



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

Special Attention of:
CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

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Subject: Requirements for Committing HOME Funds

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PURPOSE

Participating jurisdictions (PJs) must commit HOME funds within 24 months of HUD's obligation of its grant, or HUD will recapture the funds from the PJ's HOME Investment Trust account. This Notice explains what constitutes an eligible commitment of HOME funds for the purposes of meeting the 24-month commitment deadline. The notice will explain the requirements contained in the definition of "commitment" at 24 CFR 92.2 and the underwriting, subsidy layering, and project assessment requirements at 24 CFR 92.250(b), all of which must be met prior to the commitment of HOME funds, and some of which are new requirements imposed by the HOME final rule published on July 24, 2013.

I. BACKGROUND

Section 218(g) of the HOME statute, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 U.S.C. 12748), imposes a 24-month deadline on the commitment of HOME funds by PJs. If the PJ does not commit the funds by the deadline, the PJ's right to draw the funds from its HOME investment Trust Fund expires and HUD must reduce the line of credit in the PJ's HOME Investment Trust Fund.

In accordance with this statutory requirement, the HOME rule at §92.500(d)(1)(B) requires each PJ to commit its funds in the HOME Investment Trust Fund U.S. Treasury account within 24-months after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME grant agreement. HUD must reduce or recapture HOME funds that are not committed by this 24-month deadline. Because the 24-month commitment requirement is statutory, it cannot be waived.

Compliance with this requirement is tracked monthly for all PJs on the HOME *Deadline Compliance Status Report* (available here: <https://www.hudexchange.info/manage-a-program/home-deadline-compliance-status-reports/>).

Changes to the Definition of "Commitment"

Beyond the need to achieve compliance with this statutory 24-month requirement, HUD recognized the need to add greater specificity to the definition of "commitment" in the HOME regulation at §92.2. The 2013 HOME final rule clarified the point at which HOME funds can be committed to projects and programs.

Additional Subsidy Layering, Underwriting, and Project Assessment Requirements

The 2013 HOME final rule states what is required of a PJ prior to committing HOME funds to a project. These requirements were added to the subsidy layering requirements at §92.250(b). PJs are required to:

- perform subsidy layering and underwriting analyses;
- assess the current market demand in the neighborhood;
- assess the experience and financial capacity of the developer; and
- assess the firm written financial commitments to the project

These requirements are intended to ensure: appropriate targeting of HOME funds; cost reasonableness and the long-term viability of HOME-assisted projects; and successful and timely project completion.

II. DEFINITIONS

The 2013 update to the HOME regulations modified and clarified the definition of “commitment” found at 24 CFR Part 92.2. The regulation at §92.2 “Commitment” (1) now states that HOME funds are committed when:

The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See §92.504(c) for minimum requirements for a written agreement).

This definition makes clear that the HOME written agreement that commits HOME funds is the executed written agreement described in §92.504(c). PJs may issue nonbinding awards (e.g. award letters, preliminary reservations), but these are not “commitments.”

The HOME regulation differentiates between two different types of commitments:

- 1) to specific local projects
- 2) to programs (undertaken by a State recipient or subrecipient)

1) Commitments to specific local projects

The definition of “commitment” at 24 CFR 92.2 of the HOME regulations establishes the minimum commitment requirements for different types of HOME-assisted activities, including rehabilitation and new construction, acquisition (by PJs and by homeowners), and tenant-based rental assistance:

Rehabilitation or new construction projects (with or without acquisition)-

When committing funds to rehabilitation or new construction projects, HOME funds are committed when the PJ and the owner of the project have executed a legally binding agreement under which HOME assistance will be provided. Prior to executing the agreement, the PJ must ensure that:

- all necessary financing has been secured;
- a budget and schedule has been established;
- underwriting is complete; and
- construction is scheduled to start within 12 months.

If the project is owned by the PJ (and therefore there will not be a written agreement committing the HOME funds to another entity), the funds are committed when the project is set up in the Integrated Disbursement and Information System (IDIS) and construction must reasonably be expected to start within twelve months of the project set-up date. This is required at §92.2 “Commitment” (2)(i).

Acquisition of standard housing projects-

When the HOME-funded activity consists of acquisition of standard housing, all of the requirements for a commitment to a specific local rehabilitation or new construction project apply, including secured financing, an established budget and schedule, and underwriting and subsidy layering requirements. Some additional requirements in the regulation, also apply:

- In instances in which the PJ is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the PJ must have executed a written agreement with the purchaser for a specific property. Property title must be transferred to the family or purchaser within six months of the agreement date. This is required at §92.2 “Commitment” (2)(ii)(B))
- In instances in which the PJ itself is acquiring standard housing with HOME funds, the PJ and the property owner must have executed a legally binding contract for sale of an identifiable property, and the property title must be transferred to the PJ within six-months of the date of the contract. This is required at §92.2 “Commitment” (2)(ii)(A).

Tenant-based rental assistance-

If the PJ directly administers tenant-based rental assistance, a “commitment” occurs when the PJ enters into a rental assistance contract with either the tenant or the owner that complies with the provisions of §92.209. This is in accordance with §92.2 “Commitment” (2)(iii).

