



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

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

Notice: CPD-04-05
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Cross Reference: 24 CFR Parts 91 & 92

Subject: Notice of Procedures for Designation of Consortia as a Participating Jurisdiction for the HOME program

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HOME Consortia Calendar – (Summary of Deadlines)

Other Resources

- A. A list of HOME consortia and qualification periods is available on the web at: <http://www.hud.gov/homeprogram/>.
- B. CPD Notice 01-07, Instructions for Designating New Participating Jurisdictions; Reserving and Obligating Funds; and Numbering HOME Investment Partnership Agreements is also available on the HOME program website.

I. Purpose

This Notice provides guidance on the procedures for approving local governments to participate as a consortium in the HOME Investment Partnerships Program. The Notice updates CPD Notice 03-06; it is applicable to (a) Units of General Local Government (UGLGs) that wish to form a consortium to participate in the HOME program (b) existing consortia that are already qualified to participate in the HOME program and want to add one or more UGLG members and (c) existing consortia that must execute a new consortium agreement because their consortium qualification period has ended.

NOTE: Special attention should be directed to all deadlines as indicated in Section V, Schedule of Submissions, and that are also summarized in the Attachment, HOME Consortia Calendar. Delays in the designation of a consortium may result in the loss of eligibility to receive a HOME allocation.

II. General Information

A. Headquarters Contacts

All required documents and correspondence concerning consortia should be submitted to Jill Kennerly, Headquarters, Office of Community Planning and Development (CPD), Systems Development and Evaluation Division, at Jill_S_Kennerly@hud.gov or faxed to (202) 708-4275 (this is not a toll-free number).

Questions regarding the policy that governs consortia should be directed to Donna Anderson, Headquarters, CPD, Office of Affordable Housing Programs, at Donna_K_Anderson@hud.gov or (202) 708-2684, extension 4691 (this is not a toll-free number).

B. Background

The HOME program is authorized by the HOME Investment Partnerships Act (referred to as “the Act”), Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701), as amended.

A HOME consortium consists of contiguous UGLGs that separately, may not qualify to receive HOME funds. These UGLGs may join together to form a consortium for the purpose of receiving a HOME allocation and administering the HOME program as a single Participating Jurisdiction (PJ). The Act provides that a consortium is eligible to be a HOME PJ if the Secretary determines that the consortium (1) has sufficient authority and administrative capacity to carry out the purposes of the Act on behalf of its member UGLGs and (2) will, according to a written certification by the state, direct its activities to the alleviation of housing problems within the State.

HUD Field Offices approve new consortia and the renewal and amendment of consortium agreements during the current fiscal year by August 2; this ensures that the consortia will be eligible to receive HOME funds in the next Federal Fiscal Year.

A list of consortia that are participating in the HOME program for the current fiscal year is available on the web at <http://www.hud.gov/homeprogram/>.

C. Advantages and Drawbacks to Forming a Consortium

The formation of a consortium can be a positive force for affordable housing production. It permits an area, which otherwise might not be assured funding, to plan and carry out an affordable housing program.

HOME funds are distributed (after set-asides) by formula with 40 percent of the funds going to states and 60 percent of the funds going to UGLGs. The amount that each state receives is based on two calculations 80 percent of a state's funds are based on the demographic profile of the non-entitled areas of the state, while 20 percent of its funds are based on the demographic profile of the whole state. Except for states that receive the minimum allocation of \$3,000,000, the amount available to a state is reduced when a consortium is formed because the demography of the consortium is included only in the calculation for 20 percent of the funds, and not in the calculation for 80 percent of the funds. When a Field Office discusses the merits of forming a consortium, the prospective members need to understand that the formation of a consortium could result in a loss of HOME funds to the state as a whole.

The amount of funds available for UGLGs is divided among a greater number of jurisdictions each year due to the addition of new metropolitan cities, urban counties, and consortia. Therefore, the amount allocated to a new consortium will depend, in part, on how many jurisdictions receive a share of the total funds available. It will also depend on the amount of HOME funds that Congress appropriates each Fiscal Year and the demographic profile of each jurisdiction.

In the event that a consortium fails to receive a HOME allocation in any one year, HUD will reallocate the funds to the state consistent with 24 CFR 92.451 (c)(2)(i).

