in an area that is part of a federally designated Empowerment Zone (EZ) or Enterprise Community (EC), or
- He/she resides in a census tract/block numbering area where at least 70 percent of the residents are LMI.

In counting the jobs to be used in the calculation for determining the percentage that benefit L/M income persons, the following policies apply:

- Part-time jobs must be converted to full-time equivalents (FTE) (e.g., a job that will require only working half time would count as only one-half a job);
- Only permanent jobs count; temporary jobs may not be included;
- Seasonal jobs are considered permanent for this purpose only if the season is long enough for the job to be considered as the employee's principal occupation;
- All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
- Jobs indirectly created or retained by an assisted activity (i.e., "spin off" jobs) may not be counted.

#### **LMJ Documentation**

There are five suggested options for documenting the LMI status of an applicant or employee:

- Referrals from an agency that has agreed to refer individuals who are determined to be LMI based on HUD's category. These agencies must maintain records, which must be available to the State or Federal inspection, showing the basis upon which they determined that the person was LMI;
- A written self-certification by the employee or applicant of his/her family size and total income that is signed and dated and subject to Federal review. Certification can either include actual size and income of family or can contain a statement that the annual family income is below the Section 8 low-income limit for the applicable family size;
- Qualification of employee or application for assistance under another program with income

qualification that are as restrictive as those used by the CDBG program. Examples include referrals from public housing, welfare agency, or the Workforce Innovation and Opportunity Act (WIOA) program;

- Evidence that the individual is homeless;
- Evidence that the individual may be presumed to be LMI by way of residence address and poverty rates of applicable census tract or documentation of area designation as Empowerment Zone or Enterprise Community.
- Program records must document which jobs were created and retained by job title, whether each such job was held by, taken by, or made available to a Low/Mod Income Person, the full-time equivalency status of each job, and the basis of determining LMI status.

HUD does not specify in statute or regulation the length of time within which these jobs must be or remain filled. The subrecipient agreement will provide more specific details on this expectation.

#### **Slum/Blight Area Basis**

To qualify under the national objective of slums/blight on an area basis, an activity must meet all the following criteria:

- The area must be officially designated by the grantee and meet a definition of a slum, blighted, deteriorated, or deteriorating area under state or local law. (For these purposes, it is not necessary to follow formal procedures under state law for designating slum or blighted area.)
- The area must exhibit the following physical signs of blight or decay, meaning there must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a safe harbor, HUD will consider this test to have been met if either:
  - The proportion of buildings in the area in such condition is at least equal to that specified in the applicable state law for this purpose; or
  - In the case where the applicable state law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least one quarter (25%) of all the buildings in the area must be deteriorated or deteriorating; or
  - The public improvements throughout the area must be in a general state of deterioration. (For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken must clearly exhibit signs of deterioration.)

#### **Slum/Blight Spot Basis**

The elimination of specific conditions of blight or deterioration on a spot basis is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas.

To comply with the national objective of elimination or prevention of slums or blight on a spot basis, i.e.,

outside a slum or blighted area, an activity must meet the following criteria:

- The activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and
- The activity must be limited to one of the following:
  - Acquisition;
  - Clearance;
  - Relocation;
  - Historic Preservation; or
  - Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

### Urgent Need

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the city certifies:

- Pose a serious and immediate threat to the health or welfare of the community,
- Are of recent origin or recently became urgent,
- The grantee is unable to finance the activity on its own, and
- Other resources of funding are not available to carry out the activity.

A condition will generally be considered of recent origin if it is developed or became critical within 18 months preceding the grantee's certification. The records should include:

- A description of the condition that was addressed, showing the nature and degree of seriousness of the threat it posed;
- Evidence the grantee certified that the CDBG activity was designed to address the urgent need;
- Information on the timing of the development of the serious condition; and
- Evidence confirming that other financial resources to alleviate the need were not available.

Qualification of activities under the Slum/Blight and Urgent Need Broad National Objectives is much less common than qualification under one of the four subcategories of the Low- and Moderate-Income Persons (LMI) Broad National Objective. If an agency is interested in pursuing funding under the Slum/Blight or Urgent Need categories, it is recommended that the agency contact the city's Federal Programs Bureau Manager prior to applying.

## Chapter 3: Eligible CDBG Activities

The CDBG program permits a wide variety of community, housing, and economic development activities. Some of the basic eligible CDBG activities include:

1. Housing Activities
2. Public Facilities
3. Economic Development
4. Public Services

### Housing Activities

CDBG funds may be used to assist existing homeowners with the repair, rehabilitation, or reconstruction of owner-occupied units. CDBG can be used for grants, loans, loan guarantees, interest subsidies, or other forms of assistance to homeowners for the purpose of repairs, rehabilitation, or reconstruction. These activities generally qualify under the Low-Mod Housing national objective.

### Rehabilitation

The city has the flexibility under the CDBG program to design owner-occupied or rental repair and rehabilitation programs that meet the needs of its residents.

Examples of the types of local programs that may be funded include:

- General programs aimed at rehabilitation of existing structures, including substantial rehabilitation programs, which typically bring the property up to local codes and standards.
- Special purpose programs, including:
  - Energy efficiency programs aimed at improving the energy efficiency of homes through additional insulation, new windows and doors and other similar improvements;
  - Handicapped accessibility programs through which improvements, such as installation of ramps and grab bars, are made to homes of persons with disabilities to make the home more accessible;
- Emergency repair programs that provide for the repair of certain elements of a housing unit in emergency situations, such as repairs to a roof that is leaking, but the whole house is not rehabilitated; and
- Weatherization programs aimed at improving a home's ability to withstand the elements, including insulation and weather-stripping.

Eligible costs include:

- Labor and materials,
- Replacement of principal fixtures and components of existing structures;
- Water and sewer connections;
- Installation of security devices, including smoke detectors;
- Conservation costs for water and energy efficiency;

- Landscaping, sidewalks, garages, and driveways when accompanied with other rehabilitation needed on the property;
- Evaluating and treating lead-based paint; and
- For rehabilitation
  - Initial homeowner warranty premium;
  - Hazard insurance premium (except when a grant is provided);
  - Initial flood insurance premium

### [Homeownership](#)

CDBG funds may be used to provide direct financial assistance to low-moderate income households with the purchase of a new home. Eligible assistance include:

- Up to 50% of required down payment;
- Reasonable closing costs;
- Principal write-down assistance;
- Interest rate subsidy (buy down);
- Acquisition financing; and
- Acquisition of guarantees for mortgage financing from private lenders (i.e., assist homebuyers with private mortgage insurance).

### [Community Based Development Organization - Homeownership Activities](#)

Homeownership assistance may also be eligible under a Special Activity through a Community Based Development Organizations (CBDOs). CBDOs located within a HUD approved Neighborhood Revitalization Strategy Area (NRSA) may also provide CDBG homeownership assistance as part of the neighborhood revitalization in the NRSA.

CDBG program funds under the CBDO activity may be used for homeownership activities in the NRSA including the rehabilitation and/or new construction of housing units to be sold to low to moderate income buyers.

The City of Norfolk does not have an active NRSA and does not currently accept projects for CBDO activities.

### [New Construction](#)

New construction of housing is generally ineligible under CDBG; however, the city may assist the new construction of housing by providing ancillary support for the development, including:

- Acquisition by public or nonprofit entities;
- Site clearance and assemblage; and
- Site improvements (if in public ownership)

Activities that involve rehabilitation and construction generally have a high level of environmental review and procurement requirements. NDHCD and any subrecipient interested in pursuing a housing activity with CDBG or with any HUD funding must refer to the environmental compliance and procurement sections for relevant information and requirements and coordinate on any such activities

to ensure compliance is met.

## Public Facilities and Improvements

The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements are eligible and may be carried out by the city, subrecipients, or another nonprofit. The facilities may only be owned by these types of entities. However, if the assisted facility is owned by a nonprofit, the CDBG program regulations stipulates that the facility must be open to the public during normal working hours.

Eligible types of facilities and improvements include:

- Infrastructure improvements (construction or installation) including, but not limited to streets, curbs, and water and sewer lines;
- Neighborhood facilities including, but not limited to public schools, libraries, recreational facilities, parks, playgrounds; and
- Facilities for persons with special needs such as facilities for the homeless or domestic violence shelters, nursing homes, or group homes for the disabled.
- A public facility otherwise eligible for assistance under the CDBG program may be assisted with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:
  - The public portion of the facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
  - The subrecipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.
  - Allowable costs are limited to those attributable to the eligible portion of the building or facility.

Eligible costs associated with eligible activities may include:

- Energy efficiency improvements;
- Handicapped accessibility improvements (including improvements to buildings used for general conduct of government); and
- Architectural design features and other treatments aimed at improving aesthetic quality (e.g., sculptures, fountains).

Ineligible Activities include:

- Routine maintenance and repair of public facilities used for the general conduct of government ;
- Operating costs associated with public facilities or improvements are ineligible unless part of a CDBG-assisted public service activity or eligible as an interim assistance activity.

## Economic Development

CDBG funds may be used for activities related to economic development, such as those discussed below.

### Special Economic Development

CDBG funds may be used to undertake certain special economic development activities such as:

- Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions.
- Assisting a private, for-profit business, including grants, loans, loan guarantees, and technical assistance; and
- Providing economic development services in connection with otherwise eligible CDBG economic development activities.

### **CBDO**

Economic development may also be undertaken by CBDOs to assist in neighborhood revitalization or community economic development. To be eligible, the CBDO must be carrying out neighborhood revitalization, community economic development or energy conservation projects.

The following restrictions apply when a CBDO undertakes an activity:

- CBDOs may not carry out otherwise ineligible activities (i.e., general government buildings or expenses, or political activities); and
- CBDOs cannot carry out special economic development activities that do not meet the city's underwriting guidelines for such projects and HUD's mandatory public benefit standards.

### **Technical Assistance**

A subrecipient may provide technical assistance to businesses. This activity involves providing technical assistance and training on topics such as business planning or accounting. This activity may be undertaken under several different eligibility categories, assuming the activity will meet a national objective:

- As a part of a special economic development project;
- As a public service;
- By a CBDO as a part of an eligible project; or
- As a part of microenterprise assistance package to the owner of a micro business for his or her employees.

### **Microenterprise Development**

Microenterprise development activities are designed to foster the development, support, and expansion of microenterprise businesses. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. A "person developing a microenterprise" refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business that will be a microenterprise at the time it is formed.

Eligible microenterprise activities include the provision of:

- Grants, loans, loan guarantees and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
- Technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
- General support to owners of microenterprises and persons developing microenterprises including childcare, transportation, counseling, and peer support groups; and

- Training and technical assistance or other support services to increase capacity of the subrecipients to carry out microenterprise activities.

### **Commercial Rehabilitation**

These activities bring commercial structures up to code or improve their facades. If the structure is owned by a private, for-profit entity, the following limitations apply:

- Rehabilitation is limited to the exterior of the building and the correction of code violations; and
- Any other improvements are carried out under the special economic development activities category discussed above.

### **Job training**

Job training involves providing skill building classes to employees or potential employees and can be an important part of an economic program. This activity can be undertaken:

- As a part of a special economic development project;
- As a public service;
- By a CBDO as a part of an eligible project; or
- As a part of microenterprise assistance package to the owner of a micro business for his or her employees.

### **Notable Restrictions on Economic Development Activities**

It is important to note the following restrictions:

- Job pirating is prohibited under Section 588 of the Quality Housing and Work Responsibility Act of 1998. Job pirating refers to the use of federal funds to lure or attract a business and its jobs from one labor market to another.
- CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubator projects designed to facilitate business relocation if:
  - The funding will be used to assist directly in the relocation of a plant, facility, or operation; and
  - The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs

### **Public Services**

Public Service agencies within the city are eligible for CDBG funding to carry out the public service activities listed below. While there is not a minimum threshold on funding for public service activities, HUD requires that no more than 15% of the city's annual CDBG allocation to be used toward this activity.

The CDBG program permits the use of funds for a wide variety of public service activities. Most public service activities are categorized as a social services and must meet a national objective. Some of the typical social services are delineated in the *CDBG Public Service Performance Measures Chart* below.

Activity Type	Targeted Beneficiaries	CDBG Purpose – Public Services	Unit of Measurement	National Objective
Direct Social Services	Seniors and/or Special Needs Population	<ul style="list-style-type: none"> <li>• Transportation</li> <li>• Meals</li> <li>• Rental assistance</li> <li>• Adult Day Care</li> <li>• ADA compliance and accessibility</li> <li>• Other Senior and/or Special Needs social service activities</li> </ul>	Number of individuals served	LMC
	Youth (Unaccompanied youth under 25 years of age)	<ul style="list-style-type: none"> <li>• Foster Care</li> <li>• Transitional Housing</li> <li>• Workforce Training</li> <li>• Counseling services</li> <li>• Substance Abuse</li> <li>• Other Youth social service activities</li> </ul>	Number of individuals served	LMC
	Low-Moderate Income (LMI) Persons	<ul style="list-style-type: none"> <li>• Day Care</li> <li>• Housing Counseling</li> <li>• Homebuyer Assistance</li> <li>• Rental Assistance</li> <li>• Other direct LMI social service activities</li> </ul>	Number of individuals/households served	LMI
Indirect Social Services	Low-Moderate Income Population (Area-wide)	<ul style="list-style-type: none"> <li>• Food Pantry</li> <li>• Homeless Activities</li> <li>• Health Services</li> <li>• Neighborhood Cleanup</li> <li>• Crime Awareness</li> <li>• Other Area-wide LMI social service activities</li> </ul>	<ul style="list-style-type: none"> <li>• Number of individuals/households served, <u>and</u></li> <li>• Percentage of low-moderate population in the service area (at least 51%)</li> </ul>	LMA
	Low-Moderate Income Population (Area-wide)	<ul style="list-style-type: none"> <li>• Fair Housing</li> <li>• Legal Services</li> <li>• Other Area-wide indirect LMI social service activities</li> </ul>	<ul style="list-style-type: none"> <li>• Number of individuals/households served, <u>and</u></li> <li>• Percentage of low-moderate population in the service area (at least 51%)</li> </ul>	LMA

#### New or Expanded Service Requirement

To use CDBG funds for a public service, the service must be either:

- ✓ A new service; or
- ✓ A quantifiable increase in the level of an existing service

### **Eligible Costs for Public Services**

CDBG funds may be used to pay for labor, supplies, and material as well as to operate and/or maintain the portion of a facility in which the public service is located. This includes the lease of a facility, equipment, and other property needed for the public service.

## **Fair Housing Activity**

Recipients of CDBG funds are held to the Fair Housing Act which prohibits discrimination in housing based on race, color, gender, sexual orientation, religion, creed, national or ethnic origin, age, family or marital status, disability, gender identity and people who are fleeing domestic violence, stalking, or other situations that are covered under the Violence Against Women Act (VAWA).

### *Fair Housing Public Service Costs*

Certain fair housing activities can be funded as a CDBG public service under 24 CFR 570.201(e). For example, fair housing counseling, fair housing complaint processing and testing in support of an individual complainant can be funded as a public service.

### *Fair Housing Administrative Costs*

Fair housing activities eligible for funding as administrative costs under 24 CFR 570.206(c) include those decisions to further the objectives of the Fair Housing Act by making persons aware of the range of housing opportunities available to them through fair housing enforcement, education, and outreach activities.

## Chapter 4: Emergency Solutions Grant Overview

### Program Overview

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) amended the McKinney-Vento Homeless Assistance Act, revising the Emergency Shelter Grants Program in significant ways and renaming it the Emergency Solutions Grants (ESG) program. The ESG Interim Rule took effect on January 4, 2012. The change in the program's name, from Emergency Shelter Grants to Emergency Solutions Grants, reflects the change in the program's focus from addressing the needs of homeless people in emergency or transitional shelters to assisting people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness. ESG is a formula grant program.

The ESG program provides funding to assist persons who are homeless or are at risk of becoming homeless. The program funds the following homeless activities: (1) engage homeless individuals and families living on the street; (2) improve the number and quality of emergency shelters for homeless individuals and families; (3) help operate these shelters; (4) provide essential services to shelter residents, (5) rapidly rehouse homeless individuals and families, and (6) prevent families/individuals from becoming homeless.

For more information on the definition of Homeless and criteria refer to **Appendices A and B**.

### Eligible Applicants

Eligible subrecipients are generally private nonprofit organizations with experience managing and operating homeless programs and initiatives. The Emergency Solutions Grant program regulations can be found at 24 CFR Part 576. Subrecipients are also required to conform with the Uniform Guidance requirements found at 2 CFR Part 200.

### Eligible ESG Activities

ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities (up to 7.5% of a recipient's allocation can be used for administrative activities).

#### 1. Street Outreach

Essential Services necessary to reach out to unsheltered homeless individuals and families, connect them with emergency shelter, housing, or critical services, and provide them with urgent, non-facility-based care. Component services generally consist of engagement, case management, emergency health and mental health services, and transportation. See [24 CFR 576.101](#).

#### 2. Emergency Shelter

- a. **Essential Services** for individuals and families in emergency shelter. Component services generally consist of case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, and transportation.
- b. **Shelter Operations**, including maintenance, rent, security, fuel, equipment, insurance,

utilities, and furnishings.

- c. **Relocation assistance** for persons displaced by a project assisted with ESG funds.

See [24 CFR 576.102](#).

### 3. Homelessness Prevention

- a. Housing relocation and stabilization services, and rental assistance as necessary, to prevent the individual or family **from moving into** an emergency shelter or another place. Services and assistance generally consist of short-term and medium-term rental assistance, rental arrears, rental application fees, security deposits, advance payment of last month's rent, utility deposits and payments, moving costs, housing search and placement, housing stability case management, mediation, legal services, and credit repair.
- b. Eligible costs include:
  - Rental Assistance: rental assistance and rental arrears
  - Financial assistance: rental application fees, security and utility deposits, utility payments, last month's rent, moving costs
  - Services: housing search and placement, housing stability case management, landlord-tenant mediation, tenant legal services, credit repair

See [24 CFR 576.103](#).

### 4. Rapid Re-Housing

- a. Housing relocation and stabilization services, and rental assistance as necessary, to help individuals or families **living in** an emergency shelter or other place described in paragraph (1) of the "homeless" definition move as quickly as possible into permanent housing and achieve stability in that housing. Services and assistance generally consist of short-term and medium-term rental assistance, rental arrears, rental application fees, security deposits, advance payment of last month's rent, utility deposits and payments, moving costs, housing search and placement, housing stability case management, mediation, legal services, and credit repair.
- b. Eligible costs include:
  - Rental Assistance: rental assistance and rental arrears
  - Financial Assistance: rental application fees, security and utility deposits, utility payments, last month's rent, moving costs
  - Services: housing search and placement, housing stability case management, landlord-tenant mediation, tenant legal services, credit repair

See [24 CFR 576.104](#).

### 5. Homeless Management Information System (HMIS)

HMIS is a client-level data collection and management system that allows for better coordination among agencies providing services to clients. It is not a national reporting system, and it is not designed to be a financial reporting/accounting system. Grant funds may be used for HMIS and comparable database costs.

ESG funds may be used to pay for the costs of participating in and contributing to the HMIS designated by the Continuum of Care for the area, pursuant to [24 CFR 576.108](#).

Eligible costs include:

- Purchasing or leasing computer hardware;
- Purchasing software or software licenses;
- Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- Obtaining technical support;
- Leasing office space;
- Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;
- Paying salaries for operating HMIS;
- Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;
- Paying staff travel costs to conduct intake; and
- Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

Additional costs may be eligible for HMIS Lead agencies. See [24 CFR 576.107](#).

### Ineligible Activities

The intent of ESG is to provide funding for housing or emergency shelter expenses to assist persons who are homeless, or would be homeless if not for this assistance. Case managers should work to link program participants to resources available through other programs.

ESG funds may **not** be used to pay for any of the following items:

- Cash assistance to program participants,
- Financial assistance to a household for a purpose and time period supported by another source,
- Rent or utility assistance longer than 24 months during any 3-year period,
- Property acquisition and new construction,
- Mortgage costs or costs to assist with any fees, taxes, or other costs of refinancing a mortgage,
- Late fees; The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

## Chapter 5: ESG Program Requirements

### **Matching Requirement**

Subrecipients must match grant funds with an equal amount of contributions, which may include cash, donated buildings or materials, and volunteer services. The city's policies requires that ESG subrecipient provide a 100% (1 for 1) match. Subrecipients must match grant funds with an equal amount of contributions, which may include cash, donated buildings or materials, and volunteer services. Matching is required to be reported quarterly in conjunction with reimbursement requests. The matching funds are provided based on the total grant amount and do not have to be provided on a component-by-component basis. For example, if a subrecipient is spending \$10,000 on HMIS, they do not need to find \$10,000 in HMIS expenses from another source to use as match.

The requirements for matching ESG funds are described in section 576.201 of the ESG Interim Rule, and the requirements for documenting matching contributions are described in section 576.500(o).

### **Continuum of Care Participation**

All ESG subrecipients must consult with the Continuum(s) of Care (CoC) operating within the jurisdiction in determining how to allocate ESG funds. The Continuum of Care in Norfolk is the **Southeastern Virginia Homeless Coalition (SVHC)**, for which The Planning Council is the lead agency.

The City of Norfolk and subrecipients will coordinate and integrate, to the maximum extent practicable, ESG-funded programs with other programs targeted or eligible to homeless people in the area covered by the Continuum of Care to provide a strategic, community-wide system to prevent and end homelessness for the area, per 24 CFR 576.400(b).

Homeless service programs receiving funding through the city's CDBG, HOME, ESG, and/or general revenue funds are required to participate in the CoC's Coordinated Entry System and meet the performance measures developed by the city in conjunction with the CoC.

### **Homeless Management Information System**

The City of Norfolk requires the use of HMIS by all local homeless providers receiving funding from ESG, other HUD entitlement programs, or the city's general revenue funds. The city works with the CoC in developing funding approaches, plus policies and procedures for the operation and administration of the CoC's HMIS through their involvement in CoC committees, serving on the CoC governing board, and ongoing discussions with the HMIS lead agency.

Projects receiving funding under Emergency Solutions Grant program must participate in HMIS. With the exception of victim service or legal service providers, all ESG subrecipients **MUST** enter client-level data into the HMIS in accordance to HUD's HMIS Data Standards. Victim service providers will use a comparable database that collects client-level data over time and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to a HMIS system. For more information about connecting to HMIS or for training opportunities, contact The Planning Council at 757-622-9268.

For more information about using HMIS visit the HMIS page [here](#).

### **Fair Housing and Civil Rights**

ESG program subrecipients must follow applicable fair housing and civil rights requirements and procedures and affirmative outreach for effective communication, accessibility, and reasonable accommodations for persons with disabilities and provide meaningful access to participation by limited English proficient (LEP) residents.

### **Fair Market Rent and Rent Reasonableness**

Rental assistance can only be provided as long as the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507 [provided here](#). These rent restrictions are intended to make sure that program participants can remain in their housing after their ESG assistance ends. Refer to **Appendix E** for City of Norfolk's rent reasonableness calculation.

For purposes of calculating, rent equals the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

These rules apply regardless of whether a household is seeking to maintain its current housing (Homelessness Prevention), or if the household is exiting homelessness into new housing (Rapid Rehousing).

To aid in understanding the rules and implementing them, HUD has released Rent Reasonableness and Fair Market Rent Under the Emergency Solutions Grants Program. It explains the requirements and addresses how to determine whether the unit cost exceeds or does not exceed FMR, how to calculate the gross rent amount, and tips for determining and documenting compliance.

*Exceptions:* The rent restrictions discussed in the ESG Interim Rule at 24 CFR 576.106(d) do not apply when ESG funds are being used solely for rental arrears assistance. Furthermore, they do not apply when a program participant receives only financial assistance or services under Housing Stabilization and Relocation Services. This includes rental application fees, security deposits, an initial payment of "last month's rent," utility payments/deposits, and/or moving costs, housing search and placement, housing stability case management, landlord-tenant mediation, legal services, and credit repair. (Note: "Last month's rent" may not exceed the rent charged for any other month; security deposits may not exceed 2 months' rent.)

### **Beneficiary Eligibility**

The minimum eligibility criteria for ESG beneficiaries are as follows: For essential services related to street outreach, beneficiaries must meet the criteria under paragraph (1)(i) of the "homeless" definition under § 576.2. For emergency shelter, beneficiaries must meet the "homeless" definition in 24 CFR 576.2. For essential services related to emergency shelter, beneficiaries must be "homeless" and staying in an emergency shelter (which could include a day shelter). For homelessness prevention assistance, beneficiaries must meet the requirements described in 24 CFR 576.103par. For rapid re-housing assistance, beneficiaries must meet requirements described in 24 CFR 576.104. Further eligibility criteria may be established at the local level in accordance with 24 CFR 576.400(e).

### **Client Confidentiality**

Confidentiality of all records is required. All records containing personally identifying information of any applicant for and/or recipient of ESG assistance will be kept secure and confidential. The Subrecipient should take care to redact unnecessary Personally Identifiable Information prior to submitting any documentation to the City of Norfolk for review.

#### **Protection for victims of domestic violence, dating violence, sexual assault, or stalking**

The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. The VAWA regulatory requirements under 24 CFR part 5, subpart L apply to all eligibility and termination decisions that are made with respect to ESG rental assistance on or after *December 16, 2016*. The recipient must ensure that the requirements under 24 CFR part 5, subpart L, are included or incorporated into rental assistance agreements and leases as provided in §576.106(e) and (g). Requirements related to VAWA are found in 24 CFR 576.409.

#### **Homeless Participation**

The subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under the ESG program. If the subrecipient is unable to meet this requirement, it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under the ESG program.

To the maximum extent practicable, the subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

#### **Environmental Review**

Emergency Solutions Grant recipients and subrecipients are subject to the Environmental Requirements found at 24 CFR Part 58. For more information refer to the Environmental Review section of this manual, and HUD's guide to the [Levels of Environmental Review for ESG Components](#).

#### **Lead-based Paint Requirements**

The lead-based paint requirements exist to protect vulnerable families from potential health hazards. To prevent lead-poisoning in young children, agencies must comply with these rules. For more information, refer to the [HUD Exchange Lead-Based Paint Resources Guide](#).

## Chapter 6: HOME Investment Partnerships Overview

The HOME Program was created by the National Affordable Housing Act of 1990 (NAHA) and is referred to as the HOME Investment Partnerships Act. The Act has been amended several times. Implementing regulations can be found at Title 24 Code of Regulations, Part 92, as amended (The Final Rule). HUD CPD Notices also provide detailed guidance on a specific subject by explaining how the HOME program regulations should be interpreted or applied.

HOME is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.

The intent of the HOME Program is to:

- Provide decent affordable housing to lower-income households,
- Expand the capacity of nonprofit housing providers,
- Strengthen the ability of state and local governments to provide housing; and
- Leverage private-sector participation.

In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families.

State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

### HOME Partnerships

The HOME Program requires participating jurisdictions to maintain existing partnerships and to forge many new ones. Partners play different roles at different times, depending upon the project or activity being undertaken. Typical partners under HOME include:

- *Local Governments and Public Agencies:* Public organizations, departments or other agencies that may provide programs and services with the support of HOME funds from NDHCD
- *Subrecipients:* Nonprofit organizations (including faith-based organizations) able to provide programs and services on behalf of the City of Norfolk with the support of HOME funds
- *Community Housing Development Organization (CHDO):* A CHDO is defined as a private, nonprofit, community-based service organization that meets a series of qualifications prescribed in the HOME regulations at 24 CFR Part 92.2 and is certified as a CHDO by the City of Norfolk. CHDOs may receive HOME funds as the owner, developer or sponsor of affordable housing for the community it serves. CHDOs are further defined below.
- *For-profit Developers:* A firm that either owns a property and seeks to develop an affordable housing project or has a contractual obligation to a property owner to develop an affordable

housing project.