Acquiring land with HOME funds

"Land banking" is not permitted under the HOME Program. Under §92.205(a)(2), land can only be acquired for a specific local project, with construction scheduled to begin within 12 months of commitment. Therefore, if the PJ acquires land with HOME funds with the intention to convey it to a developer for a HOME project, the PJ must have an actual project before using HOME funds for the acquisition, and the PJ must document that construction on the specific project will begin within 12 months.

2) Commitments to programs (undertaken by a State Recipient or subrecipient)

PJs can commit HOME funds to State recipients or subrecipients to administer some or all of the PJs' HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. Funds are committed when the PJ has executed a legally binding written agreement with a State recipient or a subrecipient to use a specific amount of HOME funds for one of these purposes.

Eligibility: To be an eligible subrecipient, the organization must be a public agency or nonprofit organization, in accordance with the definition of "subrecipient" at §92.2. A State recipient is a unit of general local government to which a State PJ provides HOME funds to carry out programs or undertake specific local projects. The revised 2013 HOME rule clarifies the validity of a commitment between a PJ and a subrecipient. Specifically, commitments do not include an agreement between a PJ and a subrecipient that the PJ controls (e.g., providing HOME funds to the PJ's social service agency to run a program). These entities are considered a part of the PJ, not separate entities. Therefore, these types of agreements are not subrecipient commitments and do not count toward the 24-month commitment requirement.

Note: An agreement between the lead entity of a consortium and a consortium member that is not for a specific local project is not a commitment. This is not an award between the consortium and another entity, but rather an allocation of funds within the consortium.

III. REQUIREMENTS PRIOR TO THE COMMITMENT OF HOME FUNDS

The revised definition of “commitment” clarifies the elements that are necessary for HOME program commitments. The HOME regulation establishes specific prerequisites that must be met before a PJ can enter into a commitment and the provisions that must be included in the written commitment of HOME funds. This section will focus on what requirements PJs must meet prior to committing funds to a “specific local project” or to a State recipient or subrecipient to undertake a HOME-funded program.

For both commitments to specific local projects and to State recipients or subrecipients, the project or program must be associated with an activity identified in the PJ’s approved Consolidated Plan or Annual Action Plan. The PJ is required to complete the citizen participation process prior to committing any HOME funds.

1) Requirements PRIOR to the commitment of HOME funds to “specific local projects”

The regulations require that a PJ must commit funds to a “specific local project” and cannot commit funds in anticipation of a project or on the assumption that a project will come together when additional funding sources are identified. Under the HOME Program, there must be a “specific local project” before the commitment is made.

Prior to executing a legally binding written agreement committing HOME funds to a specific local project, the PJ must meet all of the requirements of the definition of “commitment” at §92.2, as well as all of the project assessment requirements contained in §92.250(b), “underwriting and subsidy layering.” Prior to committing HOME funds, the PJ must meet (and document compliance with) all of the following requirements:

- i. Identify a specific project**
The PJ must identify the address of the project or a legal description of the proposed property.
- ii. Assess current market demand in the neighborhood where the project will be located**
The PJ must conduct an assessment of the current neighborhood market demand for all HOME-funded rental and homebuyer development projects. The PJ must determine that there is adequate demand for each project by reviewing neighborhood and other relevant market data, and must develop written policies and procedures for assessing and documenting the determination that there is an adequate amount of demand for the type and number of housing units that are being developed. There must be a demonstrated demand for all of the units in the project, not just those units that are designated as HOME-assisted.

PJs are not required to pay for an external, independent market assessment or perform a full, formal market study, but the scope of the assessment should be

relative to the project scope. The PJ can either conduct a market assessment in-house using available data; contract for a market assessment; or use the market assessment conducted by the developer, partner or other funding source. If the PJ will accept a market assessment performed by the developer, it must review the assessment to ensure that it conforms to the PJ's written policies. The PJ can pay for the assessment as an administrative cost or as a project delivery cost.

The assessment should include an analysis of local market trends, a clear definition of the market area from whom the buyers or renters can reasonably be expected to be drawn, and analysis of the demand, supply, and competition. The PJ must determine, based on its own local policies and information about the local market and trends specific to the neighborhood in which the project will be located, whether the market assessment truly reflects the *current* demand. HUD recognizes that data availability varies by geographical area. Consequently, a PJ must establish in its policies the data sources and age of the data that will be acceptable for its assessment. The PJ must review the market assessment in accordance with its market assessment policies, and document its review and determination that the demand is sufficient. The PJ must document the date of the assessment of market demand and the assessment should have been performed less than 12 months prior to the commitment of HOME funds.

Applicability: This requirement is not applicable to the rehabilitation of owner-occupied housing (as defined at §92.254(b)) or to HOME-funded downpayment assistance programs pursuant to §92.254(a) that do not include HOME-funded development activity.

iii. Complete environmental review requirements

The HUD environmental review regulations at 24 CFR Part 58 prohibit HOME funds or non-HUD funds from being committed to a project prior to completion of environmental review requirements. The environmental review process should begin as soon as a recipient determines the use of HUD assistance in the project, in accordance with §58.30(b). See the “Conditional commitments pending completion of environmental review” section (pages 14-15) for more information on the environmental review requirements and the limited circumstances in which a PJ may make a “conditional commitment” pending completion of environmental review for the purposes of meeting the 24-month commitment deadline.

iv. Secure all necessary financing

The PJ must have secured all financing, including non-HOME sources for the project. For rental housing, both the construction and permanent financing must be secured.