Since a consortium administers the HOME program as a PJ, it is important that the member UGLGs are able to establish a working relationship to meet the affordable housing needs of every member. Each consortium must designate a representative, also referred to as the lead entity, to assume the overall responsibility for the consortium's compliance with the HOME program requirements. The consortium members should trust the lead entity's ability to assume this responsibility, and all members must be committed to cooperatively achieve the objectives of the Consolidated Plan.

The HOME consortia web page contains further information and guidance on regional planning, good practices, performance measurement, and estimating funding. The page is available at <http://www.hud.gov/homeprogram/>.

III. Eligibility Requirements for Forming a Consortium

A. Consortium Members

The UGLGs of a proposed consortium must be geographically contiguous according to the Census Bureau or other authoritative maps. A river or other body of water may separate the UGLGs, if there is a road or a bridge that makes them contiguous.

When a UGLG is part of an urban county for the Community Development Block Grant (CDBG) program, it is also a part of the urban county for the HOME program, except for metropolitan cities

under Joint Grant Agreements. A UGLG that is a part of an urban county may join a consortium only if the entire urban county joins the consortium. While an included UGLG may only receive a formula allocation under the HOME program as part of the urban county, this does not preclude the urban county or a UGLG participating with the urban county from applying for state HOME funds.

A non-urban county may join a consortium as the lead entity. However, the non-urban county cannot, on its own, include the whole county in the consortium. Each UGLG in a non-urban county that wishes to receive funding as a participant of the consortium must sign the consortium agreement.

If a metropolitan city has a Joint Grant Agreement with an urban county for the CDBG program and wishes to be considered for funding as part of the urban county for the HOME program, it must form a HOME consortium with the urban county. Both programs must establish the same program year in order to receive funding. Note: The CDBG program regulations allow a metropolitan city located, in whole or in part, within an urban county to be included as part of that county for the purposes of planning and implementing a joint community development and housing program (24 CFR 570.308). This request is approved by HUD through the submission of a “Joint Grant Agreement.”

B. Administrative Capacity

In order to be eligible to become a HOME PJ, a consortium’s lead entity must have the sufficient legal authority and administrative capacity to carry out the purposes of the HOME program on behalf of its members. If the consortium designates an urban county or a metropolitan city as the lead entity, the consortium will be considered to have sufficient administrative capacity to carry out the purposes of the HOME program. If the consortium designates a lead entity or an existing public agency that has relevant experience (e.g., successful experience in administering CDBG or the HOME program as a state recipient), the consortium may also be considered to have sufficient administrative capacity to carry out the HOME program. However, a newly created public agency that is established to administer the HOME program for a consortium would not be considered to have sufficient administrative capacity unless it includes as its administrator(s) a person or persons with relevant experience in successfully administering programs, such as the CDBG program, which is similar to the HOME program.

If the Field Office is satisfied that the consortium meets the eligibility requirements for participation in the HOME program and that it has the necessary legal authority and administrative capacity to carry out the HOME program, it will approve the consortium request and notify Headquarters as provided in Section V.

IV. Qualification Documents Requirements

To be considered for approval as a HOME program consortium, or for a consortium seeking to renew or amend its consortium agreement, the following qualification documents must be provided to the appropriate Field Office **prior to June 15:**

A. State Certification

This is a written certification by the state declaring that the consortium will direct its activities to the alleviation of housing problems within the State. The state certification may be signed by the Governor or his/her authorized designee who signs as "Authorized Official."

B. Consortium Agreement

This is a legally binding consortium cooperation agreement executed by all members of the consortium, which contains the following provisions and attachments:

- (1) *Program Activity:* The members of the consortium agree to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME program.
- (2) *Representative Appointment:* One consortium member is authorized to act in a representative capacity as the lead entity for all members of the consortium for the purposes of administering the HOME program.
- (3) *Representative Responsibilities:* The lead entity assumes overall responsibility for ensuring that the consortium's HOME program is carried out in compliance with the requirements of the HOME program, including requirements concerning the Consolidated Plan.

NOTE: The agreement **must not** contain a provision for veto, or any other clause, that would allow a consortium member to obstruct the implementation of the consortium's approved Consolidated Plan.