- *Private lenders:* Financial institutions that support loans for development of affordable housing and/or mortgages for homeownership programs supported with HOME funds
- *Third-party contractors:* A contractor working for a developer or subrecipient.

#### Community Housing Development Organization (CHDO):

The City of Norfolk must reserve not less than 15 percent of its HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organization. Up to five percent of the allocation may be used for the operating expenses of the CHDO, refer to the City of Norfolk's CHDO Guidance [here](#).

A Community Housing Development Organization (CHDO), as defined under [24 CFR part 92.2](#), is a private, nonprofit, community-based organization with qualified staff that receives HOME funds for an eligible housing activity. CHDOs are further defined by their legal structure, organizational independence, role and accountability to the low-income community, and their capacity and experience. Organizations seeking to operate as a CHDO must complete certification with NRHA and be approved by the City of Norfolk. Certification (and recertification) is completed on an annual basis per HUD guidance and interpretation of [24 CFR part 92.300](#).

CHDOs are eligible to complete new construction or rehabilitation projects for affordable homeownership or rental. CHDOs must be the owner, developer, or sponsor of the affordable housing project in the community that they serve. In owner or developer roles, CHDOs must own HOME-assisted housing in fee simple absolute.

- **Owner:** A CHDO is considered an owner of a property when it holds valid legal title. The CHDO may be an owner with one or more individuals, corporations, partnerships, or other legal entities, but must be the managing general partner with effective control (in decision-making authority) of the project.
- **Developer:** A CHDO is considered a developer when it either owns the property and develops the project or has the contractual obligation to a property owner to develop a project. Under [24 CFR 92.252](#), if the CHDO owns the property, it must be in total control of the development process, which includes:
  - Zoning,
  - Securing non-HOME financing,
  - Selecting architects, engineers, and general contractors,
  - Overseeing the progress of the work, and
  - Determining the reasonableness of costs.
- **Sponsor:** A CHDO may be a sponsor for both HOME-assisted rental housing and homebuyer housing, where it is in agreement with another organization or firm to transfer ownership after the project is complete. A CHDO sponsor must always own the project before and/or during the development phase of the project.

CHDOs may also be eligible for HOME funds to assist with general operating expenses related to development activities and capacity building, depending on availability of funds. Refer to CHDO

Operating Costs under HOME Eligible Activities. For more on CHDO certification and requirements, refer to the City of Norfolk's CHDO Guidance [here](#).

### Match Requirement

The City of Norfolk must contribute or match no less than 25 percent of HOME funds spent on affordable housing. The matching contribution adds to the resources available for HOME-assisted or HOME-eligible projects and must come in the form of a permanent contribution to affordable housing. As needed, NDHCD may pass down the match requirement to Subrecipients, Developers and/or CHDOs as part of receiving a HOME award.

Generally, investments from state or local governments or the private sector qualify as matching contributions, whereas federal funds (such as CDBG) do not qualify.

Eligible sources of a match for HOME funds include: cash; donated construction materials or volunteer labor; value of donated land or real property; value of foregone interest, taxes, fees, or charges levied by public or private entities; investments in on-or offsite improvements; proceeds from bond financing; the cost of supportive services provided to families living in HOME units; and the cost of homebuyer counseling to families purchasing HOME-assisted units.

The HOME statute provides for a reduction of the matching contribution requirement under three conditions: 1) fiscal distress; 2) severe fiscal distress; and 3) for Presidentially-declared major disasters covered under the Stafford Act. Subrecipients should review whether the City of Norfolk qualifies for the reduced match requirement each year. For more information on match requirements, see [24 CFR 92.218](#).

### Long-Term Affordability

To ensure investments provide affordable housing over the long term, rent and occupancy restrictions continue throughout the period of Affordability.

The minimum length of an affordability period depends on the amount of the HOME investment in the property and the nature of the activity:

HOME Investment per Unit	Affordability Period
Less than \$15,000	5 years
\$15,000-\$40,000	10 years
More than \$40,000	15 years
New construction of rental housing	20 years
Refinancing of rental housing	15 years

Throughout the period of affordability, income eligible households must occupy the assisted units. When designated rental units become vacant during the period of affordability, subsequent tenants must be income eligible and must be charged the applicable rent.

When down payment assistance and closing cost support is provided to an eligible buyer, a Promissory Note and Deed of Trust will be signed by the Borrower(s) and recorded by the Closing Agency/Attorney, immediately following the settlement date, to secure repayment of the HOME subsidy to NRHA, as NDHCD's program subrecipient. Once the Promissory Note and Deed of Trust have been recorded in the Norfolk Circuit Court as a public record, NRHA has a lien on the property, with NDHCD listed as an interested party, for the term of the affordability period. All notifications and requests for payoffs and lien subordinations will be forwarded to NRHA and NDHCD. If a home purchased with HOME assistance is sold during the period of affordability, recapture provisions, outlined in the Homebuyer section below, apply to ensure the continued provision of affordable housing.

### [Income Eligibility and Verification](#)

Beneficiaries of HOME funds—homebuyers, homeowners or tenants—must be low-income or very low-income. “Low-income” is defined as an annual income that does not exceed 80 percent of area median income, as adjusted by household size. “Very low income” is defined as having an annual income that does not exceed 50 percent of area median income, as adjusted by household size. A household’s income eligibility is determined based on its annual income. Annual income is the gross amount of income anticipated by all adults in the household during the 12 months following the effective date of the determination. To calculate annual income, the responsible partner (subrecipient, CHDO, developer, etc.) may choose from:

- Section 8 annual (gross) income. Annual income determinations are based on the Part 5 definition of annual income. Note that this definition is now known as Part 5.
- IRS adjusted gross income. The calculation for “adjusted gross income” outlined in the Federal income tax IRS Form 1040.

Note: The Low Income Housing Tax Credit (LIHTC) Program requires the use of the Part 5 definition of income; therefore, projects that use both HOME and LIHTCs can use the Part 5 definition and comply with the requirements of both programs.

## Chapter 7: HOME Eligible Activities and Costs

### Eligible Activities

HOME funds may be used to develop and support affordable rental housing and homeownership through:

- Acquisition (including assistance to homebuyers)
- Tenant-based rental assistance (TBRA) to eligible household(s), including security deposits;
- Operating expenses of Community Housing Development Organizations (CHDO).
- New construction (includes adding additional units to an existing structure), Reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including related costs such as:
  - Real property acquisition,
  - Site improvements,
  - Demolition, and
  - Other eligible expenses including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations.

All housing supported with HOME funds must be permanent or transitional housing. The specific eligible costs for these activities are set forth in [24 CFR 92.206](#) through [209](#). The activities and costs are eligible only if the housing meets the property standards as outlined at [24 CFR 92.251](#) upon project completion. Any HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and will be subject to recapture.

### Ineligible Activities

HOME funds shall not be used to:

- Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;
- Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;
- Provide non-federal matching contributions required under any other Federal program;
- Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);
- Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;
- Provide assistance to rehabilitate manufactured housing units.
- Provide assistance (other than TBRA or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under §92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

- Pay for the acquisition of property owned by the City of Norfolk, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.
- Pay for any cost that is not eligible under §§ 92.206 through 92.209.
- Support activities in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

### Maximum Values and Limits

HOME investments are for modest housing. Thus, HOME imposes maximum value limits on owner-occupied and homebuyer units, investments and rental fees.

### Maximum HOME Subsidy

The amount of HOME funds available for new construction per unit is determined by the maximum limits for elevator-type projects set by HUD for each jurisdiction or metro area. The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project. The amount of HOME funds that can be invested on a per-unit basis in affordable housing may never exceed the per unit dollar limits for elevator-type projects that apply to the area in which the housing is located.

For information on maximum per-unit subsidy limits, see [CPD Notice 15-003, HOMEfires Vol. 12, No. 1](#), and the [HOME Maximum Per-Unit Subsidy Limits](#) on the HUD Resource Exchange.

### Purchase Price

The maximum purchase price may not exceed 95 percent of the median purchase price of homes purchased in the area. In the case of a purchase-rehabilitation project, the value of the property after rehabilitation may not exceed 95 percent of the area median purchase price for that type of housing. HUD provides the [HOME Homeownership value limits](#) for new construction and existing units for the metro area on the HUD Exchange website and releases updates annually. The after-rehabilitation value estimate should be completed prior to investment of HOME funds.

### Rent Limits

HOME-assisted rental housing must comply with certain rent limitations. HOME rent limits are published each year by HUD at <https://www.huduser.gov/portal/datasets/HOME-Rent-limits.html>.

### Eligible Project Costs

HOME funds may be used to pay the following eligible costs. All costs must be necessary to the development of the project.

- New Construction and Rehabilitation
  - Acquisition Costs
  - Development Hard Costs
  - Related Soft Costs
  - Relocation Costs
- Community Housing Development Organization Costs

- Tenant Based Rental Assistance:
  - Eligible costs include the rental assistance and security deposit payments made to provide tenant-based rental assistance for eligible households.
  - Administration of tenant-based rental assistance is generally eligible only under administrative expenses (subject to administrative CAP). Specific exceptions will apply where costs for income certifications and unit inspections can be directly assigned to individual projects.

If a property supported (acquired, rehabilitated, etc.) with HOME funds is ultimately unable to provide affordable housing in accordance with HUD regulations, the project will be deemed ineligible and subject to the recapture of HOME funds. These project costs are explained in further detail in the following pages.

## [New Construction and Rehabilitation Eligible Costs](#)

### **Manufactured Housing**

- HOME funds may be used to purchase manufactured housing units or purchase the land upon which a manufactured housing unit is located.
- Any manufactured housing unit purchased with HOME funds must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

### **Acquisition Costs:**

- Includes costs of acquiring improved or unimproved real property.
- Acquisition of vacant land or demolition can only be undertaken for particular housing project intended to provide affordable housing.
- Costs to make utility connections to an adjacent street or to make improvements to the project site, in accordance with the provisions of § 92.206(a)(3)(ii) and (iii) are also eligible in connection with acquisition of standard housing.

### **Development Hard Costs:**

- Includes the actual cost of constructing or rehabilitating housing.
- New Construction: Project costs must meet the City of Norfolk construction standards and building codes attached to this document.
- Rehabilitation: Project costs must meet the City of Norfolk construction standards and building codes attached to this document. Demolition of Existing Structures (Remember that Uniform Relocation Act applies)
- Creation of utility connections including off-site connections from the property line to the adjacent street.
- Improvements to the project site (only property owned by the project owner, where the project

is located) that is in keeping with improvements of surrounding, standard projects. Including:

- On-site roads
- Sewer Lines
- Water lines
- Costs to construct or rehabilitate laundry and/or community facilities located in the same building as the housing for the use of project residents (only applicable to multi-unit rental housing).

**Soft Costs:**

Soft costs include other reasonable and necessary costs incurred by the owner and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

- Architectural Services
- Engineering Services
- Preparation of plans, drawings, specifications, or work write-ups
- Costs to process and settle the financing for a project
- Private lender origination fees
- Credit reports
- Fees for title evidence
- Fees for recordation
- Filing of legal documents
- Building permits
- Attorney's fees
- Private appraisal fees
- Fees for an independent cost estimate
- Builders or developers fees
- Costs of a project audit
- Affirmative marketing and fair housing information to prospective homeowners and tenants
- Staff and overhead costs directly related to carrying out the project, such as:
  - Work specifications preparation
  - Loan processing inspections
  - Other services related to assisting potential owners, tenants, and homebuyers
  - Housing counseling (only for individuals who ultimately occupy a HOME unit)
- For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction
- Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project
- Cost of funding an initial operating deficit reserve, not to exceed 18 months (ONLY eligible for new construction or rehabilitation projects):
  - Only can be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service
  - Any HOME funds placed in an operating deficit reserve that remains unexpended after the period of project rent-up may be retained for project reserves

- Relocation costs (for persons displaced by the project):
  - Replacement housing payments
  - Moving expenses
  - Other reasonable out-of-pocket costs incurred in the temporary relocation of persons
- Staff time associated with providing relocation to displaced persons (including referrals housing search assistance, property inspections, counseling, and other assistance necessary to minimize hardship)
- Payment of Construction Loan, Bridge Financing, or Guaranteed Loan (principle & interest), if:
  - The Project meets all HOME requirements and the loan was used for eligible costs specified in HOME Regulations and this policies and procedures manual; and
  - The HOME assistance is part of the original financing for the project

**CHDO Operating Costs:**

- Operating expenses may be awarded (separate from project) to support CHDO capacity for affordable housing development work. Operating expenses must be reasonable and necessary costs for the operation of the community housing development organization. Refer to City of Norfolk's *CHDO Guidance* for eligible operating costs.

CHDOs acting as a subrecipient under the HOME Program are NOT eligible for operating expenses separate from the program award.

**HOME Subsidy Layering and Underwriting Policy**

Applicants seeking HOME funds are required to submit to the City's Department of Housing and Community Development. Before committing funds to a project, the City must evaluate the proposal, including the project budget and expected operating budget (rental development), to determine that there will be a reasonable level of profit or return on the owner's or developer's investment in a project and that no more HOME funds are invested, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for the entire affordability period. This evaluation will include:

- An examination of the total development cost and all sources and uses of funds for the project to make a determination that the costs are reasonable.
  - *Total Development Costs:* Eligible costs should be estimated and classified to include costs for Site Acquisition and Preparation, Construction/Rehabilitation, Soft Costs, and Developer Fees. Ensure all costs eligible under [24 CFR part 92.206](#).
  - *Sources and Uses:* Sources are the funds that will be used to pay for costs. Uses are the one-time costs associated with the project. Sources should be verified with documentation of a firm commitment from each source. Once the HOME funds request is included, the total sources should equal or exceed the total development costs.
- Commitment letters with all terms and conditions for the following:
  - Mortgages
  - Grants and/or other governmental assistance
  - Subordination agreements
  - Bridge (interim) loans

- Investment tax credits (historic, low-income, if applicable)
  - Copy of partnership agreement (if the applicant is a partnership), which indicates the cash contributions by the general partners and/or limited partners
- An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm written financial commitments for the project.
  - A market analysis or evaluation of developer capacity is not required for projects involving rehabilitation of owner-occupied housing units, or for HOME-funded down payment assistance projects which do not include HOME- funded development activity.
- Developer Experience and Capacity;
- Long-term projected profitability and financial health of the project over the affordability period and/or through the end of the development cycle;
- The City may rely upon the guidelines developed and/or evaluations conducted by other agencies, such as when Low Income Housing Tax Credits (LIHTC) or other HUD program funding, are used.

Note: The proceeds from the sale of tax credits must be identified as a source of funding. Documentation to verify the sources indicated in the Template including:

- Earnest money agreement, option or closing statement for land and/or buildings
- Construction cost estimate
- Construction contract or preliminary bids
- Agreements governing the various reserves which are capitalized at closing (to verify that the reserves cannot be withdrawn later as fees or distributions)
- Appraisal (to substantiate the value of land and property after rehabilitation/construction)

If low-income housing tax credits are utilized, documentation on the syndication costs (legal, accounting, tax opinion, etc.) from the organization /individual who will syndicate and sell the offering to ensure that the project can support the fees necessary to syndicate/fund the project. All assumptions in the offering should be verified in the supporting documentation.

If the documentation is not adequate and does not support the costs as stated, the City will request additional documentation or a second opinion and/or reference from an appropriate source, such as another construction cost estimator, architect, or lawyer. When required documentation cannot be obtained, the City may deny HOME funding for the project.

#### [Site and Neighborhood Standards for Potential HOME Rental Projects:](#)

Proposed sites for potential HOME rental projects must meet the following site and neighborhood standards:

- Be adequate to accommodate the number and type of units proposed;

- Have sufficient utilities and streets to service the site;
- Be in full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063;
- Promote greater choice of housing opportunities;
- Avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- Be accessible to social, recreational, educational, commercial, and health facilities and services,
- Be accessible to municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- Be so located to places of employment providing a range of jobs for lower income workers.
- The neighborhood must not be one which is seriously detrimental to family life or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- The site must not be located in an area of minority concentration, except as permitted below:
  - Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; or
  - The project is necessary to meet overriding housing needs that cannot be met in that housing market area.

Please refer to [24 CFR 983.6](#) for more details regarding utilization of the exceptions listed above.

## Chapter 8: Other HOME Requirements

### Lease Requirements

The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

### Prohibited lease terms:

The lease may not contain any of the following provisions:

- Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
- Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- Termination of tenancy. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

### Construction Standards

Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

All other HOME-assisted housing (e.g., acquisition) must meet all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing.

An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest. Before the transfer of the homeownership interest, the City of Norfolk or subrecipient will:

- Inspect the housing for any defects that pose a danger to health; and
- Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

## [Environmental Review](#)

HOME recipients and subrecipients are subject to the Environmental Requirements found at 24 CFR Part 58, and described in ***Chapter 15*** of this manual.

## [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 in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to projects assisted under HOME program.

The lead-based paint requirements exist to protect vulnerable families from potential health hazards. To prevent lead poisoning in young children, agencies must comply with these rules. For more information, refer to the [HUD Exchange Lead-Based Paint Resources Guide](#).

## [Fair Housing](#)

Recipients of HOME funds are held to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063 20Title VI of the Civil Rights Act of 1964, P. L. 88-352 and the regulations of HUD with respect thereto, including 24 CFR, Parts 1.

Section 109 of the HCD Act of 1974, Title I, prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex within Community Development Block Grant (CDBG) programs or activities<sup>1</sup>.

See also in this manual (**Chapter 14**): Davis-Bacon Act, Affirmative Outreach, and Uniform Relocation Assistance

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<sup>1</sup> Section 109 of Housing Community Development Act of 1974, Program Description, HUD  
[https://www.hud.gov/programdescription/sec109#:~:text=Section%20109%20of%20the%20HCD%20Act%20of%201974%2C%20Title%20I,\(CDBG\)%20programs%20or%20activities.](https://www.hud.gov/programdescription/sec109#:~:text=Section%20109%20of%20the%20HCD%20Act%20of%201974%2C%20Title%20I,(CDBG)%20programs%20or%20activities.)

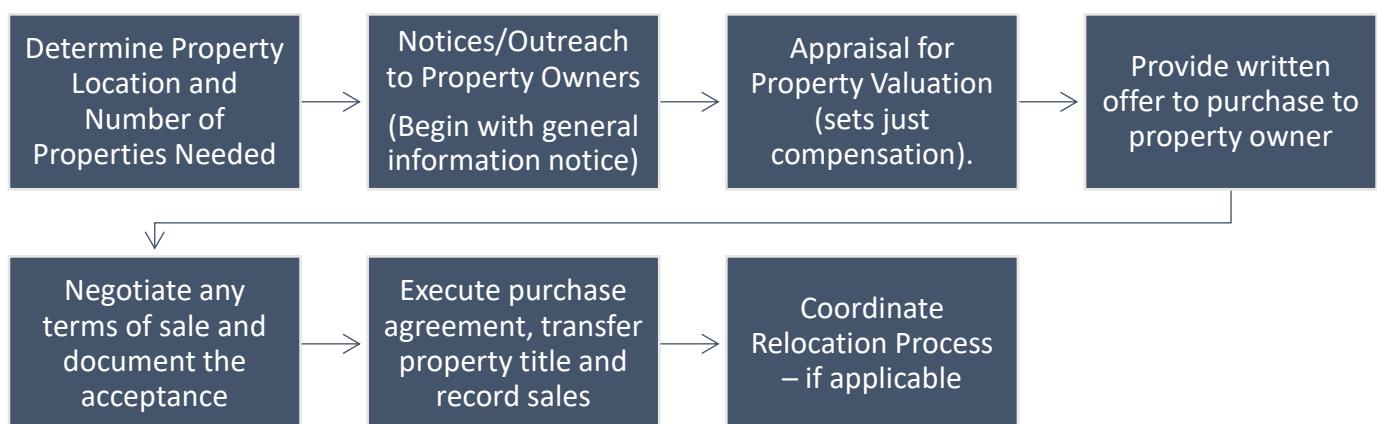
## Chapter 9: Uniform Relocation Act and 104(d)

Whenever Federal funds are used in a project that includes the acquisition, rehabilitation or demolition of real property, a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) generally applies. In some cases, the use of CDBG or HOME funds in a project involving the demolition or conversion of lower income dwellings may also trigger another federal law under Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)).

- The URA establishes minimum requirements for the acquisition of real property and the displacement of persons from their homes, businesses or farms as a result of acquisition, rehabilitation or demolition for a federally funded project. The URA requires relocation assistance and payments to be provided to all eligible displaced persons. The government-wide regulations that implement the URA are 49 Code of Federal Regulations (CFR) Part 24.
- Section 104(d) establishes minimum requirements for the displacement of lower income persons who, in connection with a HOME or CDBG funded activity, are displaced as a result of demolition or conversion of a lower income dwelling. Section 104(d) requires relocation assistance and payments to be provided to all eligible displaced lower income persons. Although the relocation payments and assistance under section 104(d) are generally similar to the URA, there are some important differences. It is also important to note that section 104(d) requires the replacement on a one-for-one basis of lower income dwellings demolished or converted to another use other than lower income housing in connection with a HOME or CDBG funded activity. 24 Code of Federal Regulations (CFR) Part 42 are the HUD regulations that implement Section 104(d) requirements.

### Acquisition

When discussing acquisition – the purchase of real estate property – the purchasing entity **must** determine what type of acquisition will take place. For the purposes of URA, there is only Voluntary and Involuntary acquisition, which are each defined below. Once the acquisition type is determined during the planning stage, the purchasing agency **cannot** change the acquisition type. Failure to adhere to the identified acquisition type could lead to any acquisition being **deemed ineligible**.



## Voluntary

When the City or subrecipient determines that it needs to purchase property for the completion of a project, the first necessary action is to determine whether the acquisition is voluntary or involuntary. Voluntary acquisition is:

- Less restrictive,
- Typically, less costly, and
- Typically, less time consuming.

Three requirements define voluntary acquisitions, and **all three must be in place** for a voluntary acquisition to occur:

- No use of eminent domain power or threat to use it, even if the entity acquiring the property is a municipality with such authority; AND
- Projects in which no specific site or property needs to be acquired; AND
- All or substantially all of the property within the area will NOT be acquired within a specified time frame.

When possible, it is usually encouraged to acquire property through the voluntary acquisition process; however, the City must ensure that they are not using voluntary acquisition as a means of avoiding involuntary requirements. It is important that acquisition determinations are based on the requirements in 49 CFR 24 to avoid any repercussions.

Sometimes there is confusion about what is considered “voluntary.” A common misconception is that “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not true under URA. The applicable requirements of the regulations at [49 CFR 24.101\(b\)\(1\)-\(5\)](#)<sup>2</sup> must be satisfied for a transaction to be considered voluntary.

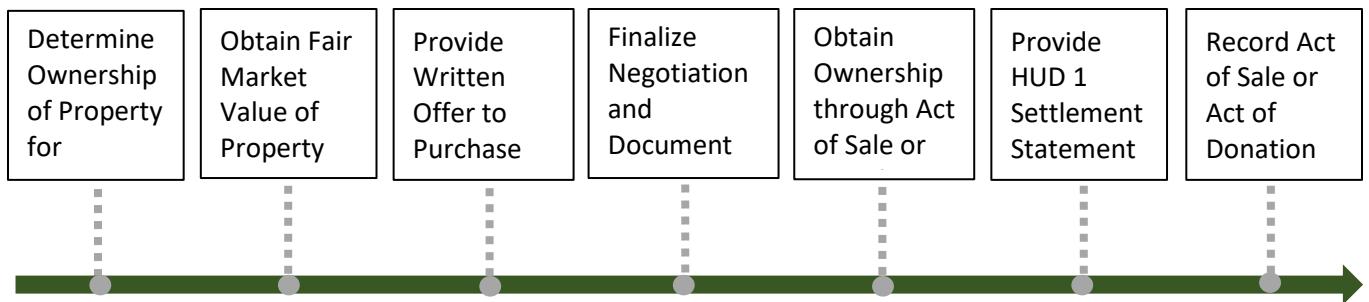
When acquiring property under voluntary acquisition, the following are the minimum required actions to complete during the process.

- Establish current ownership of property,
- Establish fair market value through market analysis. Though not required by HUD on voluntary acquisitions, it is best practice to also have an appraisal conducted on the property,
- Document notification of offer and acceptance by property owner,
- Obtain ownership of property through Act of Sale or Act of Donation and provide HUD 1 Settlement Statement,<sup>3</sup> and
- Record Act of Sale or Donation.

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/CFR-2003-title49-vol1/pdf/CFR-2003-title49-vol1-sec24-101.pdf>

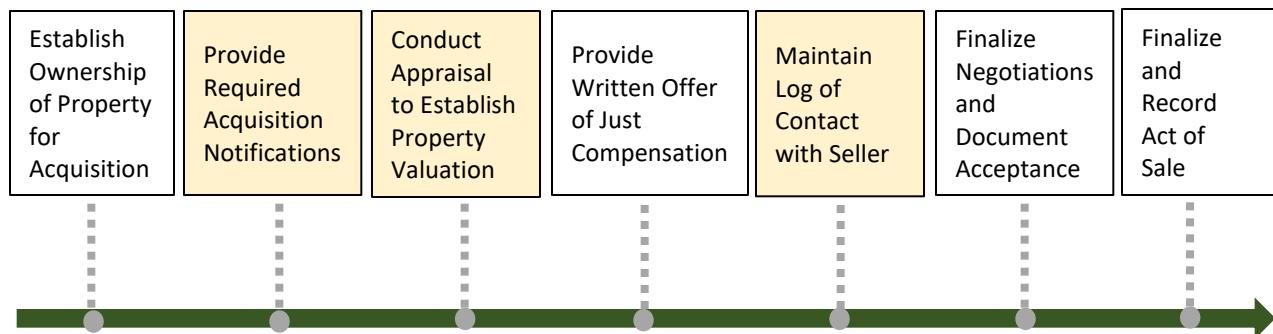
<sup>3</sup> <https://www.hud.gov/sites/documents/1.PDF>



## Involuntary

If acquisition is required to complete the project and does not meet any of the exceptions detailed in 49 CFR 24.101(b)(1)-(5), it falls under the category of involuntary acquisition. Involuntary acquisition is a more complex process that requires more formalized steps to ensure the rights of the individual/family is not violated and additional notifications, to include but not limited to:

1. Increase in formal notices to individual/family impacted by the property (land) acquisition.
  - a. Some additional notices that are required are
    - i. 90-day notice to Move
    - ii. 30-day notice to Move
    - iii. Notification of Displacement/Non-displacement
    - iv. Notification of Eligibility Benefits
    - v. Just Compensation Statement and Offer to Property Owner (Voluntary and Involuntary).
    - vi. Record log of Communication – to include evidence of receipt of communication – with property owner (Voluntary and Involuntary).
2. Formal conducting of appraisal to establish property valuation. Here it is strongly recommended that the property owner be invited to attend the appraisal of the property.
3. Creation of a [RAPAP Plan](#) for relocation services and benefits.
  - a. Relocation Benefits will be required for individual/family who are determined to be displaced as a result of the acquisition
  - b. Relocation Advisory Services are required for individual/family who are determined to be displaced as a result of the acquisition
4. Project requires a specific parcel of property in order to be viable. In voluntary acquisition, the parcel is not required but is sought after. If – for voluntary acquisition – the acquisition is unsuccessful, it does not have a significant impact on the viability of the project.



Involuntary acquisition places a larger focus on notification between the acquiring agency and the property owner or tenant.

### Appraisal

The valuation process requires an appraisal and a review appraisal to establish the fair market value of the targeted property acquisition. Either of the following two conditions will trigger the need for an appraisal:

- The value of the property is estimated to be more than \$10,000; or
- The owner of the property wants an appraisal.