All necessary financing commitments must be in writing and the documentation retained in the PJ's files. All award or commitment letters received from funders must be dated prior to the date of the HOME written agreement. However, it is not necessary that other financing sources have actually “closed” or been disbursed.

Documentation of secured financing can include award letters, letters of intent, offer letters, term sheets, or other commitments which are conditioned upon the receipt of HOME funds. But these must be non-speculative sources identified and secured in the amount necessary to complete the project. The PJ must have assessed these firm written financial commitments to ensure that they are in fact firm commitments and that:

- The terms and amounts are consistent with the PJ’s financial underwriting of the project;
- All sources are compatible with HOME program requirements (e.g. affordability restrictions, income targeting, unit mix); and
- All funds can reasonably be expected to close prior to the disbursement of HOME funds.

In the case of projects with Low Income Housing Tax Credits, the project must have received a reservation of credits from the state or local housing credit agency (e.g., applicable state or local housing finance agency) and be able to provide a good faith offer of equity investment from an investor prior to the execution of a HOME commitment.

Preliminary Awards: In accordance with §92.504(c)(3), the PJ may make a preliminary award of HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. **BUT**, this preliminary award is **not a commitment** to a project. A PJ may want to make a preliminary award of HOME funds for a proposed project to facilitate applications for other financing, and often preliminary award letters are issued as the result of a competitive funding process. **Preliminary awards are not commitments and cannot be entered into IDIS.** A legally binding agreement must be executed when all financing is secured, and it is this legally binding HOME written agreement that will constitute a commitment.

A preliminary award is not the same as a “conditional commitment” pending completion of Environmental Review requirements, which is explained in detail on pages 14-15. A PJ may not make a preliminary award of HOME funds for a specific project prior to completion of environmental review requirements, unless the preliminary award also meets the requirements for a conditional commitment pending completion of environmental review.

Avoid 24 CFR 58.22 violations when securing other financing

When securing other financing after the application for HOME funds, owner, developers, and sponsors must ensure that awards and commitments, even those of non-HOME or non-HUD funds, are conditioned upon the receipt of HOME funds.

v. Establish a budget

In addition to having secured financing, the PJ must have identified a complete budget for the project in sufficient detail to determine total project development costs and its funding, including proposed sources and uses. The PJ must ensure that the amount of HOME funding in the project:

- Does not exceed the maximum per-unit subsidy amount;
- Is at least \$1,000 per unit; and
- Supports only eligible costs that are both necessary and reasonable.

vi. Examine the sources and uses of funds for the project and determine that costs are reasonable

The PJ must review the sources and uses statements or other records that indicate that there are sufficient HOME-eligible costs associated with the project to support the amount of HOME funds provided. The PJ must have a system in place for reviewing cost estimates and evaluating whether the costs are reasonable and that the HOME portion of the funding is only used for HOME-eligible expenses, in accordance with §§92.205 through 92.207 and §92.214.

vii. Complete underwriting and subsidy layering requirements, as applicable

Prior to committing funds to a project, the PJ must complete an underwriting and subsidy layering analysis of the project to ensure that the HOME funds invested (alone or in combination with other governmental assistance) are reasonable and necessary, and sufficient to provide quality affordable housing that is financially viable for a reasonable period of time (at least the period of affordability). The PJ must adopt guidelines that establish the standards to which it will evaluate its projects.

a) Underwriting Requirements-

Underwriting is the analysis of project risks and compliance to determine if the public investment is reasonable and the project can be expected to meet all applicable program requirements for the affordability period.

For multi-unit HOME projects in which not all the units will be HOME-assisted, PJs must complete a cost allocation analysis as part of underwriting and subsidy layering analysis. Cost allocation is required to determine the actual HOME eligible costs that may be charged to the program in accordance with §92.206(d). This analysis is also necessary to determine the minimum number of required HOME units and minimum period of affordability.

b) Subsidy Layering Requirements-

Subsidy layering involves the assessment of whether the proposed amount and form of HOME assistance is appropriate, given the amount and form of project investment by other sources. The PJ's policies must describe its standards for determining a reasonable profit or return on an owner's or

developer's investment in a project, based on the size, type, and level of complexity of each project.

The PJ must document its assessment and determination, and maintain documentation in the project file. In making its determination that the project meets the standards in its guidelines, the PJ can use the underwriting information and analysis of a contractor or other project funder. However, the PJ must still document its own determination that the project meets the PJ's standards. In order to demonstrate compliance with this requirement, the PJ must affirmatively review and approve the underwriting and subsidy layering analysis, including dated signatures.

Applicability: For information on the applicability of the subsidy layering and underwriting requirements to specific types of HOME activities, please see Appendix A.

Homebuyer Assistance: When providing homebuyer assistance, the PJ must determine the appropriate amount of assistance for each individual homebuyer. In accordance with §92.254(f), PJs must have written policies with established standards for evaluating housing debt and the overall debt of the family, the appropriateness of the amount of assistance, the monthly expenses of the family, the assets available to acquire the housing, and the financial resources to sustain homeownership.

viii. Assess the experience and financial capacity of the developer

The PJ must evaluate the experience and fiscal soundness of the developer of HOME-assisted housing based on the PJ's established policies. The PJ's policies must set forth the standards for determining what constitutes acceptable experience and financial capacity based on the size, scope, and complexity of the project, and the process by which the PJ will make and document this determination. When assessing the developer's experience, the PJ should consider both prior experience and the current capacity of the organization. When determining whether the developer has the financial capacity to undertake the project, the PJ should examine financial statements and audits to determine the developer's net worth, portfolio risk, pre-development funding, and liquidity.