- (4) *Legal Opinion:* In a legal opinion, the lead entity's counsel cites applicable law to conclude that the terms and provisions of the agreement are fully authorized under state and local law. The opinion shall also state that the agreement provides full legal authority for the consortium to undertake or assist in undertaking housing assistance activities for the HOME program.
- (5) *Fair Housing:* In a statement in the agreement, each consortium member agrees to affirmatively further fair housing.
- (6) *Term:* The consortium's qualification period is specified (the consecutive three Federal Fiscal Year period during which the consortium is to qualify to receive HOME funds), and members are prohibited from withdrawing from the agreement during this period.

For example, if the agreement is executed in Fiscal Year (FY) 2004 for (FY) 2005 funding, the qualification period is from FY 2005 to FY 2007. If one or more urban counties are members of the consortium, the agreement may specify a lesser number of fiscal years in order to coincide with the number of years remaining in an urban county's qualification period. If an urban county consortium member fails to re-qualify as an urban county during the qualification period included in the consortium agreement, the consortium agreement terminates with the last fiscal year for which the urban county qualified. A new consortium agreement must be executed for the succeeding qualification period.

The consortium agreement must, at a minimum, remain in effect until the HOME funds from each of the Federal Fiscal Years of the qualification period are expended on eligible activities. No consortium member may withdraw from the agreement while it remains in effect. The new agreement is governed by the requirements of this Notice or its successor.

If the consortium fails to meet the \$500,000 minimum threshold to receive a HOME allocation for the first Federal Fiscal Year of its qualification period, it must request to be considered to receive a HOME allocation in each of the subsequent two years.

- (7) *Automatic Renewal:* At the option of the consortium, the agreement may provide that it will automatically be renewed for participation in successive three-year qualification periods.

Where automatic renewal provisions are used, the agreement must state that, by the date specified in HUD's consortia designation notices or listed on HOME's Consortia web page, the lead entity will notify each consortium member in writing of its right to not participate for the successive three-year qualification period. A copy of the notifications must be sent to the Field Office. Automatic renewal provisions must also include a stipulation requiring the consortium to adopt any amendments to the agreement that incorporate future changes necessary to meet the requirements for consortia agreements in subsequent qualification periods. Failure of the lead entity to notify consortium members and to submit amendments to HUD will void the automatic renewal provision in the agreement.

The automatic renewal provisions do not apply when the consortium adds a new member.

If there is no change to the consortium agreement at the time of renewal, the Field Office can email Headquarters indicating that there has been no change. If a member decides not to participate in the renewal of the consortium agreement, the Field Office must notify Headquarters that the member is no longer a part of the consortium.

- (8) *Program Year:* The start date for the consortium indicates the beginning date of the program year. **As required by the Consolidated Plan final rule, all UGLG members of a HOME consortium approved after February 6, 1995, must be on the same program year for the CDBG, HOME, Emergency Shelter Grants (ESGs) and Housing Opportunities for Persons with AIDS (HOPWA) programs.** In order to be on the same program year and be approved by the Field Office as a HOME consortium, the members of a proposed consortium may shorten their program years as consistent with Section 91.101(e).
- (9) *Authority to Amend Agreement:* The lead entity is authorized to amend the agreement and to add new members on behalf of the entire consortium, unless the consortium requires all members to sign and approve all amendments to the agreement.
- (10) *Signatures:* The agreement is to be signed by the chief executive officer or authorized official of each member UGLG. The authorized urban county official can sign the agreement on behalf of its participating UGLGs.
- (11) *Attachment - Resolutions:* The authorizing resolutions should be provided by the governing body of each member UGLG, or other acceptable evidence must be submitted saying that the Chief Executive Officer or authorized official has the authority to sign the agreement.

C. Amending the Consortium Agreement to Add Members

A consortium agreement can be amended to add new members for the remaining fiscal years of the qualification period. The agreement must be amended in the fiscal year before the year in which the new member is to be added. The consortium must provide the Field Office with a copy of the authorizing resolution from the new member's governing body and an amendment to the consortium agreement signed by the Chief Executive Officer of the lead entity (if the consortium agreement authorizes the lead entity to sign on behalf of all members) and the Chief Executive Officer of the new UGLG. Any change in the make-up of the consortium must be communicated to Headquarters.

