

Establishing and Managing a Successful HOME Consortium



U.S. Department of Housing and Urban Development
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Introduction

Under the HOME Program of the U.S. Department of Housing and Urban Development (HUD), local governments are able to join together to form a “consortium” in order to receive HOME funding for affordable housing. Forming a consortium enables local governments that would not otherwise qualify for HOME Program funding under the formula criteria to join with other units of local government to receive a direct allocation of funds. This creates an opportunity for these jurisdictions to take a more regional, collaborative approach to meeting their affordable housing needs. In Federal Fiscal Year 2006, there were 130 approved consortia participating jurisdictions (PJs).

Although a consortium is subject to the same requirements as a local government PJ for purposes of the HOME Program, a consortium faces a number of challenges that other local PJs do not face. By definition, a consortium is a collaboration of local government entities—each with its own bureaucratic structure, elected leadership, and legal requirements. In order to carry out HOME activities and meet all HOME requirements, the consortium must create and operate as one new entity that is able to operate efficiently and effectively to assess affordable housing needs, develop a plan to address those needs, make funding decisions, carry out complex housing activities, self-monitor progress, account for expenditures, and report to HUD.

Purposes of the Guidebook

The primary purpose of this guidebook, *Establishing and Managing a Successful HOME Consortium*, is to provide technical and operational advice to new and prospective HOME consortia and to answer critical questions about the management and implementation of HOME Program activities. At the same time, this guidebook provides guidance to existing HOME consortia on governance and renewal, and suggests alternative models for governance and administration for those consortia that want to enhance their program operations.

Organization of the Guidebook

The guidebook is organized into six chapters:

Chapter 1, *Forming a Consortium*, discusses the basics of HOME consortia. It defines a consortium, identifies eligibility criteria, and describes common motivations for forming consortia. This chapter reviews a number of key issues that local jurisdictions should consider prior to forming a consortium, including how to determine the group’s potential HOME allocation, assess its capacity to meet HOME requirements, and evaluate its ability to work together as a group.

Chapter 2, *Obtaining and Renewing Consortium Status*, describes the HOME requirements associated with requesting, maintaining, and renewing consortium status. It also reviews HUD requirements for adding and/or dropping members or disbanding.

Chapter 3, *Key HOME Regulatory Requirements*, provides a brief overview of the key HOME administrative, program, and project requirements that apply to all PJs, including consortia. The chapter identifies other resources that provide more detailed information on these requirements.

Chapter 4, *Responsibilities of the Lead Entity*, outlines the specific responsibilities of the lead entity, the consortium’s representative jurisdiction that has responsibility for interacting with HUD. Ultimately, HUD holds the lead entity responsible for the consortium’s compliance with HOME requirements. This chapter highlights required and recommended practices that will help the lead entity succeed in seeing that the consortium operates in compliance with HOME requirements, including executing and enforcing agreements, managing HOME funds, monitoring member jurisdictions, and reporting to HUD.

Chapter 5, *Strategic Decisions of a Consortium*, reviews the decisions that prospective and existing consortia must make regarding the governance and operations of their HOME activities. This chapter will assist existing consortia in assessing, identifying gaps in, and improving their current operational systems. This chapter will help new and prospective consortia foresee problems that

can arise, and develop systems to help them avoid common problems.

Chapter 6, *The Seven Habits of Highly Effective Consortia*, summarizes key information from this guide by drawing on lessons learned from a highly successful consortium. It reinforces many of the requirements and decisions discussed in earlier chapters, and makes recommendations about what systems, procedures, and rules have been found most helpful to existing consortia.

The experiences of successful consortia are shared throughout the guidebook.

Who Benefits from Reading this Guidebook?

Both prospective consortia and existing consortia should benefit from this guidebook. This guidebook is organized sequentially to address the range of issues that prospective and existing consortia must consider. Prospective consortia will want to review every chapter to gain a complete understanding of what obligations they

will assume, and decisions they will need to make, when they form a consortium. Existing consortia are able to focus on areas of need—such as the responsibilities of the lead entity (Chapter 4), or strategic decisions of the consortium (Chapter 5). All consortia will benefit from the final chapter's lessons of a successful consortium.

