

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

Special Attention of:

Notice: CPD-99-5

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors
All HOME Participating jurisdictions

Issued: May 18, 1999

Expires: May 18, 2000

Cross Reference: 24 CFR Parts 91 and 92

SUBJECT: Notice of procedures for designating consortia: HOME Investment Partnerships Program

I. Background

The HOME Program is authorized by the HOME Investment Partnerships Act which is Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12701 *et seq.*) (Act). Section 216(2) of the Act provides that a consortium of geographically contiguous units of general local government is considered a unit of general local government for purposes of the HOME Program if the Secretary determines that the consortium (a) has sufficient authority and administrative capability to carry out the purposes of the Act on behalf of its member jurisdictions and (b) will, according to a written certification by the State, direct its activities to the alleviation of housing problems within the State.

In accordance with section 217(b)(3) of the Act, HUD will include, as jurisdictions eligible to receive allocations of HOME funds by formula, units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities (as defined at section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)); urban counties (as defined at section 102(a)(6) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)) and throughout this notice "urban county" has this meaning); and approved consortia of units of general local government.

The Department plans to complete the designation of new urban counties and metropolitan cities before September 30, 1999 (the end of FY 1999), so that they will be designated and eligible to receive a HOME allocation as well as an allocation of Community Development Block Grant (CDBG) funds for FY 2000.

CGHF: Distribution: W-3-1

II. Purpose

This Notice provides guidance to HUD Field Offices and local governments on procedures for designation of local governments to participate as consortia in the HOME Investment Partnerships Program for Fiscal Year 2000. The notice updates CPD Notice 98-7, makes changes in the procedures for local governments to participate as consortia in the HOME Investment Partnerships Program for FY 2000, and provides deadlines by which existing consortia adding new members, requalifying consortia and potential consortia must submit documentation to HUD. The most significant change from the Fiscal Year 1999 notice is a provision which will permit a consortium, at its option, to execute an automatically renewing agreement.

Special attention should be directed to the deadlines (see Paragraph V). Delays in designating consortia may result in loss of eligibility to receive an allocation in FY 2000.

III. Applicability

This notice is applicable to (a) local governments that wish to form a consortium for the first time to participate in the HOME Program for FY 2000, (b) existing consortia already qualified to participate for FY 2000, but which wish to add one or more local governments, and (c) existing consortia which must execute a new consortium agreement because their consortium qualification period ends September 30, 1999.

A list of consortia that are participating in the HOME Program for FY 1999 is included as Attachment A to this notice and a list of consortia which must renew their HOME consortium agreements to participate as a consortium in the HOME Program for FY 2000 through FY 2002 is included as Attachment B.

IV. Effect of Consortia Formation on State Funding

Consortia are contiguous units of local government which join together for purposes of receiving a HOME allocation and administering the HOME program as a single grantee. Each consortium must designate a lead member, and must receive a certification from the State that it will direct its activities to alleviation of housing problems within the State.

In most cases, the formation of consortia causes a reduction in the amount of HOME funds available to the State for its program, and may also result in a reduction in the amount of HOME funds available for the State as a whole. HOME funds are distributed (after set-asides) by formula with 40% of the funds going to States and 60% of funds going to units of local government. The amount each State receives is based on two calculations: 80% of its funds is based on the demography of the nonentitled areas of the State, while 20% of its funds is based on the demography of the whole State. Except for States which receive the minimum allocation of

\$3,000,000, the amount available to the state is reduced when a consortium is formed because the demography of the consortium is included only in the calculation for 20% of the funds, and not in the calculation for 80% of the funds, where some or all of the demography of the consortium had been previously included.

Whether the formation of a consortium also results in a reduction in funds available for the state as a whole depends on whether the allocation to the consortium from the local government pot of funds equals or exceeds the amount of the reduction in the funds going to the State. Since the amount available in the pot of funds available for local governments is divided among more jurisdictions each year due to new metro cities, new urban counties, and new consortia, the amount going to the new consortium depends on its relative share compared to other jurisdictions. Field offices should take care in explaining the possible loss of funding to the State as a whole in discussing the merits of consortia formation with prospective consortia.

Irrespective of the funding levels, the formation of consortia can be a positive force for affordable housing production, in that it permits an area that otherwise may not be assured of funding to plan and carry out an affordable housing program with continuity.