Applicability: This requirement is not applicable to the rehabilitation of owner occupied housing (as defined at §92.254(b)) or to HOME-funded downpayment assistance programs pursuant to at §92.254(a) that do not include HOME-funded development activity.

ix. Determine that construction will start within 12 months of the agreement date

The PJ must have a reasonable basis for the agreement to provide that construction is scheduled to begin within 12 months of the commitment date. The PJ must assess and document the feasibility of the project construction commencing within 12 months and the project schedule must reflect this requirement.

x. Establish a completion schedule

A completion schedule is also required and the deadlines must meet all HOME requirements:

- construction is scheduled to begin within 12 months
- project completion must be achieved within 4 years
- all HOME-assisted homebuyer units must be sold to an eligible homebuyer within 9-months of construction completion
- all HOME-assisted rental units must have initial occupancy within 18-months of project completion

Project completion deadline

In accordance with §92.205(e)(2), a PJ must complete each project within 4-years of the date of commitment of funds to the project. For commitments to specific local projects, this 4-year completion requirement will begin the date the HOME written agreement is executed. For commitments to programs, the start of this 4-year completion deadline period will begin when the State recipient or subrecipient executes a HOME written agreement committing funds to a specific local project, in accordance with the definition of “commitment” at §92.2 and all of the prerequisite requirements outlined in this notice.

If the PJ needs to amend the written agreement at any point during the development phase to add additional HOME funding to a project, the date of commitment, for the purposes of the 4-year completion deadline, will remain the original date of commitment. Amending a written agreement to add additional funds does not extend the completion deadline.

xi. Set-up in IDIS

After the written agreement is executed, the project must be set up in the disbursement and information system set up by HUD (currently IDIS). However, pursuant to §92.502(b)(1), conditional commitments pending completion of environmental review may not be entered into IDIS.

Site and Neighborhood Standards

Prior to the commitment of HOME funds to a “specific local project” a site and neighborhood standards analysis must have been completed, including a determination that the site is or can be made accessible. A PJ must administer its program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act and the Fair Housing Act and promotes greater choice of housing opportunities (§92.251). If a site cannot be made accessible, it should not be selected for funding.

2) Requirements PRIOR to the commitment of HOME funds to programs (undertaken by a State recipient or subrecipient)

A legally binding written agreement between a PJ and a State recipient or a subrecipient to use a specific amount of HOME funds to undertake a HOME program, is a commitment. The requirements for the contents of the written agreement are set forth in §92.504(c).

State recipients and subrecipients, by definition, have been selected by the PJ to administer all or some of the PJ’s HOME programs, and are required to use HOME funds in accordance with all program requirements. The State recipient or subrecipient, in turn, must ensure that all of the requirements of a “commitment” at §92.2, the “underwriting and subsidy layering” requirements at §92.250(b), as established by the PJ, and all of the terms and conditions of the State recipient or subrecipient agreement are met before committing HOME funds to a specific local project.

[As stated in §92.504(a), the PJ is responsible for managing the day-to-day operations of its HOME program, ensuring HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipient or subrecipients does not relieve the PJ of these responsibilities.]

IV. WRITTEN AGREEMENT REQUIREMENTS FOR COMMITMENTS

The HOME Program regulations at §92.502(b) and §92.504(c) require that, before setting up a HOME project in IDIS or disbursing any HOME funds for the project, the PJ must enter into a written agreement that includes all of the required provisions of §92.504(c) for the project. It is the executed written agreement that evidences a commitment of HOME funds.

The agreement must be legally binding, signed by all parties to the agreement, and all signatures must be dated. An agreement that is dated only on the first page does not meet the requirements for a commitment. Given the statutory 24-month commitment deadline, it may be in the PJ's best interest to have signatures notarized or otherwise formally attested to on the agreement. If the signatures of the parties to the agreement have different dates, it is the last dated signature that is the date of the execution of the commitment. The HOME statute and regulations require the PJ to enter into a legally binding commitment within 24 months, and the written agreement needs to be dated to verify compliance. Note that if state or local law requires approval of the agreement by the chief executive or legislative body, it is not legally binding until the approval is given.

Parties to Written Agreements

PJs must enter into written agreements with:

- State recipients or subrecipients (that in turn must enter into project specific agreements with owners or developers or with the homebuyers, homeowners, or recipients of tenant-based rental assistance)
- Owners, developers, and sponsors
 - ❖ If the applicant for funding does not own the property at the time the commitment is made, the HOME-funded entity must be in the process of acquiring the specific local project identified in the agreement. However, where a conditional commitment pending completion of environmental review has been made, the project may not be acquired until the environmental review process is complete and the release of funds has been approved.
- Homebuyers, homeowners, or recipients of tenant-based rental assistance
- Contractors providing services to the PJ

Written Agreement Requirements

This section covers written agreement requirements for:

- 1) specific local projects
 - a. conditional commitments pending completion of environmental review
 - b. CHDO agreements
 - c. consortia agreements
- 2) programs (undertaken by a State recipient or subrecipient)

1) Written agreements for specific local projects

HUD strongly recommends that the written agreement be a separate document from the financing documents (e.g., mortgage or deed of trust, promissory note, security instruments, or other agreements that might be used to convey payment terms) because an agreement which imposes the HOME affordability restrictions must remain in force until the end of the affordability period.

