

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Planning and Development

Special Attention:

All Secretary's Representatives
State Coordinators
All CPD Division Directors
All HOME Participating Jurisdictions

NOTICE: CPD 01-13

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**SUBJECT: Commitment, CHDO Reservation, and Expenditure Deadline Requirements
for the HOME Program**

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I. PURPOSE

- A. Provide procedures for determining whether Participating Jurisdictions (PJs) have met the requirements established by the HOME Program Final Rule codified at 24 CFR 92.500(d), which outlines the commitment, Community Housing Development Organization (CHDO) reservation, and expenditure requirements for HOME Program funds.
- B. Provide guidance on the types of documentation acceptable to HUD which demonstrate the commitment, CHDO reservation, and expenditure requirements have been met.
- C. Delineate the deobligation process.

II. GENERAL INFORMATION

A. STATUTORY & REGULATORY BACKGROUND:

- 1. FUNDS COMMITMENT REQUIREMENT: The HOME statute, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended, at Section 218(g) (42 U.S.C. 12748) states:
"If any funds becoming available to a participating jurisdiction under this title are not placed under binding commitment to affordable housing within 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, the jurisdiction's right to draw such funds from the HOME Investment Trust Fund shall expire. "
- 2. CHDO RESERVATION REQUIREMENT: Section 231(a) (42 U.S.C. 12771) of the Act states:
"For a period of 24 months after funds under subtitle A are made available to a jurisdiction, the jurisdiction shall reserve not less than 15 percent of such funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations.
- 3. EXPENDITURE REQUIREMENTS: The HOME regulation at 24 CFR Part 92.500 (d)(1)(C) states that in addition to the two categories above, HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:
"Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement. "

B. FAILURE TO MEET REQUIREMENTS:

1. The 24-month commitment and 24-month CHDO reservation requirements are statutory and cannot be waived.
2. If the HOME commitment and expenditure requirements are not met by a PJ, HUD will deobligate that portion of allocated funding that has not met the requirement and reallocate those funds to other PJs through a future formula distribution.
3. If the HOME CHDO reservation requirement is not met by a PJ, HUD will deobligate that portion of allocated funding that has not met the requirement and reallocate those CHDO funds through a competitive process.

III. DEFINITIONS

- A. Commitment:** The HOME Program regulation found at 24 CFR 92.2 - Definitions, fully defines the term "commitment" as:

"(1) The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community housing development organization; or has met the requirements to commit to a specific local project, as defined in paragraph (2), below.

"(2) Commit to a specific local project, which means:

- (i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project setup date.*
- (ii) (A) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred*

to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.

(iii) If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of 92.209. "

1. For the purpose of compliance with the 24-month commitment deadline, the definition of *conditional* HOME commitment found in Notice CPD 01-11 "Environmental Review and the HOME Investment Partnerships Program" meets the definition of "commitment" in 24 CFR 92.2. Attachment 1 further explains *conditional* HOME commitment.
2. For the purpose of the environmental review process, commitment means the expenditure of private or public funds, or a legally binding agreement between the PJ, insular area or state recipient, and a state recipient, subrecipient, contractor, or owner/developers (including CHDOs) to expend HOME funds for a specific project, for project activities such as property acquisition, construction, conversion, demolition, movement, rehabilitation, repair, or to provide tenant-based rental assistance. A *conditional* HOME commitment of funds (as defined above) does not constitute a commitment for the purpose of the environmental review process.
3. For the purpose of calculating the amount of funds to be committed by the 24month commitment deadline, HOME administrative and CHDO operating costs are presumed to be committed when they are subfunded in the Integrated Disbursement and Information System (IDIS) (see Section IV, "Reports and Program Income"). The "Commitment Requirement" amount shown in the IDIS report C04PR27 "Status of HOME Grants" (PR27) and the Commitment Status Report is reduced by the amount of administrative and CHDO operating costs subfunded in IDIS.

- B. **CHDO RESERVATION:** The HOME Program regulation defines "CHDO Reservation" as a PJ entering into a written agreement with a CHDO. See 24 CFR 92.300 (a) - (f) for further explanation.
- C. **EXPENDITURE:** The HOME Program regulations define outlays (expenditures) as "charges made to the project or program" in "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," at 24 CFR 85.3. This includes payment of eligible costs of state recipients, subrecipients, and CHDOs that have an executed agreement with the PJ to carry out HOME activities.