The program will utilize a state licensed appraiser to conduct the appraisal of the property and furniture, fixtures and equipment (FF&E) for business acquisitions, if necessary. The appraiser will be selected based on the established criteria per 49 CFR 24.103(d)<sup>4</sup>. See also FHWA Questions and Answers covering 49 CFR 24.103<sup>5</sup>.

The appraisal will be used to establish the fair market value (FMV) at the time of valuation. It will not consider any recent zoning changes or future development. The price offered will be no less than the fair market value.

If an appraisal is required, the property owner **must** be invited to accompany the appraiser during the inspection. During the appraisal process, the City must provide the property owner with an opportunity to accompany the appraiser during the inspection of the property. The appraiser and the acquiring entity must accommodate any reasonable request in order for the property owner to meet with the appraiser. The property owner also has the right to obtain his or her own appraisal. If the two appraisals differ, the acquiring entity and the property owner will meet to discuss the differences and attempt to agree on a price.

A review appraisal must be conducted to ensure that the original appraisal was conducted in a manner that meets appraisal industry standards and meets standards set in the URA, 49 CFR 24.103, and in the *HUD Handbook (Section 1378.0, Ch. 5, Part J)*<sup>6</sup>. It is important to note that the review appraisal does not take the place of the original appraisal nor is it a standalone appraisal. The file will document that the

<sup>4</sup> <https://www.govinfo.gov/content/pkg/CFR-2003-title49-vol1/pdf/CFR-2003-title49-vol1-sec24-103.pdf>

<sup>5</sup> [https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafags.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafags.cfm)

<sup>6</sup> <https://www.hud.gov/sites/dfiles/OCHCO/documents/1378c5CPDH.pdf>

original appraisal was reviewed by qualified staff, and that no conflict of interest exists between the person conducting the original appraiser and the review appraiser. An updated appraisal, however, will be required if six or more months have passed since the original appraisal was completed. All appraisals will be carried out by a qualified appraiser using the requirements of 49 CFR 24.103(d).

### [\*\*Appraisal Exceptions, Waivers, and Conditions\*\*](#)

While 49 CFR 24.102 allows exceptions for appraisals, when a waiver is required the conditions of requesting the waiver **must be** strictly adhered to in order to be in compliance with requirements. 49 CFR 24.102(c)(2) outlines when an appraisal is not required but allows for the City to offer the impacted individual(s) the option to have an appraisal conducted. The situations below detail those conditions and the process:

#### *1. Valuation of property is estimated to not exceed \$10,000*

Based on available market data, if the City determines that the valuation process is uncomplicated and the anticipated value of the proposed acquisition is estimated to not exceed \$10,000, the City must fulfill the conditions listed below:

- The City shall prepare a written waiver valuation, defined as the valuation process used and the product produced when the City determines that an appraisal is not required, to HUD that details how the fair market value was determined.
- The individual completing the waiver valuation must have sufficient understanding of the local real estate market – but does not have to be a real estate professional – to be qualified to make the evaluation.

#### *2. Valuation of property is estimated to not exceed \$25,000*

Based on available market data, if the City determines that the valuation process is uncomplicated and the anticipated value of the proposed acquisition is estimated to not exceed \$25,000, the City may submit a waiver request to the HUD Regional Community Development Program Specialist to increase the threshold for conducting an appraisal. In its request, the City must include waiver valuation operating procedures, which include:

- Identification of the project(s) for which a threshold increase is being requested;
- The increased threshold amount requested;
- Identification of the person(s) who will be authorized by the City to perform the waiver valuation, and a description of qualification of the individual(s); and
- Proof the City offered the property owner the option of having the targeted acquisition property appraised.

If HUD approves the waiver request, the City **must** offer the property owner the option of having the property appraised. The property owner's signature acknowledging the agency's offer of an appraisal and the property owner's acceptance of a waiver valuation **must** be included in the City's acquisition file whenever the waiver valuation amount exceeds \$10,000.

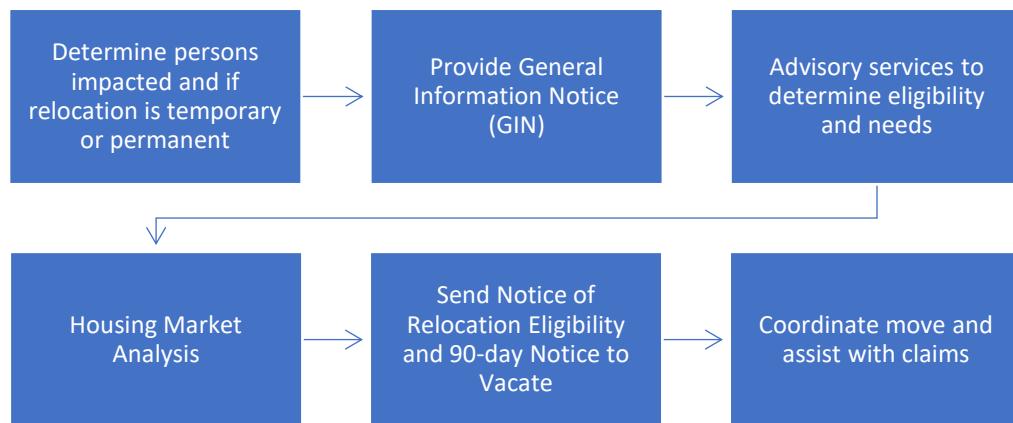
#### *3. Donation by Property Owner*

The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in 49 CFR 24.102(c)(2). The Agency must ensure the owner is informed of their rights to receive just compensation for

the property. The Agency must obtain all applicable releases/waivers from the property owner and maintain such records in the acquisition file.

## Relocation Requirements Applicability

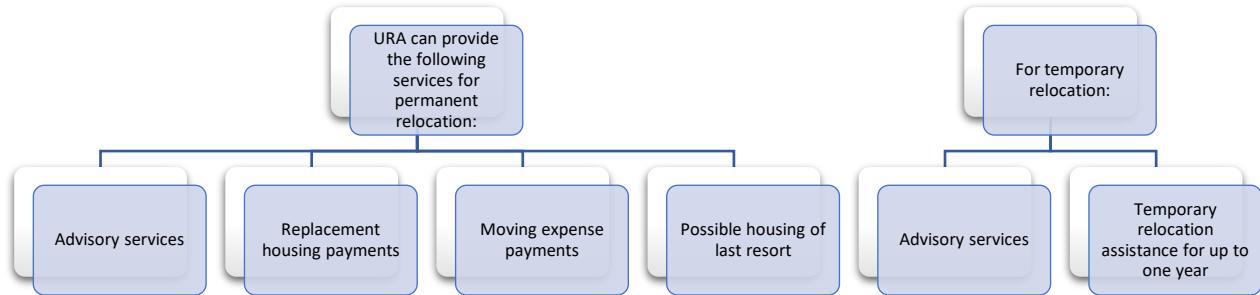
The purpose of the URA with respect to relocation is to ensure that eligible persons are provided with the amount of relocation assistance they are eligible for. Persons include residential homeowners, renters, businesses, or nonprofit organizations who occupy the project site. This section determines who is eligible, how to plan for relocation, track occupants, provide required notices and correctly compute relocation assistance.



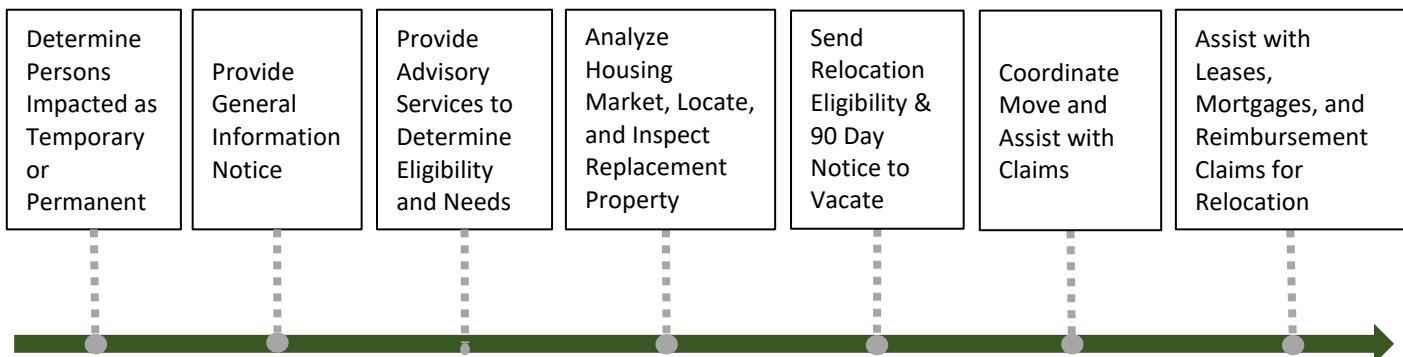
An agency's obligation to provide required relocation assistance and payments under the URA and section 104(d) is dependent on the program activities that result in the displacement of persons from their homes, businesses or farms.

- Three activities may cause the URA requirements to apply – acquisition, rehabilitation and/or demolition. URA relocation requirements generally apply when displacement occurs as a direct result of any one of these activities for a federally funded project.
- Distinct from the URA, Section 104(d) requirements may be triggered by the demolition or conversion of lower-income dwelling units. Activities that involve acquisition alone do not trigger 104(d) though they may trigger the URA. Rehabilitation activities that cause conversion or demolition may trigger 104(d) requirements. Generally, Section 104(d) requirements may apply when HOME or CDBG assistance is used for a project involving demolition or conversion.

## Relocation Obligations



When a federally funded project causes people to move from their homes, businesses, or farms, eligible displaced persons must be provided with relocation assistance and payments. “Displaced person” is a term used to refer to residential and nonresidential (businesses, farms, and nonprofit organizations) owners and tenants who must relocate due to a federally funded project.



For residential displacements, agencies must:

- Provide relocation advisory services
- Provide a minimum 90 days written notice to vacate prior to requiring possession
- Reimburse for moving expenses
- Provide payments for the added cost of renting or purchasing comparable replacement housing

For nonresidential displacements, agencies must:

- Provide relocation advisory services
- Provide a minimum 90 days written notice to vacate prior to requiring possession
- Reimburse for moving and reestablishment expenses

Eligible lower income displaced persons may choose assistance based on either Section 104(d) or the URA. The 104(d) relocation assistance and payments are similar to URA relocation assistance and payments. In fact, relocation advisory services, moving expense payments and several other requirements are identical to the URA. However, there are a few differences. See chart below for a breakdown of the difference between URA and Section 104(d).

Agencies must ensure compliance with all applicable statutory and regulatory requirements for HUD-funded programs and projects. The URA and Section 104(d) statute, regulations, and other helpful materials, including contact information for HUD's Regional Relocation Specialists, may be found on HUD's Real Estate Acquisition and Relocation Web Site at: <http://www.hud.gov/relocation>. Another resource is this guide for [Planning and Budgeting Relocation Costs for HUD-Funded Projects](#).

Subject	URA	Section 104(d)
<b>Displaced Person</b>	1. Residential tenants and homeowner occupied 2. Non-residential owners and tenants (Business, non-profit, and farm)	Only residential tenants are covered
<b>Income Requirements</b>	No income requirements (covers persons of all income level)	Only Lower-income residential tenants
<b>Persons displaced by Acquisition</b>	Eligible for Assistance	Only eligible for assistance if housing units are demolished or Low Income Housing Units are converted.
<b>Person displaced by rehabilitation</b>	Eligible for Assistance	Only eligible for assistance if Low Income Housing Units are converted as a result of rehabilitation.
<b>Persons displaced by demolition</b>	Eligible for Assistance	Displaced Low Income Residential Tenants are eligible.
<b>Persons displaced by conversion<sup>7</sup> of lower income dwelling</b>	Not Applicable, provided no acquisition, rehabilitation, or demolition is involved.	Displaced Low Income tenants eligible only if market rent – including utilities – of the displacement dwelling did not exceed the Fair Market Rent (FMR) before conversion
<b>Advisory Services</b>	Comprehensive Services provided	Same as URA

<sup>7</sup> Conversion: This term means altering a housing unit so that it is (i) Used for non-housing purposes, (ii) Used for housing purposes, but no longer meets the definition of lower-income dwelling units; or (iii) Used as an emergency shelter. See 24 CFR 42.305.

Subject	URA	Section 104(d)
<b>Rental Assistance</b>	Payment equals: 42 (months) X Monthly Rental Assistance Payment	Payment equals: 60 (months) X Monthly Rental Assistance Payment
<b>Monthly Rental Assistance Payment</b>	<p>Monthly difference between the lesser of:</p> <ul style="list-style-type: none"> <li>• Older rent/utility costs;</li> <li>• 30% of gross monthly income (if low income);</li> <li>• Welfare Rent (as paid)</li> </ul> <p><b>And</b></p> <p>Monthly rent/utility costs for the lesser of:</p> <ul style="list-style-type: none"> <li>• Comparable or</li> <li>• DSS<sup>8</sup> Replacement dwelling occupied</li> </ul>	<p>Monthly difference between Total Tenant Payment<sup>9</sup> (TTP) the greater of:</p> <ul style="list-style-type: none"> <li>• 30% of adjusted monthly income</li> <li>• 10% of gross monthly income</li> <li>• Welfare Rent (as paid)</li> <li>• Minimum Rent (PHAs<sup>10</sup>)</li> </ul> <p><b>And</b></p> <p>Monthly rent/utility costs for the lesser of:</p> <ul style="list-style-type: none"> <li>• Comparable or</li> <li>• DSS Replacement dwelling occupied</li> </ul>
<b>Use of Governmental Housing Assistance (Vouchers, etc)</b>	<p>If displaced residential tenant is not currently receiving government housing assistance, cash replacement housing payments is required. Person may accept government housing assistance, if available.</p> <p>If displaced person currently in governmental assisted housing, must be offered a government assisted rental, unless one is not available.</p>	<p>Agency may offer Housing Choice Vouchers (Section 8) assistance in lieu of cash replacement housing payment under 104(d).</p> <p>However, Low Income Tenants may request assistance calculated under URA instead.</p>
<b>Pay Security Deposit</b>	Only if Non-Refundable	Payment Required
<b>Downpayment Assistance</b>	<p>Payment equals: 42 (months) X Monthly rental assistance payment</p> <p>Agency may increase up to \$7,200, if calculation is less<sup>11</sup></p>	<p>Limited to purchase of cooperative or mutual housing and based on present – discounted – value of</p> <p>60 (months) X Monthly Rental Assistance Payment</p>

<sup>8</sup> DSS: Decent, Safe, and Sanitary Dwelling

<sup>9</sup> See [24 CFR 5.628](#) for definition of Total Tenant Payment

<sup>10</sup> PHAs: Public Housing Authority

<sup>11</sup> See [CPD-14-09](#) Moving Ahead for Progress in the 21<sup>st</sup> Century Act (Map-21)

Subject	URA	Section 104(d)
<b>Moving Related Expenses</b>	<p>Displaced Person may choose:</p> <ol style="list-style-type: none"> <li data-bbox="494 323 918 390">1. Payment for actual moving and related expenses;</li> <li data-bbox="494 390 918 458">2. Fixed Residential Moving Cost Schedule;</li> <li data-bbox="494 458 918 547">3. Or in some cases, a combination of both</li> </ol>	Same as URA

## Chapter 10: Subrecipient Administrative and Financial Requirements

Subrecipients are entities that are provided CDBG, ESG, and/or HOME funds by a grantee for their use in carrying out agreed-upon, eligible activities. In general, subrecipients are responsible for meeting all federal requirements and regulations related to the respective HUD entitlement program as well as the Uniform Administrative Requirements (2 CFR Part 200) unless specifically excluded or superseded by the grant regulations. This section describes what a subrecipient is, who is eligible, and the required administrative systems and internal controls.

There are three categories of subrecipients: Governmental Agencies, Private Non-Profits, and Private For-Profits.

- **Governmental agencies** are public agencies, commissions, or authorities that are independent of the grantee's government (for example, a public housing authority or a park district). Grantee public agencies undertaking CDBG assisted activities are subject to the same requirements as are applicable to subrecipients (§570.501(a)).
- **Private non-profits** are usually, but not always, corporations, associations, agencies, or faith-based organizations with non-profit status under the Internal Revenue Code (Section 501(c)(3)), usually with a board of directors and an executive director in charge of daily administration. Examples of private non-profits include private social services agencies (such as those providing job training or counseling, or day care providers), community development corporations, faith-based housing development groups, and operators of homeless shelters.
- **Private, for-profit entities** qualify as subrecipients in limited circumstances, when facilitating economic development by assisting microenterprises under the provisions of 24 CFR 570.201(o).

### *Subrecipients vs Contractors*

While a subrecipient can be designated by the grantee, contractors must be selected through a competitive procurement process. However, other than rules relating to bonding, insurance, prevailing wages and other such provisions, most of the standard Federal administrative and monitoring requirements (described in [2 CFR 200.331](#), as applicable) do not apply to contractors, once the procurement process is complete. Those regulations, however, must be followed, as applicable, by all subrecipients.

Under most circumstances the distinction between a contractor and a subrecipient is clear. A development firm hired to build a new senior center is a contractor. A community development corporation running senior service programs at the center is a subrecipient. However, there can be some tricky cases. For example, if the city designs and specifies eligibility for a program, then hires (through a competitive procurement process) a non-profit to operate the day-to-day operations, the non-profit is a contractor in this instance. The difference lies in the procurement process and in who maintains authority over program rules and compliance.

### *Faith-Based Organizations*

The HUD program requirements in 24 CFR 5.109 apply to the CDBG, HOME, and ESG programs, including the requirements regarding disposition and change in use of real property by a faith-based organization.

Religious/faith-based organizations:

- Are eligible on same basis as other organizations
- Retain their independence
- Must not engage in explicitly religious activities as part of HUD-funded activities
- Must not discriminate based on religion or religious belief
- Must not use ESG funds to rehabilitate structures used for inherently religious activities (e.g., chapels or sanctuaries)

If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance.

### *Administrative Systems and Internal Controls*

Once an agency enters into an agreement to accept federal funds as a subrecipient, the agency becomes a Non-Federal Entity and is responsible for meeting both the associated internal control and policy requirements outlined in 2 CFR 200, the Uniform Administrative Requirements.

Therefore, after being awarded funding, but before an agreement will be signed, subrecipients will be required to demonstrate compliance by providing the following documentation:

- IRS 501(c)3 Letter
- Documentation of registration with Virginia State Corporation Commission
- Most recent single audit (or, if the agency does not meet the 2 CFR 200.501(d) threshold, a statement from a CPA)
- Most recent Form 990 or 990EZ if organization in a nonprofit entity
- Mission Statement
- Board Roster with contact information
- Current Organization Chart
- Articles of Incorporation and Bylaws
- Resumes of Program Administrator and Fiscal Officer
- Contingency and Succession Plan
- Conflict of Interest Disclosure Statement
- Indirect Cost Rate documentation (if applicable)
- Required Certifications (§200.415 & §200.324(c))
- If a faith-based organization, an explanation for how the agency will demonstrate compliance with 24 CFR § 5.109 and which prohibits the use of direct financial assistance on explicitly religious activities.
- Proof that organization is not debarred or suspended (SAM.gov search results)

## Policies and Procedures Manual

Subrecipients must also have on file and be ready to produce upon request a Policies and Procedures Manual that includes the following policies:

- Non-Discrimination and Equal Opportunity (§570.602 & 618;24 CFR §5.105a)
- Code of Ethics (Principle 1)
- Conflict of Interest (§200.318 & §570.611)
- Procurement (§200.318(a))
- Grievance and Termination (Staff and Clients) §570.607(a)
- Confidentiality and Personally Identifiable Information (§200.303(e))
- Record Retention (§570.506)
- Information Technology (Principle 11)
- Whistleblower (Principle 14)
- Monitoring (§200.328) (if sub-sub-recipients)
- Drug-Free Workplace Statement (2 CFR part 2429)
- If Housing Activities Involved:
  - Fair Housing (§570.611)
  - Lead-Based Paint (§570.608)

## Financial Management Systems

In addition, subrecipients must have a strong financial management system capable of tracking federal expenditures. Subrecipients will be expected to be able to produce the following:

- Accounting records that separately identifies HUD programs and awards received and expended §200.302
- Financial Status Report (Budget to Actuals) §200.302(B)(5)
- Documentation of Match (if required)
- Documentation of federal negotiated indirect cost rate (if applicable)
- Program Income Tracking Ledger (if applicable)
- Equipment Tracking Process (if applicable)
- For reimbursements:
  - Complete ACH forms for the processing of electronic payments
  - Payroll records – timesheets and paychecks or pay register details (if applicable)
  - Backup documentation (invoices, etc.)
  - Proof of payment

Subrecipients should also be aware of the following procurement and record retention requirements when considering their administrative systems:

## Indirect Cost Allocation Plan Approval Process

A subrecipient's grant award budget may include indirect costs. The NDHCD staff shall review, approve, or deny indirect cost rate proposals submitted by subrecipients for each HUD-funded activity for the purpose of reimbursing indirect administrative expenses for rates already approved by a federal cognizant agency. An approved indirect cost allocation must be in accordance with the requirements of the Federal award to which they apply and 2 CFR part 200.414.

All costs included in the proposal must be properly allocable to Federal awards on the basis of a beneficial or causal relationship between expenses incurred and the agreements to which they are allocated. The same costs that have been treated as indirect costs cannot be claimed as direct costs.

A signed certification acknowledging the appropriate use of the 10 percent de minimis indirect cost rate, or documentation of a federally negotiated indirect cost rate, is required prior to approval of the reimbursement of indirect costs.

#### *De Minimis Cost Rate*

Recipients and subrecipients electing the 10 percent de minimis rate must use the MTDC as the base for this rate. According to 2 CFR §200.68, the MTDC is composed of “all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, sub-awards and subcontracts up to the first \$25,000 of each sub-award or sub-contract (regardless of the period of performances under the award).”

All costs used to comprise an MTDC base (used for calculating de minimis) must be identified specifically to a funded program or be directly assigned to such activities easily and accurately. Costs must also be allowable under program regulations, necessary and reasonable for the performance of the federal award, and consistent with policies and procedures that apply uniformly to both federal and non-federal activities of the grantee (2 CFR §200.403). Once the MTDC base has been determined, the de minimis rate of 10 percent is applied to that base, deriving total de minimis indirect costs. The calculation of the de minimis rate is described in more detail below.

#### **Included in MTDC base**

- All direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards
- Subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award)

#### **Excluded from MTDC base**

- Equipment
- Capital expenditures
- Charges for patient care
- Rental costs
- Tuition remission
- Scholarships and fellowships
- Participant support costs
- Portion of each subaward and subcontract in excess of \$25,000
- Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs

For more information about calculating an indirect cost rate, HUD has provided an [Indirect Cost Toolkit](#) for CoC and Emergency Solutions Grant Programs. Subrecipients are encouraged to reach out to NDHCD staff with questions related to their specific grant.

## Record Retention Requirements

Record retention requirements vary under each program. The city's general requirement is that all subrecipients are required to retain all program and financial records for a period of not less than **five (5)** years from the date of submission of the CAPER in which the specific activity is reported on for the final time, or the resolution of all Federal audit findings, whichever occurs later. In the case of real or personal property acquisition or improvement, this requirement may be longer. Subrecipients should refer to their Subrecipient Agreements to determine the requirements for their specific grant award.

## Preventing Duplication of Benefits

Grantees who utilize CDBG-CV (COVID-19 Supplemental CDBG funding) are required by the CARES Act to establish and follow procedures to ensure that a duplication of benefits does not occur. A duplication of benefits (DOB) occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance. All grantees are bound by the OMB Cost Principles within 2 CFR § 200 that requires all costs to be "necessary and reasonable for the performance of the Federal award." To prevent DOB, subrecipients must build the following protections into their program design:

- Requirement that any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative. This may be documented through a subrogation agreement or similar clause included in the agreement with the person or entity.
- Assess whether the use of these funds will duplicate financial assistance that is already received or is likely to be received (such as insurance proceeds) by acting reasonably to evaluate the need and the resources available to meet that need. Grantees should evaluate current programs available at the local, county, state, and federal level as well as current and anticipated non-governmental assistance from nonprofits or faith-based groups and establish lines of communication for preventing duplication of benefits. **See Appendix C for examples.**

## Conflicts of Interest

Subrecipients must establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, no member, officer, or employee of a subrecipient who exercises any functions or responsibility with respect to the program during his or her, tenure or for one year thereafter, may have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted with ESG, HOME, or CDBG funds.

### *Individual conflicts of interest.*

For the procurement of goods and services, the recipient and its subrecipients must comply with 2 CFR 200.317 and 200.318.

### *Organizational conflicts of interest.*

The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the

subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under §576.401 or administer homelessness prevention assistance under §576.103. Subrecipients must maintain written standards of conduct covering organizational conflicts of interest required under 2 CFR 200.318.

### Affirmative Outreach

Subrecipients must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

### Subrecipient Agreements

Once an activity has been determined eligible and added to the Annual Action Plan, the city publishes the draft Annual Action Plan in the local newspaper for public comment and holds a public hearing, in accordance with the city's Citizen Participation Plan. The proposed plan must also be approved by City Council and HUD. City Council approval typically occurs in early May, in conjunction with the annual budget ordinance. Once the Annual Action Plan has been approved by City Council and submitted to HUD, the city will issue formal award letters to all subrecipients informing them of their award and the anticipated effective date.

Along with award letters, NDHCD staff prepare written agreements for each funded activity to disseminate all applicable federal, state, and local requirements to subrecipients and city departments implementing awarded activities.

The written agreement is a valuable management tool for verifying compliance and monitoring performance. The agreement explains what the subrecipient or contractor agrees to do in exchange for receiving grant funds, including any documentation requirements to demonstrate regulatory compliance. It shall be the responsibility of the HUD Program Specialist and their supervisor to ensure that the necessary and proper documentation is established and referenced in the agreement. Contracts executed with external (non-city) subrecipients will be reviewed and finalized by the Norfolk Department of Law prior to signature and execution. Internal (City of Norfolk) subrecipients will receive a similar Letter of Agreement (LoA), that will be reviewed by the Federal Programs Bureau Manager prior to signature and execution.

The city must comply with all its obligations under its agreement with HUD to assure that all agreements contain the required provisions necessary to comply with the program regulations.

## Chapter 11: Reporting

Subrecipients with open activities are required to report to the Department of Housing and Community Development at least quarterly, for both reimbursement requests and accomplishment/progress reports. This is to ensure that subrecipients are maintaining an appropriate timeline to expend their funds and achieve their proposed outcomes, as well as to provide any necessary technical assistance or program interventions.

### Reimbursement Requests

NDHCD staff shall review subrecipients' requests for reimbursement for compliance with grant regulations and the terms and conditions of the written agreement between the city and subrecipient or city department. Only those requests that are fully documented and compliant will be paid.

To ensure that grant funds are administered in accordance with the Uniform Administrative Requirements found at 2 CFR Part 200, the city operates the grant programs on a reimbursable basis so that all documentation necessary to demonstrate compliance with the regulations can be collected, reviewed and filed prior to payment with federal funds. Both the city and subrecipients operate on a reimbursement basis so that federal funds are not drawn down in IDIS until the city is certain that all financial transactions occurred in a manner that fully documents compliance.

Although the city may provide subrecipients with the flexibility of submitting reimbursement requests monthly (if necessary, for cash-flow purposes), subrecipients must submit reimbursement requests not less than quarterly during the term of the agreement. If the subrecipient does not have grant expenditures during the quarter, the subrecipient must submit a report indicating that no costs were incurred during the quarter. The request must include a summary of current and prior requests, as well as all supporting documentation in accordance with the written agreement.