If any of the conditions upon which these pre-commitment assessment requirements are based change after the HOME funding commitment has been made (e.g., the amount of HOME funding changes, the number of HOME units increase or decrease, the funding partners change the PJ must update its analysis and maintain the documentation in its project files. The PJ must amend its HOME written agreement to reflect these changes. Depending upon the specific nature of the changes, it may require the PJ to cancel the original HOME commitment and execute a new commitment of funds.

a) Conditional commitments pending completion of environmental review

The HUD Environmental Review regulations at 24 CFR Part 58 and the HOME regulations at §92.352(b) require that the environmental review process be complete prior to the commitment of any funds, including HUD or non-HUD funds, once an application has been submitted. Responsible Entities (PJs or State recipients) should begin the environmental review process as soon as the projected use of HUD assistance is determined, in accordance with §58.30(b).

However, it is possible to make a “conditional commitment” pending completion of environmental review in which the PJ conditions the commitment of HOME funds on the completion of the environmental review. Conditional commitments (i.e., subject to completion of environmental review) may be included when determining whether the commitment requirement of §92.500 (d) has been met. HOME written agreements can ONLY be conditioned on completion of an environmental review. The project must meet all of the requirements under the definition of “commitment” at §92.2 and of §92.250(b) at the time the written agreement is executed.

HUD permits the flexibility to execute a conditional commitment in order to accommodate delays in achieving environmental clearance within the 24-month commitment deadline. This allows a PJ to make a conditional commitment of HOME funds for the purpose of meeting the 24-month commitment deadline. Though PJs are permitted the flexibility to execute conditional commitments, HUD’s expectation is that the PJ will already have begun the environmental review process prior to executing the conditional commitment of HOME funds.

The conditional commitment agreement must:

- contain a provision prohibiting the State recipient, subrecipient, or project owner from undertaking or committing any funds (not limited to HOME funds) to physical or choice-limiting actions. Physical or choice-limiting actions include entering into contracts (including conditional contracts) for

- property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance;
- indicate that the violation of this provision may result in the denial of any funds under the agreement; and
 - explicitly state **that the agreement to provide funds to the project is conditioned on the PJ's determination to proceed with, modify or cancel the project based on the results of the environmental review.**

HUD recommends the following language for use in “conditional commitments”:

This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [the participating jurisdiction, insular area or state recipient] of an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development [or the state of ...] under 24 CFR Part 58. The provision of any funds to the project is conditioned on the [participating jurisdiction, insular area or state recipient's] determination to proceed with, modify or cancel the project based on the results of the environmental review.

Pursuant to §92.502(b)(1), a Responsible Entity (PJ or State recipient) must have completed the environmental review requirements under 24 CFR Part 58 and obtained approval of the release of funds prior to setting up a specific local project in IDIS.

b) **Community Housing Development Organization (CHDO) agreements**

Project-specific CHDO reservations-

The 2013 revisions to the HOME regulations made important changes to awarding funds to a CHDO. The HOME regulations have always required that PJs reserve 15 percent of their HOME funds to CHDOs within 24 months. Before the regulatory changes, a PJ could reserve funds to a CHDO with the expectation that the CHDO could find, locate, and develop projects. This is no longer the case. A PJ must now require that a CHDO identify a specific local project before funds can be reserved to that CHDO.

The revised regulations at §92.300(a)(1) define “reservation of funds” to a CHDO to mean the written agreement between the PJ and the CHDO committing HOME funds to a specific project to be owned, developed, or sponsored by the CHDO. Accordingly, to reserve set-aside funds to a CHDO, a PJ must meet all of the requirements of the definition of “commitment” to a specific local project at §92.2, all of the requirements of §92.250(b), and the written agreement requirements in §92.504(c)(3).

CHDO Operating, Capacity Building, and Predevelopment Loan Agreements-

Funds are committed when a PJ provides HOME funds to a CHDO under an agreement for operating expenses (in accordance with §92.208(a), §92.300(e)-(f)), and

§92.504(c)(6)), capacity building (in accordance with §92.300(b)), or a predevelopment loan (in accordance with §92.301).

c) Consortia agreements

An agreement between the lead entity of a consortium and a consortium member, other than a commitment to a specific local project, is not a commitment. This is not an award between the consortium and another entity, but rather an allocation of funds within the consortium.

2) Written agreements for programs (undertaken by a State recipient or subrecipient)

In accordance with §92.504(c)(1) and (2), funds are committed when a written agreement is executed committing HOME funds to a State recipient or subrecipient for the purpose of administering one or more affordable housing programs.

The State recipient or subrecipient is required, in turn, to execute a written agreement which complies fully with the requirements for written agreements at §92.504(c) when committing funds to an owner, developer or sponsor, contractor, homeowner, homebuyer, or tenant (or landlord) for a specific project.