About the HOME Model Program Guides

Establishing and Managing a Successful HOME Consortium is one of a number of model program guides that has been issued by HUD to provide technical assistance to state and local government participating jurisdictions implementing the HOME Program. These model program guides cover a range of topics related to HOME Program administration and activities, and are available at no cost through Community Connections at 1-800-998-9999. For a complete list of all the model program guides, see the HOME Program's website, *Model Program Guides*, at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.

Chapter 1: *Forming a Consortium*

This chapter is a must-read for all members of any prospective consortium. The chapter provides general background on consortia, describing what consortia are and why they are typically formed. It highlights specific considerations for jurisdictions that are thinking of creating a new consortium, including community needs, the consortium's potential resources and technical capacity to implement housing programs, and the proposed members' ability to work together. Using guidance in this chapter, prospective consortia can assess the commitment required to succeed as a HOME consortium and their own potential for success.

What is a Consortium?

A consortium consists of contiguous units of general local governments that come together to qualify for a direct allocation of HOME funds from HUD. Generally, local governments choose to form a consortium when the members are not eligible to receive HOME funds individually because they do not meet the HOME Program's initial thresholds for participation (described below). The consortium as a whole must initially qualify for the minimum HOME formula allocation. This requirement is discussed in Chapter 2.

The consortium functions as a HOME PJ with all of the responsibilities of a PJ to meet the HOME Program requirements. A consortium must, therefore, be able to demonstrate to HUD that it has sufficient legal and administrative capabilities to carry out these responsibilities, which are described in Chapter 3.

Consortia can organize and govern themselves as they choose; however, they must designate one jurisdiction as the "lead entity" and must execute a legally binding consortium agreement that formally organizes the consortium. The consortium agreement is described more fully in Chapter 2. The lead entity retains primary responsibility for ensuring consortium compliance with all HOME Program rules and reporting to HUD. The responsibilities of the lead entity are described in Chapter 4.

For more information about HOME Consortia

HUD's Office of Affordable Housing Programs administers the HOME Program and maintains accurate and up-to-date information about the HOME Program, at
<http://www.hud.gov/homeprogram/>.

For information specifically on HOME consortia, see <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/consortia/index.cfm>.

Why Form a Consortium?

Generally, units of local government form consortia to access direct formula allocations of HOME funds to support housing activities and programs. Without a direct formula allocation, local jurisdictions can participate in the HOME Program only by receiving an allocation from their state as state recipients. In some states, funding is offered through competitive processes, and some localities may not be able to access state funding for the housing activities they wish to conduct.

Forming a consortium enables local governments to work together to develop collaborative approaches to local and regional housing needs that cross town and county lines. Successful consortia find that joining together improves cooperation between local governments, fosters regional planning, and provides a vehicle for assisting small jurisdictions to meet housing needs.

Who is Eligible to be a Consortium?

To be eligible to form a consortium, the proposed members must all be legal entities that are units of general local government, and these members must be geographically contiguous. The HOME regulations also impose additional requirements for certain types of jurisdictions.

Definition of Unit of General Local Government

Consortium member jurisdictions must be units of general local government. A wide variety of local governmental entities qualify as a unit of general local government, including a city, town, township, county, parish, village, or other general purpose political subdivision of a state. In addition, a unit of general local government can be an agency or instrumentality of any state or local governmental entity that is established by legislation and designated by the chief executive of the jurisdiction to act on behalf of the jurisdiction with regard to the HOME Program. Examples of such agencies include designated public housing authorities or mortgage finance authorities. An urban county under the Community Development Block Grant (CDBG) program is also considered a unit of general local government for the HOME Program. (A unit of general local government is defined in the HOME Program regulations at 24 CFR 92.2.)

Contiguous Jurisdictions

The units of general local government that comprise a consortium must be geographically contiguous according to the U.S. Census Bureau or other authoritative maps. A river or other body of water may separate these jurisdictions if there is a road or a bridge that makes them contiguous. As long as they are contiguous, jurisdictions from different states can join together to form a consortium.

Requirements for Some Types of Local Governments

A consortium may be comprised of a range of jurisdictions as described above, however HUD has identified several requirements for specific types of jurisdictions. In general, these requirements are imposed to ensure that the jurisdictions in a consortium are participating in the preparation and implementation of one single

consortium-wide housing plan as part of the consolidated planning process. The consolidated planning process is discussed in Chapters 3 and 5.