IV. REPORTS AND PROGRAM INCOME

- A. **HEADQUARTERS REPORTS:** There are several monthly status reports issued by Headquarters that will provide field office staff with the data to make commitment, CHDO reservation and expenditure determinations.
 - 1. Headquarters posts the following status reports on the Internet at <http://www.hud.gov/offices/cpd/affordablehousing/reports/index.cfm> by the 15th day of each month:
 - a. COMMITMENT STATUS REPORT (Attachment 4A).
 - b. CHDO RESERVATION STATUS REPORT (Attachment 4B).
 - c. DISBURSEMENT STATUS REPORT (Attachment 4C).
 - 2. The status reports identify, by field office, the percentage of requirements attained by a PJ for the cumulative period related to the PJ requirement deadline as reported in IDIS. These data are an initial indicator of PJ performance in meeting requirements. Attachment 5 provides a definition of the data sources for each field in the Headquarters status reports.
- B. **INTEGRATED DISBURSEMENT INFORMATION SYSTEM (IDIS) REPORT CO4PR27:**
 - 1. The PR27 provides the details relating to the fiscal year allocations and is used in conjunction with the Headquarters status reports when a PJ has not met its requirements. Review of the PR27 identifies the source of potential problems and the fiscal year in which they occurred and should be conducted at least **annually** or more frequently if performance or compliance problems are identified.
 - 2. In the context of the PR27, the terms "other entity" and "other reservation" are interchangeable. "Other entity" refers to the combination of the following two elements of the subgranting process:

- a. A state can subgrant to a unit of local government making that unit a state recipient.
 - b. Any PJ can subgrant to a public agency or non-profit organization not acting as a CHDO, making that agency or organization a subrecipient.
 3. The PR27 also provides background information to identify problems as a result of an audit or an on-site review.
 4. Attachment 2 provides an example of a PR27 and Attachment 3 defines the PR27 data sources.
- C. **PROGRAM INCOME**: The HOME Program regulation found at 24 CFR 92.2 defines program income as the "gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions."
 1. Program income will only count towards commitment and expenditure requirements when the PJ explicitly draws it down for an activity. IDIS has no automatic mechanism for counting program income towards commitment and expenditure requirements. The PJ must intervene by selecting the program income type when an activity is drawn down. This has the effect of committing program income to an activity.
 2. HOME funds in the local account of the HOME Investment Trust Fund (including program income) must be disbursed before drawdown requests are made for HOME funds in the United States Treasury account, in accordance with 24 CFR 92.502. CPD Notice 97-09, "HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds" describes the requirement in detail.
 3. Program income that has been committed or expended in IDIS is reflected in the Commitment and Disbursement status reports provided by Headquarters.
 4. For HOME program income not reflected in IDIS, PJs may submit additional documentation, as described in Section VI, that demonstrates program income has been expended prior to the deadline date.

V. COMMITMENT, RESERVATION, and EXPENDITURE DETERMINATIONS

Refer to the following chart, an example of a sample PJ, for Parts A and B.

EXAMPLE:

- The PJ's Program Inception¹ September 15, 1992
- Cumulative Allocations² September 15, 1992 to September 30, 1999
- Cumulative Commitments/Reservations³ September 15, 1992 to September 30, 2001

A. COMMITMENT DETERMINATION:

1. **The Commitment Deadline:** The commitment deadline occurs 24 months after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Investment Partnerships Agreement (the date on the award letter which must also be the Congressional release date). This date is entered in Item 12 of the executed form HUD-40093, "Funding Approval and HOME Investment Partnerships Agreement," or superseding form.
2. **Determining Compliance:** To determine compliance with the commitment requirement, field staff must compare the *cumulative allocations* from program inception to the *cumulative commitments* to HOME activities from program inception through the commitment deadline. Commitments include amounts subgranted to state recipients and subrecipients, reservations to CHDOs and commitments to HOME activities not already counted as subgrants or reservations.
3. **Standards for Meeting the Commitment Requirement:**
 - a. A PJ meets the commitment requirement if the cumulative commitments are equal to or greater than the cumulative allocations.
Cumulative Commitments \geq Cumulative Allocations
 - b. If a PJ has one or more prior deobligations, the cumulative allocation amount will be reduced by the total of all prior deobligations.