Commitments for tenant-based rental assistance

When a PJ provides a State recipient or Subrecipient a specific amount of HOME funds to undertake a tenant-based rental assistance (TBRA) program, the PJ receives commitment credit for that funding amount at the time the parties execute the legally binding writing agreement . If the PJ is undertaking a TBRA program directly, the PJ receives commitment credit at the time the PJ enters into a rental assistance contract with the tenant or the unit owner. If a PJ executes a contract or memorandum of understanding with an entity that the PJ controls (such as the PJ's social service organization) to undertake a TBRA program on its behalf, this entity does not constitute an eligible State recipient or Subrecipient. In this circumstance, commitment credit occurs when the entity has executed a rental assistance contract with the individual tenant or owner, in accordance with the provisions at 92.209.

IV. CALCULATING COMPLIANCE WITH THE COMMITMENT REQUIREMENT

HUD calculates compliance with the 24 month commitment deadline based on both commitments entered into IDIS and commitments that have not yet been entered into IDIS. For all commitments, PJs are required to maintain documentation of compliance with ALL commitment requirements in the project file.

Reflecting Commitments in IDIS

HUD will consider the HOME commitments that have been entered into IDIS when determining compliance with the 24-month commitment deadline. The following is a complete list of items that are considered commitments in IDIS:

- i. HOME activities funded with entitlement (EN) funds
- ii. SU subgrants to State recipients or subrecipients
- iii. HOME activities funded with CHDO set-aside (CR) funds
- iv. HOME activities funded with CHDO operating (CO) funds
- v. Authorized amount of the administrative allowance (AD) subfund
- vi. HOME activities funded with CHDO capacity building (CC) funds
- vii. HOME activities funded with CHDO predevelopment loan (CL) funds

A PJ may never set up a project or subgrant in IDIS before it executes a legally-binding written agreement committing the HOME funds. When committing funds to a HOME activity in IDIS, the PJ must certify that it has a fully executed written agreement that meets the requirements of the regulations. When committing funds for CHDO set-aside projects, the PJ additionally certifies that the organization meets the definition of CHDO at §92.2, that the organization has demonstrated capacity, and that the organization meets the requirements to own, develop, or sponsor the housing, in accordance with §92.300 (a). These requirements are included as part of the *HOME Activity Funding Certification* that appears for all HOME activities in IDIS (see full certification below).

Entering a commitment in IDIS before it meets the definition of commitment at §92.2 and the requirements at §92.250(b) is a violation of the HOME regulations. In such cases, HUD will recalculate the PJ's compliance with the 24-month commitment requirement and it may result in the repayment of HOME funds invested in the project.

HOME Activity Funding Certification

By requesting the disbursement of Federal funds, the representative of the Participating Jurisdiction (PJ) using this system certifies that he/she is authorized to execute the certifications set forth herein, and, on behalf of the PJ, further certifies that, in accordance with the requirements in 24 CFR Part 92 and, where applicable, Public Law 112-55 and Public Law 113-6:

- (i) the PJ has fully executed a written agreement that meets the requirements of the regulations applicable to the IDIS activity for which the funds are to be used;
- (ii) the IDIS activity for which the funds are to be used meets the definition of a commitment at 24 CFR 92.2 and all the requirements of the definition of a commitment pursuant to the regulations applicable to the IDIS activity;
- (iii) the PJ has not drawn and will not draw funds for the IDIS activity unless it has fully executed a written agreement committing the funds;
- (iv) if the activity involves acquisition, construction, or rehabilitation of rental or homebuyer projects, the PJ has conducted an underwriting review, assessed developer capacity and fiscal soundness, and examined neighborhood market conditions to ensure adequate need for the project for which these funds are to be used;
- (v) for CHDO set-aside projects, the PJ certifies the organization meets the definition of “community housing development organization” at §92.2, which includes that the organization has demonstrated capacity to own, develop, or sponsor the housing to which funds are being committed, in accordance with §92.300; and
- (vi) All of the statements and claims made herein are true and correct. Pursuant to 18 USC § 1001, 31 USC § 3729, et seq., and 24 CFR Part 28, false or fraudulent statements or claims are subject to up to 5 years imprisonment and civil penalties up to \$10,000 plus up to 3 times the amount of damages sustained by the Government for each fraudulent act committed.

Commitments not yet entered in IDIS

The same documentation that supports commitments in IDIS – a legally-binding written agreement or contract committing funds to a specific local project or to a State recipient or subrecipient to undertake a program – is evidence of a HOME commitment that has not been entered into IDIS. PJs must submit documentation that a commitment has been made to HUD for review.

Program income, recaptured funds, and repayments to the local account

The amounts of program income, recaptured funds, and repayments to the local account that are received by the PJ, deposited in the PJ’s local account, and recorded in IDIS as receipts are not added to the PJ’s commitment requirement. Consequently, commitments of HOME program income, recaptured funds, and repayments to the local account are not counted as a HOME commitment for the purposes of meeting the 24-month commitment requirement.

IDIS reports

As noted above, the best way to ensure an accurate accounting of valid commitments is to enter all commitments into IDIS. The system can generate reports that will give a PJ information on its progress in committing HOME funds.

IDIS Report Number	Report Name	Use
PR22	Status of HOME Activities Report	Shows the “Committed Amount” for each HOME activity in IDIS
PR48	HOME Open Activities Report	Shows the amount committed to specific open HOME activities in the “Funded Amount” column
PR25	Status of CHDO Fund Report	Shows the “Amount Committed” to CHDO set aside and CHDO operating activities from subgrants to specific CHDOs.
PR35	Grant, Subfund, and Subgrant Report	Shows the “Amount Committed to Activities” from each of a PJ’s subgrants in IDIS.