D. HUD Review of Qualification Documents

The Field Office reviews a consortium's submitted documents to determine whether it is made up of geographically contiguous UGLGs, whether it has sufficient administrative capacity to carry out the purposes of the HOME program on behalf of its member jurisdictions, and to ensure that there is a written certification from the State. The Field Office will also ensure that all UGLG members of the consortium are on the same program year for HOME, CDBG, ESG and HOPWA prior to approval.

Field Office counsel should review each new consortium's submissions to determine whether the consortium has sufficient legal authority to carry out the HOME program.

V. Schedule of Submissions for Approving New Consortia and Renewing Existing Consortia

The following schedule will govern the procedures for approving and renewing consortia:

NOTE: Prior written authorization must be received from Headquarters to extend some of the deadlines. The schedule also indicates that Field Offices have the authority to extend certain deadlines. However, the Field Office may not grant any extension if it would have the effect of extending a subsequent deadline that the Field Office is not authorized to extend. When a published date falls on a weekend or a holiday, the deadline will be the next business day.

By **March 1**, to be considered for an allocation of HOME funds in the next fiscal year, a proposed consortium, an existing consortium that is adding members, or a consortium that must sign a new consortium agreement provides to its Field Office written notification of its intent to participate as a consortium. Any change in the consortium membership must be listed within the agreement.

By **June 1**, the lead entity of a consortium that intends to renew its consortium agreement through automatic renewal provisions must notify each of its members of their right to not participate in the next qualification period.

NOTE: This date is provided as a guide to meet the **June 30** deadline. Based on the organizational structure, location and availability of its members, the lead entity may need to allow more time to determine the status of its membership for the next qualification period.

Prior to **June 15**, each member that does not intend to participate in the next qualification period with a consortium that is renewing its agreement through automatic renewal provisions must submit written notification to the lead entity. The lead entity must provide copies of these communications to its Field Office by June 15 so that Headquarters can be notified of any change in consortium membership by June 30.

By **June 30**, a proposed consortium, a consortium that must sign a new agreement, or a consortium that is amending its current agreement must submit the documents that are required in Section IV to its Field Office. In addition, the Field Office must submit a list of consortia that are in the last year of their qualification periods and that do not have a change in membership.

NOTE: Any delay in receipt of the consortium documents must not postpone the Field Office's ability to meet the **August 2** deadline below.

By **August 2**, Field Offices must approve all consortium agreements and send appropriate documents to Headquarters. This submission must include the section from each new or amended agreement that (1) lists the consortium members, and (2) documents the consortium qualification period.

By **August 16**, Field Office staff updates the Grants Management Process (GMP) System with data on consortia.

In late August or early September, Headquarters will use GMP to inform the Field Office CPD Directors of the consortia that will be included in the next fiscal year's formula allocation. CPD Directors must review the information in GMP with the consortium lead entity to verify that it is accurate.

By **September 20**, CPD Directors must update and complete the worksheet for each consortium in the Field Office jurisdiction, sign the worksheet, and send it to Headquarters to allow sufficient time for data to be assembled so that changes can be reflected in the next year's allocation of HOME funds. Directors are reminded that it is imperative that the information in the worksheet be confirmed with the consortium's lead entity prior to transmitting it to Headquarters.

NOTE: This date may not be extended without prior written authorization from Headquarters. In order to allow sufficient time to run the formula and meet the statutory deadline, it is important that Field Office staff update GMP by September 20. GMP will be closed for access to HOME program consortia updates from September 20 until October 15.

Schedule for Developing and Submitting the Consolidated Plan for New Consortia

It is important that jurisdictions have sufficient time to develop their housing market analyses and to meet the citizen participation requirements of 24 CFR Part 91. Field Office staff should work informally with new PJs to identify the start of the consolidated program year and to determine the timeframe for developing the Consolidated Plan. The Field Office can then formally notify the jurisdiction of its allocation amount on a predetermined date that triggers the notice of intent to participate and allows enough time for the jurisdiction to submit its Consolidated Plan. HUD staff should be cautious about releasing allocation information to prospective new PJs that could be considered formal notice that starts the timeframe for the regulatory and statutory deadlines.

The date that the Field Office formally notifies the consortium of its formula allocation amount will

determine the date that the Consolidated Plan is due according to the timeline below.

