

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

Special Attention of:

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

Notice: CPD 02-02

Issued: April 11, 2002
Expires: April 11, 2003

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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- A. Consortia Listing with Latest Qualification Periods

Distribution: W-3-1

I. Purpose

This Notice provides guidance on procedures for designation of local governments to participate as consortia in the HOME Investment Partnerships Program for Fiscal Year 2003. The notice updates CPD Notice 01-04, and provides the documentation requirements and deadlines for the designation of potential consortia, re-qualification of existing consortia and the addition of new members to a consortium.

Special attention should be directed to the deadlines as indicated in Section V, Schedule of Submissions. Delays in designating a consortium may result in loss of eligibility to receive an allocation in FY 2003.

II. General Information

A. Background

The HOME Program is authorized by the HOME Investment Partnerships Act, Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended. 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 (1) has sufficient authority and administrative capability to carry out the purposes of the Act on behalf of its member jurisdictions and (2) 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 identify units of general local government (metropolitan cities, urban counties and consortia) that are eligible to receive HOME funds by formula, as of the end of the previous fiscal year.

The Department plans to complete the designation of new urban counties and metropolitan cities before September 30, 2002 (the end of FY 2002), so that they will be eligible to receive HOME and Community Development Block Grant (CDBG) allocations for FY 2003.

B. 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 2003, (b) existing consortium already qualified to participate for FY 2003, but that wish to add one or more local governments, and (c) existing consortium that must execute a new consortium agreement because their consortium qualification period ends September 30, 2002.

A list of consortia that are participating in the HOME Program for FY 2002 and a list of consortia that must renew their agreements for FY 2003 - 2005 are attachments to this notice.

C. Effects of Forming a Consortium

Consortia are contiguous units of local government that 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 a consortium causes a reduction in the amount of HOME funds available to the State for its program. It 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 the funds are based on the demographics of the non-entitled areas of the State, while 20% of the funds are based on the demographics 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.

The amount of funds available for each unit of local government is divided among more jurisdictions each year due to the addition of new metro cities, urban counties, and consortia. Therefore, the amount going to the new consortium will depend on the how many jurisdictions receive a share of the total funds available. Field offices should keep track of consortia that receive Community Development Block Grant (CDBG) funds and explain the possible loss of HOME funding to the State as a whole in discussing the merits of consortium formation with prospective consortium members.

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 the consortium would be administering the HOME Program as a unit of local government, it is also important that the members are able to establish a working relationship to meet the affordable housing needs of all of the participants. The Representative, also referred to as the Lead Agency, assumes the overall responsibility for compliance with the HOME Program requirements. Therefore, the consortium participants need confidence in the Representative's ability to assume this responsibility on their behalf and be committed to cooperate to achieve the objectives of the Consolidated Plan.

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

III. Eligibility for Forming a Consortium

Units of general local government that are geographically contiguous, as described by the Census Bureau maps (available at <http://ftp2.census.gov/geo/maps/>), 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. Units of general local government forming a consortium may be cities or urban counties that would be eligible, individually, to become participating jurisdictions in the HOME Program.

A unit of general local government that is included in an urban county may be part of a consortium only if the urban county joins the consortium. A unit of general local government that is located within an urban county cannot join the consortium if the urban county does not want to participate as a member of the consortium. (Thus, when units of general local government 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 the Joint Grant Agreements Section of this notice).

IV. Designation and Renewal Procedures

To be considered as a HOME Program consortium for FY 2003, a proposed consortium, or a consortium that must renew its HOME consortium agreement, is to provide the following qualification documents **by June 30, 2002 (or such later date as agreed to by the applicable HUD Field Office)**, to the appropriate HUD Field Office:

A. State Certification

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 the Governor or his/her authorized designee who signs as "Authorized Official."

B. Consortium Agreement

A legally binding consortium cooperation agreement executed by all members of the consortium 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*: Authorizes 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.

(3) *Representative Responsibilities:* Provides 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.

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.

(4) *Legal Opinion:* A legal opinion from the lead entity's counsel that cites applicable law. It is 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:* A statement in the agreement that each member unit of local government agrees to affirmatively further fair housing.

(6) *Term:* Specifies and lists 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 3 of this Section.

(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, 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 consortia agreements set forth in a Consortia Qualification Notice applicable for a subsequent three-year consortia qualification period. The amendment shall be submitted to HUD as specified in the Consortia Qualification Notice for that period. Failure to comply will void the automatic renewal of the consortium agreement.

The Automatic Renewal provisions will not apply when the consortium adds a new member. (See Paragraph C of this Section for documentation requirements.)

If there is no change to the consortia agreement at the time of renewal, the HUD Field Office can e-mail Jill S. Alexander, CPD, Office of Technical Assistance and Management Systems

Development and Evaluation Division at Jill_S._Alexander@hud.gov or fax to (202) 708-4275 indicating that there has been no change. In the event that a member decides not to participate or a change has been made within the consortium, the Field Office shall notify Ms. Alexander that the entity is no longer a member of the consortium.

(8) *Program Year*: States the program year start date for the consortium and that all units of general local government that are consortium members are on the same program year for the CDBG, HOME, ESG and HOPWA programs.

