HOME Grant-Based Accounting Interim Rule Summary
December 2, 2016

Introduction

On December 2, 2016, HUD published an interim final rule making changes with respect to HOME Program commitment and expenditure requirements. Beginning with FY 2015 HOME allocations, HUD will no longer use the cumulative method for measuring compliance with the requirement that participating jurisdictions (PJs) commit HOME funds within 24 months of obligation. Beginning with FY 2015 allocations, the 15% CHDO set-aside requirement will also be applied on a grant-specific basis instead of the "cumulative average" approach HUD previously employed. The rule is effective on January 3, 2017.

Requirements for FY 2014 and Earlier HOME Allocations [§ 92.500(d)(2)]

The requirements for committing and expending HOME funds from FY 2014 and earlier allocations are largely unchanged.

Commitments: HUD has used the cumulative method to determine compliance with the 24-month commitment requirement for all HOME allocations prior to and including the FY 2014 HOME allocation. Under the cumulative method, HUD determined a PJ's compliance with the 24-month deadline by measuring whether the total amount of HOME funds committed by the PJ from all HOME allocations received was equal to or greater than the amount the PJ committed from all allocations through the allocation being examined (e.g., generally, FY 2013 allocations for deadlines that occurred in 2015). In 2016, commitment deadline compliance for PJs' FY 2014 HOME allocations was measured using the cumulative method. PJs received credit for commitments from FY 2015 and FY 2016, and consequently may have met the requirement even if all FY 2014 or earlier funds were not yet committed. To complete the transition to grant-specific commitments, HUD will measure each PJ's commitments from FY 2014 and earlier allocations again as of the commitment deadline date for FY 2015 allocations [§ 92.500(d)(2)(iii)]. Each PJ, by its commitment deadline date for its FY 2015 HOME allocation, must have committed its FY 2015 HOME allocation and also all of its FY 2014 and earlier HOME grant funds or those funds will be subject to deobligation.

Expenditures: HUD will use the cumulative method to measure compliance with the 5-year deadline for expending FY 2014 and earlier HOME funds until all FY 2014 HOME allocations have passed their 5-year expenditure deadline (which for most PJs will occur in 2019). The provision established by the 2013 HOME Final Rule that required HUD to separately measure expenditure of the 15% CHDO set-aside has been eliminated for all fiscal years' allocations.

Requirements for FY 2015 and Subsequent HOME Allocations [§ 92.500(d)(1)]

Commitments: Beginning with FY 2015 HOME allocations, HUD will measure each PJ's compliance with the 24-month commitment deadline on a grant-specific basis. As of its deadline, 100% of funds from the specific HOME allocation subject to the deadline must be committed (in accordance with the definition of "commitment" at § 92.2). The 15% CHDO set-aside also must be met on a grant-specific basis. HUD must deobligate any HOME or CHDO set-aside funds not committed by the deadline.

Any HOME or CHDO set-aside funds that are uncommitted (e.g., due to cancellation of a project, cancellation or reduction of subrecipient or state recipient award, a project being completed for an amount less than the committed amount) after the deadline cannot be recommitted by the PJ and must be deobligated by HUD.

To ensure that all HOME funds are committed to projects timely, the rule adds a new requirement that funds committed to State recipients or subrecipients must be committed to specific projects within 36 months of HUD's obligation of the HOME allocation. Such funds that become uncommitted from a project after the 36-month period will not be subject to deobligation, as long as the commitment to the State recipient or subrecipient remains in place.

Because most deobligated HOME funds will have passed their period of availability for obligation by HUD, HUD will be unable to reallocate them in the next HOME formula allocation process or, in the case of CHDO funds, through national competition. For example, FY 2015 funds remain available until September 30, 2018 and cannot be obligated by HUD after that date.

Expenditures: For FY 2015 and subsequent years' HOME allocations, the rule eliminates the 5-year expenditure deadline for HOME funds and the separate 5-year expenditure deadline for CHDO set-aside funds. Since FY 2002, HOME appropriations have been subject to expiration 5 years after the period of availability for obligation (the period of availability for HOME appropriations has been 3 or 4 fiscal years, so generally the HOME appropriation expires 8 or 9 years after the end of the fiscal year for which the HOME funds were appropriated). FY 2015 HOME funds that are committed by the commitment deadline and are not uncommitted after the deadline, will remain available for expenditure until the expiration of the appropriation.