- The consortium submits a written notification of its intent to be a PJ no later than 30 days after receiving notice of its formula allocation amount (Section 92.103 and Section 216 of the Act).
- The consortium submits a Consolidated Plan to the Field Office within 90 days of providing notification of its intent to be a PJ (Section 92.104).

To receive HOME funds, the consortium submits the Consolidated Plan for the entire geographic area encompassed by the consortium. If an urban county is a member of a HOME consortium, the consortium submits the Consolidated Plan; the urban county, like all other CDBG entitlement grantees in the consortium, is only required to submit its own non-housing Community Development Plan (Section 91.215 (e)), Action Plan (Section 91.220) and the required Certifications (Section 91.225 (a) and (b)), as part of the Consortium's Consolidated Plan.

NOTE: A new consortium must submit the complete Strategic Plan required by Sections 91.215, 91.220 and 91.225. A consortium that has previously participated in the HOME program and submitted a complete Strategic Plan may submit only the Action Plan and Certifications unless it is required to submit a new five-year complete Strategic Plan (see Section 91.15(b)). If Joint Grant Agreement participants form a consortium for the HOME program, the Consolidated Plan submitted by the urban county will also serve as the Consolidated Plan for the HOME consortium, because the UGLGs in the consortium are the same as the UGLGs in the urban county Joint Grant Agreement. All members of the consortium must be on the same program year prior to being approved by the Field Office as a HOME program consortium.

VI. Responsibilities if a Consortium Disbands

Once a consortium is designated a PJ by HUD, it remains a PJ until all remaining funds in its HOME Investment Trust fund are expended. The lead entity has continuing responsibilities to comply with the HOME regulations beyond the terms of the consortium agreement and throughout the periods of affordability for HOME projects. A lead entity's financial and monitoring responsibilities include the following:

Program Income. 24CFR92.503(a)(3) states that program income derived from consortium activities undertaken by or within a member UGLG continues to be the consortium's program income even after the UGLG terminates its participation in the consortium. The lead entity could permit a member that no longer participates in the consortium to retain program income as a subrecipient for future HOME projects pursuant to a written agreement. (24CFR92.503(a)(1)).

Repayments. Any HOME funds invested in housing that does not meet the affordability requirements, is terminated before completion, or is determined to be ineligible must be repaid by the PJ. Although the lead entity could try to collect from a member, the lead entity is responsible for repayments to HUD (24CFR92.503(b)).

Recaptured Funds. Recaptured funds received from a PJ's homebuyer program during the period of affordability are deposited in its HOME local account. The lead entity could permit a member that no longer participates in the consortium to retain the recaptured funds as a subrecipient pursuant to a written agreement (24CFR92.503(c)).

Monitoring. The PJ is responsible for reviewing the performance of each subrecipient at least annually (24CFR91.504(a)). The lead entity is responsible for applying the same requirements to its members as are applicable to its subrecipients (24CFR92.101(d)). The lead entity has continuing monitoring responsibilities during the period of affordability for all activities funded by the consortium.

HOME CONSORTIA CALENDAR
(Summary of Deadlines)

Deadline Date	Action	Status of Consortium		
		New	Renew	Add/Drop Member
March 1	Consortium sends written notification to Field Office of intent to participate.	X	X	X
June 1	Lead entity notifies members of their right not to participate in next qualification period.		X	
June 15	Members notify lead entity of their intent not to participate.		X	
June 30	Lead entity submits State certification and executed consortium agreement with attachments to HUD Field Office. The Field Office submits copies of these documents to Headquarters.	X	X	X
June 30	Field Office notifies Headquarters of consortia with no change in membership.		X	
August 2	Field Office approves consortium agreements.	X		
August 2	Field Office approves amended consortium agreements (unless there is automatic renewal with no change of membership).	X	X	X
August 2	Field Office provides Headquarters (via fax or email) list of consortium members and qualification period documentation from consortium agreements (unless there is automatic renewal with no change of membership).	X	X	X
August 15	Field Office enters data into the Grants Management Process (GMP) System.	X	X	X
Late August/ Early September	Headquarters emails worksheets to CPD Directors for verification. Field Office staff contact consortia to confirm status.	X	X	X
September 20	Field Office certifies to Headquarters status of consortia.	X	X	X
September 20	GMP module closed until October 15	X	X	X
September 30 (Statutory Deadline)	Designation process complete for eligibility to receive HOME funds by formula.	X	X	X