Complete copies of each reimbursement request shall be maintained in the grant activity file. Any information that the subrecipient wishes not to be included in the file (social security numbers or other PII) should be redacted by the subrecipient prior to submission.

### Accomplishment/Progress Reports

NDHCD staff collect performance reports for all activities that are "open" (have remaining balances or have not yet met required outcomes) not less than quarterly. Performance reports shall be evaluated to determine the sufficiency of program performance and to facilitate the entry of accomplishment data into IDIS.

Depending on the grant requirements, eligibility, beneficiaries, and Broad National Objective (for CDBG) of each activity, the reporting requirements to HUD in the IDIS system will vary. To capture the HUD-required data elements necessary to complete activities in IDIS and to complete the CAPER at year-end, several reporting formats have been developed for use by subrecipients and city departments implementing grant funded activities.

The NDHCD will review the performance report to determine if the subrecipient is on track to meet its annual goal as appropriate for the point-in-time of the review. For example, public service subrecipients should be at least 25% of the way toward meeting their annual goal as of September 30th, 50% as of

December 31st, and so on. However, the nature of some activities will result in no accomplishments until the third or fourth quarter of the year due to the way the activity is implemented.

In instances where an activity is not on a linear pace toward achieving 100% of its goal, the subrecipient should include a written explanation in the narrative section of the performance report delineating how and when the annual goals will be met.

If it does not appear the subrecipient is making appropriate progress, subrecipients should expect a follow-up from the HUD Program Specialist to discuss concerns, alternatives, assistance, and in extreme cases, potential amendments or terminations to the agreement.

After receipt of reports, the HUD Program Specialists enter the reported data into IDIS as appropriate to each open activity. For technical information on the entry of accomplishment data, refer to [IDIS Online for CDBG Entitlement Grantees](#).

## Annual HUD Reports

NDHCD staff has established tracking and data collection systems to support the preparation and submission of a variety of compliance reports to HUD throughout each program year as required by the grant regulations and other federal requirements.

HUD requires the collection of six periodic reports throughout the program year besides the Consolidated Annual Performance and Evaluation Report that is submitted annually within 90 days of the end of the program year. The reports include the SF-425 Federal Financial Report, the Contract-Subcontract Activity Report, the Semi-Annual Labor Standards Enforcement Report, the Section 3 Summary Report, the Equipment Inventory report and the Federal Funding Accountability Transparency Act report (FFATA).

Each of these reports documents and certifies critical program compliance information that is used in turn by HUD to assess the city's risk as part of HUD's annual risk assessment to determine which of their grantees will receive on-site monitoring visits. For this reason, it is critical that each of these periodic reports is prepared accurately and submitted to HUD timely.

### SF-425 Federal Financial Report (CDBG only)

HUD requires CPD grant recipients to periodically submit reports on the financial progress of the CDBG grant. The SF-425 is due to be submitted in IDIS within 30 days of the end of each quarter. Since the city operates its grants with HUD on a reimbursement basis, the SF-425 will consistently report a zero balance. This report is based on the reimbursements and drawdowns completed during the reporting period. This report does not require the collection of any additional information from subrecipients.

### HUD-2516 Contract-Subcontract Activity Report (CDBG only)

The Contract-Subcontract Activity Report is used by HUD to monitor and evaluate activities against the designated minority business enterprise (MBE) and Women business enterprise (WBE) goals. This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities that included \$10,000 or more of CDBG funding, executed during the reporting period (October 1 – September 30). As part of this process, NDHCD will request that

the form be completed by any subrecipients or city departments who executed contracts during the year as part of their CDBG-funded activities.

The report must be submitted to the Field Office's Fair Housing and Equal Opportunity (FHEO) representative within 30 days of the end of the Federal Fiscal year.

#### HUD-4710 Semi-Annual Labor Standards Enforcement Report

The Semi-Annual Labor Standards Enforcement Report, covering the periods of October 1-March 31 and April 1-September 30, is a report to the Field Office Labor Relations representative within 7 calendar days after the end of the period covered, or upon request.

The Semi-Annual Labor Standards Enforcement Report provides information on contracts awarded that must comply with the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act. Specifically, the report lists each project/contract awarded during the reporting period for which DBRA or CWHSSA is applicable.

The report also includes information on enforcement activities undertaken by the city during the reporting period. The information reported on contracts (Part I) and the information reported on enforcement activity (Part II) is separate and should only be reported to HUD on the HUD-4710 form once. For example, a contract should only be reported on the report corresponding to the period when the contract was awarded. Similarly, enforcement activity is aggregated and reported on the form covering the period when the enforcement activity took place. Therefore, enforcement activity may be reported for projects/contracts that appeared on any prior report as a contract awarded under Part I. Subrecipients with open construction activities that may be subject to DBRA or CWHSSA will be required to complete the form, even if there is nothing to report.

#### Section 3 Summary Report

The HUD Section 3 Summary Report provides details on the city's accomplishment of the Section 3 goals prescribed at 24 CFR Part 135 and 24 CFR Part 75, or as amended. The city's Section 3 Plan delineates the city's approach to compliance with Section 3 (refer to Chapter 12 section on *Section 3 Employment and Contracting*).

The Section 3 Program is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance. Contractors working on Section 3 covered projects are required to regularly submit reports indicating their progress toward hiring and contracting goals.

The Section 3 report must be submitted to HUD along with the annual CAPER. As part of this process, any subrecipient with an open activity that may be subject to section 3 requirements will be required to complete the summary report for the program year (July 1 – June 30) along with their fourth quarter progress report.

#### Equipment/Property Inventory

If the city or subrecipient uses HUD funds to acquire real or personal property in excess of \$5,000, Federal regulations require that the property is continually used for its intended (and approved)

purpose, that it is appropriately tracked and maintained, and if sold, that the grantee is reimbursed for the proportional share of the property's value. Federal regulations for use of equipment are found at [2 CFR 200.313](#).

Property can only be acquired with HUD funds for a specific purpose that must be approved by the grantee and should be made a part of the Subrecipient Agreement. Subrecipients should refer to the grant regulations and executed subrecipient agreements for official terms and disposition requirements.

Federal regulations require the following:

- That the use of property for the approved purpose must continue; in the case of personal property, generally if the subrecipient owns it and the property is needed for the CDBG activity, and in the case of real property (acquired or improved with CDBG funds in excess of \$25,000), for at least 5 years following the expiration of the Subrecipient Agreement. (See 24 CFR 570.505)
- If you own the property, you must keep accurate records for it (e.g., purchase date, price, location, physical description, maintenance history and condition, original and current use, and other inventory types of data).
- You must control the use of the property (in accordance with its intended purpose) and take good care of it (that is, take adequate steps to prevent its damage, theft, or loss).
- If you no longer need the property, you can dispose of it but only according to specific rules (such as paying back the grantee, accounting for program income, etc.).

As part of this requirement, every subrecipient is required to submit an Equipment Inventory Form along with their fourth quarter report, detailing any equipment and personal property owned by the subrecipient that was acquired with HUD grant funds. Subrecipients should report all equipment purchased, regardless of the year in which it was acquired. The following details must be provided:

- Purchase Date
- Type of Equipment
- Serial/Model Number
- Condition
- Location
- Price/Total Cost

#### Federal Funding Accountability Transparency Act Report (FFATA)

The FFATA is the reporting tool by which the Federal prime awardee (City of Norfolk) reports subaward/grants and executive compensation data for all CDBG, ESG and HOME sub-awardees (sub-recipients). To promote transparency with federal spending, the sub-award information is then displayed on [www.USASpending.gov](#). The following data about sub-awards greater than \$25K is reported annually 30 days after all contracts are finalized for the fiscal year:

- Name of entity receiving award
- Amount of award
- Funding agency
- NAICS code for contracts / CFDA program number for grants
- Program source

- Award title descriptive of the purpose of the funding action
- Location of the entity (including congressional district)
- Place of performance (including congressional district)
- Unique identifier of the entity and its parent; and
- Total compensation and names of top five executives (same thresholds as for primes)

#### [Consolidated Annual Performance and Evaluation Report \(CAPER\)](#)

Grantees are required to report on accomplishments and progress toward Consolidated Plan goals in the Consolidated Annual Performance and Evaluation Report (CAPER) each year. The CAPER is due September 30<sup>th</sup> (90 days after the end of the program year). While the Federal Program Management Division prepares the CAPER for submission, subrecipients may be asked to assist with the development of the narrative or to provide additional documentation necessary for accurate reporting.

Each grantee's CAPER must include narrative statements that address the following:

- Assessment of Three- to Five-Year Goals and Objectives
- Efforts related to Affirmatively Furthering Fair Housing
- Affordable Housing: evaluates progress toward meeting its objectives toward the provision of affordable housing by income level;
- Continuum of Care: evaluates progress toward meeting its objectives toward homeless and special needs populations;
- Other Actions indicated in the Grantee's Strategic and Action Plans
- Leveraging Resources: describes other public and private resources used toward the provision of affordable housing and community development activities;
- Citizen Comments: describes any public comments received in regard to the program; and
- Self-evaluation: focuses on results on programs and projects funded by the grantee and their impact on their community.

In addition, CDBG grantees must submit a narrative statement addressing the following issues:

- The relationship of the use of CDBG funds to priorities, needs, goals and specific objectives identified in the Consolidated Plan;
- Nature and reasons for any changes in program objectives;
- Efforts of the grantee to carry out planned activities described in its Action Plan;
- If applicable, why the use of CDBG funds did not meet one of three national objectives;
- Activities involving acquisition, relocation and displacement;
- Economic development activities not resulting in jobs held by LMI persons;
- Presumed limited clientele activities;
- Activities generating program income;
- Rehabilitation activities; and
- If applicable, progress against Neighborhood Revitalization Strategy Area benchmarks.

## Chapter 12: Procurement and Contracting

As Non-Federal Entities, both the city and subrecipients must follow federal procurement rules when purchasing services, supplies, materials, or equipment with HUD funding. The applicable federal regulations are contained in 2 CFR 200.318-326. These regulations apply to all subrecipients of HUD grant funding, but they are particularly important for entities engaging in large purchases, construction, or development projects.

Subrecipients should ensure procurement policies and procedures are in place for all HUD funded programs, and that they follow federal regulations for procurement and contract management and the standards outlined below.

In addition to federal regulations, each entity receiving HUD grant funds should be aware of other state and/or local laws that may affect procurement policies. If there are inconsistencies among Federal, State, or local laws, the strictest of the requirements applies.

### General Procurement Standards

NDHCD, city departments, and all subrecipients managing HUD-funded awards are responsible for complying with the following general procurement standards:

- Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (2 CFR 200.318(b))
- Maintain written standards of conduct covering conflicts of interest for employees and related organizations (2 CFR 200.318(c))
- Be responsible, in accordance with good administrative practice and sound business judgement for the settlement of all contractual issues. (2 CFR 200.318(k))
- Avoid acquisition of unnecessary or duplicative items. (2 CFR 200.318(d))

A non-Federal Entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement taking into consideration such matters as: (2 CFR 200.318(h))

- Integrity
- Public Policy Compliance
- Record of Past Performance
- Financial and Technical Resources

For subrecipients, selected contractors must be able and willing to meet project milestones and requirements that are in compliance with the terms of the subrecipient's funding agreement with NDHCD.

### Competition

The non-Federal entity must conduct procurement transactions in a manner providing "full and open competition" (2 CFR 200.319). All solicitations must provide an opportunity for all eligible and interested

businesses to respond to the procurement, which means the request for submissions must be made public and advertised and equal information is made available to all interested bidders including responses to questions.

The non-Federal entity must ensure there are no actions tied to the procurement that would limit competition, such as placing unreasonable requirements on firms, or requiring unnecessary experience and excessive bonding that are beyond the scope of work. This also applies to non-competitive contracts on retainer. Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from bidding (2 CFR 200.319(a)).

A non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except where Federal law expressly mandates or encourages geographical mandates. However, this prohibition does not apply to:

- State Licensing Requirements
- Architectural and engineering (A/E) services, provided there is an appropriate number of qualified firms that can still compete for the contract (2 CFR 200.319(b))

#### Independent Cost Estimate

The non-Federal entity must make independent cost estimates (ICE) for all procurement actions before receiving bids or proposals (2 CFR 200.323).

The ICE should be a summary and calculation of the procurement action and include the following items:

- Method of procurement
- Type of item/services being procured (good, service, construction, A/E services)
- Description of the item or service being procured
- Provide documentation of the tool used to provide the estimate,
  - Construction estimating software
  - Published pricing or quotes
  - Other methods

The methodology used to develop an ICE must match the way that cost or price is requested in the solicitation. This allows for an “apples to apples” comparison when determining cost reasonableness through the cost or price analysis process (described below).

## Methods of Procurement

There are five types of procurement: Micro, Small, Sealed, Competitive, and Non-Competitive. The type of procurement needed is based on the dollar amount and the services or goods being acquired. The chart below provides a breakdown of the main differences between each method. However, it is important to refer directly to the regulation prior to beginning the procurement process.

Procurement Type	Dollar Thresholds	Applications	Solicitation Method
<b>Micro Purchases</b> <b>2 CFR 200.320(a)</b>	<ul style="list-style-type: none"> <li>Under \$2,000 for construction (Davis-Bacon)</li> <li>Under \$10,000 for all other purchases</li> </ul>	<ul style="list-style-type: none"> <li>Supplies or Services</li> </ul>	<ul style="list-style-type: none"> <li>No solicitation required</li> <li>Distribute purchases equitably among qualified suppliers</li> <li>Price considered to be reasonable based on market rates of similar products.</li> </ul>
<b>Small Purchases</b> <b>2 CFR 200.320(b)</b>	<ul style="list-style-type: none"> <li>\$250,000 or less for produced items for non-construction services</li> </ul>	<ul style="list-style-type: none"> <li>Single-task Services</li> <li>Supplies</li> <li>Other property</li> </ul>	<ul style="list-style-type: none"> <li>Collect price or rate quotations “an adequate number” of sources (at least 3)</li> <li>Submitted Bids</li> </ul>
<b>Sealed Bid</b> <b>2 CFR 200.320(c)</b>  Formal Advertising  *Preferred for construction if conditions are met	<ul style="list-style-type: none"> <li>All construction contracts in excess of \$2,000</li> <li>Produced or designed items over \$250,000</li> </ul>	<ul style="list-style-type: none"> <li>Construction Items</li> <li>Produced or Designed Items</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Bids</li> <li>Firm fixed price (lump sum or unit price) awarded to bidder who complies with terms and has lowest price</li> </ul>
<b>Competitive Proposals</b> <b>2 CFR 200.320(d)</b>  *use when sealed bid conditions not met	<ul style="list-style-type: none"> <li>Professional Services and/or Multi-task Services over \$250,000</li> <li>Designed Items over \$250,000 when Sealed Bid is not appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Professional Services</li> <li>Multi-Task Services</li> <li>Designed Items</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Proposals</li> </ul>
<b>Non-Competitive Proposals</b> <b>2 CFR 200.320(f)</b>	<ul style="list-style-type: none"> <li>No particular threshold, but may only be used when other methods are not feasible</li> </ul>	<ul style="list-style-type: none"> <li>Produced Items</li> <li>Single-task Service</li> <li>Professional Services</li> <li>Multi-task Services</li> <li>Designed Item</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Proposal from only one source</li> <li>Must provide justification for non-competitive selection</li> <li>Subrecipients must receive approval from NDHCD for non-competitive procurements prior to initiating the process</li> </ul>

## Cost and Price Analysis

A Non-Federal Entity must perform a price or cost analysis in connection with every procurement action above the simplified acquisition threshold (\$250,000), including contract modifications (2 C.F.R. § 200.323). The method and degree of analysis is dependent on the facts and circumstances surrounding the particular procurement.

A **price analysis** is where the overall price of the contract is reviewed and compared to the ICE, the market rate, and other quotes provided. This method is most appropriate for procurements where price or quotes can be directly compared to each other as they cover the same or very similar products or services. This method is recommended for comparing prices in micro and small purchase procurements.

A **cost analysis** is completed for sealed bids, competitive proposals, and non-competitive proposals, where the scope of work and budget are often more complex and may not allow for direct comparisons of prices. Cost analyses focus on the individual cost elements of the solicitation by evaluating each proposal or bid submitted in comparison to the ICE, the market rate, and other the quotes provided to determine which is the most cost reasonable across all the services and goods provided within the scope of work.

Profit should not be a line item in any proposal budget and must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Additionally, a non-Federal entity must not use a cost-plus-percentage-of-cost or cost-plus-percentage-of- construction-cost method of contracting.

## Procurement File

The non-Federal entity must maintain records sufficient to detail the history of procurement and contract. These records will include, but are not necessarily limited to the following depending on the type of procurement and contract (2 CFR 200.318(i)):

- Procurement process records:
  - Rationale for the method of procurement
  - Scope of Work for procurement
  - Independent Cost Estimate
  - Solicitation document (RFQ, RFP, summary of research for cost comparison for eligible micro or small purchases), including cross-cutting requirements that apply (See *Other Federal Requirements for Contracting* section below)
  - Public Notice or proof of publication for release of request for solicitations (RFQ, RFP, sealed bids)
  - Correspondence during procurement period (Public responses to questions, any other communications with proposers)
  - Records of proposals or bids received
  - Record of scoring/selection process
- Contracting records:
  - Selection of contract type
  - Cost Reasonableness Analysis (comparison of ICE and budget of the selected proposal or bid to ensure costs are within 15 percent of the ICE)
  - Debarment check of selected contractor

- Notice of Intent to Award for selected contractor
- The basis for the contract price
- Executed contract, along with required Certifications, Bonding, Insurance documents
- Final Scope of Work as agreed to by all parties
- Documentation of any protests received and the corresponding resolutions

### Contract Types

The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (2 CFR 200.318(j))

- The actual cost of materials; and
- Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

### Other Federal Requirements for Contracting

There are other federal requirements that relate to contracting. While these requirements are briefly mentioned below as required elements, additional training may be required.

### Civil Rights Requirements

Recipients of HUD federal grants (CDBG, HOME, ESG, HOPWA) must comply with federal and state civil rights, fair housing, and equal opportunity and equal employment opportunity regulations and requirements. These laws are designed to ensure that members of protected groups are treated fairly by avoiding discrimination, providing equal opportunity and taking affirmative action to correct past discrimination based on race, color, religion, national origin, age, sex/gender, disability and/or familial status.

- Title VI of the Civil Rights Act of 1964: This act states that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of race, color, or national origin.
- Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act): This act prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin. It also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.
- Section 504 of the Rehabilitation Act of 1973, as amended: This act states that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, subjected to discrimination.
- Section 109 of the Housing and Urban Development Act of 1974, as amended: This act states that, under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of a contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, or sex.
- The Age Discrimination Act of 1975, as amended: This act states that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the

basis of age.

- Executive Order 11063: This act states that no person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in housing (and related facilities) provided with federal assistance, or lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
- Executive Order 11246, as amended: This act states that no person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of \$10,000.
- Equal Access to HUD-assisted or Insured Housing—24 CFR 5.105 (a)(2)(i) and (ii): This regulation requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status.

#### Equal Employment Opportunity

It is the City's policy to use state and federally funded programs to provide services to extremely low, very low and low-income persons. At no time will employment opportunities provided through the expenditure of state or federal funds or otherwise be denied on the basis of race, color, religion, sex, national origin, familial status, genetics or disability. Notice of the EEO policy shall be placed in plain sight on the job location for the benefit of interested parties. All EEO posters will be displayed as required by state and federal guidelines. EEO protects all employees and the potential employment of all applicants and sub-recipients. These requirements apply at all times for any and all entities (City, subrecipients, contractors, etc.) receiving state or federal funding.

#### Davis-Bacon Act and Related Acts

The Davis-Bacon Act (Davis-Bacon) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor (DOL) and are issued in the form of federal Wage Decisions for each classification of work. Generally, the law applies to all construction, alteration, and/or repair contracts in excess of \$2,000.

Application of Davis-Bacon to Grants	
<b>HOME</b>	Construction (rehabilitation and new construction) of housing that includes twelve (12) or more units assisted with HOME funds ( <a href="#">24 CFR 92.354</a> )*
<b>CDBG</b>	New construction contracts in excess of \$2,000; Rehabilitation of residential property that contains 8 or more units
<b>ESG</b>	Does not apply ( <a href="#">24 CFR 576.407(e)</a> )

[\*Note: Davis-Bacon may still apply if HOME funds are used for a fraction of the project cost, construction or non-construction. HOME funds do not have to fund the entire project in order to trigger the regulation. However, once triggered, labor standards are applicable to the construction of the entire project; including the portions of the project that are not assisted with HOME funds.]

In most cases, demolition is not covered by Davis-Bacon unless it will be followed by Davis-Bacon covered construction. Davis-Bacon coverage is based on knowledge that there will be subsequent construction and that the subsequent construction work will be covered by Davis-Bacon.

When it comes to the installation of equipment or other pre-fabricated items, Davis-Bacon is not triggered on work associated with these costs unless costs of installation exceeds 13% of the total equipment cost.

*Example of Installation where Davis Bacon applies:*

The City has approved a building rehabilitation project that includes installation of new product packaging equipment. Equipment totals \$100,000 and installation costs \$23,000. The cost of installation is 23%, therefore Davis Bacon requirements are applicable for this project.

*Example of Installation where Davis Bacon does not apply:*

The City has approved a building rehabilitation project that includes the installation of new light fixtures. The cost of the light fixtures is \$23,000 and the cost of installation is \$2,500. As installation is less than 13 percent, Davis Bacon requirements are not applicable for this project.

### **Force Account Labor**

Forced Account Labor refers to the use of laborers or mechanics who are employed by the non-federal entity which is used in place of contracted contractors. In such cases Davis Bacon wages do not apply but can, instead, pay the rates normally paid to employees on staff. However, as Davis Bacon does not apply to Force Account Labor, the non-federal entity will need to document why force account labor was used and that it was not used with the intention of getting around Davis Bacon Requirements. Minimum documentation would address the pre-requisites for use of force account labor.

#### Pre-requisites for the Use of Force Account Labor

1. There should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors;
2. The non-federal entity must have the equipment, supervisory skills, a substantial portion of the required work force, and record keeping system; and
3. The legal counsel for the governing body must make a finding that the project is permissible in accordance with Virginia laws and does not constitute a major project nor include construction of a building.

If forced account labor may occur, subrecipients must contact City staff immediately for discussion and approval.

In addition to Davis-Bacon, contracts for construction with CDBG and HOME funding are subject to:

#### ***Copeland “Anti-Kickback” Act***

The Copeland “Anti-Kickback” Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorized in writing, and those required by court processes. The Act also requires that weekly Statements of Compliance (Optional Form WH347) be submitted to the Contract Compliance Officer (CCO). The Act applies to all contracts covered by Davis-Bacon.

#### ***Contract Work Hours and Safety Standards Act***

The Contract Work Hours and Safety Standards Act requires that workers receive "overtime" compensation at a rate of 1 ½ times their basic rate of pay for all hours worked in excess of 40 hours in a work week. It applies to all construction contracts funded in whole or in part with HOME funds. The City of Norfolk, subrecipients, contractors, subcontractors, and other participants must comply with these regulations and other Federal laws and regulations pertaining to labor standards, as applicable.

#### Davis-Bacon Procedures:

For each awarded project where Davis Bacon is required, the project manager responsible for the contract (whether City-led or subrecipient-led) is responsible for compliance and reporting for Davis-Bacon rules. The NDHCD Federal Program Management Division provides training and technical assistance for project managers to understand and implement Davis Bacon requirements in the project as needed, and supports compliance. It is the responsibility of the Federal Programs Bureau Manager to ensure project managers are aware of the use of HUD funds as early in the project development phase as possible and provide guidance for including Davis Bacon wage rates and reporting requirements. The Federal Programs Bureau Manager is also responsible for reviewing and verifying the project's Davis-Bacon payroll reports in preparation for semi-annual reporting to HUD.

Recipients must include a copy of the prevailing wage rate determination and the federal labor standards provisions (HUD 4010) in any solicitation or invitation to bid. Wage Determinations may be downloaded at <http://www.wdol.gov/>.

Recipients may only award construction contracts to eligible contractors and subcontractors that agree to comply with these provisions. No contract may be awarded to any contractor that is debarred, suspended or otherwise ineligible to participate on Federal or Federally-assisted contracts.

Prevailing wage rates are "locked in" at certain points of time during procurement and contracting. *Lock-in dates are determined as follows:*

#### For Competitively Bid Contracts:

- 10 days before bid opening, the project manager confirms the most recent prevailing wage rate determination is provided with the solicitation. If an updated prevailing wage rate determination has been posted to <http://www.wdol.gov/> then it must be added to the solicitation and all prospective bidders notified. Modifications published less than 10 days before bid opening are not applicable as there is insufficient time to notify bidders.
- Prevailing wage rates provided in the solicitation are valid for the contract period, provided the contract is awarded within 90 days.
- Must update wage decision if contract is awarded more than 90 days after bid opening.

For Negotiated Contracts, the Lock-in date is the contract award date or construction start date, whichever occurs first.

In accordance with procedures specified by HUD, the Project Manager must:

- Verify that bid and contract documents contain required labor standards provisions, lock-in date, and the appropriate Department of Labor wage determinations;
  - The [HUD-4010](#) must be incorporated in bid specifications and contract documents.

- Wage Determinations may be downloaded at <http://www.wdol.gov/>
  - See lock-in date determination criteria below
- Provide approval prior to the advertisement of contracts
- Prior to award, verify through [www.sam.gov](http://www.sam.gov) that the contractor is not debarred, suspended or otherwise ineligible to participate on Federal or Federally assisted contracts.
- Provide contractor training to make certain the contractor understands the requirements for Davis-Bacon compliance (Refer contractor to [A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects](#))
- Ensure that the wage decision information is posted at the job site in an area accessible to all workers and protected from the weather;
- Review certified weekly payroll reports for accuracy in labor classifications, wage rates, and wages paid and approved;
  - If certified weekly payroll reports contain errors, the Project Manager ensures corrections are made prior to approval;
- Conduct on-site inspections and employee interviews as needed;
- Maintain documentation of administrative and enforcement activities; and
- Require certification as to compliance with applicable labor provisions before making any payment under covered contracts.
- Examine subrecipient/subgrantee/subcontract management firm contract activity as necessary
- Correct all labor standards violations promptly;
- Provide all information necessary, including any complaints, investigations, restitution, or damages to the Federal Programs Bureau Manager for purposes of submitting the HUD 4710 report (see Annual HUD Reports section for more information about the 4710 process)

Contracts utilizing CDBG funding must also be approved by the Federal Program Management Division prior to execution to ensure the appropriate wage determination and lock-in date have been incorporated into the contract. Payments made by city departments under these contracts are also automatically routed to the Federal Program Management Division as part of the approval process workflow in the city's financial system. Any contract awarded to a prime contractor that is found to be ineligible for award must be terminated immediately.

Semiannually, the Federal Programs Bureau Manager will request from the project managers information necessary to complete the HUD 4710 report.

## Contracting with Small and Minority Firms

Recipients are required to take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Recipients shall take all the following steps to further this goal:

- Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.
- Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

## Section 3 Employment and Contracting

The Section 3 Program is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance. Section 3 applies to all HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures. Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction. For Section 3's implementing regulations, see 24 CFR Part 75 (effective November 30, 2020). Refer to the full City of Norfolk Section 3 Plan for more [details](#).

## Debarment and Suspension

NDHCD staff shall verify that participating contractors, subcontractors, consultants, and subrecipients are not suspended, debarred, or otherwise prohibited from conducting business with any Federal Agency by checking the System for Award Management (SAM) database.