For further information or for questions, please contact your local HUD Field Office.

Appendix A:
Applicability of Underwriting and Project Assessment Requirements

Required Element	Activity Type			
	Rental Project	Development of Homebuyer Housing	ONLY Direct Homebuyer Assistance	Owner-Occupied Rehabilitation
Secured financing	✓	✓	✓	✓
Source/uses and cost reasonableness	✓	✓	✓	✓
Underwriting and subsidy layering (with cost allocation, if applicable)	✓	✓	Related Req. ¹	Ltd. Req. ²
Developer experience & financial capacity	✓	✓		
Market assessment	✓	✓		

¹ §92.254(f) requires underwriting of HOME-assisted buyers, including level of direct assistance provided.

² Assessment of ongoing financial viability (i.e. owner's ability to repay HOME loan) is only required in owner-occupied rehabilitation projects if the HOME assistance is provided as an amortizing loan.

ATTACHMENT A

Commitment Checklist for “Specific Local Projects”

Purpose: This checklist is a tool to determine whether or not the HOME requirements for committing funds to a specific local project have been met, in accordance with the definition of commitment at 24 CFR 92.2 and the subsidy layering and underwriting requirements at 24 CFR 92.250(b).

Applicability: This checklist applies to HOME commitments made to rental and homebuyer housing development projects, including acquisition of standard housing.

While funds are committed when the PJ has executed a legally binding written agreement with a State recipient or subrecipient to undertake a program, the commitments that State recipients and subrecipients make to specific local projects must comply with the requirements in this checklist.

How to Use: PJs and Field Office staff can use this checklist to help ensure that commitments of HOME funds meet HUD’s minimum requirements. HOME written agreements for specific local projects must reflect all of the requirements contained in §92.504(c).

Requirements for Committing HOME Funds to “Specific Local Projects”

Project Name: [Click here to enter text.](#)

IDIS Activity Number: [Click here to enter text.](#)

Commitment Date: [Click here to enter the date the HOME written agreement was executed](#)

Requirement	Documentation / Basis of Qualification	Comments	Yes	No
Association with an approved Action Plan				
The HOME project is associated with one of the PJ’s approved Consolidated Plan/Annual Action Plan projects	Program year: Click here to enter year		<input type="checkbox"/>	<input type="checkbox"/>
Environmental Review (ER)				
The ER review requirements have been met	<input type="checkbox"/> The ER is complete (receipt of an Authority to Use Grant Funds form from HUD or the State) OR <input type="checkbox"/> The ER is not complete, but the written agreement is a “conditional commitment” pending environmental review		<input type="checkbox"/>	<input type="checkbox"/>
The Project				
There is an identifiable project	<input type="checkbox"/> Address OR <input type="checkbox"/> Legal description of property		<input type="checkbox"/>	<input type="checkbox"/>
Assessment of Market Demand				
There is an assessment that identifies market demand for the project	<input type="checkbox"/> PJ documented assessment of market demand Date the PJ reviewed, documented, and approved assessment: Click here to enter date <input type="checkbox"/> assessment was performed not more than 12 months prior to commitment		<input type="checkbox"/>	<input type="checkbox"/>

Requirement	Documentation / Basis of Qualification	Comments		
	<input type="checkbox"/> assessment is based on current, reliable data: Click here to enter data source and date <input type="checkbox"/> assessment identified appropriate neighborhood target area <input type="checkbox"/> proposed pricing for project (rents, sales prices) is appropriate for neighborhood and within HOME requirements			

Financing

Project budget	Total HOME funds: Click here to enter amount Total project costs: Click here to enter costs The budget is in sufficient detail to determine total project development costs and funding— <input type="checkbox"/> Yes <input type="checkbox"/> No		Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Requirement	Documentation / Basis of Qualification	Comments																													
All necessary financing has been secured	<p><u>Firm commitments</u> from all project funders. List each funding source below. Total sources must equal total development costs identified in project budget:</p> <table border="1" data-bbox="646 423 1394 841"> <thead> <tr> <th data-bbox="646 423 871 500">Funding Source</th> <th data-bbox="871 423 1108 500">Amount</th> <th data-bbox="1108 423 1394 500">Type of Documentation</th> </tr> </thead> <tbody> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td></td> <td>\$</td> <td></td> </tr> <tr> <td>Total:</td> <td>\$</td> <td></td> </tr> <tr> <td>Total Development Costs:</td> <td>\$</td> <td></td> </tr> </tbody> </table>	Funding Source	Amount	Type of Documentation		\$			\$			\$			\$			\$			\$		Total:	\$		Total Development Costs:	\$			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Funding Source	Amount	Type of Documentation																													
	\$																														
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	\$																														
	\$																														
	\$																														
	\$																														
Total:	\$																														
Total Development Costs:	\$																														
Subsidy layering and underwriting	<p>PJ has reviewed, documented, and approved:</p> <p><input type="checkbox"/> Appropriateness of the HOME assistance—</p> <ul style="list-style-type: none"> • the developer’s/owner’s profit/return on investment is appropriate and complies with PJ policies • the HOME funds are reasonable and necessary (to provide quality affordable housing that is financially viable for at least the period of affordability) • HOME funds are needed to fill a funding gap <p><input type="checkbox"/> Sources and uses statement—</p> <ul style="list-style-type: none"> • costs are reasonable, eligible, and within PJ guidelines • development cost statement adequately reflects the costs of the project • there are sufficient funding sources to pay all anticipated development costs • developer fee is appropriate and within PJ guidelines 		Yes <input type="checkbox"/>	No <input type="checkbox"/>																											