Treatment of Funds in the Local HOME Account/Consolidated Plan Requirements

Under the previous HOME regulation, funds that PJs deposited in the local account (program income, repaid funds, and recaptured funds) were not required to be committed to specific projects before they could be expended. Further, these funds were required to be expended before appropriated funds could be drawn from the HOME Treasury account, and HUD excluded program income from the calculation of commitments and expenditures when determining compliance with the 24-month and 5-year deadlines under the cumulative method.

Continuation of this approach is not possible under grant-based accounting, as the receipt and expenditure of program income, repaid funds, or recaptured funds would result in an equivalent amount of appropriated HOME funds committed to projects being uncommitted and subsequently deobligated by HUD, if the 24-month period for commitment had passed. The interim rule changes the requirements for committing and expending funds in the local account to ensure that appropriated funds are not deobligated as a result.

Under the provisions of the rule, the PJ may accumulate program income, repaid funds, and recaptured funds it receives during the program year, rather than being required to expend them for the next eligible draw. The PJ is now required to include any uncommitted program income, repaid funds, or recaptured funds it received during the previous program year in the resources it describes in its annual action plan [§ 91.220(l)(2)(i) and § 91.320(k)(2)(i)]. The PJ may, but is not required, to also include any funds it anticipates receiving during the program year for which the annual action plan is being submitted. Program income, repaid funds, and recaptured funds included in the annual action plan will have a commitment deadline that is the same as the 24-month commitment deadline that is applicable to the HOME allocation the PJ receives for that fiscal year. Establishing a single deadline for both the HOME allocation and accumulated funds in the local HOME account avoids administrative burden of multiple deadlines, ensures that the PJ has identified the exact amount of funds in the Federal and local HOME accounts that must be committed by the deadline, and eliminates the potential for unnecessary loss of funds.

PJs must commit the identified amount of funds in its local HOME account before committing the appropriated HOME funds. If a project has funds from both the local and Federal HOME account committed to it, the PJ must expend the funds from the local HOME account before it draws funds from the Federal HOME account. [§ 92.502(c)(3)]

A provision has been added at § 92.503(b)(2) clarifying that funds expended for projects terminated before completion or for otherwise ineligible costs must be repaid. Paragraph § 92.503(b)(3) states that HUD will instruct the PJ whether a specific repayment should be made to the local HOME account or the Federal HOME account. This will ensure that PJs do not mistakenly deposit repaid funds to a HOME allocation for which the 24-month commitment deadline has already passed.

Clarifications of Definition of "Commitment" [§ 92.2]

(1) The reference in the previous regulation to an agreement with a contractor constituting a commitment has been eliminated. Unlike an agreement with a subrecipient or state recipient, which design and administer HOME programs, a contractor is hired to implement the PJ's policies and procedures. Such an agreement should not have been included in the commitment definition.

(2) Language has been added to state that executed agreements for CHDO operating expenses, CHDO capacity building services, and CHDO project-specific technical assistance and site control loans constitute commitments. HUD has always provided commitment credit to PJs for these agreements and is adding them to the definition to eliminate any misunderstanding with respect to their treatment in determining compliance with the 24-month commitment requirement. The rule adds corresponding language to § 92.504, outlining the requirements for written agreement that provide funds for these purposes.

(3) Language has been added to the definition to clarify that the amount of each HOME allocation that is set aside in IDIS for the PJ's administrative and planning costs are considered to be committed at the time the set-aside is established. When HUD enters a HOME allocation into IDIS, the 10% available for administration and planning is placed in a set-aside fund. The entire amount is considered committed unless the PJ reduces the amount of the set-aside.

Automatic Cancellation of HOME Project in IDIS [§ 92.502(b)(2)]

The provision in the HOME regulations that authorized the automatic cancellation of projects that had been committed in IDIS for more than 12 months without an initial disbursement of funds has been eliminated. Since 2012, IDIS has automatically cancelled such projects so that they would not be counted toward the PJ's commitment requirement unless the PJ could substantiate that the funds were appropriately committed and the start of construction was imminent. HUD determined that automatic cancellation of projects was not appropriate under a grant-specific methodology, because it might result in the loss of HOME funds that become uncommitted due to automatic cancellation irrespective of the nature and extent of any delay in project commencement, or because the HOME funds were intended to be used in the latter stages of project development.

The definition of commitment at § 92.2 continues to require that HOME funds may only be committed to a specific project if the PJ has a reasonable expectation (as demonstrated by completed underwriting and subsidy layering, secured financing, and a final budget and construction schedule) that construction will begin within 12 months. While HUD will no longer automatically cancel projects, it will continue to monitor projects for timely disbursement of funds and to evaluate the appropriateness of project commitments based on compliance with the 12-month standard.