

APPENDIX B

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 01-4
Issued: April 9, 2001
Expires: April 9, 2002

Cross Reference: 24 CFR Parts 91 &92

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

01. Background 0

The HOME Program is authorized by the HOME Investment Partnerships Act which is Title 11 of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12701 *et seq.*) (Act). Section 216(2) of the Act provides that a consortium of geographically contiguous units of general local government is considered a unit of general local government for purposes of the HOME Program if the Secretary determines

that the consortium (a) has sufficient authority and administrative capability to carry out the purposes of the Act on behalf of its member jurisdictions and (b) will, according to a written certification by the State, direct its activities to the alleviation of housing problems within the State.

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

in the amount of funds available for local governments is divided among more jurisdictions each year due to new metro cities, new urban counties, and new consortia, the amount going to the new consortium depends on its relative share compared to other jurisdictions. Field offices should take care in listing those Consortia that are receiving CDBG funds and explain the possible loss of funding to the State as a whole in discussing the merits of consortia formation with prospective.

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

V. Timing of Submissions

The HOME Program regulations at 24 CFR 92. 101 (a)(1) require that to be considered as a consortium, the proposed consortium is to provide written notification to the appropriate HUD Field Office of its intent to participate as a consortium in the HOME Program for the following year. The following schedule will govern the procedure for jurisdictions to qualify as HOME Program consortia for Fiscal Years 2002-2004. Unless noted otherwise, deadlines may only be extended by prior written authorization from Headquarters. However, no extension may be granted by the Field Office if it would have the effect of extending a subsequent deadline that the Field Office is not authorized to extend.

By March 1, 2001 (or such later date as agreed to by the applicable HUD Field Office), to be considered for an allocation of HOME funds in FY 2002, a proposed consortium, an existing consortium that is adding members, or a consortium that must sign a new HOME consortium agreement is to provide to the appropriate HUD Field Office written notification of its intent to participate as a consortium in the HOME Program for FY 2002. Any changes in participants must be listed within the agreement.

By June 30, 2001 (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 below in Paragraph VII, entitled "Procedures Localities Must Follow for Designation as a Consortium or Renewal of an Expiring Agreement," or Paragraph VIII, "Procedures for Existing Consortia That Are Adding Members," as appropriate. NOTE: Any delay in receipt of the consortium documents must not interfere with the Field Office's ability to meet the August 2 deadline below.

By **August 2, 2001**, Field Offices must approve all consortia agreements and provide Headquarters CPD, Office of Technical Assistance, Systems Development & Evaluation Division, with evidence from the consortium agreement for each consortium which must sign a new or amended agreement which (1) lists the consortium members and (2) documents the consortium qualification period. The appropriate pages from the consortium agreement should be forwarded to 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, you may contact Alice Gregal, Director,

CGHF: Distribution: W-3-1

NOTE: THIS DATE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.

During late August or early September, the CPD Systems Development and Evaluation Division in Headquarters will send worksheets via email to Field Office CPD Directors to verify data for each consortium that will be included in the formula allocation for Fiscal Year 2001. CPD Directors must verify the worksheets with the consortium lead agency to assure the accuracy of the information.

By September 20, 2001, CPD Directors shall update and complete the worksheet for each consortium in the Field Office jurisdiction, sign the worksheet and send a copy of the worksheet to Jill S. Alexander, Systems Development and Evaluation Division, Room 7224 to allow sufficient time for data to be assemble~ so that changes can be reflected in the FY 2002 allocation of HOME funds. Directors are reminded that it is imperative that the information in the directory be confirmed with the consortium's lead entity prior to transmitting the required certification to Headquarters. **NOTE: THIS DATE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.**

VI. **Eligibility** for Forming a Consortium

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

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

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

To be considered as a HOME Program consortium for FY 2002, a proposed consortium, or a consortium that must execute a new HOME consortium agreement, must provide the following qualification documents by June 30, 2001 (or such later date as agreed to by the applicable HUD Field Office), to the appropriate HUD Field Office:

A written certification by the State that the consortium will direct its activities to the alleviation of housing problems within the State. The State certification may be signed by whomever has the authority to make the certification; it may be the Governor or his/her designee. If a designee signs, the signature line must indicate the signer is an "Authorized Official."