¹ Program Inception: The date of obligation on the first form HUD-40093, or superseding form, between a PJ and HUD.

² Cumulative Allocation: The total fund amount allocated to a PJ since program inception.

³ Cumulative Commitment/Reservation: The total funds committed or reserved to a CHDO by a PJ since program inception.

B. CHDO RESERVATION REQUIREMENT:

1. A PJ meets the CHDO reservation requirement if the cumulative CHDO reservations are equal to or greater than 15 percent of the cumulative allocations.
Cumulative CHDO Reservations \geq 15% of Cumulative Original Allocations
2. A PJ does not have to satisfy the 15% CHDO requirement with each grant year, but can over-reserve in one year and under-reserve in another as long as the 15% requirement is satisfied over the total period of the requirement.
3. IDIS is currently programmed to set-aside the 15% CHDO requirement each year. If a PJ chooses to under-reserve in one year because it has already met its CHDO requirement, the entries in IDIS must be corrected to release the funds from the CHDO set-aside and to make them available for other purposes. In this situation, the PJ must notify the HUD field office who will work with Tom Dulebohn, Financial and Information Services Division, Office of Affordable Housing Programs (OAHP), who will ensure the corrections are made.

Prior to a PJ requesting this adjustment in IDIS, the PJ must validate that any reservations used to determine compliance with the requirement are also committed to specific activities. This will ensure that the IDIS correction is not made in error, should there be a reason for a CHDO reservation to be canceled.

4. In situations where a PJ had one or more prior deobligations: CHDO reservation requirements are based on the *original CHDO reservation requirement*. Prior CHDO deobligations are subtracted from the CHDO requirement. Therefore, a PJ may meet its CHDO reservation requirement with a percentage less than 15% [as reported on the CHDO Reservation Status Report, Attachment 4A].
Total Reservation to CHDOs \geq CHDO Requirement

C. EXPENDITURE DETERMINATION:

1. **The Expenditure Deadline:** The expenditure deadline occurs 5 years after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Investment Partnerships Agreement (the date on the award letter which must also be the Congressional release date). This date is entered in Item 12 of the executed form HUD-40093, "Funding Approval and HOME Investment Partnerships Agreement," or superseding form.

EXAMPLE:

- If HUD notified the PJ on September 15, 1996, the expenditure deadline is September 30, 2001

- 2. **Determining Compliance:** To determine compliance using the previous example, field staff must compare the *cumulative fund allocations* from program inception to the *cumulative expenditures* from program inception to HOME activities through the expenditure deadline.

- 3. **Standards for Meeting the Requirement:**
 - a. A PJ meets the expenditure requirement if the cumulative expenditures equal to or greater than the cumulative fund allocations.
Cumulative Expenditures \geq Cumulative Fund Allocations
 - b. If a PJ had one or more prior deobligations, the cumulative allocation amount will be reduced by the total of all prior deobligations.

VI. **DOCUMENTATION**

Headquarters reports and IDIS reports run on or before the deadline date may not include all the commitments, CHDO reservations, and/or expenditures that a PJ has made by the deadline dates. Following is a list of documents that are acceptable for each requirement. There may be other acceptable documents that are unique to a PJ. The field office staff should contact their OAHP desk officer to determine the acceptability of any unique documentation.

Documents must be dated no later than the date of the HOME commitment, CHDO reservation or expenditure deadline. Documents must reflect commitments, CHDO reservations or expenditures not entered in IDIS by the deadline date.

A. **UNACCEPTABLE COMMITMENT DOCUMENTATION:**

1. Approved budgets (including governing body budget resolutions)
2. Letters of Intent
3. Award Letters
4. Council Minutes

B. **ACCEPTABLE COMMITMENT DOCUMENTATION:** Commitment is defined in Section III of this notice, "Definitions" and in 24 CFR 92.2 - Definitions.

