

## FAQs Posed to NSD staff regarding HOME ARP

- 1) Can a private citizen buy a property and a nonprofit then enter into a contract to buy that property if they are awarded PSH funds?

Private citizens are only constrained to the extent that indicated in the regulation I copied below - would they be legally considered a “participant in the development process”?

- 2) Do any HOME ARPA funds in a project trigger all regs (whether it is \$1 or \$1 million)?  
YES - Davis Bacon

- 3) What is trigger/timeline for environmental review?

If an entity knows they will apply for federal funds, the environmental review requirements are triggered -- here is the regulatory citation:

### § 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. (note, we do not yet have a formal application)

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

See below link for interesting commentary I found on this...y'all are not alone....

Catch-22: The “Choice Limiting Activities” Dilemma | Felicity Hardee Law Practice (fhardee.com)

4) What pre-development activities are allowed and which can be waived if requested? Will need Environmental Exempt certification for predevelopment costs before anything could be reimbursed from grant funds.

5) What pre-development can be done now that can be reimbursed once grant awards are made?

As listed in reg, only if Exempt has been approved

6) What pre-development work cannot be done before award?

Anything for which Environmental Exempt has not been approved

7) Have submitted question to HUD ARP previously – “The City of Fort Worth intends to release a Request for Proposals in late January that includes HOME ARPA funding as well as city general funds to fund 2-3 projects with a total of 125 PSH units. It is anticipated that City council will award projects in late March or April.

A nonprofit PSH developer has identified a good site for a PSH project. **Is the nonprofit able to put money down on the site and if they are awarded through the RFP later, pay themselves back?** Need “magic” language in purchase contract, also need to confirm that this would not be “pre-award” costs under HOME-ARP -- will need to get back to you on this...

Example – On Dec. 17, nonprofit enters into contract with property owner for a 4 month contract for \$50,000. Non profit pays \$50,000 to owner. In March, nonprofit is awarded \$4 million in HOME ARPA and City general funds to develop 50 units of PSH. Nonprofit uses \$50,000 of that award to pay themselves back. **Does it make a difference if the nonprofit uses the City general funds to pay themselves back the \$50,000 vs using \$50,000 of HOME ARPA” I think that is okay to use the non-HUD funds to reimburse themselves?**

8) Your advice/guidance on using flexibility of HFC and Directions Home dollars for items in a project that might not be covered by HOME ARP – for example, it is my understanding that HOME ARPA doesn’t cover a standalone community center and laundry (like New Leaf model). Could project distinguish no HOME ARPA for standalong community center/case management offices/laundry and use HFC and Directions Home funds instead because the items are necessary to support of projects? Yes - use HFC or DH funds.

9) What is guidance on committing HUD assistance?

24 CFR 28.22 (a) Neither a recipient nor any participant in the development process including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in section 58.1(b) (*CDBG, HOME, etc*) on an activity or project until HUD or the state has approved the recipients Request for Release of Funds (RROF) and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in section 58.1b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

10) Can I be reimbursed an option fee?

Here is the language about the option fee --

24 CFR 58.22(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part (*24 CFR Part 58*) and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review, and have no say in the approval or disapproval of the project.