The following entities may be a HOME consortium member, as follows:

- **Urban county**, as defined by CDBG statute. As a practical matter, an urban county is a county that is receiving a CDBG entitlement grant and includes units of general local government that sign cooperation agreements with the county. When units of general local government sign up to be part of an urban county for the CDBG program, they also agree to participate in the HOME Program if the urban county joins a consortium. Accordingly, when an urban county joins a HOME consortium, a unit of local government that is a member of the county cannot join the consortium except through participation in the urban county (except a metropolitan city with a joint agreement with an urban county, as explained below). The authorized official of the urban county signs the consortium agreement on behalf of the entire urban county.

While an included unit of general local government may only receive a formula allocation under the HOME Program as part of the urban county, this does not preclude the urban county or a unit of general local government participating with the urban county from applying for state HOME funds.

In many urban counties, there are units of general local government that have chosen not to participate in the CDBG urban county. These units of general local government can choose to join the HOME consortium, but they must sign the HOME consortium agreement to do so. By signing the consortium agreement, the unit of general local government within the urban county, but not participating in the urban county, becomes a member of the consortium.

- **Non-urban county**. This is a county that is not receiving a CDBG entitlement grant.

A non-urban county may join a HOME consortium. However, the county on its own

cannot include the whole county in the consortium, only the unincorporated area of the county. A unit of local government within the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement. By signing the consortium agreement, the unit of general local government within the non-urban county becomes a member of the consortium.

- **Metropolitan city**, as defined by CDBG statute. As a practical matter, a metropolitan city is a city that is receiving a CDBG entitlement grant.

A metropolitan city may be a HOME consortium member. If a metropolitan city has a Joint Grant Agreement with an urban county for the CDBG program and wishes to receive HOME funding with the urban county, it must form a HOME consortium with the urban county. Both programs must establish the same program year in order to receive funding.

Note: The CDBG program regulations allow a metropolitan city located, in whole or in part, within an urban county to be included as part of that county for the purposes of planning and implementing a joint community development and housing program. (See 24 CFR 570.308.) This request is approved by HUD through the submission of a “Joint Grant Agreement.”

For guidance during the formation process

If a jurisdiction is unclear about whether or not it is eligible to participate in a consortium, and/or about who must sign a consortia agreement, it should consult with its HUD Field Office. The Field Office is able to provide guidance about the technical requirements related to forming a consortium as well as the HOME Program regulations.

What Conditions Must Proposed Consortia Meet?

In addition to the eligibility criteria defined above, the proposed consortium is required to

demonstrate to HUD that it meets a number of additional conditions:

- All of the member jurisdictions **must** operate on the same program year for HOME, CDBG, Emergency Shelter Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA), if these program funds are received by any member jurisdiction(s);
- The group **must** have sufficient administrative capacity and legal authority to administer the consortium’s activities;
- The lead entity **must** assume full responsibility on behalf of the consortium for compliance with HOME and other applicable Federal requirements;
- The consortium **must** be able to operate for a three-year qualification period, during which time jurisdictions can be added as members, but none can drop out. Note, the consortium may elect a shorter qualification period than three years to synchronize with the urban county qualification period. [See 24 CFR 92.101(e).];
- The state **must** certify that the consortium will carry out activities to alleviate housing problems within the state; and
- The group **must** execute a legally binding consortium agreement.

The process and documentation necessary to demonstrate compliance with these requirements, as well as the bases for HUD’s review and approval, are described in Chapter 2.

What Work is Involved in Forming a Consortium?