Requirement	Documentation / Basis of Qualification	Comments		
	<p>For <u>multi-unit</u> housing only:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Cost allocation— <ul style="list-style-type: none"> • determined number # of HOME units • HOME funds are within per unit subsidy limits <p>For <u>rental</u> housing only:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Operating pro forma— <ul style="list-style-type: none"> • covers entire period of affordability • assumptions about anticipated revenue and expenses are reasonable and complete • anticipated revenues are sufficient to pay debt service and other projected costs • projected rents are supported by a market assessment and meet HOME rent restriction requirements • underwriting ensures sustainability and financial feasibility through period of affordability (through sufficient capital reserves, conservative revenue trending, etc.) <p>For <u>homebuyer</u> housing only—</p> <ul style="list-style-type: none"> <input type="checkbox"/> Projected sales analysis based on reasonable range of low-income buyers <ul style="list-style-type: none"> • price appropriateness for income-eligible buyers • anticipated closing costs reasonable (projected for sale) • reasonable estimates of how much HOME funding is being used for direct assistance to buyer(s) 			

Requirement	Documentation / Basis of Qualification	Comments
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Developer Capacity

There is an assessment of the developer's financial capacity	<input type="checkbox"/> The PJ has documented its assessment <input type="checkbox"/> Date of determination is prior to commitment date: Determination date: Click here to enter date Commitment date:		Yes <input type="checkbox"/>	No <input type="checkbox"/>
There is an assessment of the developer's experience	<input type="checkbox"/> The PJ has documented their assessment <input type="checkbox"/> Date of determination is prior to commitment date		Yes <input type="checkbox"/>	No <input type="checkbox"/>

Project Schedule

There is a completion schedule for the project			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Construction is expected to start within 12 months	<input type="checkbox"/> The feasibility of the project commencing within 12 months is documented in the file		Yes <input type="checkbox"/>	No <input type="checkbox"/>

For CHDO Set-Aside Projects ONLY

The CHDO meets the CHDO qualification requirements at §92.2	<input type="checkbox"/> Date of determination is prior to commitment date Determination date: Click here to enter date Commitment date:		Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
The CHDO has the capacity to undertake this specific local project (relative to their role as owner, developer, sponsor)	<input type="checkbox"/> Date of determination is prior to commitment date Determination date: Click here to enter date Commitment date:		Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
The CHDO meets the definition of (select one): <input type="checkbox"/> Owner <input type="checkbox"/> Developer <input type="checkbox"/> Sponsor			Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Requirement	Documentation / Basis of Qualification	Comments
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Legally Binding Written Agreement

Identifies all parties to the agreement			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Provides dated signatures for each party			Yes <input type="checkbox"/>	No <input type="checkbox"/>

ATTACHMENT B

Commitment Checklist for Programs (undertaken by State Recipients or Subrecipients)

Purpose: This checklist is a tool to determine whether or not Participating Jurisdictions (PJs) have met the HOME requirements for committing funds to a State recipient or subrecipient to undertake a HOME program to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. The checklist reflects the minimum requirements that must be met, in accordance with the definition of commitment at 24 CFR 92.2 and the definitions of subrecipient and State recipient at 24 CFR 92.2 and 92.201(b)(2), respectively.

Applicability: This checklist applies to HOME commitments made to State recipients or subrecipients to undertake a HOME program to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. While funds are committed when the PJ has executed a legally binding written agreement with a State recipient or subrecipient, the commitments that State recipients and subrecipients subsequently make to specific local projects must comply with the requirements contained in the “Commitment Checklist: Specific Local Projects.”

How to Use: PJs and Field Office staff can use this checklist to help ensure that commitments of HOME funds meet HUD’s minimum requirements. HOME written agreements for programs must reflect all of the requirements contained in §92.504(c)(1) and (2).

Requirements for Committing HOME Funds to “Programs” (undertaken by a State Recipient or Subrecipient)

Requirement	Documentation / Basis of Qualification	Comments		
Association with an approved Action Plan				
The HOME program is associated with one of the PJ’s approved Consolidated Plan/Annual Action Plan projects	Program year: Click here to enter year		Yes <input type="checkbox"/>	No <input type="checkbox"/>
State Recipient/Subrecipient Eligibility				
The entity is eligible as a State recipient or subrecipient	<p>For State recipients:</p> <input type="checkbox"/> it is a unit of general local government		Yes <input type="checkbox"/>	No <input type="checkbox"/>
	<p>For subrecipients:</p> <input type="checkbox"/> it is a public agency or nonprofit organization <input type="checkbox"/> the subrecipient is not controlled by the PJ (such as another department under the PJ’s jurisdiction, or an authority that is part of the local government)			
Legally Binding Written Agreement				
Identifies all parties to the agreement			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Provides dated signatures of each party			Yes <input type="checkbox"/>	No <input type="checkbox"/>