V. Timing of Submissions

The HOME Program regulations at 24 CFR 92.101 (a)(1) require that to be considered as a consortium, the proposed consortium is to provide written notification to the appropriate HUD Field Office of its intent to participate as a consortium in the HOME Program for the following year. The following schedule will govern the procedure for jurisdictions to qualify as HOME Program consortia for Fiscal Years 2000-2002. Unless noted otherwise, deadlines may only be extended by prior written authorization from Headquarters. However, no extension may be granted by the Field Office if it would have the effect of extending a subsequent deadline that the Field Office is not authorized to extend.

By March 1, 1999 (or such later date as agreed to by the applicable HUD Field Office), to be considered for an allocation of HOME funds in FY 2000, a proposed consortium, an existing consortium which is adding members, or a consortium which must sign a new HOME consortium agreement is to provide to the appropriate HUD Field Office written notification of its intent to participate as a consortium in the HOME Program for FY 2000.

By June 30, 1999 (or a later date if agreed to by the applicable HUD Field Office), a proposed consortium, a consortium which must sign a new agreement, or a consortium which is amending its current agreement to add members must submit to the appropriate HUD Field Office the documents as required below in Paragraph VII, entitled "Procedures Localities Must Follow for Designation as a Consortium or Renewal of an Expiring Agreement," or Paragraph VIII, "Procedures for Existing Consortia Which Are Adding Members," as appropriate. **NOTE:** Any delay in receipt of the consortium documents must not interfere with the Field Office's ability to meet the August 2 deadline below.

By **August 2, 1999**, Field Offices **must** approve all consortia agreements and provide Headquarters CPD, Office of Affordable Housing Programs, with evidence from the consortium agreement for each consortium which must sign a new or amended agreement which (1) lists the consortium members and (2) documents the consortium qualification period. The appropriate pages from the consortium agreement should be forwarded to Frances Bush, Office of Affordable Housing Programs, Room 7168 or faxed to (202) 708-1744, ATTN: Frances Bush. **NOTE: THIS DATE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.**

During late August or early September, the CPD Systems Development and Evaluation Division in Headquarters will send worksheets via email to Field Office CPD Directors to verify data for each consortium that will be included in the formula allocation for Fiscal Year 2000. CPD Directors must verify the worksheets with the consortium lead agency to assure the accuracy of the information.

By **September 20, 1999**, CPD Directors shall update and complete the worksheet for each consortium in the Field Office jurisdiction, sign the worksheet and send a copy of the worksheet to the CPD Systems Development and Evaluation Division in Headquarters to allow sufficient time for data to be assembled so that changes can be reflected in the FY 2000 allocation of HOME funds. Directors are reminded that it is imperative that the information in the directory be confirmed with the consortium's lead entity prior to transmitting the required certification to Headquarters. **NOTE: THIS DATE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.**

VI. Eligibility for Forming a Consortium

Local governments that are geographically contiguous may form a consortium for purposes of receiving an allocation and participating in the HOME Program. A river or other body of water may separate them, but if there is transportation access (e.g., bridges), they may be considered contiguous. The local governments forming a consortium may be cities or urban counties that would be eligible, individually, to become participating jurisdictions in the HOME Program, or other local governments. A unit of local government that is included in an urban county may be part of a consortium, only if the urban county joins the consortium. The included local government cannot join the consortium except through participation in the urban county. (Thus, when local governments become part of an urban county for the CDBG Program, they are part of the urban county for the HOME Program, except for metropolitan cities under joint grant agreements with urban counties as described in Paragraph IX, of this notice.)

Further, as indicated in section 91.402 of the Consolidated Plan final rule and in Paragraph X of this notice, all units of general local government that are members of the consortium must be on the same program year for the CDBG, HOME, Emergency Shelter Grants (ESG) and Housing Opportunities for Persons With AIDS (HOPWA) programs.