Forming a consortium requires a significant effort on the part of participating members, especially the lead entity. Before forming a consortium, every member jurisdiction should review this guidebook to ensure that it understands its obligations as a consortium member. There are a series of steps involved in getting HUD’s approval as a PJ (discussed in Chapter 2), a number of HOME and other Federal requirements that must

be met in implementing HOME activities (discussed in Chapters 3 and 4), and numerous decisions that the consortium needs to make in order to carry out its program effectively (discussed in Chapter 5). A number of the tasks involved require a higher level of coordination among members to satisfy the HUD requirements than are required of other HOME PJs, because of the nature of the consortium as an entity comprised of a number of distinct jurisdictions. Key among these tasks are:

- **Negotiating the consortium agreement.** The consortium agreement is the legally binding document that addresses who is in the consortium, what each jurisdiction's roles and responsibilities are, how funds will be allocated to projects and HOME activities, and what operational and communication responsibilities each member will have.
- **Preparing a joint Consolidated Plan.** Once HUD has designated a consortium, the group must develop a three- to five-year plan that describes community needs, available resources, housing priorities, and decisions about proposed housing activities to be undertaken with HUD HOME, CDBG, ESG, and HOPWA funding. This is discussed in Chapter 3.
- **Undertaking HOME activities in compliance with HOME requirements.** Once designated a PJ, the consortium will need to organize itself and develop systems to identify and select specific projects and/or activities it will undertake to implement its Consolidated Plan (Conplan). It will need to execute legal agreements that address how the activities will be undertaken to ensure effective performance and HOME compliance. Chapter 3 discusses the HOME requirements and identifies additional resources.
- **Reporting, monitoring, and record-keeping.** Throughout the administration of HOME funds, there are a number of reporting and record-keeping requirements that are the responsibility of the lead entity, but which cannot be carried out without considerable communication with, and

cooperation from, member jurisdictions, developers, and owners that are carrying out HOME activities. The lead entity is accountable to HUD for HOME compliance for all activities of the consortium, including those carried out by member jurisdictions, and it must monitor member jurisdictions' implementation of activities, as well as their record-keeping to document compliance.

Key Considerations Before Forming a Consortium

All prospective consortia are encouraged to contact the HUD Field Office before they begin any significant level of effort to form a consortium. The prospective consortium must weigh a number of critical factors before deciding to pursue a consortium designation and the HUD Field Office can assist in this assessment, evaluating its potential for success and weighing the benefits against the costs and challenges of administering a new entity. The HUD Field Office can also provide technical assistance and guidance about the HOME Program and its requirements.

The experiences of existing consortia suggest that there are number of factors that a group should consider early on to predict its likely success as a consortium:

- Who should be included in the consortium?
- What level of HOME funding is the consortium likely to receive?
- How does the creation of a new consortium in the state affect the state's HOME allocation and the allocation to other local PJs?
- Does the proposed group have the capacity to carry out the functions of the HOME Program?
- Will the group work well together?

Who Should be Included in the Consortium?

Determining which local entities are included in the consortium's membership is, perhaps, one of the biggest decisions for a new consortium.

Consortium membership determines the capacity, resources, and needs of the consortium, as well as the size of the HOME allocation. In addition to the regulatory requirements described in the preceding section, a consortium should think strategically about its formation. The number of jurisdictions, and their populations, will impact how many jurisdictions must join in order to form a consortium that will draw a sufficient HOME allocation to address regional housing needs.

What is the Consortium's HOME Funding Level?

Since the primary reason that many groups form a HOME consortium is to receive a direct HOME allocation in order to carry out affordable housing activities, one of the first things a prospective consortium should consider is the group's likely HOME allocation.

HOME Formula Allocations

HOME funds are distributed to states and local governments according to a formula that is established and applied by HUD annually. In order for a jurisdiction to be eligible to receive HOME funds, its proposed allocation must reach or exceed a certain threshold. In years in which the HOME appropriation is \$1.5 billion or more, the minimum allocation required for new jurisdictions is \$500,000. In years in which the HOME appropriation is less than \$1.5 billion, the minimum allocation required for new jurisdictions is \$335,000. (See 24 CFR 92.102.)

In addition, when a proposed jurisdiction's formula allocation is equal to or less than \$750,000 (or \$500,000 in fiscal years where Congress appropriates less than \$1.5 billion), HUD must find:

- The unit of general local government has a local public housing authority (PHA) that has demonstrated a capacity to carry out HOME activities, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities.
- The state has authorized HUD to transfer to the unit of general local government a portion

of the state's allocation, or the state, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and \$750,000 (or \$500,000 in fiscal years where Congress appropriates less than \$1.5 billion).