Federal funds granted by HUD may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension, or placement of ineligibility status. Prior to entering into any HUD-funded agreement, the city must check against the System for Award Management (SAM), found at <https://www.sam.gov>. A debarment sanction means that an individual, organization and its affiliates are excluded from conducting business with any Federal Agency government wide. Depending upon the outcome of an investigation or legal proceeding, a suspension may lead to debarment. Debarment is the most serious compliance sanction and is generally imposed for a three-year period. However, debarment can be imposed for a longer period, if determined to be necessary to protect the public interest.

HUD policies and procedures concerning debarment and suspension are contained at 2 CFR Part 180 and 2 CFR Part 2424. The requirements at 24 CFR 180 prohibit grantees and subgrantees from making any

award or permitting any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR part 2424.

- 2 CFR Part 180 provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement programs and activities.
- 2 CFR Part 180 Subpart B describes which contracts are covered, including procurement and non-procurement contracts.
- 2 CFR Part 2424 adopts the OMB guidance on non-procurement debarment and suspension and supplements it with HUD-specific clarifications and additions.
- 2 CFR Part 2424 Subpart B expands the covered contracts to include any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered non-procurement transaction.

In general, the city must check the eligibility of every entity (contractor, subgrantee, consultant, etc.), and the principals and/or owners of those entities, prior to entering into a non-procurement agreement and dispersing funds. For procured goods and services, every entity must be checked for any award over \$25,000. This also applies to subcontracts – any contract that is expected to have subcontracts should include in the contract a clause requiring that subcontractors also not be debarred or suspended. The city must document that eligibility and debarment status was checked for all non-procured subrecipients for any award amount, as well as all primary contractors with awards over \$25,000, including the date the check was made.

Subrecipients who procure a contractor or provide other subawards to fulfill their project under their subrecipient agreement with NDHCD are also required to check the eligibility of any entity to be assisted with CDBG, ESG, or HOME funds and document the entity's eligibility to participate on Federal or Federally-assisted contracts.

## Chapter 14: Environmental Review

All CDBG, ESG, and HOME activities are subject to requirements of HUD environmental review regulations at 24 CFR Part 58. These regulations implement HUD's responsibilities for use of federal funds under NEPA. If HUD funds are being considered for the project, the HUD environmental review process must be completed before funds may be accessed for covered activities, before the purchase of any land or buildings, selection of a contractor, or start of any work on a proposed project, **even with non-HUD funds**. The aforementioned conditions are known as "choice-limiting actions" and this limitation applies to all participants involved in a HUD-funded activity.

### Levels of Environmental Review

Level of Environmental Review		Example Projects	Estimated Time to Complete
<b>1</b>	Exempt (24 CFR Part 58.34)	<ul style="list-style-type: none"><li>Administration &amp; Planning</li><li>Public Services</li><li>Engineering and Design</li><li>Essential Services (ESG)</li></ul>	1 day
<b>2</b>	Categorically Excluded NOT Subject to the §58.5 statutes (24 CFR Part 58.35(b))	<ul style="list-style-type: none"><li>Tenant-based rental assistance</li><li>Non-construction economic development activities</li><li>Shelter Operations (ESG)</li><li>Housing Stabilization Service (ESG)</li></ul>	1 day
<b>3</b>	Categorically Excluded Subject to §58.5 (may or may not require mitigation)	<ul style="list-style-type: none"><li>Curb, Gutter, Sidewalk Project</li><li>Street Improvements</li><li>Repairs, Minor Rehab, Leasing of Shelter or Office Space, Project-based rental assistance (ESG)</li></ul>	1-2 months
<b>4</b>	Environmental Assessment (24 CFR Part 58.36)	<ul style="list-style-type: none"><li>Construction of a new Center</li><li>Major Rehab or Conversion (ESG)</li></ul>	1-6 months
<b>5</b>	Environmental Impact Statement (24 CFR Part 58.37)	<ul style="list-style-type: none"><li>Construction of a Convention Center</li></ul>	6 – 12 months

\*Additional details for ESG activities can be found on the [HUD Exchange](#).

The primary objective of the environmental review is to identify specific environmental factors that may be encountered at potential project sites and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures. Only when the environmental review process is complete may the city, subrecipient, or contractor commit project funds.

NDHCD staff document its review of each activity for compliance with the National Environmental Policy Act (NEPA) requirements prior to contracting, funding or disbursing funds. HUD Program Specialists are responsible for preparing all Exempt and CENST level reviews using the HUD Environmental Review Online System (HEROS) prior to the execution of formal Subrecipient contracts and Letters of Agreement. The HUD Program Specialists will sign as preparer and the Assistant Director of NDHCD or designee will sign as "Responsible Entity Agency Official."

Reviews at CEST level may be prepared by the departmental project managers, or associated HUD Program Specialist. The preparer will create the Environmental Review Record (ERR) using the HUD Environmental Review Online System (HEROS) and also request that the city's Historic Resources Officer, located in the Office of City Planning, begin the Section 106 process. Once all sections are completed except for Historic Preservation, the preparer will assign the Environmental Review to the Historic Resources Officer in HEROS to complete the Historic Preservation section of the ERR. Once complete, the Historic Resource Officer will reassign the Environmental Review to the preparer in HEROS.

Reviews at the Environmental Assessment level are not completed by the city but instead must be contracted out to qualified vendors.

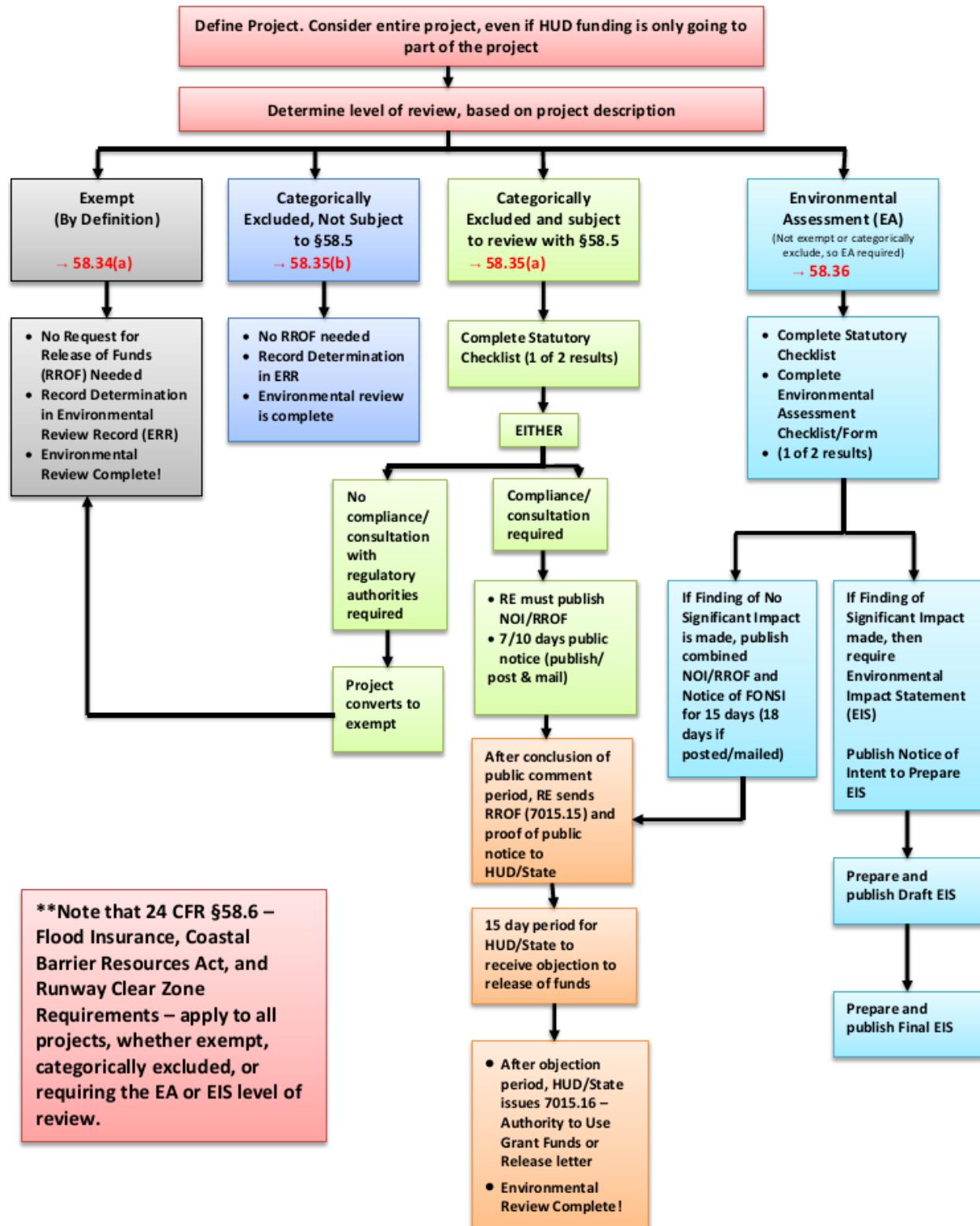
For CEST projects, once the environmental review is completed, the preparer will sign, as will the Assistant Director of NDHCD or designee as "Responsible Entity Agency Official." For EA level projects, the full completed EA will be routed through Docusign along a full copy of the environmental review (by link or included). This must be approved by the Department of Law for "form and correctness," and signed by the Norfolk City Manager (the Certifying Officer).

If one or more statutes or authorities listed at 58.5 require formal consultation or mitigation, the preparer will work with the NDHCD Federal Programs Management division to publish a "Finding of No Significant Impact" and "Notice of Intent to Request Release of Funds" (NOI/RROF) in the Virginian Pilot. After the required public comment period has passed, the 7015.15 Request for Release of Funds will be completed by the ERR preparer and routed through Docusign along with the supporting evidence of the required public comment period and full copy of the environmental review (by link or included). This must be approved by the Department of Law for "form and correctness," and signed by the Norfolk City Manager (the Certifying Officer).

The signed 7015.15 and supporting evidence of the required public comment process will then be submitted to HUD to obtain the "Authority to Use Grant Funds" (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds. This entire process will be completed through HEROS. The relevant individual will sign as preparer and the Assistant Director of NDHCD or designee will sign as "Responsible Entity Agency Official." Where required, the Norfolk City Manager will sign as Certifying Officer.

After the completion of the environmental review, the city may enter into agreements and fund activities. It is important to note that the city is also responsible for ensuring that any remediation or mitigating conditions identified as part of the NEPA review are completed during the course of the project and that documentation is maintained in the CDBG activity file. The following flow chart summarizes the environmental review process for HUD-funded programs or projects.

## Environmental Review Process



## Lead-Safe Housing

Whenever Federal funds are used to assist housing built before 1978, steps must be taken to address lead hazards. These rules must be met for the grantee to be in compliance.

Subrecipients who will be undertaking housing or construction activities should be familiar with the lead-based paint rules, including:

- HUD's Lead Safe Housing Rule (24 CFR Part 35) and
- EPA's Lead Renovation, Repair and Painting Program Rule (40 CFR Part 745).

These rules apply to all pre-1978 housing units assisted with HUD funds, including single and multi-family units, whether publicly or privately owned. Additionally, the EPA RRP rule also applies to pre-1978 child-occupied facilities located in not only residential, but also public and commercial buildings.

All housing units in a project assisted with HUD funds must comply with the regulations found at 24 CFR Part 35. For CDBG projects, the lead-based paint requirements established by the regulation fall into the three major categories listed below:

- Notification
- Assessment/Evaluation
- Hazard Reduction

For more information about the Lead Based Paint hazard requirements, refer to the [HUD Exchange Lead-Based Paint webpage](#), chapter 17 of the [Basically CDBG for Entitlements](#) manual, and the relevant sections of the CDBG and EPA regulations.

For lead safe housing compliance with HOME funds, the City of Norfolk adopts the policies and procedures provided by Virginia Department of Housing and Community Development (DHCD): <https://dhcd.virginia.gov/sites/default/files/Docx/housing/lead-safe-housing-rule-procedures.pdf>

## Chapter 15: HUD Unit Administrative Processes

The city's Department of Housing and Community Development (DHCD) staff is responsible for the administration of multiple fiscal years of HUD Entitlement funding at any given point in the program year. The program year is consistent with the city's fiscal year (July 1-June 30). While this procedural manual covers the administration of a single program year from start to completion, it is important to keep in mind that in a given month, DHCD staff will be responsible for tasks associated with two (2) or more program years of grant funds.



### Statement of CDBG Policies

The following policy statements are included throughout this CDBG Procedural Manual to clearly communicate the responsibilities of DHCD staff in the administration of the HUD Entitlement programs.

- DHCD staff shall document its review of the eligibility of all activities proposed for funding prior to the inclusion of an activity in any funding recommendation or Action Plan. Such review shall be prepared and approved by separate DHCD staff members as delineated herein.
- DHCD staff shall document its review of each activity for compliance with the National Environmental Policy Act (NEPA) requirements prior to contracting, funding or disbursing funds. Such review shall be prepared by HUD Program Specialists or other qualified staff and approved by the Department of Housing and Community Development Federal Programs Bureau Manager.

- DHCD staff shall prepare written agreements for each HUD-funded activity to disseminate all applicable federal, state, and local requirements to subrecipients and city departments implementing awarded activities.
- DHCD staff shall verify that participating contractors, subcontractors, consultants and subrecipients are not suspended, debarred, or otherwise prohibited from conducting business with any Federal Agency by checking the System for Award Management (SAM) database.
- DHCD staff shall set up activities in IDIS and fund activities in IDIS to facilitate grant reporting and drawdown throughout the program year.
- DHCD staff shall provide training and technical assistance to subrecipients and city departments to foster program-wide compliance with the HUD regulations and to facilitate practical understanding of the terms and conditions of written agreements.
- DHCD staff shall collect performance reports for all activities that are “open” in IDIS not less than quarterly. Performance reports shall be evaluated to determine the sufficiency of program performance and to facilitate the entry of accomplishment data into IDIS.
- DHCD staff shall review requests for reimbursement for compliance with the CDBG regulations and the terms and conditions of the written agreement between the city and subrecipient or city department. Only those requests that are fully documented and compliant shall be paid, with the goal to issue payments within 30 days of a fully compliant request.
- DHCD staff shall draw down funds from the U.S. Treasury to reimburse the city for its expenditure of funds for CDBG activities. Drawdowns shall be conducted not less than quarterly, within 90 days of the end of each quarter, and may be conducted more frequently to meet business needs.
- DHCD staff shall conduct a risk assessment of all open activities and shall conduct on-site monitoring reviews of all activities implemented by subrecipients or city departments that meet the threshold criteria identified in the annual risk assessment.
- DHCD staff shall establish tracking and data collection systems to support the preparation and submittal of a variety of compliance reports to HUD throughout each program year as required by grant regulations and other federal requirements.
- DHCD staff shall implement grant closeout procedures as part of IDIS activity completion and the preparation of the CAPER in order to verify records demonstrating that each HUD-funded activity is compliant with federal regulations and to verify that all City of Norfolk procedures have been followed in the implementation of each activity.
- DHCD staff shall, at least monthly, reconcile expenditures between IDIS and the city’s financial system (AFMS).

## Fair Housing Compliance

The City of Norfolk does business in accordance with the federal fair housing law and Section 504 program accessibility requirements. The Department of Housing and Community Development complies with the Fair Housing Act and provides reasonable accommodations and modifications to persons with disabilities. The Department of Housing and Community Development does not discriminate on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity in admission or access to its programs.

For more information about Fair Housing, visit <https://www.norfolk.gov/5307/Fair-Housing>.

## Training and Technical Assistance

- DHCD staff shall provide training and technical assistance to subrecipients and city departments to foster program-wide compliance with the regulations and to facilitate practical understanding of the terms and conditions of written agreements.
- Training and Technical Assistance are important activities that promote greater understanding of applicable federal regulations, facilitate the implementation of HUD-funded activities, and establish documentation protocols for the city and its subrecipients or implementing city departments.

Training and Technical Assistance can take many forms, including but not limited to:

- 1:1 Technical Assistance;
- Congregate Technical Assistance;
- Answering questions by phone or e-mail;
- Providing advice/direction as part of site visits or subrecipient monitoring;
- Disseminating critical information to subrecipients and city departments;
- Providing reference materials; or
- Promoting the availability of HUD-sponsored training or other capacity building opportunities.

To promote sound administration and implementation of grant programs amongst subrecipients, the city will provide ongoing informal technical assistance to each subrecipient throughout the year, and formally at least once per year in a congregate setting.

## Grant Closeout/IDIS Completion

DHCD staff shall implement grant closeout procedures as part of IDIS activity completion and the preparation of the CAPER in order to verify records demonstrating that each activity has complied with grant requirements and to verify that all City of Norfolk procedures have been followed in the implementation of each activity.

The city is responsible for ensuring compliance with all applicable requirements associated with the use of HUD grant funds for housing, economic and community development activities. The city must maintain records demonstrating that it has met all obligations to HUD as delineated in the Action Plan certifications that are signed and submitted to HUD with the SF-424 grant application. Grant Closeout is an integral internal management process by which program, finance and management staff verify that

appropriate records demonstrating compliance with all applicable HUD regulations is on file, ready for audit. The basic grant closeout process is represented below.

1. Verify Program Records
2. Verify Financial Records and Supporting Documentation
3. Process the Final Reimbursement Request
4. Conduct the Final IDIS Drawdown
5. Mark Activity “Complete” in IDIS
6. Closeout Memorandum

# Chapter 16: Program Monitoring and Risk Assessment

## Overview

Monitoring is both an integral management control technique and an ongoing process to assess the quality of program performance over time. More specifically, monitoring ensures that the City of Norfolk manages its federal awards in compliance with programmatic requirements, and federal, state, and local laws and statutes, as codified in the subrecipient agreement(s) and contract(s).

### Monitoring Goal

The goal of monitoring is to prevent the potential of waste, fraud, and abuse, and to ensure that program funds are expended in an efficient manner on goods and services that achieve the objectives of the program. Depending on the assessed risk level and stage of program implementation, monitoring oversight can take the form of training, technical assistance, or monitoring.

### Roles and Responsibilities

The City of Norfolk (NDHCD) is the responsible entity for implementing HOME, ESG, or CDBG funds, and is therefore charged with monitoring program implementation activities. NDHCD Federal Program Management Division staff are charged with ensuring that NDHCD is operating in a transparent and open manner. Using documents and reports submitted by its subrecipients, NDHCD staff inspect and monitor grant activities to determine compliance with 1) federal, state, and local regulations statutes and laws, 2) the Subrecipient Agreement, and 3) the programmatic requirements.

NDHCD staff ensure – to the greatest extent feasible – that subrecipient staff comply with regulations governing administrative, financial, and programmatic operations, and that they achieve performance objectives on time and within the budget.

NDHCD has established its monitoring process in conformance with [2 CFR 200.62](#) and monitoring and reporting program performance requirements in [2 CFR 200.329](#). These requirements include evaluation and monitoring compliance with federal statutes, regulation, and the terms and conditions of federal awards.

### Risk Assessment

Monitoring engagements are prioritized and scheduled based on the results of completed Risk Assessments (RA) (Appendix F). A Risk Assessment is a tool NDHCD uses to focus its resources on the programs and subrecipients that may be higher risk for meeting requirements and compliance with the grant award. The RA helps NDHCD staff determine the required mode of monitoring (on-site, remotely, or both) and the frequency of monitoring throughout the year and over the life of the grant, as well as any technical assistance a subrecipient may require.

The overall long-term goal is to ensure that evaluations are conducted on all eligible entities at a frequency that affords NDHCD the ability to avoid problems and improve performance in a timely manner to meet objectives and outcomes.

#### *Risk Assessment Levels*

The Risk Assessment results provide a level of risk for the evaluated program, contractor, or subrecipient based on the amount of risk identified across the criteria in the RA tool. Levels of criteria risk are categorized as High, Medium or Low, depending on a point value:

Risk Area	Risk Description
Award Amount	Assigns risk level based on the amount of the award/contract. The larger the number the higher the risk.
Program Oversight	How much oversight is there over the administering entity. The less oversight the larger the risk.
Agreement Type	Assigns risk on how the funds are expended to the administering entity.
Client Served	Assigns risks based on the projected number of clients served. The higher the client number the higher the risk.
Key Staff Change	Assigns risk based on how many key organizational members either left or how new these members are to this program type.
Program Management	Assigns risk on the following factors: <ul style="list-style-type: none"> <li>• Program Goals: what is the program designed for and how large of an impact will it have</li> <li>• Program Performance: is the program on track for completion in line with the agreement.</li> <li>• Program Measures: submitting documentation that supports how the program is performing.</li> </ul>
Grant Experience/History	Assigns risk based on how much experience the administering entity and its staff have in managing programs of this type and size.
Compliance History	Assigns risk based on history of compliance – or non-compliance – as a predictor of future compliance.

Once risk is determined for all criteria in the Risk Assessment Tool, a total point value is calculated, and the total level of risk is determined based on a set range:

- *Highest Risk* – The entity is considered missing most of the necessary programmatic systems and/or staffing capacity for administering the program. **550 - 400 Points**
- *Medium Risk* – The entity is considered lacking some of the necessary programmatic systems and/or staffing capacity for administering the program. **399 - 250 Points**
- *Low Risk* – The entity is considered missing one of the necessary programmatic systems and/or staffing capacity for administering the program. **249 - 112 Points**

The total risk ranking for each subrecipient can be used to determine monitoring needs or other management requirements.

#### *How Risk Assessment is conducted*

Risk Assessment (RA) for each subrecipient regardless of the amount expended by the project will be conducted annually to determine risk levels and areas of technical assistance required.

The result of the RA process helps NDHCD's staff identify:

1. Which subrecipients are deemed high-risk for priority monitoring,
2. The type of monitoring (remote or on-site monitoring),
3. The areas of technical assistance and training needed, and
4. Resources needed for each monitoring.

The Risk Assessment is conducted annually by a member of NDHCD staff to provide the core criteria analysis needed to determine the monitoring schedule during the grant life.

Monitoring Frequency		
Risk Level	Monitoring Frequency	Monitoring Type
High	Annually	On-site
Medium (Single Award)	Once every 3 years	Remote or On-site
Medium (Multiple Awards)	Once every 2 years	Remote or On-site
Low (Single Award)	Once every 3 years	Remote or On-site
Low (Multiple Awards)	Once every 2 years	Remote or On-site

Subrecipients rated as high-risk levels are monitored annually, regardless of amount or number of program year awards and activities.

Medium or low risk subrecipients that have a single program year award with the City will be monitored once every three (3) years.

Medium or low risk subrecipients that receive a program year award in more than one program year (i.e. an award for the current program year and an award for the upcoming program year), or that receive additional funding within a single program year, will be monitored every two (2) years. This is due to the increase in complexity of administering multiple awards, either singular or multiple funding years.

#### **Types/levels of monitoring defined**

Monitoring is an on-going activity to ensure that subrecipients are managing projects within compliance standards with all requirements. Monitoring also informs NDHCD on the overall areas that subrecipients may require focused training or technical assistance.

#### **Methods of Monitoring**

NDHCD will be executing its monitoring engagements in the following methods:

- Remote (Desk) Monitoring
- On-site Monitoring

#### **Remote Monitoring Engagements**

Remote monitoring is conducted at NDHCD's office regardless of the location of the subrecipient's office. A remote monitoring can either be area specific (e.g. Procurement and Contract, Environmental, Section 3) or a comprehensive review of the project administered by the subrecipient with grant funds.

The remote monitoring also serves to assess subrecipient or program compliance and potential training/technical assistance needs to become compliant and maintain proper administration within acceptable compliance standards as set in Federal and state regulations, rules, and applicable guidance.

### **On-Site Monitoring Engagements**

On-site monitoring is intended to be a more comprehensive assessment of the subrecipients' management of HOME, ESG, and CDBG programs in compliance with applicable Federal, state, and local regulations and requirements. This level of monitoring is performed at the subrecipient's location and is typically more comprehensive than a remote monitoring engagement.

The on-site monitoring also serves to assess subrecipient or program compliance and potential training/technical assistance needs to become compliant and maintain proper administration within acceptable compliance standards as set in Federal and state regulations, rules, and applicable guidance. On-Site monitoring includes a tour of the facilities to examine appropriate recordkeeping and storage management, evaluate the general physical conditions, and confirm that the provided services were accurately represented to the city.

## [\*\*Remote and Onsite Monitoring Engagement Process\*\*](#)

### **Monitoring Notification**

Subrecipients must receive a Monitoring Notification Letter 30 days prior to the beginning of a monitoring engagement. The notification should specify the details of the review and documents needed to complete the engagement review.

### **Monitoring Engagement Preparation**

Prior to the start of a Monitoring Engagement, the monitor(s) should review grant and program requirements and other notices relevant to the funding allocation to gain an understanding of the project(s) and any special conditions:

- Applicable programmatic requirements;
- Federal Register Notice (FRN) requirements applicable to the monitored program and any applicable waivers;
- Other federal regulatory guidance, such as Uniform Administrative, cost principles, and audit requirements outlined in 2 CFR 200, 24 CFR 570, or other applicable regulations;
- Specific conditions as stated in 2 CFR 200.205 and 200.207 respectfully to mitigate the risk of the grant;
- Program Policies, guidelines and Standard Operating Procedures (where applicable)
- Any agreement with the subrecipient or contractor, including amendments if applicable; and
- Results of any ongoing reviews conducted by compliance personnel.

### **Entrance Conference**

An entrance conference is held either virtually or at the monitoring site with the subrecipient's director and appropriate NDHCD staff. It is held prior to beginning the monitoring review. The goal of the entrance conference is to make sure that all subrecipient staff has a clear understanding of the purpose, scope and schedule of the monitoring visit from the very beginning. An Entrance Conference Agenda should be prepared and distributed to all staff in attendance.

## **File Review**

During the monitoring visit, the Compliance Monitor will review the program, subrecipient or contractor's files for compliance with all applicable federal and program regulations. A clear written record of the steps followed, and the information reviewed must be documented by completing the applicable monitoring tools. File Reviews will typically cover the following programmatic and financial areas – as appropriate to the program requirements:

- ✓ Programmatic requirements – typically participant testing
- ✓ Internal Policies and Procedures
- ✓ Project Application(s)
- ✓ Subrecipient Agreement
- ✓ Payment Requests
- ✓ Financial Reconciliation
- ✓ Davis Bacon and Related Acts
- ✓ Procurement
- ✓ Contract Management
- ✓ Applicant Files
- ✓ Environmental Review
- ✓ Uniform Relocation Act
- ✓ Lead base paint, mold, and asbestos
- ✓ Section 3

## **Exit Interview**

An Exit Conference is held at the end of the monitoring visit with the subrecipient's director and appropriate NDHCD staff to present the tentative conclusions of the monitoring visit. During the exit conference, the monitor can present preliminary results of the monitoring visit, provide an opportunity for the subrecipient to correct any misconceptions or misunderstandings, and to secure any additional information, if needed.

The exit interview allows the provider an opportunity to explain or provide documentation to clear up minor or easily correctable errors.

## [\*\*Monitoring Report and Follow-up Actions\*\*](#)

### **Monitoring Report Letter**

Upon completion of the monitoring and creation of the draft monitoring report, the monitor will begin composing the Monitoring Report and Letter (MRL). The MRL concisely details:

- Areas of Review,
- Areas of Weaknesses (Finding or Concern), and
- Areas of Technical Assistance.

Additionally, any required corrective actions must be detailed in a manner that allows the subrecipient to clearly understand the requirements that must be met and the importance of future compliance. Once MRL has been finalized it will be transmitted to the subrecipient.

NDHCD has 30 to 45 days to provide the subrecipient with the results of the monitoring. Between the conclusion of the Exit Conference and prior to sending the Official Monitoring Report Letter, subrecipient staff can provide documentation or responses to questions, which may alleviate issues

identified during monitoring to some degree. Even though the issue is resolved, it will still appear on the MRL, but no actions will be required on resolved issues.

