

HOME-ARP Policy Brief

Preferences, Methods of Prioritization, and Limitations

This policy brief explains and clarifies the requirements for establishing preferences and limitations in *CPD Notice 21-10: Requirements for the Use of Funds in the HOME-American Rescue Plan (HOME-ARP) Program* (the Notice) and how preferences and limitations affect permissible client referral methods. This brief does not establish new requirements.

Through section 3205 of the American Rescue Plan Act of 2021 (P.L. 117-2) (“HOME-ARP”), Congress authorized the use of HOME-ARP funds to provide housing, shelter, and services to specific qualifying populations (QPs). These four QPs, defined in [Section IV.A](#) of the Notice, (pages 3-8) are¹:

1. Homeless as defined in [24 CFR 91.5](#);
2. At risk of Homelessness as defined in [24 CFR 91.5](#);
3. Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking² (referred to herein as domestic violence/sexual assault/trafficking); and,
4. Other populations who do not qualify under any of the populations above but meet one of the following criteria:
 - A. Other Families Requiring Services or Housing Assistance to Prevent Homelessness
 - B. Those At Greatest Risk of Housing Instability

The HOME-ARP statute reflects Congress’s intent that HOME-ARP activities benefit all four QPs to address housing instability and homelessness. In accordance with the HOME-ARP statute, participating jurisdictions (PJs) must design and administer their HOME-ARP program to **provide all four QPs with access** to HOME-ARP projects and activities. Providing access means allowing all four QPs to apply for or be referred to HOME-ARP projects or activities. In practice, this access may not always result in individuals or households from all four QPs being served by a PJ’s HOME-ARP program (e.g., admittance to a HOME-ARP unit or receiving HOME-ARP supportive services), but a PJ may not exclude or remove the eligibility of any QP from its HOME-ARP program.

¹ Veterans and families that include a veteran family member that meet the criteria for one of the QPs defined in [Section IV.A](#), of the Notice are also eligible to receive HOME-ARP assistance.

² This QP differs from the domestic violence population served by the Continuum of Care program because it includes persons fleeing or attempting to flee human trafficking, which includes both sex and labor trafficking, as outlined in the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7102).

What are Preferences and How Do They Operate in HOME-ARP?

Preferences are used to establish the order in which applicants are admitted to housing or shelter or provided with HOME-ARP TBRA or services. A preference provides a priority in the selection of applicants for a project or activity among QPs (e.g., homeless QP) or who are in a specific category/subpopulation within a QP (e.g., elderly or persons with disabilities within one or more QPs). In HOME-ARP, PJs are permitted to establish reasonable preferences among the four QPs or for a subpopulation of the QPs to prioritize applicants in a specific QP or subpopulation for selection for HOME-ARP projects or activities. Preferences do not make anyone eligible who was not otherwise eligible for HOME-ARP assistance (i.e., a member of a QP).

A **preference** permits an eligible QP applicant that qualifies for a PJ-adopted preference to be selected for HOME-ARP assistance before another eligible QP applicant that does not qualify for a preference. A preference is not a **limitation** (i.e., does not exclude an individual or household that qualifies under any of the four QP definitions from applying for the HOME-ARP project or activity). A **method of prioritization** is the process by which a PJ, Continuum of Care (CoC) Coordinated Entry (CE), subrecipient, or project owner determines how two or more eligible QP applicants qualifying for the same or different preferences are selected for HOME-ARP assistance.

Example: A PJ adopts a preference for chronically homeless individuals and families for a HOME ARP rental project. The preference gives chronically homeless QP applicants priority for admission to the project. All other eligible QP applicants (including homeless QP applicants who do not qualify as chronically homeless) are selected in chronological order for any units not occupied by chronically homeless QP applicants. Chronically homeless QP applicants are prioritized for admission for occupancy based on length of time they have been homeless.

In the example, the PJ-adopted **preference** for chronically homeless requires eligible QP applicants who are chronically homeless to be selected before eligible QP applicants who do not qualify as chronically homeless. The PJ-adopted **method of prioritization** within the chronically homeless preference requires chronically homeless applicants to be selected in order based on length of homelessness.

Preferences can be implemented in several ways: All of the following are examples of a PJ using a preference in the use of its HOME-ARP funds:

- **Projects or activities that will target assistance to a certain QP (e.g., homeless QP) or subpopulations (e.g., veterans in the homeless QP) before serving other QPs.**
 - A HOME-ARP non-congregate shelter (NCS) that prioritizes admission of individuals or households in the homeless QP or domestic violence/sexual assault/trafficking QP over the other QPs (i.e., at risk of homelessness and other populations). Members of all four QPs are eligible to apply for and be admitted to the NCS.