Once HUD designates the consortium as a PJ, the consortium remains a PJ for subsequent fiscal years and these threshold requirements no longer apply. (See 24 CFR 92.106.)

Determining the Consortium's Allocation

HUD has developed an online tool, the *Consortium Builder*, to enable a prospective consortium to estimate its likely HOME allocation. The *Consortia Builder* uses Census information and the HOME formula to estimate, based on population, the amount of funds available to a prospective consortium.

Using the *Consortium Builder*, a prospective consortium can determine whether or not it might meet the \$500,000 and \$750,000 minimum formula allocation thresholds that are required in order to receive HOME funds. When the projected allocation is below the thresholds, the prospective consortium should consider:

- Increasing the number of member governments involved in the consortium in order to increase its HOME formula allocation. The consortium should weigh this option against additional administrative and project costs that might be incurred as a result of such a change.
- Whether the allocation will be sufficient to undertake the desired housing activities, considering both project, administrative, and coordination costs. Note, the HOME Program caps a PJ's administrative costs at ten percent of the annual HOME allocation plus ten percent of program income generated. If the consortium expects to receive \$750,000 in HOME funds, only \$75,000 of this amount can be used for administrative funds. Without additional administrative funding from other sources,

this is not sufficient for most jurisdictions to administer a successful and compliant HOME Program. This administrative requirement is discussed in Chapter 3.

- Whether or not one or more of the member jurisdictions might be able to pursue and be eligible for a comparable amount of HOME funds through an award of funds from the state's HOME allocation.
- For a consortium with an estimated allocation between the \$500,000 and the \$750,000 thresholds, it should consider whether it meets the additional HUD requirements that it has a local housing authority or administrative capacity to carry out HOME activities, and whether it will be able to secure additional funds up to \$750,000.

The Consortium Builder

The Consortium Builder is an online tool that provides guidance on how to combine the demographics of proposed member governments for the purpose of qualifying for a HOME formula allocation. It can be found at http://www.hud.gov/offices/cpd/affordable_housing/programs/home/consortia/builder/map#map.

What Is the Impact of a Consortium on HOME Funding Levels in the State?

Since HOME funds are a Congressional appropriation that must be distributed to all eligible jurisdictions annually, the creation of a new consortium results in a redistribution of HOME funds to the state and to other local jurisdictions in the state.

Exhibit 1-1 shows how the HOME formula distribution to states and local governments works. The amount of HOME funds provided to local jurisdictions is fixed at 60 percent of the annual allocation. It is easy to see that the creation of a consortium results in a decrease of funds to other local participating jurisdictions nationwide since this 60 percent is distributed to a larger number of jurisdictions.

Exhibit 1-1: Understanding State HOME Allocations

HOME funds are distributed (after set-asides) by formula:

- 40% of the funds are distributed to states
- 60% of the funds are distributed to local units of government

State allocations are based on two calculations and a minimum threshold:

- 80% of the state's funds are based on the demographic profile of the non-entitlement areas of the state
- 20% of the state's funds are based on the demographic profile of the whole state
- If a state receives less than \$3 million by formula, HUD increases the state's allocation to a minimum allocation of \$3 million.

The creation of a consortium also impacts the state's allocation, and the redistribution of funds to a new consortium also results in a loss of HOME funds to the state or states in which the consortium is located. The 40 percent of the HOME funds that are allocated across states is distributed based on a formula that weights heavily the population of the state's non-entitlement communities. When a new consortium is formed, HUD excludes the demographic profile for the consortium's member jurisdictions in the state's formula. This results in a smaller allocation for the state.

As local jurisdictions pursue the consortium designation, they should understand that their plans affect the state allocations. As discussed in Chapter 2, as part of the consortium's approval process, the consortium must provide a certification by the state that the consortium will help alleviate housing problems in the state. When seeking this certification from the state, the consortium members should consider that the state may not want to support the creation of new consortia, because this results in a decrease of the

state's own allocation. Prospective consortium members should consider the advantages and disadvantages of becoming a state recipient, rather than a consortium, prior to their discussion with the state.

Do the Jurisdictions Have the Capacity to Meet HOME Requirements?