1. A written agreement or contract between the PJ and a state recipient, subrecipient, program recipient (including homeowners, housing authorities and property owners) or contractor signed by both parties dated on or before

the deadline date committing a specific amount of HOME funds (including HOME program income) to a specific HOME project.

2. If the PJ owns the land and/or is the developer, evidence that construction is expected to start within 12 months such as:
 - a. Preliminary plans.
 - b. Proposed project timeliness
 - c. Submission of form HUD-7015.15, "Request for Release of Funds and Certification," for approval by HUD or the state.
 - d. Architectural drawings.
 - e. Requests for Proposals that will select the project developer and has an approved project budget.
3. CHDO reservation documentation as defined in section C.
4. A written agreement signed by both parties that provides for the conditional HOME commitment of funds for a specific project which must still comply with the environmental review requirements of the National Environmental Policy Act (NEPA) and with other local procedures such as land use review.
5. HOME program income expenditures for a specific HOME project as recorded in the PJ's financial ledgers (i.e. paid invoices, vouchers, payroll, etc.) not reflected in IDIS.
6. A written agreement signed by both parties between the PJ and a CHDO reserving a specific amount of HOME funds for CHDO operating costs not entered in IDIS.
7. In the first 24 months a jurisdiction is a PJ, a written agreement signed by both parties between a PJ and a CHDO committing funds for CHDO capacity building.

C. ACCEPTABLE CHDO RESERVATION DOCUMENTATION: A written agreement signed by both parties between the PJ and a CHDO reserving a specific amount of HOME funds to produce affordable housing or committing funds to a specific CHDO project.

NOTE: Reservations for CHDO operating costs may not be included when determining that the 15% CHDO reservation deadline has been met.

D. ACCEPTABLE EXPENDITURE DOCUMENTATION:

1. HOME program income expenditures for a specific HOME project as recorded in the financial ledgers (i.e. paid invoices, vouchers, payroll, etc.) of the PJ, state recipient, subrecipient, or CHDO not reflected in IDIS.

2. HOME Program costs paid with other funds but not yet charged to the HOME allocation or program income as recorded in the financial ledgers (i.e. paid invoices, vouchers, payroll, etc.) of the PJ, state recipient, subrecipient, or CHDO but not reflected in IDIS.

E. WAIVER REQUESTS:

1. HUD will consider waiver requests for good cause to accept other documentation a PJ can demonstrate are commitments and/or reservations prior to the 24-month deadlines.
2. HUD will consider expenditure waiver requests for good cause to accept other documentation a PJ can demonstrate are expenditures prior to the 5-year deadline.

VII. FIELD OFFICE MONITORING

Field office staff should routinely monitor PJs to determine whether commitment, CHDO reservation and expenditure deadlines are being met and to identify other areas of concern with program performance. Field office staff should also ensure that acceptable documentation identified in Section VI results in a commitment to a specific activity. Attachment 10 describes one model monitoring process and includes sample documents to compliment it.

A. REVIEW OF REPORTS:

1. General Information:

- a. The Headquarters status reports provide initial indicators of deadline compliance by a PJ and should be reviewed *monthly* or until a PJ has met its deadlines to determine whether a PJ is in danger of missing deadlines.
- b. The IDIS report CO4PR27 (PR27) identifies the source of potential problems and the fiscal year in which they occurred, and should be reviewed *annually* or more frequently. The PR27 should be reviewed *four months prior to the deadline date* and *the first business day after the deadline date* if a PJ is at risk of missing or has missed one or more of its requirement deadlines. Instructions for downloading all IDIS reports are found in Attachment 6.
- c. If a PJ meets its requirements (100% for commitments and expenditures and 15% or greater for CHDO reservations) on the Headquarters status reports, there is no need to continue to review it or to review the PR27 unless there are extenuating circumstances such as Inspector General (IG) audit findings or known problems with a PJ.

2. **Calculating the CHDO Requirement for PJs with Prior Deobligations:** When calculating the CHDO requirement for a PJ known to have had prior deobligations, use the CHDO Reservation Status Report instead of the PR27. The CHDO Reservation Status Report adds all prior deobligations (regular and CHDO) back into the total authorizations amounts shown in the PR27 to determine the original allocation. The CHDO requirement is calculated as 15% of the original allocation. Prior CHDO deobligations are subtracted from the CHDO requirement reported on the CHDO Reservation Status Report so as not to further penalize PJs that have already had CHDO funds deobligated.