- A HOME-ARP supportive services activity prioritizes homeless veterans (a subpopulation of the Homeless QP) over those in the Homeless QP who are not veterans and those in the other QPs.
- **Project selection processes (e.g., RFP, NOFO, etc.) that apply a preference in the award of funds (e.g., rank projects higher or award bonus points for serving a certain QP or a subpopulation of a QP).**
 - A PJ issues HOME-ARP NOFO for projects that will serve all QPs but provides additional points to projects that will have a preference for individuals or families in that qualify for the Homeless QP.
- **Referral methods that prioritize certain QPs or subpopulations of a QP.**
 - A PJ enters into a written agreement with the local CoC to use its CE system to accept applicants from all QPs for its HOME-ARP projects and activities. The CE selects individuals and families in the homeless QP for referrals for HOME-ARP assistance before other QPs, in accordance with its written agreement with the PJ.

If a PJ intends to implement one or more preferences, the PJ must identify and describe those preferences and methods of prioritization in its HOME-ARP allocation plan. The PJ's preferences must also be tied to and justified by the PJ's needs assessment and gaps analysis. **If a PJ does not identify and describe preferences in its allocation plan, it is prohibited from implementing any preferences and methods of prioritization in any of its HOME-ARP projects or activities unless it completes a substantial amendment to the approved plan. In the absence of established preferences, the PJ must ensure that individuals and households from all QPs are admitted to projects or activities chronologically in order of their application.**

If a PJ establishes preferences, it must ensure that those preferences comply with the requirements in [Section IV.C.1](#) of the Notice (pages 9-10), including:

- PJs must comply with all applicable fair housing, civil rights, and nondiscrimination requirements, (e.g., Fair Housing Act, Title VI of the Civil Rights Act, section 504 of Rehabilitation Act, HUD's Equal Access Rule, and Americans with Disabilities Act).
- PJs may provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) within the QP only if the preference complies with 24 CFR 8.4 and is needed to address a greater gap in benefits and services received by such persons in the PJ's geographic area. The PJ must identify and describe the specific category and how it addresses the greater unmet need in its HOME-ARP allocation plan.

HUD strongly recommends that PJs consult with the Fair Housing and Equal Opportunity (FHEO) Division in their local HUD Field Office before establishing a preference (or limitation as discussed in the next section) that may have fair housing or civil rights implications.

What is the Effect of Not Adopting Preferences?

PJs are not required to establish preferences. If a PJ does not identify preferences in its allocation plan, its HOME-ARP program will serve individuals and families from all QPs in all of its projects or activities and will use project- or activity-specific waiting lists. If using project or activity-specific waiting lists, applicants for HOME-ARP projects or activities must be selected in chronological order of their application to the greatest extent practicable, without the use of any preference or method of prioritization being employed. Consequently, by not establishing preferences, the PJ limits its option to use the CE as a referral method (i.e., a CE can only refer clients for placement on HOME-ARP project- or activity-waiting lists, and those clients are subject to the requirement for selection in chronological order).

What Are Limitations and How Do They Differ From Preferences?

Unlike a PJ's adoption of one or more preferences which establish priorities among QPs or for subpopulations of QPs, limitations exclude certain QPs or subpopulations of QPs from eligibility for a project or activity. Examples of limitations include:

- A HOME-ARP non-congregate shelter (NCS) will limit admission to individuals or families that qualify under the domestic violence/sexual assault/trafficking QP.
- A HOME-ARP rental project will limit occupancy to homeless veterans, a subpopulation of the homeless QP.
- A PJ issues a HOME-ARP NOFO that will only fund projects that will exclusively serve individuals or families that are members of the homeless QP.

Pursuant to Section 504 requirements at [24 CFR 8.4\(b\)\(1\)\(iv\)](#), a PJ may only limit a HOME-ARP project or activity to persons (within the QPs) with a specific disability only as necessary to provide effective housing, aid, benefit, or services that would be as effective as those provided to others. Limitations must not discriminate against any protected class under federal nondiscrimination laws in [24 CFR 5.105](#).

HUD strongly recommends that PJs consult with the FHEO Division in their local HUD Field Office before establishing a limitation that may have fair housing or civil rights implications.

Limitations on eligibility for a HOME-ARP project or activity may cause unintended violations of fair housing, civil rights, and nondiscrimination requirements or HOME-ARP statute. Consequently, **PJs should not impose a limitation on eligibility unless it is necessary to address a greater gap in effective housing, aid, benefit, or services in the PJ's geographic area and the HOME-ARP project or activity cannot address the gap through the use of a preference.** If a PJ will use a limitation in any of its HOME-ARP projects or activities, the limitation must be justified in the HOME-ARP allocation plan based on the PJ's priority needs in

its needs assessment and gaps analysis. This includes any restriction on eligibility for assistance or occupancy based on the eligibility requirements of other funding sources in a project that will receive HOME-ARP funds.