(9) *Authority to Amend Agreement*: Authorizes the lead entity to amend the agreement and add new members on behalf of the entire consortium.

NOTE: This provision is optional if the consortium members agree to have all the members sign and approve all agreement amendments.

(10) *Signatures*: The agreement is to be signed by the chief executive officer or authorized official of each member unit of local government.

NOTE: If a CDBG urban county is a member of the consortium, the authorized urban county official can sign the consortium agreement for its participating units of general local government. (A unit of local government that is included in an urban county can be a member of a consortium only by joining the CDBG urban county.) A unit of general local government that is located in the urban county, but has not joined the CDBG urban county, can be a member of the consortium if it signs the HOME consortium cooperation agreement. A non-urban county may be a member of a consortium. However, the non-urban county cannot on its own include the whole county in the consortium. Each unit of general local government in a non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

(11) *Attachment - Resolutions*: Provide the authorizing resolutions from the governing body of each member unit of local government, or other acceptable evidence that the chief executive officer or authorized official has the authority to sign the agreement.

C. 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 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. The metropolitan city is treated the same as any other unit of general local government that is part of the urban county.

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. It must have the same program years for funding. If the metropolitan city and urban county wish to form a new HOME consortium, the procedures outlined above for new consortia would apply.

D. Qualification Period and Duration

The consortium agreement must specify the fiscal years that the consortium is to qualify for in order 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 2003-2005). If one or more urban counties are members of the consortium, the agreement may specify a lesser number of Federal fiscal years that coincide 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 as indicated in the Automatic Renewal paragraph of Section IV. If an urban county consortium member fails to re-qualify 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.

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: 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. HUD will re-allocate funds to a State that is a participating jurisdiction pursuant to 24 CFR 92.452.

E. Procedures for Existing Consortia to Add 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 Section IV above.

F. 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 the 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 Program.

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, 2002**.

V. Schedule for Submissions

The HOME Program regulations at 24 CFR 92.101 (a)(1) require a proposed consortium or an existing consortium whose qualification terminates at the end of the Fiscal Year 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 qualifying as HOME Program consortium for Fiscal Years 2003-2005.

As indicated in the following schedule, 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. 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. In the event that the published date falls on a weekend or holiday, the deadline will be the next scheduled business day.

By **March 1, 2002**, to be considered for an allocation of HOME funds in FY 2003, a proposed consortium, an existing consortium that is adding members, or a consortium that must sign a new HOME consortium agreement provides to the appropriate HUD Field Office written notification of

its intent to participate as a consortium. Any changes in participants must be listed within the agreement. Provided that subsequent deadlines can be met, the Field Office may accept notification at a later date.

By **June 30, 2002** (or a later date if agreed to by the applicable HUD Field Office), a proposed consortium, a consortium that must sign a new agreement, or a consortium that is amending its current agreement to add members must submit to the appropriate HUD Field Office the documents as required in Section IV, entitled "Designation and Renewal Procedures". **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, 2002**, Field Offices approve all consortium agreements. Headquarters CPD, Office of Technical Assistance, Systems Development & Evaluation Division is to be provided with documentation of the approved consortium agreement. This submission is to include evidence from each new or amended agreement that (1) lists the consortium members and (2) documents the consortium qualification period. The appropriate pages from the consortium agreement should be forwarded to Jill S. Alexander, Systems Development & Evaluation Division, Room 7224 or faxed to (202) 708-4275. If you should have any questions regarding the Policy that govern consortia, contact Donna Kind Anderson, Affordable Housing Specialist, Financial & Information Services, at (202) 708-2684 Extension 4691. **NOTE: THIS DATE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.**

During late August or early September, the CPD Office of Technical Assistance and Management, 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 2002. CPD Directors must verify the worksheets with the consortium lead agency to assure the accuracy of the information.

By **September 20, 2002**, CPD Directors shall update and complete the worksheet for each consortium in the Field Office jurisdiction, sign the worksheet and send to Jill S. Alexander, CPD Office of Technical Assistance and Management, Systems Development and Evaluation Division, Room 7224 to allow sufficient time for data to be assembled so that changes can be reflected in the FY 2003 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. 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 HOME consortium approved after February 6, 1995, 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. Consolidated Plan

To receive FY 2003 HOME funds, a unit of general local government must submit a Consolidated Plan. A consortium is considered a unit of general local government for purposes of receiving an allocation and participating in the HOME Program. Therefore, when two or more units of general 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 §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 consistent with Section IV, 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.

The Field Office should be aware that the date they notify the consortium of its formula allocation amount will drive the date that the Consolidated Plan is due according to the following timeline:

- Consortium submits a written notification of its intention to be a PJ no later than 30 days after receiving notice of its formula allocation amount (§ 92.103)
- Consortium submits a consolidated plan to the Field Office within 90 days of providing notification of its intent to be a PJ (§ 92.104).

Because of the statutory timeline listed above, it is critical that Field Offices work with new jurisdictions so that formal notification of formula allocation amounts can be sent at a point that creates the most flexibility for new jurisdictions as they prepare their consolidated plans.

VIII. 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 IV. Also, the Field Office will assure that all units of general local government that are to be members of the consortium are on the same program year for CDBG, HOME, ESG and HOPWA.

IX. 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.