## Types of Monitoring Deficiencies

### **Finding**

Findings are deficiencies in performance for which there is clear non-compliance with a statutory, regulatory, or HOME, ESG, CDBG-specific requirements. Findings identified during monitoring must be addressed with an appropriate course of action, known as a corrective action.

Findings are recorded with a specific regulatory citation of the requirement that is not being adhered to, as well as a description of the condition which is causing the finding. Where possible, references should be made to specific dates, documents, payments, costs, or activities, rather than general operations

### **Concern**

Concerns are similar to findings in that a deficiency in performance is identified. However, the deficiency is not in clear violation of an existing statutory, regulatory, or HOME, ESG, CDBG program-specific requirement. Concerns may lead to future findings if deficiencies are not corrected.

Concerns may be more broadly described than a finding and not specifically cite a requirement. Concerns often reference a deficient process and not a deficient item. Subrecipients must address the concerns with details of remedy actions. NDHCD may also provide recommendations and has the right to approve or reject the action.

## Corrective Action

### **Corrective Action Incomplete Letter**

The subrecipient has 30 days from the date the MRL is issued to respond to any findings and/or concerns identified therein. After the NDHCD office receives the subrecipient's response to the MRL, it is reviewed to determine if the response satisfies the required corrective actions as stated in the MRL. During this assessment period, the monitor will determine if the actions sufficiently address the required action. If it is determined that the official response is insufficient, the monitor will make recommendations to management on the need for follow-up actions which will be detailed in a Corrective Action Incomplete Letter (CAIL).

The CAIL will follow the letter review process as covered in the MRL process. The CAIL process will continue until all issues have been satisfied and a Clearance Letter can be generated.

### **Corrective Action Complete**

After a subrecipient has been provided with the MRL, the subrecipient must work on completing the actions stated in the MRL. If the subrecipient has an issue with the corrective actions listed in the MRL, they can take one of two options:

- Appeal the determination
- Reach out to NDHCD staff to discuss amending the corrective action to one that would be more feasible for the entity. It should be noted, taking this route will require the MRL to be amended to reflect and alterations and/or additions to the corrective action.

Once all issues have been satisfied the corrective actions will be considered complete and monitoring closed.

## Monitoring Record Keeping

During the monitoring process NDHCD is required to maintain accurate records from every monitoring and maintain all records in a manner that ensure compliance with 24 CFR 570.490, under access to documents. After a monitoring is concluded – where a Clearance Letter has been disseminated to the subrecipient – the specialist must collect the following documents, to be uploaded into NDHCD's eCivis monitoring records. Records should reflect, at a minimum, the following documentation:

- ✓ Copy of documents review
- ✓ Checklists
- ✓ All Communication (letters, emails, etc.)
- ✓ Agendas
- ✓ Sign-in Sheets
- ✓ Document and question request lists
- ✓ Monitoring Report Letter
- ✓ Corrective Action Incomplete Letter – as applicable
- ✓ Corrective Action Complete Letter

## Training and Technical Assistance

### Training

This type of support is designed to increase knowledge and skills within a subrecipient and can be offered to group/individual subrecipients. Training will be provided throughout the year by NDHCD, HUD, or other third parties in the form of a webinar, self-guided module, or in-person workshop.

It typically casts a broader net than technical assistance delivery. Due to the amount of time and effort a training will take, it should be conducted less frequently than with technical assistance. Often, this activity will cover the basics of HOME, ESG, CDBG, or cross-cutting regulations, and applicable Federal Register Notices required to administer a HUD funded grant. NDHCD will determine how training will be handled in terms of how many topics to cover per training.

### Technical Assistance

This activity is typically less formal than training and more focused on a specific area that a subrecipient needs covered. While NDHCD determines when to perform this action, subrecipients can request technical assistance and specify areas where technical assistance is required. Since technical assistance is generally less comprehensive compared to training, it should be performed more frequently than training. Some examples of technical assistance include:

- Observation of subrecipient activities and the provision of feedback,
- Verbal or written guidance, and
- Formal delivery of technical assistance according to a plan describing the basis for intervention, the capacity gap, and the techniques for building capacity in that specific area.

Successful delivery of technical assistance addresses the most common challenges revealed in the oversight of subrecipients and effectively increases local grant management capacity and improves performance.

## References and Web Links

- [City of Norfolk Federal Program Management Division Webpage](#)
  - [Consolidated/Annual Action Plans, CAPER, and Citizen Participation Plan](#)
- [HUD Manual: Basically CDBG for Entitlements](#)
- [24 CFR Part 270 – Community Development Block Grant Regulations](#)
- [2 CFR Part 200 – Uniform Administrative Requirements](#)
- [HUD Community Planning and Development Monitoring Overview](#)
- [CPD Income Eligibility Calculator and Income Limits](#)
- [HUD Self-Certification of Income Form](#)
- [HUD Lead-Based Paint Resources](#)
- [CPD Monitoring Exhibits](#)
- [Matrix Code Definitions](#)
- [Matrix Code – Broad National Objective Table](#)
- Environmental Review Templates:
  - [Exempt or Categorically Excluded, Not Subject to 58.5](#)
  - [Categorically Excluded, Subject to 58.5](#)
  - [Part 58 Environmental Assessment](#)
- [HUD-2516 Contract-Subcontract Activity Report](#)
- [HUD-4710 Semi-Annual Labor Standards Enforcement Report](#)

## Appendix A

### Homeless Definitions

Emergency Solutions Grant funding can only be used to serve individuals and families who are homeless or at risk of homelessness. For these purposes, the regulatory definitions of homelessness are provided in 24 CFR 576.2: [Here](#). It is essential that subrecipients understand these definitions and the way client status should be documented.

#### **Homeless means:**

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
  - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
- (2) An individual or family who will imminently lose their primary nighttime residence, provided that:
  - (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - (ii) No subsequent residence has been identified; and
  - (iii) The individual or family lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other permanent housing;
- (3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

- (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- (ii) Has no other residence; and
- (iii) Lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, to obtain other permanent housing.

## Appendix B

Homeless Criteria and Recordkeeping  
Virginia DHCHD Homeless Certification Form



# Homeless Definition

CRITERIA FOR DEFINING HOMELESS	Category 1	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: <ul style="list-style-type: none"> <li>(i) Has a primary nighttime residence that is a public or private place not meant for human habitation;</li> <li>(ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); <u>or</u></li> <li>(iii) Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution</li> </ul>
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: <ul style="list-style-type: none"> <li>(i) Residence will be lost within 14 days of the date of application for homeless assistance;</li> <li>(ii) No subsequent residence has been identified; <u>and</u></li> <li>(iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing</li> </ul>
	Category 3	Homeless under other Federal statutes	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: <ul style="list-style-type: none"> <li>(i) Are defined as homeless under the other listed federal statutes;</li> <li>(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;</li> <li>(iii) Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; <u>and</u></li> <li>(iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers</li> </ul>
	Category 4	Fleeing/Attempting to Flee DV	(4) Any individual or family who: <ul style="list-style-type: none"> <li>(i) Is fleeing, or is attempting to flee, domestic violence;</li> <li>(ii) Has no other residence; <u>and</u></li> <li>(iii) Lacks the resources or support networks to obtain other permanent housing</li> </ul>



# Homeless Definition

RECORDKEEPING REQUIREMENTS	Category 1	Literally Homeless	<ul style="list-style-type: none"> <li>Written observation by the outreach worker; <u>or</u></li> <li>Written referral by another housing or service provider; <u>or</u></li> <li>Certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter;</li> <li>For individuals exiting an institution—one of the forms of evidence above <u>and</u>:           <ul style="list-style-type: none"> <li>discharge paperwork <u>or</u> written/oral referral, <u>or</u></li> <li>written record of intake worker's due diligence to obtain above evidence <u>and</u> certification by individual that they exited institution</li> </ul> </li> </ul>
	Category 2	Imminent Risk of Homelessness	<ul style="list-style-type: none"> <li>A court order resulting from an eviction action notifying the individual or family that they must leave; <u>or</u></li> <li>For individual and families leaving a hotel or motel—evidence that they lack the financial resources <u>to stay</u>; <u>or</u></li> <li>A documented and verified oral statement; <u>and</u></li> <li>Certification that no subsequent residence has been identified; <u>and</u></li> <li>Self-certification or other written documentation that the individual lack the financial resources and support necessary to obtain permanent housing</li> </ul>
	Category 3	Homeless under other Federal statutes	<ul style="list-style-type: none"> <li>Certification by the nonprofit or state or local government that the individual or head of household seeking assistance met the criteria of homelessness under another federal statute; <u>and</u></li> <li>Certification of no PH in last 60 days; <u>and</u></li> <li>Certification by the individual or head of household, and any available supporting documentation, that (s)he has moved two or more times in the past 60 days; <u>and</u></li> <li>Documentation of special needs <u>or</u> 2 or more barriers</li> </ul>
	Category 4	Fleeing/ Attempting to Flee DV	<ul style="list-style-type: none"> <li><i>For victim service providers:</i> <ul style="list-style-type: none"> <li>An oral statement by the individual or head of household seeking assistance which states: they are fleeing; they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker.</li> </ul> </li> <li><i>For non-victim service providers:</i> <ul style="list-style-type: none"> <li>Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; <u>and</u></li> <li>Certification by the individual or head of household that no subsequent residence has been identified; <u>and</u></li> <li>Self-certification, or other written documentation, that the individual or family lacks the financial resources and support networks to obtain other permanent housing.</li> </ul> </li> </ul>



# HOMELESS CERTIFICATION FORM

Applicant Name and Unique Identifier: \_\_\_\_\_

Staff Member Name: \_\_\_\_\_

Household without dependent children (complete one form for each adult in the household)  
 Household with dependent children (complete one form for household)

Number of persons in the household: \_\_\_\_\_

**This is to certify that the above named individual or household is currently either literally or imminently homeless based on the check mark, other indicated information, and signature indicating their current living situation. Check the appropriate type of documentation used to verify homelessness and attach it to this worksheet.**

---

## CHRONIC HOMELESS CERTIFICATION

**\*Agency must select "Yes" if household meets the following criteria**

Individual or family is literally homeless and has third-party, intake worker, or household documentation of the following:

Has been homeless for at least one year continuously or on at least four separate occasions in the last three years, **where the cumulative total of the four occasions is at least one year (Stays in institutions of 90 days or less will not constitute a break in homelessness, but such stays are included in the cumulative total)** in a place not meant for human habitation, a safe haven, or an emergency shelter; and

Has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability post-traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions.

**CHRONICALLY HOMELESS:**  Yes\*       No

---

## GENERAL HOMELESS CERTIFICATION

**Complete with information on the primary cause of homelessness**

Homeless Status	Type of Eligible Documentation	Documentation/Eligibility
<b>LITERAL HOMELESSNESS (RAPID RE-HOUSING ELIGIBLE)</b>		
<input type="checkbox"/> Persons living on the street or sleeping in a place not designed for or ordinarily used as a regular sleeping accommodation	<ul style="list-style-type: none"><li>• Signed and dated written certification by person seeking services</li><li>• Signed and dated written certification by an outreach worker</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Persons living in a shelter designed to provide temporary living arrangements <ul style="list-style-type: none"><li>- congregate/scattered site emergency shelters</li><li>- transitional housing</li><li>- hotels/motels paid for by a charitable organization or government program</li></ul>	<ul style="list-style-type: none"><li>• HMIS shelter record</li><li>• Written referral from previous shelter staff</li><li>• Written referral from charitable organization or government program</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Persons exiting an institution	<ul style="list-style-type: none"><li>• HMIS shelter record</li></ul>	



## HOMELESS CERTIFICATION FORM

	where they resided for 90 days or less and resided in a place not meant for human habitation immediately before entering institution	<ul style="list-style-type: none"><li>Written referral from previous shelter staff</li><li>Written referral from institution</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	Persons fleeing domestic violence. <b>*Must meet one of the homeless status categories listed above*</b>	<ul style="list-style-type: none"><li>Written, signed and dated verification from the participant</li><li>Written, signed and dated verification from the domestic violence service provider.</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>IMMINENT RISK OF HOMELESSNESS (PREVENTION/DIVERSION ELIGIBLE)</b>			
<input type="checkbox"/>	Person will imminently lose primary nighttime residence within 14 days and meets both of the following circumstances <ul style="list-style-type: none"><li>- No appropriate subsequent housing options have been identified</li><li>- Household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing</li></ul>	<ul style="list-style-type: none"><li>Documentation of efforts to divert from homelessness (contact with prevention provider)—<b>Notate in case file</b></li><li>Eviction letter from tenant/homeowner (If living with another, i.e. doubled up)</li><li>Letter from hotel/motel manager and cancelled checks to verify costs covered by the participant</li><li>Court order/eviction notice</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<input type="checkbox"/>	Persons fleeing domestic violence <b>*Must also be imminently homeless*</b>	<ul style="list-style-type: none"><li>Written, signed and dated verification from the participant</li><li>Written, signed and dated verification from the domestic violence service provider.</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Documentation of attempts to obtain third party verification (required):</b> <i>Third party verification is the preferred method of certifying homelessness or risk for homelessness for an individual who is applying for homeless assistance.</i>			
<b>Self Declaration of Homelessness:</b> <i>Self declaration is only permitted when third party verification cannot be obtained.</i>			

Participant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Form Completed By: \_\_\_\_\_

Staff Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix C

### CDBG Cares Act Duplication of Benefits Handout



## DUPLICATION OF BENEFITS

As part of the CARES Act and described in FR-6218-N-01 (CDBG-CV Federal Register Notice), HUD must ensure that there are adequate procedures in place to prevent any duplication of benefits as required by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended by section 1210 of the Disaster Recovery Reform Act (DRRA) of 2018. To ensure HUD complies with this requirement, this responsibility is passed on to all CDBG-CV grantees. This Quick Guide provides a brief explanation of the duplication of benefits requirement, how it applies to grantees and beneficiaries, and examples of how to calculate and evaluate the risk of duplication of benefits.

### BACKGROUND

A duplication of benefits (DOB) occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance. Within the CDBG-CV program, all grantees are bound by Section 312 of the Stafford Act, as amended by the DRRA, and the OMB Cost Principles within 2 CFR § 200 that requires all costs to be “necessary and reasonable for the performance of the Federal award.”

To comply with DOB requirements, grantees are required by the CARES Act to establish and follow procedures to ensure that DOB does not occur. Establishing a process to effectively identify and prevent duplication of benefits is critical for CDBG-CV grantees to effectively manage the multiple active funding streams related to coronavirus response and efficiently target CDBG-CV resources to meet unmet needs within the community.

*Note to grantees with experience administering CDBG-DR: Unlike other disaster funds, CDBG-CV grantees do not need to follow a statutory “Order of Assistance” for delivery of different federal and non-federal programs. This means that grantees do not need to validate whether other funding sources are available or will be available before allocating CDBG-CV assistance (as opposed to CDBG-DR, where the grantee generally must check to see whether FEMA assistance was provided before making an award). The grantee is solely responsible for ensuring that an actual duplication of benefits does not occur.*

### APPLICABILITY

Duplication of benefits requirements apply to all CDBG-CV allocations as well as to FY2019 and FY2020 formula CDBG allocations used to prevent, prepare for, and respond to coronavirus.

### REQUIRED POLICIES AND PROCEDURES

To prevent the duplication of benefits, all grantees must establish policies and procedures that include the following components:

1. Requirement that any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to **repay assistance that is determined to be duplicative**. This may be documented through a **subrogation agreement** or similar clause included in the agreement with the person or entity. The grantee should establish a protocol to monitor compliance based on risk of duplication of benefits for each activity.
2. Method of assessing whether the use of these funds will duplicate financial assistance that is already received or is likely to be received (such as insurance proceeds) by **acting reasonably to evaluate the need and the resources available to meet that need**. Grantees should evaluate current programs available at the local, county, state, and federal level as well as current and anticipated non-governmental assistance from nonprofits or faith-based groups and establish lines of communication for preventing duplication of benefits. HUD has prepared a [list](#) of active Federal CARES Act and coronavirus response programs and funding sources to help grantees evaluate potential risk for duplication for each activity and applicant. HUD encourages grantees to target CDBG-CV activities to address unmet needs and gaps to reduce the risk of duplication of benefits.

To ensure that policies and procedures accurately reflect the specific components of each program, grantees should consider designing DOB policies and procedures that are specific to each CDBG-CV program and activity. Policies and procedures should be specific for each program supported with CARES Act funding and should be commensurate with risk of duplication of benefits.

## DETERMINING DUPLICATION OF BENEFITS

To analyze duplication of benefits a grantee should complete the following steps:

1. Assess Need: Determine the amount of need (total cost)
2. Determine Assistance: Determine the amount of assistance that has or will be provided from all sources to pay for the cost
3. Calculate Unmet Need: Determine the amount of assistance already provided compared to the need to determine the maximum CDBG-CV award (unmet need)
4. Document analysis: Document calculation and maintain adequate documentation justifying determination of maximum award

## DUPLICATION OF BENEFITS EXAMPLES

### Rental Assistance

A family that has suffered job loss due to the economic impact of the coronavirus seeks rental assistance under a CDBG-CV Emergency Payment program for 3 months of arrears payments and 2 months of current/ future rent.

#### Step 1: Assess Need

Monthly Rent = \$1,000

Potential Total Need:  $\$1,000 * 5 \text{ months} = \$5,000$

#### Step 2: Determine Assistance

In the application, the applicant was asked to report if they are receiving or expecting to receive any additional or similar assistance. The applicant reported that a local faith-based organization provided \$250/month for the past three months, but that aid is no longer available. The family certified that it has not applied for assistance from any other source.

**Step 3: Calculate Unmet Need**

Total Need = \$5,000

Other Assistance = \$750 (\$250/ month for three months)

Actual Unmet Need (Maximum Award) = \$4,250 (\$5,000- \$750)

**Step 4: Document the Analysis**

Maintain documentation of calculation and justification to confirm amount of unmet need.

**Small Business Assistance**

A small business requests a grant for working capital funds to retain employees that would otherwise be laid off due to the economic impact of the coronavirus. The small business requests three months of assistance.

**Step 1: Assess Need**

Capital funds needed via underwriting = \$10,000

Potential Total Need: \$10,000 \* 3 months = \$30,000

**Step 2: Determine Assistance**

In the application, the applicant was asked to report if it was receiving any additional or similar assistance or had made any claims on existing business insurance. The business reported that it previously received a PPP forgivable loan under the CARES Act to cover payroll, but that the assistance has run out. The business certified that it made a claim on its business interruption insurance but was declined because the insurer said the economic impacts of the coronavirus are outside the scope of the policy.

**Step 3: Calculate Unmet Need**

Total Need = \$30,000

Other Assistance = \$0

Actual Unmet Need (Maximum Award) = \$30,000

**Step 4: Document the Analysis**

Maintain documentation of calculation and justification to confirm amount of unmet need.

## SUBSIDIZED LOANS

In DOB calculations, private loans are not considered a form of assistance and should not be considered when calculating duplication of benefits. However, subsidized loans from SBA or FEMA should be included in the duplication of benefits analysis unless one of the three exceptions is met:

1. Short-term subsidized loans (e.g. bridge loans) for costs later reimbursed with CDBG-CV funds
2. Declined or cancelled subsidized loans
3. Loan assistance is used toward a loss suffered as a result of a major disaster or emergency

An example of a subsidized loan is the SBA Economic Injury Disaster Loans (EIDL). This type of loan is summarized in more detail in [FR-6169-N-01](#).

## RESOURCES

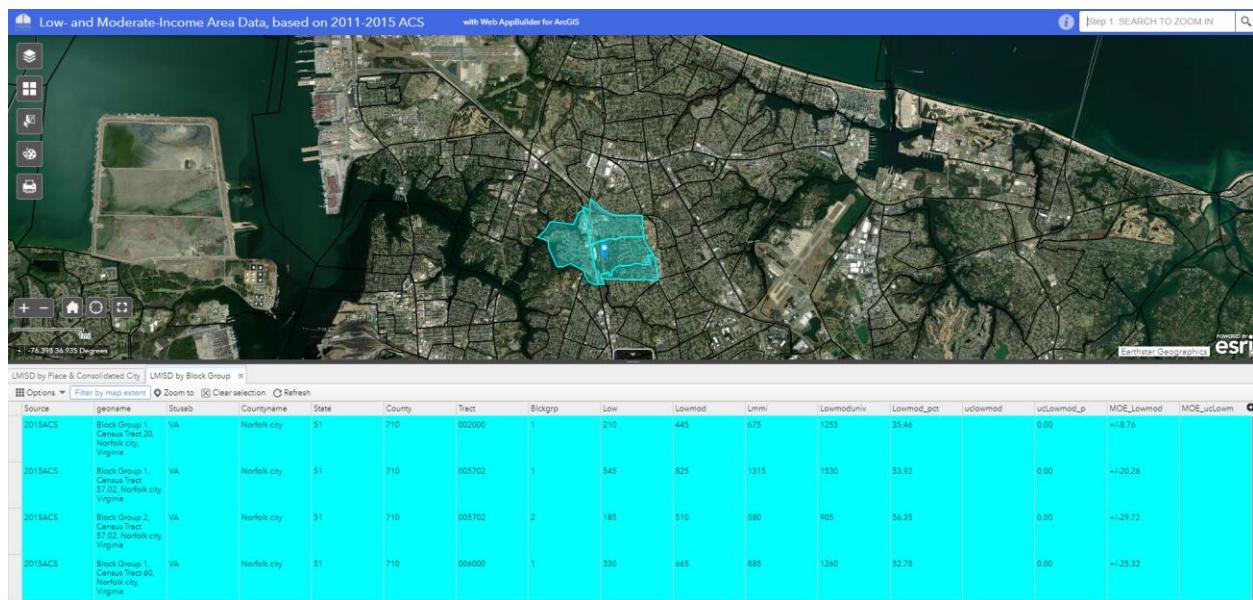
1. [CDBG-CV Federal Register Notice \(FR-6218-N-01\)](#) (8/7/2020)
2. [Duplication of Benefits Memo](#) (7/13/2020)
3. [Federal Funding Priority Order for NCS](#) (6/23/2020)
4. [Summary of CDBG Activity Categories](#) (6/23/2020)
5. [CARES Act Programs](#) (7/10/2020)
6. [Federal Register Notice Webinar](#) (8/20/2020 and 9/1/2020)
7. CDBG CARES Act Launch Kit (*forthcoming*)
8. Duplication of Benefits Webinar (*forthcoming*)

## Appendix D

### Determining LMA Service Area

To determine if a service area will meet the LMA National Objective using the census method, the following steps must be taken:

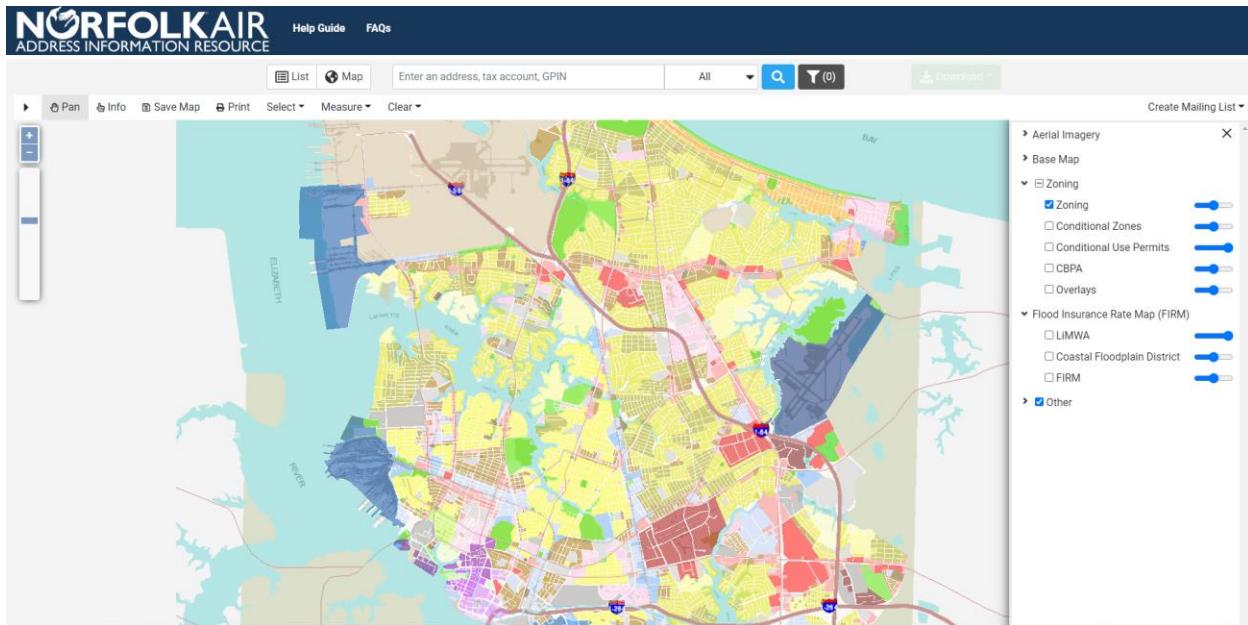
- Go to the [HUD Web App](#) to utilize the latest HUD census data
- Enter in the address of the proposed activity and zoom in. “Add a marker” to indicate the location of the activity.
- Using the layer icon, select only “LMISD by Block Group” and select “view in attribute table”
- Use the “Select Service Area” option to select the block groups contained in the service area. This will highlight the census blocks on the map and in the attribute table
- Using the attribute table, add the total number of low/mod persons residing in the selected block groups (LowMod), and divide it by the total number of residents (LowModUniv) to determine the percentage of low/mod persons residing in the service area.
- If the percentage of low/mod persons residing in the service area at least 51%, the activity meets the LMA National Objective.
- Print the map, including the following disclaimer:  
... combination of city restrictions and HOME grant requirements. HOME-ARP awards will only be provided in the form of a true grant. Rental development projects may only be awarded in the form of grants paid directly to the project owner and may not be awarded via third party. The project owner is the entity that holds valid legal title to, or long-term lease interest in the property.



If the city or applicant believes that the available census data does not reflect current relative income levels in an area, or where the area does not coincide sufficiently well with census boundaries, the city may conduct a survey of the residents of the area. The city must obtain HUD’s approval of the survey instrument and other methodological aspects of the survey for this purpose. HUD will approve the survey where it determines that it meets standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size. This is uncommon. If you are interested in pursuing a survey, contact the Norfolk Federal Programs Bureau Manager to discuss further.

HUD also requires evidence that the service area is primarily residential. To determine if a service area is primarily residential, the following steps should be taken:

- Go to the [Norfolk Air mapping tool](#)
- Under the  legend options and Zoning, select only the first “zoning” option
- Zoom to the appropriate service area
- Print the map and save in your records. The yellow and brown shading on the map represent single and multifamily zoning, while purple represents downtown/mixed-use zoning.



Grantees who qualify under LMA are expected to maintain documentation demonstrating the boundaries of the service area, the basis for determining those boundaries, the percentage of Low/Mod Income persons in the service area, and the residential zoning determination.

## Appendix E

### Rent Reasonableness and Fair Market Rent

#### OVERVIEW

The ESG program Interim Rule allows short- and medium-term rental assistance to be provided to eligible program participants only when the rent including utilities (gross rent) for the housing unit:

1) Does not exceed the Fair Market Rent (FMR) established by HUD for each geographic area, as provided under 24 CFR 888 and 24 CFR 982.503; and 2) Complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.2 This requirement is in the ESG program Interim Rule at 24 CFR 576.106(d).