VII. Procedures Localities Must Follow for Designation as a Consortium or Renewal of an Expiring Agreement.

To be considered as a HOME Program consortium for FY 2000, a proposed consortium, or a consortium which must execute a new HOME consortium agreement, must provide the following qualification documents by **June 30, 1999 (or such later date as agreed to by the applicable HUD Field Office)**, to the appropriate HUD Field Office:

1. A written certification by the State that the consortium will direct its activities to the alleviation of housing problems within the State. The State certification may be signed by whomever has the authority to make the certification; it may be the Governor or his/her designee. If a designee signs, the signature line must indicate it is an "Authorized Official."
2. One legally binding consortium cooperation agreement that has been executed by all consortium members:
 - (a) Agreeing to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME Program;
 - (b) Authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of the HOME Program;
 - (c) Providing that the representative member (also referred to as 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 a Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91, respectively, and the requirements of 24 CFR 92.350;

Note: The agreement must not contain a provision for veto or other restriction that would allow any member unit of local government to obstruct the implementation of the consortium's approved Consolidated Plan.

- (d) Accompanied by authorizing resolutions from the governing body of each member unit of local government, or other acceptable evidence that the chief executive officer is authorized to sign the agreement;
- (e) Signed by the chief executive officer of each member unit of local government;

Note: If an urban county is part of the consortium, only the county (not all the members of the urban county) signs the consortium agreement. However, any unit of local government that is located in but is not participating as part of the

urban county, and that wishes to be included in the HOME consortium, must sign the cooperation agreement. Also, for new consortia and renewal of existing consortia which include a non-urban county, the county cannot on its own include the whole county in the consortium; any unit of local government in the nonurban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

- (f) Containing, or accompanied by, a legal opinion from the lead entity's counsel citing applicable law and concluding that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the consortium to undertake or assist in undertaking housing assistance activities for the HOME Program;
- (g) Containing a provision requiring each member unit of local government to affirmatively further fair housing;
- (h) Specifying the qualification period (the three Federal Fiscal Years for which the consortium is to qualify to receive HOME funds), and the prohibition on withdrawal from the agreement during such time, as described in Paragraph XII. 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, the consortium lead entity will notify each participating unit of general local government in writing of its right not to participate for the successive three-year qualification periods. A copy of the notification to each jurisdiction must be sent to the HUD Field Office by the date specified in the consortia designation notice.

Consortia agreements with automatic renewal provisions must also include a stipulation that requires the consortium to adopt any amendment to the agreement incorporating changes necessary to meet the requirements for cooperation agreements set forth in a Consortia Qualification Notice applicable for a subsequent three-year consortia qualification period, and to submit the amendment to HUD as specified in the Consortia Qualification Notice for that period, and that failure to comply will void the automatic renewal of the consortium agreement.

- (i) Stating the program year start date for the consortium and that all units of general local government that are members of the consortium are on the same program year for the CDBG, HOME, ESG and HOPWA programs; and

- (j) Authorizing the lead entity to amend the consortium agreement on behalf of the entire consortium to add new members to the consortium.

Note: This provision need not be in the agreement if the consortium members prefer to have all the members sign and approve additions.

VIII. Procedures for Existing Consortia Which Are Adding Members.

A consortium agreement can be amended to add new member units of general local government for the remaining fiscal years of the qualification period. The agreement must be amended in the fiscal year before the fiscal year(s) for which the new members are added. The consortium must provide the HUD Field Office 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 unit of local government, adding the new unit of local government as a member of the consortium. Any change in the make-up of the consortium must be communicated to Headquarters in accordance with the requirements of Paragraph V above.

IX. Joint Grant Agreements

The CDBG Program regulations at 24 CFR 570.308 allow for any urban county, and any metropolitan city located in whole or in part within that county, to submit a joint request to HUD to approve the inclusion of the metropolitan city as part of the urban county for purposes of planning and implementing a joint community development and housing program. Each metropolitan city and urban county submitting a joint request must also have executed a cooperation agreement to undertake or to assist in the undertaking of essential community development and housing activities. Such agreement is hereafter referred to as a "joint grant agreement." Upon HUD's approval of the joint request and joint grant agreement, the metropolitan city is considered a part of the urban county for purposes of program planning and implementation under the CDBG Program, and is treated the same as any other unit of general local government which is part of the urban county.

However, for the HOME Program, if a metropolitan city that has a joint grant agreement with an urban county for the CDBG Program 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. If such a city and urban county wish to form a new HOME consortium, the urban county and/or the metropolitan city must follow the procedures outlined above for new consortia.

X. Consolidated Program Year

As required by section 91.402 of the Consolidated Plan final rule, all units of general local government that are members of a new HOME consortium approved after February 6, 1995, must be on the same program year for the CDBG, HOME, ESG and HOPWA programs.