One legally binding consortium cooperation agreement that has been executed by all consortium members:

- (a) Agreeing to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME Program;
- (b) Authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of the HOME Program;
- (c) Providing that the representative member (also referred to as the lead entity) assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of the HOME Program, including requirements concerning a Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91, respectively, and the requirements of 24 CFR 92.350;

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

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

NOTE: If an urban county is part of the consortium, only the county (not all the members of the urban county) signs the consortium agreement. However, any unit of local government that is located in but is not participating as part of the Urban County, and that wishes to be included in the HOME consortium, must sign the cooperation agreement. Also, for new consortia and renewal of existing consortia which include a non-urban county, the county cannot on its own include the whole county in the consortium, any unit of local government in the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

- (f) Containing, or accompanied by, a legal opinion from the lead entity's counsel citing applicable law and concluding that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the consortium to undertake or

- (g) Containing a provision requiring each member unit of local government to affirmatively further fair housing;
- (h) Specifying the qualification period (the three Federal Fiscal Years for which the consortium is to qualify to receive HOME funds), and the prohibition on withdrawal from the agreement during such time, as described in Paragraph XII. At the option of the consortium, the agreement may provide that it will automatically be renewed for participation in successive three-year qualification periods.

Where automatic renewal provisions are used, the agreement must state that, by the date specified in HUD's consortia designation notices, the consortium lead entity will notify each participating unit of general local government in writing of its right not to participate for the successive three-year qualification periods. A copy of the notification to each jurisdiction must be sent to the HUD Field Office by the date specified in the consortia designation notice.

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

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

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

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

VIII. Procedures for Existing Consortia Which Are Adding Members.

A consortium agreement can be amended to add new member units of general local government for the remaining fiscal years of the qualification period. The agreement must be amended in the fiscal year before the fiscal year(s) for which the new members are added. The consortium must provide the HUD Field Office a copy of the authorizing resolution from the new member's governing body and an amendment to the consortium agreement signed by the chief executive officer of the lead entity (if the consortium agreement authorizes the lead entity to sign on behalf of all members) and the chief executive officer of the new unit of local government, adding the new unit of local government as a member of the consortium. Any change in the make-up of the consortium must be communicated to Headquarters in accordance with the requirements of Paragraph V above.

DL Joint Grant Agreements

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

However, for the HOME Program, if a metropolitan city that has a joint grant agreement with an urban county for the CDBG Program wishes to be considered for funding as part of the urban county for the HOME Program, it must form a HOME consortium with the urban county and must have the same program years for funding. If such a city and urban county wish to form a new HOME consortium, the urban county and/or the metropolitan city must follow the procedures outlined above for new consortia.

X Consolidated Program Year

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

X1 Consolidated Plan

To receive FY 2002 HOME funds, a unit of general local government must submit a Consolidated Plan. A consortium is considered a unit of local government for purposes of receiving an allocation and participating in the HOME Program. Therefore, when two or more units of local government form a consortium for the purpose of receiving a formula allocation under the HOME Program, the consortium must, as a condition of funding, submit a single Consolidated Plan that covers the entire geographic area encompassed by that consortium. Where a consortium includes one or more CDBG entitlement grantees, any such grantee does not submit an individual Consolidated Plan (for the CDBG Program) in addition to the consortium's Consolidated Plan.

NOTE: A new consortium must submit the complete strategic plan required by sections 91.215, 91.220 and 91.225. A consortium that has previously participated in the HOME Program and previously submitted a complete strategy may submit only the Action Plan and certifications unless it is required to submit a new five-year complete strategic plan (See 91.15(b)). If joint grant agreement participants form a consortium for the HOME Program (see Paragraph IX), the Consolidated Plan submitted by the urban

county will also serve as the Consolidated Plan for the HOME consortium because the local governments in the consortium are the same as the local governments in the urban county joint, grant agreement.