#### DETERMINING IF RENT IS ACCEPTABLE FOR ESG RENTAL ASSISTANCE

Whether a household is seeking to maintain its current housing or relocate to another unit to avoid homelessness (Homelessness Prevention), or exiting homelessness into new housing (Rapid Re-Housing), the process for determining acceptable rent amounts is the same:

- The recipient or subrecipient first compares the gross rent (see box below) for the current or new unit with current FMR limits, which are updated annually.
- If the unit's gross rent is at or below FMR, the recipient/subrecipient next uses current data to determine rent reasonableness (more information is provided below on how to determine and document this).

If the gross rent is at or below both the FMR **and** the rent reasonableness standard for a unit of comparable size, type, location, amenities, etc., ESG funds may be used to pay the rent amount for the unit.

If the gross rent for the unit exceeds either the rent reasonableness standard or FMR, ESG recipients are prohibited from using ESG funds for **any** portion of the rent, even if the household is willing and/or able to pay the difference. However, because the FMR and rent reasonableness requirements apply only to rental assistance, ESG funds may be used:

1. to pay for financial assistance and services to help the eligible program participant stay in the unit, or
2. to pay for financial assistance and services to locate and move to a different unit that meets the rent reasonableness standard and is at or below FMR and pay rental assistance in that unit.

Rent reasonableness and FMR requirements **do not apply** when a program participant receives only financial assistance or services under Housing Stabilization and Relocation Services. This includes rental application fees, security deposits, an initial payment of "last month's rent," utility payments/deposits, and/or moving costs, housing search and placement, housing stability case management, landlord-tenant mediation, legal services, and credit repair. (Note: "Last month's rent" may not exceed the rent charged for any other month; security deposits may not exceed 2 months' rent.)

#### WHAT IS THE FMR REQUIREMENT?

HUD establishes FMRs to determine payment standards or rent ceilings for HUD-funded programs that provide rental assistance, which it publishes annually for 530 metropolitan areas and 2,045 non-metropolitan county areas. Federal law requires that HUD publish final FMRs for use in any fiscal year on October 1—the first day of the fiscal year (FY). FMRs for each fiscal year can be found by visiting HUD's website at [www.huduser.org/portal/datasets/fmr.html](http://www.huduser.org/portal/datasets/fmr.html) and clicking on the current "Individual Area Final

FY20\_FMR Documentation" link. This site allows subrecipients to search for FMRs by selecting their state and county from the provided list. The site also provides detailed information on how the FMR was calculated for each area.

Recipients/subrecipients must consult the most current FMR published for their geographic area and document FMR for all units for which ESG funds are used for rental assistance.

To calculate the gross rent for purposes of determining whether it meets the FMR, consider the entire housing cost: rent plus the cost of utilities that must, according to the lease, be the responsibility of the tenant. Utility costs may include gas, electric, water, sewer, and trash. However, telephone, cable or satellite television service, and internet service are not included in FMRs, and are not allowable costs under ESG. The FMR also does not include pet fees or late fees that the program participant may accrue for failing to pay the rent by the due date established in the lease.

HUD sets FMRs to ensure that a reasonable supply of modest but adequate rental housing is available to HUD program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many low-income families as possible.

#### **Example:**

A case manager is looking to rapidly re-house a mother and son, and has identified a 2-bedroom unit at a rent of \$1,200 per month, not including utilities (the tenant's responsibility). The utility allowance established by the PHA is \$150. Therefore, the gross rent is \$1,350. A check of three similar units in the neighborhood reveals that the reasonable rent is \$1,400 for that area of the city. However, the FMR for the jurisdiction is \$1,300. This means the family cannot be assisted with ESG in this unit because the gross rent exceeds the FMR.

**Note:** Once a unit is determined to meet the FMR and rent reasonableness requirements, ESG funds may be used to pay for the actual utility costs. The utility allowance calculation is only used to determine whether the unit meets the FMR standard.

#### **Determining and Documenting FMR**

Subrecipients must ensure that the rent for units assisted under the ESG Program does not exceed current HUD-published FMRs for their geographic region. For additional information about documenting ESG Rent Reasonableness and FMR visit the HUD website [here](#)

Determining FMR standards is straight forward; no geographic area has more than one FMR standard. However, if a subrecipient covers multiple cities or counties, they must use the appropriate FMR for the geographic area in which the assisted rental unit is located.

Subrecipients should print and place in case files a copy of the applicable FMR data to document the FMR for that participant's unit size and geographic area.

#### **STAFF ROLES AND RESPONSIBILITIES**

Subrecipients should have a procedure in place to ensure that compliance with rent reasonableness and FMR are documented prior to a check for rent being approved and/or prepared. The responsibility of determining and documenting each unit's compliance with these standards may be assigned to one or more program staff, such as the case manager, clerical support staff, or a staff member who is assigned to conduct habitability inspections. One staff person may perform all the checks, or the tasks may be

divided among more than one staff. For example, for rent reasonableness, one staff member could conduct a telephone survey of the property owner/landlords, while another searches rental databases for comparable properties.

## Appendix F - HOME-ARP Policies and Procedures

*This document was last updated January 9, 2024 to include additional guidance:*

- *Affirmative Marketing and Outreach*

*Under Affordable Rental Housing:*

- *Eligible Costs*
- *Period of Affordability*
- *Property Standards*
- *Income Determination*
- *Lease Requirements*

The following policies and procedures are intended to ensure that the HOME American Rescue Plan (HOME-ARP) program is administered fairly, methodically, and in compliance with all applicable statutes and requirements. This appendix should provide targeted program guidance for HOME-ARP that is complementary to the requirements outlined for Federal awards in the [HUD Entitlement Grants Policies & Procedures Manual](#). The City of Norfolk will continue to build upon and refine this document as necessary.

### HOME American Rescue Plan (HOME-ARP) Program Background

On March 11, 2021, the American Rescue Plan (ARP) was signed into law, providing \$1.9 trillion in relief to address the impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses. Congress appropriated \$5 billion in ARP funds to be administered by the U.S. Department of Housing and Urban Development (HUD) through the HOME Investment Partnerships (HOME) Program to benefit those who are homeless, at risk of homelessness, and other qualifying populations. The ARP funds administered through the HOME program are intended to perform four activities that must primarily benefit qualifying individuals and families.

### Eligible Activities

The four activities eligible for funding under HOME-ARP include:

- Development of affordable rental housing;
- Tenant-based rental assistance (TBRA);
- Provision of supportive services; and
- Acquisition and development of non-congregate shelter units

### Qualifying Populations (QPs)

The HOME-ARP program is specifically meant to assist the qualifying populations listed below:

- Sheltered and unsheltered homeless populations as defined in [24 CFR 91.5](#);
- Currently housed individuals and families at risk of homelessness as defined in [24 CFR 91.5](#);
- Individuals and families fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking or human trafficking; and,

- Other populations where providing supportive services or assistance under section 212(a) of NAHA (42 U.S.C. 12742(a)) would prevent the family's homelessness or serve those with the greatest risk of housing instability.

The City of Norfolk was awarded \$4,517,686 in HOME-ARP funds according to the HOME program formula designed to reflect relative housing need, under [CPD-21-10](#), issued September 13, 2021; herein called the *Notice*. The program is governed by Title II of NAHA as the authorizing statute for the HOME Investment Partnerships Program (HOME) and application of HOME regulations at [24 CFR part 92](#). However, pursuant to ARP, the per-unit cost limits (42 U.S.C. 12742(e)), commitment requirements (42 U.S.C. 12748(g)), matching requirements (42 U.S.C. 12750), and set-aside for housing developed, sponsored, or owned by community housing development organizations (CHDOs) (42 U.S.C. 12771) in [NAHA](#) do not apply to HOME-ARP funds. The CPD Notice entitled, [Waivers and Alternative Requirements For Implementation of the HOME American Rescue Plan \(HOME-ARP\) Program](#), describes additional waivers and alternative requirements imposed on all HOME-ARP awards.

## Allocation Plan

The HOME-ARP program requires the development of a HOME-ARP Allocation Plan for HUD approval before program activities may be implemented. Norfolk's [HOME-ARP Allocation Plan](#) includes the following:

- an overview of the consultation process, including public feedback of the draft plan;
- a needs assessment and gaps analysis of the current housing and supportive services landscape as it relates to qualifying populations (QPs); and
- planned uses of HOME-ARP funds to address gaps identified through the consultative and needs assessment processes.

Consultations with Norfolk's CoC, regional service providers and other trusted agencies show that among all QPs, there is a critical need for quality, affordable rental housing. Supportive services for QPs are an additional priority to ensure stable housing. Norfolk Department of Housing and Community Development (NDHCD) evaluated available data about the area's shelter and housing inventory and service delivery systems to determine how to address needs and gaps. Survey data, interviews, and rental data show that extremely low and low-income households are often cost-burdened or have severe housing problems, which indicates a need for additional affordable rental units and supportive service provision. Data from YWCA-SHR indicates that there is a need for additional affordable units and supportive services for the domestic violence and human trafficking QP, who do not have enough access to long-term affordable housing and civil legal support.

A solicitation for concepts launched in December of 2022 to identify the depth of appetite and breadth of priorities among potential subrecipients, and feasibility of eligible activities given the scope of HOME-ARP project requirements. Informed by data and the concept scoping, the City of Norfolk decided to administer HOME-ARP program funds directly to subrecipients via single-year grants and multi-year grants for affordable rental housing and supportive service projects. Preliminary applications were solicited through

a fair and open selection process via Norfolk's grants management platform from Nov 28, 2022, to January 6, 2023. The window was reopened from May 15 to June 2, 2023, to provide a second application opportunity. In August 2023, a final solicitation window opened for selected eligible participants to identify a plan for how resources would be leveraged against other revenue streams such as CDBG, ESG, and HOME funds, LIHTCs, and National Housing Trust Funds (avoiding a duplication of benefits) and managed for the duration of the proposed project. All projects seeking funding are competitively evaluated based on the overall quality of the content submitted, cost, demonstration of past success in project and/or service delivery, sound financial management, knowledge of and ability to adhere to all federal, state, and local statutes, and alignment of project with established priorities as defined in the final [City of Norfolk HOME-ARP Allocation Plan](#).

A portion of Norfolk's HOME-ARP funds will pay for reasonable costs associated with HOME-ARP program planning, management, coordination, monitoring, and evaluation. This may include salary costs, travel costs, administrative services, and other costs for goods and services required for program administration, as outlined in the Notice. All costs will 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 200](#), as amended.

#### Affirmative Marketing and Outreach

The requirements in [24 CFR 92.351](#) apply to the HOME-ARP program, including the referral process through which eligible participants access available housing made possible through HOME-ARP. Subrecipients must have an Affirmative Marketing Plan to promote fair housing access and provide other special assistance to groups who have historically been victims of discrimination by ensuring outreach to all potentially eligible families and individuals, especially those who are least likely to apply for assistance. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability.

At minimum, all HOME-ARP NDHCD and subrecipients must ensure efforts are made to ensure outreach to all eligible applicants, especially those who are least likely to apply. Thus, potential clients must be informed via flyers, public notices, local media articles, meetings, and/or directly. Subrecipients must develop a marketing or outreach plan that addresses how they will publicize the project; how clients may apply for a project(s); when applications or referrals will be accepted; and the method by which clients may apply.

NDHCD and subrecipients must take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons, consistent with [Title VI](#) and [Executive Order 13166](#), if applicable. All marketing and outreach efforts must be documented, and records must be made available to NDHCD upon request.

## Referral Methods for Projects

HOME-ARP referrals will be conducted in alignment with coordinated entry (CE) process led by the regional Continuum of Care (CoC) that includes Norfolk and is led by The Planning Council. Therefore, a preference will be given to chronically homeless and homeless veteran households seeking assistance. For prioritization for CE referrals to housing programs (including projects supported by HOME-ARP), households are prioritized by length of time homeless and score on a housing needs assessment.

CoC Coordinated Entry referrals will be supplemented by other referral methods to ensure all qualifying populations (QPs) have access to at least one HOME-ARP project/activity. Eligible QP applicants not referred by CoC CE will be placed on a project-specific waiting list in accordance with the CoC's preferences, and, in chronological order, to ensure all qualifying families and individuals have access to at least one HOME-ARP activity.

Regardless of which method is selected, in all cases, subrecipients developing affordable rental housing must use a project-specific waitlist when selecting households to occupy units restricted for occupancy by low-income households. Whether via CE or other referral method (such as project specific waiting lists), subrecipients must maintain documentation that shows households meet the definition of a QP or, for the portion of HOME-ARP rental units not restricted to QPs in affordable housing developments, that shows households are low-income.

## Qualifying populations (QP) and subpopulations

HUD published a comparison of HOME-ARP qualifying populations vs. CoC/ESG eligible participants [crosswalk](#) (table), which is a helpful tool to ensure the full scope of eligible program participants are served through referral methods detailed above. HOME-ARP subrecipients must retain documentation that confirms which QP definition applies to each program participant household.

HOME-ARP QPs	CoC/ESG eligible participants	Comparison
Homeless, as defined in <a href="#">24 CFR 91.5</a> <i>Homeless</i> (1), (2), or (3), which aligns with the CoC/ESG definition with one exception.	Homeless, as defined in <a href="#">24 CFR 578.3</a> and <a href="#">576.2</a> .	HOME-ARP QPs and CoC/ESG program participants share many attributes, with one exception: Category 4 as defined in <a href="#">24 CFR 578.3</a> and <a href="#">576.2</a> , <i>people fleeing or attempting to flee domestic violence</i> , is not included in the HOME-ARP QP homeless definition. More information below.
At risk of homelessness, as defined in <a href="#">24 CFR 91.5</a> , which aligns with the CoC/ESG definition.	At risk of homelessness, as defined in <a href="#">24 CFR 578.3</a> and <a href="#">576.2</a> .	No differences. These programs serve the same populations at risk of homelessness.
Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, as defined by HUD in <a href="#">24 CFR 5.2003</a> and Trafficking Victims Protection Act of 2000 (TVPA), as amended <a href="#">(22 U.S.C. 7102)</a> .	Homeless, category 4 as defined in <a href="#">24 CFR 578.3</a> : Any individual or family who: (i) is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; (ii) Has no other residence; and (iii) Lacks the resources or support networks to obtain other permanent housing.	<p>The definition of HOME-ARP QP is broader than the CoC/ESG definition of eligible participants.</p> <p>The HOME-ARP QP includes <i>persons fleeing or attempting to flee human trafficking</i>, which includes both sex and labor trafficking, as outlined in the Trafficking Victims Protection Act of 2000, as amended <a href="#">(22 USC 7102)</a>.</p> <p>HOME-ARP eliminates the CoC/ESG requirement that an individual or family:</p> <ul style="list-style-type: none"> <li>• has no other residence; and</li> <li>• lacks resources or support networks.</li> </ul> <p>PJs must consider the domestic violence/sexual assault/trafficking QP a separate population from the homeless population.</p>

<p>Other Populations: Other families, defined as households who have previously been qualified as “homeless” under <a href="#">24 CFR 91.5</a>, are currently housed due to temporary or emergency assistance, <b>and</b> who need additional housing assistance or supportive services to avoid a return to homelessness.</p>	<p>No equivalent definition.</p>	<p>Households under this HOME-ARP QP might be currently served in a homeless service program or considered homeless under the CoC/ESG definition, depending on the temporary or emergency assistance being provided.</p>
<p>Other Populations: At greatest risk of housing instability, defined as households who meet either (i) or (ii) below:</p> <ul style="list-style-type: none"> <li>i. have annual incomes less than or equal to 30% Annual Median Income (AMI) and experience severe housing cost burden (pay more than 50% of monthly income toward housing); or</li> <li>ii. have annual incomes less than or equal to 50% AMI and meet one of seven housing instability conditions from the QP definition established at <a href="#">24 CFR 91.5</a>: <i>At risk of homelessness</i>, paragraph (iii), and outlined in the <a href="#">HOME-ARP Notice</a>.</li> </ul>	<p>At risk of homelessness as defined in <a href="#">Notice CPD-20-08</a> Waivers and Alternative Requirements for the ESG Program Under the CARES Act.</p> <p><a href="#">CPD-20-08 temporarily</a><sup>12</sup> expanded the income limit in the definition of <i>at risk of homelessness</i>, as defined in <a href="#">24 CFR 576.2</a>, paragraph (1)(i), to 50% AMI for ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus.</p> <p>Persons must also lack sufficient resources or support networks to prevent them from moving to an emergency shelter or another place described under the “homeless” definition in accordance with <a href="#">24 CFR 576.2 (ii)</a> AND must meet one of the conditions in (iii).</p>	<p>At greatest risk of housing instability (i) is different than the ESG/CoC at risk of homelessness definitions which does not include the <i>condition experiencing severe cost burden</i>.</p> <p>At greatest risk of housing instability (ii) and the <a href="#">CPD-20-08 temporarily</a> expanded definition of <i>at risk of homelessness</i> serve the same populations.</p> <p>The expanded income eligibility ends on 9/30/2023 for ESG-CV funds and 6/30/2024 for reallocated ESG-CV funds as outlined in <a href="#">Notice CPD-22-06</a>.</p>
<p>Veterans and families that include a veteran family member that meet the definition of a QP.</p>	<p>Veterans experiencing homelessness.</p>	<p>No difference. Both programs serve veterans when that veteran or their household qualifies under the existing criteria.</p>

<sup>12</sup> This waiver for homeless prevention eligibility is in effect for ESG-CV funds. The expanded income eligibility ends on 9/30/2023 for ESG-CV funds and 6/30/2024 for reallocated ESG-CV funds ([Notice CPD-22-06](#)). The expanded income eligibility for annual ESG funds used to prevent, prepare for, and respond to coronavirus expired on 9/30/2022.

HOME-ARP rental housing may be limited to a specific subpopulation of a QP, so long as admission does not discriminate against any protect class under federal nondiscrimination laws in [24 CFR 5.105](#). Owners/developers may limit admission to or provide a preference for HOME-ARP rental housing to households who need the specialized support services that are provided. 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. All parties must comply with all applicable nondiscrimination and nondiscrimination and equal opportunity requirements listed in [24 CFR 5.105\(a\)](#) and any other applicable fair housing and civil rights laws and requirements.

## Affordable Rental Housing

### Purpose

Norfolk's HOME-ARP funds will be used for the development of affordable rental housing. Funds will be provided to acquire, rehabilitate, or construct affordable rental housing primarily for occupancy by households that meet the definition of one or more qualifying populations (QPs).

Eligible HOME-ARP rental housing includes "housing" as defined at [24 CFR 92.2](#), including but not limited to manufactured housing, single room occupancy (SRO) units, and permanent supportive housing. Unlike the regular HOME Program, which targets HOME-assisted rental units based on tenant income, at least 70 percent of all HOME-ARP units will admit households based only upon their status as qualifying households.

### Eligibility Requirements

Due to a combination of city restrictions and HOME grant requirements, HOME-ARP awards will only be provided in the form of a true grant. Rental development projects may only be awarded in the form of grants paid directly to the project owner and may not be awarded via a third party.

The NDHCD will evaluate projects to determine the amount of HOME-ARP capital subsidy and operating cost assistance necessary to provide quality affordable housing that meet the requirements of the Notice and is financially viable throughout the minimum 15-year HOME-ARP compliance period. Additionally, the City of Norfolk will evaluate the project in accordance with the underwriting and subsidy layering guidelines described in Appendix G.

Applicants must adhere to requirements outlined in the *HOME-ARP Program Summary* document for the duration of the project lifecycle to remain in compliance.

### Eligible Costs

Subrecipients should refer to [24 CFR 92.206](#) and the HOME-ARP Notice Section VI.B.5/6 for a list of eligible project costs. NDHCD will also review proposed project budget line items to determine if they are necessary (i.e., required to implement the project) and reasonable. All eligible costs must be documented, and records must be made available to NDHCD upon request.

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

- **Hard costs:** new construction, rehabilitation, onsite improvements
- **Soft costs:** costs relating to payment of loans, reservation fees, special inspections, appraisal fees, title and recording, relocation costs, architectural and engineering fees, environmental reviews, costs to provide affirmative marketing and fair housing information
- **Other fees:** permitting and tap fees, developer's fee.

Prohibited activities and fees are listed in 24 CFR 92.214. The following are ineligible costs: construction insurance; construction loan interest; furniture; and, payment of delinquent taxes or fees.

#### *Minimum Compliance Period*

HOME-ARP rental housing units must meet HOME-ARP requirements for not less than 15 years. When a project is also receiving project-based rental assistance, the HOME-ARP units must meet HOME-ARP requirements for the term of the Housing Assistance Payments contract. Project owners may propose a longer compliance period; however, no HOME-ARP funds will be available for operating cost assistance to cover deficits during the extended period.

The provisions at [24 CFR 92.252\(e\)\(1\)-\(4\)](#) apply, including the requirement that the City must impose the HOME-ARP rental requirements through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws, or other mechanisms approved by HUD.

#### *Period of Affordability*

The provisions at 24 CFR 92.252(e)(1)-(4) apply, including the requirement that the City must impose the HOME-ARP rental requirements through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws, or other mechanisms approved by HUD.

#### *Property Standards*

HOME-ARP rental units must comply with all property standards applicable to rental projects required in [24 CFR 92.251](#) paragraphs (a) new construction, (b) rehabilitation projects, (c)(1) and (2) acquisition of standard housing, (e) manufactured housing, and (f) on-going property condition standards, as applicable.

Owners/property managers must maintain records demonstrating that each HOME-ARP rental project meets required property standards at project completion and through the applicable minimum compliance period pursuant to [24 CFR 92.504\(d\)](#) (on-site inspections and financial oversight) and the operating cost assistance reserve management and oversight required by Section VI.B.23 of the HOME-ARP Notice.

#### *Income Determination*

All income calculations to meet income criteria of a qualifying population or for income determinations in HOME-ARP eligible activities must use the annual income definition in [24 CFR 5.609](#) in accordance with the requirements of [24 CFR 92.203\(a\)\(1\)](#). For rental projects, initial income must be verified using source documentation. Income must be recertified annually (starting year 1 after initial occupancy), and source documentation obtained every six years or sooner if evidence exists to indicate that household size or income was inaccurately reported.

Unlike the regular HOME Program, which targets HOME-assisted rental units based on tenant income, 70 percent of all HOME-ARP units will serve households based only upon their status as qualifying households. For HOME-ARP rental units restricted for occupancy by qualifying populations, a household that meets the definition of a qualifying population at the time of admission retains its eligibility to occupy a HOME-ARP rental unit restricted for occupancy by qualifying populations, irrespective of changes in income or whether the household continues to meet the definition of a qualifying population after initial occupancy. Income determinations for QPs are therefore only for purposes of establishing a QP household's rental contribution.

For low-income households, the owner 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. An owner who re-examines household income through a statement and certification in accordance with 24 CFR 92.203(b)(1)(ii), must examine the income of each household, in accordance with 24 CFR 92.203(b)(1)(i), every sixth year of the minimum compliance period, unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.

Owners/property managers must utilize the most recently published income limits for the Metro Fair Market Rent area that includes the City of Norfolk, available at the [HUD Office of Policy Development and Research](#). The very-low-income limit should be used to determine Section 8 Housing Voucher Program units.

#### *Lease Requirements*

The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

Refer to [City of Norfolk's HUD Entitlement Unit Policies and Procedures Manual](#) for a list of prohibited lease terms (Chapter 8, page 40). All lease agreements must include a HOME-ARP lease addendum that is consistent with the purposes of providing housing for qualifying populations and/or low-income households.

#### **Subrecipient Responsibilities**

The subrecipient must agree to the following to receive program funds:

- Complete application(s) in Norfolk's grants management database to ensure they are a viable entity, both financially and in regard to capacity and experience, to develop and maintain the housing and provide services, where applicable.
- Read, review, and sign a Subrecipient Agreement between the City of Norfolk and the Subrecipient.
- Establish a project-specific waitlist when selecting households to occupy units restricted for occupancy by low-income households.
- Maintain sufficient records to document adherence to program requirements and make them available to NDHCD upon request.
- Agree to accept referrals through the referral methods outlined in Norfolk's Allocation Plan.

- Document all eligible costs.
- Submit quarterly program and financial reports according to the schedule written in the Subrecipient Agreement.

## Supportive Services

### Purpose

The City of Norfolk is allocating HOME-ARP funds for the provision of supportive services to individuals and families who meet the definition of a qualifying population and who are not already receiving these services through another program.

### Eligibility Requirements

All projects seeking funding will be competitively evaluated based on the overall quality of the content submitted, cost, demonstration of past success in project and/or service delivery, sound financial management, knowledge of and ability to adhere to all federal, state, and local statutes, and alignment of project with established priorities as defined in the final *City of Norfolk HOME-ARP Allocation Plan*.

Applicants must adhere to requirements outlined in the *HOME-ARP Program Summary* document for the duration of the project lifecycle to remain in compliance.

### Eligible costs

They supportive services that HOME-ARP funds may provide are:

- McKinney-Vento Supportive Services, adapted from the services listed in section 401(29) of McKinney-Vento, and
- Homeless Prevention Services, adapted from homeless prevention services under the regulations at [24 CFR 576.102](#), 24 CFR 576.103, 24 CFR 576.105, and 24 CFR 576.106, and are revised, supplemented, and streamlined in Section VI.D.4.c.i of the Notice.
- Housing Counseling Services consistent with those defined in [24 CFR 5.100/111](#), respectively, except where otherwise noted. Housing counseling services shall be provided only by organizations and counselors certified by the (HUD) Secretary under [24 CFR part 214](#) to provide housing counseling, consistent with [12 U.S.C. 1701x](#).

Eligible costs for McKinney Vento Supportive Services and Homeless Prevention Services are detailed on page 40 of the *HOME-ARP Program Summary*. NDHCD will accept all eligible supportive services from the extensive list, as long as an eligibility assessment is conducted to identify needed and existing services for eligible program participants.

Housing counseling within the McKinney-Vento Supportive Services and Homeless Prevention Services categories is limited to:

- Development of an action plan for locating housing;
- Housing search;
- Tenant counseling;

- Securing utilities;
- Making moving arrangements;
- Outreach to and negotiation with owners;
- Assistance submitting rental applications and understanding leases;
- Assessment of housing for compliance with HOME-ARP requirements for TBRA assistance in Section VI.C of the Notice and financial assistance for short-term and medium-term rental payments provided under Section VI.D.4.c.i.(R – Financial Assistance Costs);
- Assistance obtaining utilities; and
- Tenant counseling;
- Mediation with property owners and landlords on behalf of eligible program participants;
- Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- Payment of rental application fees

Other housing counseling costs, as defined in [24 CFR 5.100](#), funded with, or provided in connection with grant funds must be carried out in accordance with [24 CFR 5.111](#). When subrecipients provide housing services to eligible persons that are incidental to a larger set of holistic case management services, these services do not meet the definition of Housing counseling, as defined in 24 CFR 5.100, and therefore are not required to be carried out in accordance with the certification requirements of 24 CFR 5.111.

#### *Documentation of eligible costs*

Chapter 13 (page 56) of the *HUD Entitlement Grants Policies & Procedures Manual* provides guidance about reporting and reimbursement policies and procedures.

#### *Duplication of benefits*

A duplication of benefits (DOB) occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose within the same time period, and the total assistance received for that purpose is more than the total need for assistance. Any subrecipient or direct beneficiary must agree to repay assistance that is determined to be duplicative. As a means to avoid duplication of benefits, NDHCD requires all HOME-ARP subrecipients to utilize the Homeliness Management Information System (HMIS), which will ensure duplication of services provided through another grant program is avoided.

#### *Other Policies*

Other policies, including but not limited to the amount and duration of *vehicle assistance, short-term and medium-term rental assistance, and housing stability case management*, may be developed by subrecipients to meet the specific needs of their unique projects and functions. The city will defer to the subrecipients' policies so long as they otherwise comply with the HOME-ARP grant notice, 2 CFR 200 Uniform Guidance rules, and other applicable cross-cutting regulations.

#### *Termination of assistance to program participants*

A subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy or no longer needs the services as determined by the terms of the provider.