Because a PJ may not exclude any of the four QPs from access to HOME-ARP assistance in its overall HOME-ARP program, **a PJ that imposes a limitation on a HOME-ARP project or activity must fund other HOME-ARP projects or activities that provide access to all other QPs to avoid excluding any of the four QPs from its overall HOME-ARP program, in violation of the HOME-ARP statute.** Consequently, a PJ undertaking only one project or activity with its HOME-ARP funds **may not** impose a limitation on eligible QPs because doing so violates the HOME-ARP statute by excluding one or more of the four QPs from the PJ's overall HOME-ARP program.

How Can a Continuum of Care (CoC) Coordinated Entry (CE) Be Used in a HOME-ARP Program?

A CoC administers a CE to standardize program participant intake and referrals to available housing and services in a designated area. CEs assess vulnerability and severity of service needs of individuals and families at risk of homelessness or experiencing homelessness. CEs then prioritize these individuals and families for assistance based on a set method that incorporates both HUD requirements and local priorities. (See [Notice CPD-16-11](#) and [Notice CPD-17-01](#) for additional background and information).

The program requirements and eligible populations for HOME-ARP and the CoC program have significant differences. Consequently, Section IV.C.2 of the Notice (pages 10-11) permits PJs to use CE for referrals for HOME-ARP projects and activities **only** if certain requirements are met.

The following further clarifies PJ requirements when using a CE:

- Because CEs **currently** are not required to serve the same populations as the four QPs in HOME-ARP and the HOME-ARP statute requires that all four QPs be eligible for HOME-ARP assistance, if a PJ will be using a CE for direct referrals to its HOME-ARP projects and activities, the CE must be expanded to accept all four QPs, as defined in the Notice. If the CE is not expanded to accept all four QPs, the PJ must require the project or activity to use other referral methods, as described in Section IV.C.2.ii (page 11). The PJ must also use referral methods other than a CE if any of the other conditions described in Section IV.C.2.i. (page 11) occur.
- In the CoC CE, “prioritization” refers to the CE-specific process by which all persons in need of assistance are ranked in order of priority. A CoC establishes CE prioritization policies to ensure, to the maximum extent feasible, that people with more severe service needs and levels of vulnerability are prioritized for housing and assistance before those with less severe service needs and lower levels of vulnerability. (See Notice CPD-16-01 and CPD Notice-17-01). This CE prioritization constitutes the use of preferences and

therefore if a PJ uses a CE for direct referrals, the CE must also comply with HOME-ARP requirements (e.g., not exclude any of the four HOME-ARP QPs, use only those preferences and method of prioritization adopted by the PJ, and include the preferences and prioritization used by the CE in the PJ's allocation plan). Further, because a PJ may want to establish different prioritization for HOME-ARP than what the CoC is currently implementing for the CE, the PJ and CoC must enter into a written agreement requiring that the CE comply with only PJ-adopted preferences and method of prioritization for HOME-ARP referrals.

Any method of prioritization implemented in HOME-ARP projects and activities, including those used by a CE to prioritize HOME-ARP applicants, must be established and described in the HOME-ARP allocation plan and specified in a written agreement between the PJ and CoC. The description in the allocation plan must clearly identify the preferences being used in the method of prioritization. For example, if applicants will be selected for HOME-ARP assistance based on a CE's intake assessment of need or duration of time the applicant has been homeless, this methodology of determining priority must be described in sufficient detail in the PJ's HOME-ARP allocation plan to demonstrate compliance with HOME-ARP requirements.

If the PJ does not include preferences and a method of prioritization in its allocation plan, including those used by the CE:

- The PJ may not allow the CE to use its preferences or prioritization to determine the order of HOME-ARP applicants for HOME-ARP shelter, housing, and assistance. Therefore, while the PJ may still use the CE for applicant intake and verification of QP eligibility, the CE may not refer an eligible QP applicant for HOME-ARP projects or activities except through a written waitlist, in accordance with the Notice requirements for a waitlist.
- A PJ must submit a substantial amendment to its HOME-ARP allocation plan for any new preferences.

Note that CEs serve designated geographic areas, which may not align completely with the PJs geographic boundaries. Consequently, the PJ must establish policies and procedures that describe the relationship of the geographic area(s) served by the project(s) or activity(ies) to the geographic area(s) covered by the CE and address how the CE will provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE. If a HOME-ARP project or activity serves QP applicants from outside the CE's geographic area, it may only use the CE in combination with other referral agencies or a project- or activity-specific waiting list.