When reviewing a consortium's request for designation, one of the criteria HUD evaluates is whether or not the consortium has sufficient administrative capacity to carry out the HOME Program. While the HOME Program brings many benefits, it also carries significant responsibilities to ensure that the funds are expended in full compliance with the statute and regulations. The consortium should assess its own capacity before it takes on the legal obligations inherent in administering Federal funds. The consortium must determine that it will be able to undertake the desired housing activities, and also comply with numerous HOME and other Federal requirements regarding income targeting, long-term affordability, matching funds, meeting participation requirements for community housing development organizations, project eligibility, unit accessibility, the timely commitment of funds, and more.

Effective program administration and regulatory compliance requires strong organizational systems, a staff skilled in housing programs, and active cooperation among the governments participating in the consortium.

The prospective consortium should consider the capabilities of its proposed lead entity and its members. It should assess the availability of administrative funds and determine whether or not they will be sufficient to undertake requisite administration, including reporting and monitoring. Some consortia find that the HOME Program's ten percent administrative fee is not sufficient to carry out the number of administrative tasks expected of them, and the lead entity or member jurisdictions contribute additional funds or staff and facilities to carry out their obligations. Consortia that undertake rental housing should also consider the implications of taking on activities that will carry monitoring

obligations for as many as twenty years after project completion.

Capacity of the Lead Entity

Every consortium **must** designate a lead entity to take responsibility for meeting HOME requirements, coordinating member activities, and reporting to and communicating with HUD. The consortium's lead entity **must** have sufficient legal authority and administrative capacity to carry out the purpose of the HOME Program on behalf of its members. HUD holds the lead entity accountable for all the consortium's HOME activities. The full responsibilities of the lead entity are discussed in Chapter 4.

HUD assumes that certain entities that have successfully administered CDBG or HOME meet this standard, including urban counties, metropolitan cities, and other existing public agencies that have served in the capacity of state recipient. If the consortium designates a newly created public agency to serve as lead entity, the agency **must** be able to demonstrate that it has staff with successful experience administering HOME, CDBG, or a similar program.

If the lead entity does not have the systems and staff in place, the prospective consortium must take the necessary steps to put them in place. Once the consortium is designated a HOME PJ and receives HOME funding, these are eligible administrative costs.

The consortium and its lead entity might consider the following options to enhance the lead entity's capacity to manage the HOME Program:

- **Hire experienced staff.** Depending on the size of the HOME allocation, the experience of the other consortia members, and the capacity of existing staff, a lead entity may find that one or two additional staff persons is sufficient to handle the additional workload associated with the consortium. Ideally, the lead entity should seek staff that already has experience in the HOME or CDBG program.
- **Collaborate with other consortium members.** It may be possible to share certain responsibilities with other consortium members. For example, if one member has a

strong financial staff and another has an active monitoring program, perhaps those functions can be divided accordingly. If responsibilities are shared among the members, the lead entity **must** hold member jurisdictions accountable for performance, as ultimately the lead entity will be held accountable by HUD for the consortium's activities.

- **Use another existing entity by written contract/agreement.** Sometimes an existing entity, other than a local government, can carry out many of the responsibilities of a lead entity. For example, a Council of Governments or a public housing authority may have the capacity or technical expertise needed to administer HOME responsibilities that small local governments do not have. For example, a Council of Governments can convene meetings, track projects, enter information into the Integrated Disbursement and Information System (IDIS), monitor projects, and conduct most HOME responsibilities on behalf of its member governments. There **must** be a written agreement with the other entity when HOME funds are being used. [See 24 CFR 92.504(a) and (b).]
- **Hire a contractor.** A contractor can also carry out HOME Program activities. Contractors should be selected carefully to ensure they have direct experience with the HOME Program or similar programs.

Capacity of the Member Entities

In addition to analyzing the lead entity's capacity to administer program requirements, a prospective consortium must consider the staff, resources, and experience of its proposed member entities to carry out housing activities. The consortium must define the role to be played by each local government. Early in the process, the consortium needs to determine if there are disparities between jurisdictions in terms of capacity, and if, in concept, the group can develop a strategy to address those disparities. Key questions are:

- What activities does each member propose to undertake within its jurisdiction?