However, the subrecipient must provide adequate opportunity for the program participant to appeal termination. At minimum, subrecipient service providers must provide:

- The program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;
- Written notice to the program participant containing a clear statement of the reasons for termination;
- A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and
- Prompt written notice of the final decision to the program participant.

### Subrecipient Responsibilities

The subrecipient must agree to the following to receive program funds:

- Complete application(s) in Norfolk's grants management database to ensure they are a viable entity, both financially and in regard to capacity and experience, to provide eligible supportive services.
- Read, review, and sign a Subrecipient Agreement between the City of Norfolk and the Subrecipient.
- Document participant selection and intake procedures in accordance with the guidance provided in Section IV.C.2 of the Notice and this policies and procedures document.
- Provide only the types of supportive services described in the Subrecipient Agreement and maintain adequate documentation of services rendered to clients as proof that program participants receive only the HOME-ARP services needed so there is no duplication of services or assistance in the use of HOME-ARP funds for supportive services. This will include the use of Norfolk's regional Homeless Management Information System (HMIS) which require coordination between the local supportive service provider(s), CoC, and other nonprofit organizations.
- Document all eligible costs.
- Subrecipient will submit invoices for supportive services for reimbursement on a quarterly (?) basis through Norfolk's grants management database. NDHCD staff will review the invoice to ensure compliance and to verify completion of work as needed. Upon approval of the invoice by NDHCD staff, the invoice will be processed for payment.

### Other Federal Requirements

#### Client Confidentiality

Confidentiality of all records is required. 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. The address location of HOME-ARP program participants or 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 per the [Notice](#). The Subrecipient should take care to redact unnecessary Personally Identifiable Information prior to submitting any documentation to the City of Norfolk for review. The subrecipient must ensure that the requirements

under [24 CFR part 5](#), subpart L, are included or incorporated into rental assistance agreements and leases as provided in [24 CFR 576.106\(e\)](#) and (g). Requirements related to VAWA are found in [24 CFR 576.409](#). The VAWA and confidentiality policies and procedures outlined in the [HUD Entitlement Grants Policies & Procedures Manual](#) for ESG program participants (page 32) apply for HOME-ARP.

#### Records

Records must evidence that HOME-ARP funds used to provide supportive services or affordable rental housing benefits individuals and families in the program's expanded definition of qualifying populations. Examples of such documentation may be found on pages 86-89 of the [HUD Entitlement Manual](#).

#### Monitoring

Refer to Chapter 16 in the [HUD Entitlement Grants Policies & Procedures Manual](#) for program monitoring and risk assessment. Subrecipients will be monitored according to a schedule determined by NDHCD: generally speaking, for low-risk subrecipients this will be once every three years.

## Appendix G - HOME ARP Underwriting

### Introduction

This document describes the guidelines used by the Norfolk Department of Housing and Community Development (NDHCD) in the underwriting of HOME-ARP rental housing.

It also includes the market assessment requirements for HOME-ARP rental housing projects. A HOME-ARP project is a site or sites together with any building or buildings under common ownership, management and financing and assisted as a single undertaking. The project includes all activities associated with the site(s) and building(s).

Underwriting is the process of identifying, evaluating and mitigating project risks. The goal of underwriting is to ensure both project feasibility (the project will be completed) and project viability (the project will remain viable throughout the minimum compliance period or restricted use period). The NDHCD recognizes that there are inherent risks in every project. Underwriting may result in the imposition of requirements to balance inherent and identified risks with the goal of producing and sustaining safe, decent, and affordable housing.

Full underwriting will occur:

1. Prior to making a commitment of HOME-ARP funds to a project; and
2. At the time of final draw when final sources and uses can be verified.

Technical reviews may also be conducted at initial closing or construction/rehabilitation start or at any time there is a material change. Material changes may also require an updated market assessment and/or project application.

The NDHCD may choose to review the underwriting of other lenders, including financial institutions, subrecipients, federal, state, or local government agencies, and underwriting contractors. When doing so, the NDHCD will document, based on these underwriting guidelines, the determination that the project meets program requirements, is compliant with the NDHCD written underwriting and subsidy layering standards, is a reasonable investment, and is likely to remain financially viable throughout the compliance or use period. The NDHCD may discuss the project with other funding sources and mutually disclose known information. For administrative ease, the NDHCD may align underwriting standards with other public funders, particularly if those standards are more restrictive or conservative.

### Exceptions and Interpretation

The NDHCD has developed these underwriting guidelines to comply with requirements of awarding federal assistance and to provide clarity to applicants on expectations. However, the NDHCD cannot identify every possible special circumstance that may warrant an exception to these guidelines.

Likewise, the NDHCD cannot identify every possible work-around that might be creatively identified by an applicant. Consequently, the NDHCD reserves the right to waive specific underwriting criteria for specific projects when, in its judgment, the purposes of the federal assistance can be better achieved without taking on undue risk. When waiving any given requirement, the NDHCD may impose additional special conditions or business terms that are not otherwise typically applied to projects.

The NDHCD reserves the right to reject any element of a transaction that, despite not being specifically prohibited, was not anticipated by these guidelines, specifically those that otherwise create

unacceptable risks, excessive returns to the owner/developer, or undermine the public purposes of the federal assistance.

## **Underwriting Framework**

The NDHCD underwriting framework includes complying with program rules and regulations and reasonable business practices, including but not limited to evaluation of:

1. Regulatory requirements applicable to the project, including occupancy by and affordability to the target population, compliance with rental housing minimum compliance periods, property standards, and cross-cutting federal requirements.
2. For rental housing projects, market risk, including whether sufficient demand exists for the project, the anticipated lease-up period, how the project compares to the competition, and whether general economic conditions support ongoing viability.
3. Owner/developer risk, including whether the owner/developer, including any subsidiaries or special-purpose entities has the capacity to develop and operate the project based on a history of experience or team members with experience.
4. Project risk, including sources and uses, ongoing operating assumptions, and the development schedule. This includes confirming that all sources of project financing are available and committed to the project.
5. Subsidy layering analysis to determine the actual amount of program funds required for project feasibility and viability.

## **Rental Housing**

Before committing HOME-ARP funds to a rental housing project, the NDHCD will evaluate the project to determine the amount of HOME-ARP capital subsidy and operating cost assistance necessary to provide quality affordable housing for qualifying populations that will be financially viable throughout the minimum 15-year HOME-ARP compliance period. Project underwriting will include the entire project, not just the HOME-ARP units. Low-income Housing Tax Credit (LIHTC) projects will be underwritten following the LIHTC underwriting requirements, wherever these requirements are more stringent.

The NDHCD underwriting includes an in-depth review of underlying project assumptions, development sources and uses, and projected operating income and expenses. The following underwriting criteria apply to rental projects funded in whole or in part with HOME-ARP. ~~Unless otherwise agreed to in the funding agreement, annual principal and interest payments will be required. The interest rate will be determined using a 15-year amortization period and combined 1.05 debt service coverage ratio for all primary and secondary debt, including deferred developer fees. The debt service coverage ratio will be based on stabilized operating or year 2. Payments of principal and interest may be deferred or forgiven.~~

**Due to a combination of city restrictions and HOME grant requirements, HOME-ARP awards will only be provided in the form of a true grant. Rental development projects may only be awarded in the form of grants paid directly to the project owner and may not be awarded via a third party. The project owner is the entity that holds valid legal title to, or long-term leasehold interest in the property.**

## ***Regulatory Requirements***

The NDHCD will evaluate the project to ensure it meets all regulatory requirements, including but not limited to the following minimum requirements:

1. The minimum per unit HOME-ARP subsidy is not less than \$1,000 per unit.
2. The HOME-ARP Program permits the funding of one or more units in a project, including mixed-income and mixed-use properties. However, HOME-ARP funds may only be used to pay eligible costs for HOME-ARP-assisted units. When fewer than 100% of a project's units are designated as HOME-ARP assisted, only the costs allocable to the HOME-ARP-assisted units may be paid. This requirement dictates the minimum required number of units that must be designated as HOME-ARP assisted. Of HOME-ARP Units:
  - a. Not less than 70% (rounded up to the nearest whole number) must be set-aside for tenancy by HOME-ARP Qualifying Populations. These units are referred to as HOME-ARP QP Units. Up to 30% must be set-aside for tenancy by households with income less than 80% of the area median income adjusted for household size and geographic area. These units are referred to as HOME-ARP LI Units.
  - b. Note that this flexibility is intended only if required to facilitate development of a HOME-ARP rental project.
3. HOME-ARP funds are considered committed to a project at the time the NDHCD and project owner execute a legally binding written agreement. The timeline must evidence:
  - a. Acquisition, if applicable, will occur within six (6) months;
  - b. Construction or rehabilitation will begin within twelve (12) months;
  - c. The project will lease-up within six (6) months of development phase completion; and
  - d. The project will be completed within four (4) years.
4. HOME-ARP funds are eligible for precommitments to support with applications for other financing sources such as LIHTC. Pre-commitments of HOME-ARP are intended for one application cycle and will only be formally committed upon receipt of other competitive funding sources. Pre-commitments may be made between one and six months before application deadlines for other competitive sources.
5. Projects must meet all local codes, zoning, and ordinances.
6. Acquisition and/or rehabilitation projects must submit a capital needs assessment.
7. For HOME-ARP Qualifying Units (HOME-ARP QP Units), unit rents, including utilities, must not exceed 30% of the adjusted household income of the qualifying population tenant up to the Low-HOME-ARP or fair market rent for the bedroom size as published by HUD. For underwriting purposes, unless the market assessment or project application documents occupancy assumptions or evidences commitment of project-based rental assistance, the NDHCD will calculate the anticipated year 1 HOME-ARP QP rent as 30% of income of a household whose income is 30% of the AMI, adjusted for anticipated occupancy by bedroom size. Stabilized operating (years 2 through 15) for HOME-ARP QP rent will assume the Low-HOME-ARP rent.
  - a. 1 person per each single room occupancy or 0-bedroom unit;
  - b. 2 people per 1-bedroom unit;
  - c. 3 people per 2-bedroom unit;
  - d. 4 people per 3-bedroom unit.

8. For HOME-ARP Low-income Units (HOME-ARP LI Units), unit rents, including utilities, must not exceed the High HOME rent for the bedroom size as annually published by HUD.
9. Unit occupancy. Within six (6) months of construction completion, HOME-ARP assisted units must be initially occupied by tenants who are qualifying populations, or low-income households as specified in the funding agreement.
10. Minimum compliance period. The minimum compliance period for HOME-ARP rental housing projects is fifteen (15) years.
11. The waiting list and tenant selection criteria provide for selection from the waiting list in chronological order to the extent practicable.
12. The affirmative marketing plan complies with HUD and NDHCD requirements.

### **Market Assessment**

All applications for NDHCD HOME-ARP rental housing funds must demonstrate demand for the proposed housing. If the applicant proposes to or has already applied for an allocation of Low-Income Housing Tax Credits (LIHTC) or another source of federal funding, including a guarantee or insurance program, the applicant must provide the market study that will be or has been submitted to Virginia Housing or the relevant federal agency.

If the project will not include LIHTC or another federal funding source, the applicant must submit a market study that contains the content, data, analysis, and conclusions described in the National Council of Housing Market Analysts (NCHMA) model standards available at [www.housingonline.com](http://www.housingonline.com). The market study need not be conducted by an NCHMA member and must be conducted by a market analyst unaffiliated with the project owner/developer. All market assessments must:

1. Be not be more than twelve months old at the time of application or reapplication;
2. Utilize current US Census, Claritas, ESRI, primary data, or document the reliability of other data if used; and
3. Assess and document the demand for the type and number of all housing units being developed, not just those designated as HOME-ARP assisted.

Contents must include:

1. Purpose of the report and scope of work conducted.
2. Project description.
3. Unit mix by bedroom size and targeted income level.
4. Maximum and minimum income for each unit type.
5. Project-based subsidies that will be offered and the number and type of units that will be subsidized.
6. Population and unit targeting, including qualifying populations and low-income households.
7. Location and site characteristics, including any adverse site conditions.
8. Definition of the primary market area (PMA), how it was determined, and a map of the PMA.
9. Detailed income increments for lower income households, including 30% AMI, 50% AMI, and 80% AMI.
10. Population and household estimates, including people experiencing homelessness, at risk of homelessness, and any other special populations to whom the project may be targeted.

11. Other affordable housing communities in the Virginia Beach-Norfolk-Newport News, VA-NC MSA, including income and special populations targeting, rent structure, vacancy rates, amenities, and any offered concessions.
12. Affordability analysis, demand analysis, capture rates, absorption period and absorption rate.
13. For rehabilitation projects, current rents, current and historical vacancy rates, wait lists, and if the project includes HOME-ARP low-income units, an analysis of the number of existing units occupied by residents expected to be income-eligible upon project completion.
14. Analysis and conclusions that summarize important points from each section of the market study.

The NDHCD will evaluate the market assessment to identify market risks including whether the market assessment evidences:

1. Proposed rent levels that are within regulatory limits and are reasonable for the market area and/or proposed population taking into account any known rent concessions offered by competing properties;
2. Achievable occupancy rates, based on a comparison of comparable properties in the primary market area and data regarding the number of low-income and sheltered and unsheltered individuals and/or families in the project market area;
3. A reasonable capture rate that does not exceed the following. A higher capture rate may be accepted for projects that include project-based subsidies, or when service providers indicate an adequate pipeline of eligible households that will be consistently referred to the project:
  - a. Ten percent (10%) for the project as a whole and twenty-five (25%) for any specific bedroom size.
  - b. Fifty percent (50%) of the most recent point-in-time count of unsheltered persons and persons sheltered in emergency or transitional housing for the project area.
4. Absorption rates that are reasonable based on the expected lease-up period and a comparable comparison period. The absorption rate must evidence that occupancy will be achieved at the proposed rents within not more than six (6) months of completion; and
5. The project is unlikely to have a negative impact on other comparable projects in the area.

Note: For HOME-ARP units for qualifying households, a market assessment is not required. If the entire proposed project only serves qualifying populations, a market assessment is not required. Rather, NDHCD can demonstrate that there is unmet need among qualifying populations for the type of housing proposed through their gap analysis, 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, NDHCD will evaluate the market assessment as described above. If a third-party market assessment completed by the developer or another funder is being utilized, NDHCD will review the assessment and provide a written, dated acknowledgement that it accepts the assessment's findings and conclusions. The market assessment and NDHCD's written, dated acknowledgement will be retained for recordkeeping purposes.

#### **Owner/Developer and Development Team Assessment**

The developer includes the owner, the developer, and any underlying corporate entities and individuals that will own the HOME-ARP assisted property. The NDHCD will consider specific skills and experience with development, including but not limited to property management, asset management, public financing, and service provision, including:

1. Recent, ongoing, and successful experience with development of similarly sized and regulated housing;
2. The presence of adequate staff with specific skills and experience appropriate to their roles in the project; and
3. The financial capacity of the owner/developer to meet its financial obligations and risks of the project.

To evaluate the owner/developer and development team, the NDHCD requires that applicants submit:

1. The name(s) and role(s) of staff and consultants principally responsible for project management during the construction phase (the development team) and operating phase (the property management team), a list of similar projects completed by the project team, or if the project team has not completed similar projects, a list of projects completed by individual team members. The project(s) list must include:
  - a. Name and location of similar projects;
  - b. Type(s) of project funding used;
  - c. Number of units and affordable units; and
  - d. On-site and/or off-site services provided for people experiencing homelessness.

The NDHCD may require and review a list of real estate owned or underway (including partnership/membership interests). This review may include project performance, and financial factors such as net occupancy, actual DCR, cash flow, outstanding loan balances, net equity of individual projects, and the overall portfolio.

#### **Identity of Interest Relationships and Costs**

Applicants must disclose all identity of interest relationships/contracts and/or costs involved in a transaction during the development period and following completion of the project. An identity of interest is any relationship based on family ties or financial interests between or among two or more entities involved in a project-related transaction that could reasonably give rise to a presumption that the entities may not operate at arms-length.

#### **Technical/Professional Capacity**

The NDHCD will review the collective capacity of the development team including, but not limited to, the general contractor, architect, engineer, market analyst, management company or property manager, accountant, attorney, and any other specialized professionals or consultants, and the individual experience of team members.

As a whole, the development team must have the skills and expertise necessary to successfully complete and operate the development. The NDHCD will examine whether the team members have worked together successfully in the past. The NDHCD will also consider prior experience with the development team. In no case may any member of the development team be a suspended, debarred, or otherwise excluded party.

New entities, new development team members, and new staff will be considered higher risk than those with successful past experience working together.

**Financial Capacity**

Developers must demonstrate financial capacity to support the proposed project during construction, lease-up, and ongoing operations. The NDHCD will not fund a project where cash needs exceed the developer's net or liquid assets. The NDHCD will identify financial capacity risks by requiring the applicant submit:

1. The applicant's most recent audit;
2. Current fiscal year-to-date income and expense statement;
3. Current balance sheet showing all assets and liabilities, including contingent liabilities (e.g., construction loans or operating deficit guarantees);
4. Income and expense statements and balance sheets for the two previous fiscal years, unless an audit is submitted; and
5. A list of any litigation, pending judgments, bankruptcies with the past seven years that apply to the applicant, any principals or officers, or any affiliated entities. Any litigation and pending judgments must be described.

The NDHCD will review the submitted documentation to determine:

1. If the financial management system complies with Generally Accepted Accounting Principles;
2. If there are any material weaknesses in the entity's financial management system or internal controls;
3. If the developer is a nonprofit organization, its audit evidences that it meets the financial accountability standards of 2 CFR 200.302 regarding financial management and 2 CFR 200.303 regarding internal controls; and that sufficient financial resources are available to cover any shortfalls during both the construction and operating periods, except for any shortfall that is planned for funding with HOME-ARP operating cost assistance. This will include an analysis of the developer's net worth, portfolio risk, litigation, pending judgments and bankruptcies, pre-development funding and liquidity.

**Disqualification**

NDHCD may disqualify an application based on substantive evidence connecting a development team member to any of the following:

- Making a misrepresentation or providing materially false information in an application;
- Allowing a shelter or affordable rental housing property to enter into foreclosure;
- Being removed from a shelter or rental housing ownership entity by an equity investor or NDHCD;
- Not being in good standing with any affordable rental housing program administrator or the State of Virginia;
- Has been a debtor in a bankruptcy within the past seven (7) years;
- Has been a party in a civil, administrative, or criminal matter which resulted in an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement against that party or a pattern of adverse civil

proceeding and judgments against that party as evidenced by three (3) or more adverse judgments within the previous seven (7) years;

- Has been found to be directly or indirectly responsible for any other project within the past five (5) years in which there is or was uncorrected noncompliance with state or federal rules, regulations or standards;
- Has outstanding compliance issues with HUD or NDHCD;
- Has NDHCD fees or taxes that are due and remain unpaid at the time of application;
- Has a loan payment that is due and remains unpaid without a pending deferral request at the time of application; and
- Being debarred, suspended, or otherwise excluded from any federal contract.

### **Project Assessment**

To identify project risks, the NDHCD will evaluate sources and uses, ongoing operating assumptions, the development schedule, and profit and returns to the developer. To ensure adequate information is available to assess project risk, the NDHCD will require applicants submit:

1. Firm commitment letters for all permanent financing sources (loans, grants) that include:
  - a. Amount
  - b. Term and amortization (not less than the minimum HOME-ARP restricted use period);
  - c. Fixed interest rate;
  - d. Fees charged;
  - e. Reserve requirements;
  - f. Anticipated lien position; and
  - g. Acceptance of the HOME-ARP covenants, conditions, and restrictions for rental housing.
2. If the applicant is a partnership or limited liability corporation, a copy of the partnership agreement or operating agreement, which must indicate the cash contributions by the partner(s) or member(s);
3. If equity is committed by the developer or owner(s), evidence of available equity funds;
4. Acquisition documents, such as the purchase or lease agreement, option or closing statement, and appraisal or other documentation of value. An appraisal must be performed by a state-licensed appraiser. Closing costs must be documented;
5. Construction and other cost estimates (e.g., professional services, soft costs, capitalized reserves) based on the scope of work;
6. Agreements governing capitalized reserves;
7. A third-party appraisal to substantiate the value of the property after rehabilitation or construction, if applicable;
8. A capital needs assessment for all acquisition and/or rehabilitation projects;
9. An operating proforma (project income and expense statement) encompassing not less than the minimum 15-year HOME-ARP compliance period and including:
  - a. Projected residential revenue (rents);
  - b. Projected non-residential revenue;
  - c. Vacancy rates that do not exceed 10%; and
  - d. Operating expenses, including but not limited to development-paid utilities, management fees, reserves, and debt service. Supportive services are accounted for separately in HOME-ARP projects.

### **Sources and Uses**

The NDHCD will review the sources and uses statement, development budget, timeline and supporting documentation. The NDHCD may adjust any factor during the underwriting analysis to adjust for known conditions not accounted for in the development budget. Sources and uses underwriting will ensure:

1. Proposed uses of program funds are eligible;
2. All funds are firmly committed to the project or are contingent only upon the receipt of program funds and environmental clearance;

3. Total funding sources are adequate and timely in their availability to cover development costs at all phases of the project;
4. All senior mortgage debt bears a fixed interest rate, has a term equal to or longer than the required minimum compliance period, and allows for the recording of covenants, conditions and restrictions imposing federal requirements senior to all other financing documents;
5. Development costs, including those paid with other sources, are reasonable, necessary, and customary both on a line item and total project basis;
6. The cost of land and/or buildings acquired does not exceed the as-is market value of the property based on the submitted appraisal, plus documented closing costs;
7. If HOME-ARP funds are requested for a capitalized operating reserve for HOME-ARP qualifying population units:
  - a. A minimum of \$300 per non-HOME-ARP qualifying population unit must be deposited into a lease-up reserve. Deposits to the lease-up reserve may be released when the property reaches ninety-three percent (93%) occupancy;
  - b. Not less than \$250 per unit for new construction projects and \$350 per unit for acquisition and/or rehabilitation projects must be funded to a replacement reserve specifically for non-HOME-ARP qualifying population units; and
  - c. The project operating reserve must equal at least four (4) months of operating expenses and debt service for the non-HOME-ARP qualifying population units.
8. If HOME-ARP funds are NOT requested for a capitalized operating reserve for HOME-ARP qualifying population units:
  - a. A minimum of \$300 per unit must be deposited into a lease-up reserve. Deposits to the lease-up reserve may be released when the property reaches ninety-three percent (93%) occupancy;
  - b. Not less than \$250 per unit for new construction projects and \$350 per unit for acquisition and/or rehabilitation projects must be funded to a replacement reserve; and
  - c. The project operating reserve must equal at least four (4) months of operating expenses and debt service for the entire project.
9. The contingency does not exceed 10% of project hard costs, unless the project is an acquisition or rehabilitation project and documentation identifying risk factors is included with the application;
10. The timing of program funds and the items for which program funds will be used coincides with the project schedule;
11. Any conditions of other funders on drawing funds will not have a negative impact on project feasibility and/or viability;
12. Permanent funding repayment terms are incorporated into long-term operating projections;
13. All funding sources' requirements are incorporated into the project structure;
14. No other funding sources have requirements that conflict with NDHCD funds requirements;
15. Capitalized reserves cannot be withdrawn as fees or distributions;
16. The budget is adequate to meet and maintain property standards throughout the minimum compliance period;

17. The costs associated with cross-cutting regulation (environmental review, URA, Davis-Bacon) compliance are included in the budget; and
18. The total amount of program funds requested is reasonable and necessary considering all funding available to the project (subsidy layering review).

The NDHCD will not make a firm commitment of funds to any project that does not evidence all financing sources are in place to complete and operate the project. For LIHTC projects, this includes a confirmed reservation from the NDHCD and a good faith offer of equity investment from an investor. When all financing sources are not in place to complete and operate the project, the NDHCD may make a conditional commitment of funds to a project. When a funding source is contingent upon receipt of HOME-ARP funds from the NDHCD, contingencies may not include automatic self-expiring clauses or highly conditioned language.

#### **Operating**

The NDHCD will review the operating proforma to ensure the following. The NDHCD may adjust any factor during the underwriting analysis to adjust for known conditions not accounted for in the operating proforma.

1. Individual line item and collective revenue (including non-residential revenue) and operating costs are reasonable, necessary, and customary when compared to other similar projects.
2. Revenue will be sufficient to cover expenses, debt service, and mandatory replacement reserve requirements while generating reasonable cash flow throughout the minimum compliance period.
3. New construction projects must evidence a minimum operating expense of \$4,500 per unit per year, not including real estate taxes and reserve payments.
4. The operating proforma must demonstrate the project operates at least at break-even (debt coverage ratio of 1.0 or higher) in each year during the minimum compliance period, unless there is a capitalized operating reserve maintained outside the control of the project owner or property manager and sufficient to fully fund all operating deficits.
5. Vacancy rates and collection losses reflect local market conditions for comparable projects and do not exceed 7%. The NDHCD may adjust vacancy rates and collection losses for any project based on the actual vacancy rates of comparable projects in the market area, the presence of project-based subsidy, or occupancy by special populations.
6. The HOME-ARP application will automatically increase operating costs 3% annually and operating expenses 2% annually.
7. Identities of interest are disclosed;
8. Other funding debt service and reserve requirements are included;
9. Any net operating income generated during the compliance period is not attributable to HOME-ARP operating cost assistance.

#### **Profit and Returns to Developers and Development Team Members**

The NDHCD will evaluate development sources and uses and the operating proforma and supporting documentation to ensure:

1. Consistent with Virginia Housing requirements, the developer fee does not exceed 15% of total development costs. Developer fees include those actually paid or otherwise recognized as income of the developer and other costs paid to third parties, such as construction oversight and consultant's fees.
2. Contractor fees, including profit, overhead and general requirements do not exceed 15% of net construction costs. Net construction costs are the amount of the construction cost less contractor fees and building permits.

When another funding source imposes a lower developer, contractor or architectural fee, the allowed fee will be the fee imposed by the other funding source.

#### **Deferred Developer Fees**

When a project includes a deferred developer fee as a financing source, the NDHCD will generally require that projections of surplus cash, after any cash-flow contingent payment due the NDHCD, be sufficient to repay the deferred fee within 15 years. Unless otherwise provided for in the "waterfall" provisions of an LIHTC project partnership or operating agreement, all surplus cash distributions will first be credited to the deferred developer fee.

#### **Subsidy Layering and Gap Analysis**

Subsidy layering analysis is conducted to ensure only the amount of program funding necessary to provide safe, decent, and affordable housing for the required minimum compliance period is provided to the project. The subsidy layering analysis will combine factors evaluated under market, developer, and project risk with an examination of other funding sources to ensure only the amount of HOME-ARP funds necessary for project feasibility and viability are provided to the project.

If the subsidy layering analysis reveals that the gap between available sources and the uses of funds exceeds the amount requested, the NDHCD may deny assistance to the project or:

1. Reduce the amount of HOME-ARP funding; and/or
2. Increase the number of HOME-ARP units.

#### **Final Underwriting**

When final underwriting takes place at project completion and the project costs are lower than originally underwritten, the NDHCD may reduce the HOME-ARP assistance provided to the project.

#### **Additional Underwriting**

All projects, including HOME-ARP NCS and HOME-ARP Rental Housing are subject to additional underwriting when any material change occurs. A material change includes:

1. Any additional funding source is committed to the project, regardless of whether the funding source was identified in the application as tentative;
2. Change in the number of beds or units;
3. Addition or deletion of any funding source necessary for the completion of the development;
4. Change in any development funding source amount;
5. Substitution of one or more members of the development or operating team;
6. Changes in the development budget; and
7. Changes in the operating budget that increase costs or decrease revenues by more than \$100/month or \$1,200/unit per year.