B. FIELD OFFICE ACTIONS TO BE TAKEN WHEN A PROBLEM MEETING REQUIREMENTS IS IDENTIFIED:

1. **Prior to Deadline:** Field office staff must notify a PJ in writing *four months before* a deadline if Headquarters reports indicate that the PJ is at risk of missing its deadline. This letter (Attachment 7A) serves to:
 - a. Alert the PJ of an impending deadline.
 - b. Give the PJ an opportunity to set up activities and/or draw down funds in IDIS for which they have documentation.
 - c. Caution the PJ of potential deobligations if action is not taken by the deadline.
 - d. Alert the PJ to the possibility of receiving technical assistance.
2. **After Deadline:**
 - a. After the PJ deadline, field office staff must print the PR27 on the first business day after the commitment, CHDO reservation and/or expenditure deadline is reached so that proof of what was in IDIS at the time of the deadline is preserved.
 - b. The field office must notify a PJ in writing *within 30 days after* a deadline if the Headquarters reports indicate that the PJ has missed one or more of its deadlines. This letter (Attachment 7B) serves to:
 - (1) Request copies of commitment, reservation or expenditure documentation not entered in IDIS by the deadline date.
 - (2) Document that HUD has begun the possible deobligation process.
 - c. The field office reviews documentation not entered in IDIS by the deadline date for acceptability using the guidelines outlined in Section VI. Documentation provided by the PJ and not previously entered in IDIS that is accepted by the field office must be maintained in the office files.
 - d. OAHP can create an ad hoc report listing all activities entered in IDIS after the deadline. This report is used to see if any of the activities entered after the deadline are backed by documentation dated prior to the deadline. Field offices can request this report by contacting their OAHP desk officer.

- e. The field office must notify the OAHP desk officer via e-mail or memorandum if the documentation has been reviewed and is acceptable or unacceptable.

VIII. DEOBLIGATION PROCESS

The deobligation process begins when the field office determines that a PJ has not met one or more of its deadline requirements.

- A. When field office staff determines that funds should be deobligated, they must send written notification of the proposed deobligation with the completed worksheet (Attachments 8 or 9) to OAHP. This submission must also include a narrative regarding the process the field office followed to determine that a deobligation should occur. For example, the narrative could state the PJ was given an opportunity to supply documentation for activities entered into IDIS after the deadline that are backed by written agreements dated on or prior to the deadline. Additionally, the field office could also state a review of written agreements did not produce valid agreements for activities entered into IDIS. OAHP will review the submission, facilitate discussion with field staff and notify the field via e-mail that the field office may proceed to deobligate funds for a specified amount.
- B. When a deobligation is reviewed by OAHP, it will consider whether a PJ has fully used its 10% administrative cost set-aside. This credit may be applied before determining any amounts for deobligation.
- C. If it is determined that a deobligation is necessary, OAHP will determine the source year(s) with available HOME funds and will block access to the deobligated amount for the source year(s) in IDIS.
- D. Field office staff then prepares a form HUD-40093, or superseding form, entering the source year provided by OAHP in item 7, to deobligate any funds not committed, reserved for CHDOs or expended by the deadline. The form should be completed and sent to the CFO National Accounting Center in Fort Worth, TX for processing no later than 30 days after receiving notification from OAHP to proceed with the deobligation. The deobligation amount should be recorded for *the exact* amount calculated for deobligation. The form can be found on the Internet at <http://www.hudclips.org>.

Note: The Department is developing a new grant agreement form entitled "Funding Agreement for Formula Programs," form HUD-1044E, which will be used by all formula grant programs. When issued, form HUD-40093 will no longer be used for HOME grant agreements. Instructions for the new grant agreement form for HOME PJs will be posted on HOME's website at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm> and included in future releases of this notice.

- E.** Upon receipt of the form HUD-40093, the CFO National Accounting Center will deobligate the funds and make them available for reallocation according to Subpart J of the HOME regulations.
- F.** OAHP staff will track the deobligation to ensure that it is processed correctly.