XI. Consolidated Plan

To receive FY 2000 HOME funds, a unit of general local government must submit a Consolidated Plan. A consortium is considered a unit of local government for purposes of receiving an allocation and participating in the HOME Program. Therefore, when two or more units of local government form a consortium for the purpose of receiving a formula allocation under the HOME Program, the consortium must, as a condition of funding, submit a single Consolidated Plan that covers the entire geographic area encompassed by that consortium. Where a consortium includes one or more CDBG entitlement grantees, any such grantee does not submit an individual Consolidated Plan (for the CDBG Program) in addition to 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 previously submitted a complete strategy may submit only the Action Plan and certifications unless it is required to submit a new five-year complete strategic plan (See 91.15(b)).

If joint grant agreement participants form a consortium for the HOME Program (see Paragraph IX), the Consolidated Plan submitted by the urban county will also serve as the Consolidated Plan for the HOME consortium because the local governments in the consortium are the same as the local governments in the urban county joint grant agreement.

XII. Consortium Agreement: Qualification Period and Duration of Agreement

The consortium agreement must specify the fiscal years for which the consortium is to qualify to receive allocations as a participating jurisdiction in the HOME Program. The qualification period is the three Federal fiscal years following the fiscal year in which the agreement is executed (i.e., FY 2000-2002), except that if one or more urban counties are members of the consortium, the agreement may specify a lesser number of Federal fiscal years coinciding with the fiscal years remaining in an urban county's qualification period. At the option of the consortium, the agreement may provide that it will automatically be renewed for participation in successive three-year qualification periods (See Paragraph VII.2.(h)). Notwithstanding the Federal fiscal years specified, if an urban county consortium member fails to requalify as an urban county for a fiscal year included in the consortium agreement, the consortium's qualification period terminates with the last fiscal year for which the urban county qualified. A new consortium agreement must be executed for the succeeding qualification period.

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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 for eligible activities.

No consortium member may withdraw from the agreement while the agreement remains in effect. The new agreement is governed by the requirements of the then current Consortium Qualification notice.

NOTE: A consortium may be disbanded if the consortium fails to receive a HOME allocation for the first Federal fiscal year of the consortium's qualification period and does not request to be considered to receive a HOME allocation in each of the subsequent two years.

XIII. HUD Action

For any consortium request whose notification was received by the deadlines established by the HUD Field Office, the HUD Field Office will review the documentation to determine whether the consortium is made up of geographically contiguous units of general local government, whether the consortium has sufficient legal authority and administrative capability to carry out the purposes of the HOME Program on behalf of its member jurisdictions, and that there is a written certification from the State as provided in Paragraph VII. Also, the Field Office will assure that all units of general local government which are to be members of the consortium are on the same program year for CDBG, HOME, ESG and HOPWA.

XIV. Legal Authority

Field Office Counsel should review each consortium's request to determine if the consortium has sufficient legal authority to carry out the HOME Program.

XV. Administrative Capacity

If the consortium includes a metropolitan city or an urban county as the lead entity, the consortium would be considered to have sufficient administrative capability to carry out the purposes of the HOME Program. If the consortium does not include a metropolitan city or an urban county, but the lead member or an existing public agency has relevant experience (e.g., successful experience in administering a CDBG or Rental Rehabilitation Program or has been administering a successful HOME Program as a State recipient), the consortium could also be considered to have sufficient administrative capability to carry out the HOME Program. On the other hand, a newly created public agency established to administer the HOME Program for a consortium would not be viewed as having sufficient administrative capability unless it includes as its administrators) a person or persons with relevant experience in successfully administering programs similar to the HOME Program, such as the CDBG or Rental Rehabilitation Programs.

If the HUD Field Office is satisfied that the consortium meets the requirements for the HOME Program and has the necessary legal authority and administrative capability to carry out the HOME Program, it will approve the consortium request and notify Headquarters as provided in Paragraph V no later than **August 2, 1999**.

XVI. Appendix

Attachment A

HOME PROGRAM APPROVED CONSORTIA - FISCAL
YEAR 1999

Attachment B

HOME PROGRAM CONSORTIA THAT NEED TO
REQUALIFY FOR FY 2000-2002

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0128.