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:

- o Field Office notifies lead entity of consortium of formula allocation amounts (Section 92.50(a))
- o Consortium must submit a written notification of its intention to be a PJ no later than 30 days after receiving notice of its formula allocation amount (Section 92.103)
- o Consortium must submit a consolidated plan to the Field Office within 90 days after providing notification of its intent to be a PJ (Section 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.

XR. Consortium Agreement: Qualification Period and Duration of Agreement

The consortium agreement must specify the fiscal years for which the consortium is to qualify to receive allocations as a participating jurisdiction in the HOME Program. The qualification period is the three Federal fiscal years following the fiscal year in which the agreement is executed (i.e., FY 2002-2004), except if one or more urban counties are members of the consortium, the agreement may specify a lesser number of Federal fiscal years coinciding with the fiscal years remaining in an urban county's qualification period; or at the option of the consortium, the agreement may provide that it will automatically be renewed for participation in successive three-year qualification periods (See Paragraph VII.2.(h)). Notwithstanding the Federal fiscal years specified, if an urban county consortium member falls 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: A consortium may be disbanded if the consortium fails to receive a HOME allocation for the first Federal fiscal year of the consortium's qualification period and does not request to be considered to receive a HOME allocation in each of the subsequent two years.

XIII. HUD Action

For any consortium request whose notification was received by the deadlines established by the HUD Field Office, the HUD Field Office will review the documentation to determine whether the consortium is made up of geographically contiguous units of general local government, whether the consortium has sufficient legal authority and administrative capability to carry out the purposes of the HOME program

the HOME Program on behalf of its member jurisdictions, and that there is a written certification from the State as provided in Paragraph VII. Also, the Field Office will assure that all units of general local government which are to be members of the consortium are on the same program Year for CDBG, HOME, ESG and HOPWA.

XIV. Legal Authority

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

XV. Administrative Capacity

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

If the HUD Field Office is satisfied that the consortium meets the requirements for the HOME Program and has the necessary legal authority and administrative capability to carry out the HOME Program, it will approve the consortium request and notify Headquarters as provided in Paragraph V no later than **August 2, 2001**.

XVI. Appendix

Attachment A	Consortium Membership for FY 2001
Attachment B	Consortium Members DUE to Re-Qualify in FY 2001 (Please list Who's In, Who's Out & whether or not they are receiving CDBG funds)

Paperwork Reduction Act Statement

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

HOME Partnership CHDO Rules

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies.

The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f). (b) HOME funds may be used for capacity building costs under § 92.300(b).

Subpart G -- Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations (CHDOs). §

92.301 Project-specific assistance to community housing development organizations. §

92.302 Housing education and organizational support. § 92.303 Tenant participation plan.

§ 92.300 Set-aside for community housing development organizations (CHDOs). (a) (1)

Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 91-1.451(c)(2)(i) and, for a unit of general local government, funds transferred from a State under § 92.102(b). The funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. The funds must be provided to a community housing development organization, its subsidiary or a partnership of which it or its subsidiary is the managing general partner. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. In addition, a community housing development organization, in connection with housing it develops, sponsors or owns with HOME funds provided under this section, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient.

(2) The participating jurisdiction determines the form of assistance, e.g., grant or loan, that the community housing development organization receives and whether any proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization. While the proceeds the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether they are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in

HOME Partnership CHDO Rules

accordance with § 92.503.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than \$150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation on community housing development organization operating funds.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans.* (1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable costs.* A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.

HOME Partnership CHDO Rules

(3) Repayment. The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating Jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) Project-specific seed money loans.

(1) General. Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) Eligible sponsors. A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.

(3) Repayment. The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act. HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