- Does each member jurisdiction have the capacity to undertake or oversee each proposed activity?
- If capacity does not exist within a member jurisdiction, do other members or the lead entity have the capacity to assist and carry out activities for that member; or can the member hire staff or contractors with capacity to carry out its HOME activities?

While some members may be able to contribute to the overall functioning of the consortium, others may lack the basic systems to carry out any program responsibilities. Some small entities may play a very minor role in the consortium's governance and the completion of projects while still benefiting from housing activities that might be undertaken within their geographic boundaries. The question for the other members of the consortium is whether they have the staff and resources to provide these services to the smaller or less participatory entities, or whether activities in these jurisdictions might be administered by a third party contractor.

Resources – Administrative Funds and Match

In assessing its capacity, the prospective consortium should also consider its access to resources. The prospective consortium must assess whether it will have sufficient administrative funds to coordinate, carry out, report on, and monitor its activities. It should also determine, even if approximately, whether or not it will have sufficient resources to meet the HOME match obligation.

A maximum of ten percent of the consortium's annual HOME allocation (plus ten percent of any program income it generates) can be used for administrative purposes. The consortium can estimate this amount based on the projected funding allocation it generated with the Consortium Builder tool (described above). Smaller consortia, in particular, should objectively assess their likely administrative costs and determine if the 10 percent administrative funds will be sufficient to meet the administrative obligations incurred by the HOME Program. If it is not, the consortium should consider the availability of other non-HOME resources to meet that shortfall. Without sufficient

administrative funds, the consortium will have difficulty administering the HOME Program effectively.

The HOME Program requires participating jurisdictions to match HOME funds (minus administrative funds) with a 25 percent contribution from other sources. Match funds need to be from non-Federal sources permanently contributed to the HOME Program, so the lack of non-Federal resources might be a significant obstacle to the consortium being able to use HOME funds. When local governments assess their capacity to meet HOME Program requirements, they should also consider the resources they have at their disposal to meet the match obligation, and how these match obligations are distributed among participating members. The match requirement is discussed in greater detail in Chapter 3.

Can the Consortium Members Establish and Maintain Good Working Relationships?

Although difficult to measure and evaluate, one of the most important features of an effective consortium is a good working relationship among member jurisdictions. This type of relationship is built on ***shared housing goals, common expectations and working styles, and communication and accountability***. One of the true advantages of consortia is that they allow local governments to work together towards common housing goals and take a broader, regional approach to housing development. However, to make this advantage a reality, the members of the consortia must have a strong, collaborative working relationship.

The most important variable to a HOME consortium's success is the effectiveness of the relationship between and among the members. When consortium members share mutual housing goals, communicate effectively, and have a system to hold each other accountable for performance, they are best positioned to succeed.

Shared Housing Goals

At this stage in the consortium-forming process, the consortium members need not have an entire housing strategy developed and adopted.

Members should, however, have general agreement about what value HOME will bring to the area and the type of development necessary in the region. While each member jurisdiction may not have the same housing needs, the jurisdictions should have general agreement about the priorities for housing development activities.

In addition to shared housing goals, there should be general agreement about the overarching question of resource allocation. The consortium members need to agree on a method or process for allocating HOME administrative funds, as well as funds among projects, programs, and activities in the various member jurisdictions. The process should reflect the shared vision of the group's housing goals. If the group cannot come to general agreement on this fundamental issue, it should weigh how difficult the administration of the program will be. This is especially important when the HOME resources will be insufficient to meet all the needs of the area.

Common Expectations and Working Styles

Ideally members of a consortium will have an idea about how the staff of each member jurisdiction interacts and how the groups will make decisions together. Member jurisdictions will also understand points of agreement and be aware of any likely frictions. These common expectations and working styles are frequently the result of previous experience working together, but may also happen somewhat naturally if the jurisdictions' political and bureaucratic structures are similar. If interactions with another local government have been unproductive in the past, this may indicate that working together in a consortium may be difficult. Governments that have worked well together have a strong basis for future collaboration as a consortium.

Effective Communication for Maintaining Good Relations

The consortium is positioned for success if its members enter this relationship with shared housing goals, a good track record on other projects, and general agreement on housing priorities and funding allocation methods. To sustain good working relations, the member jurisdictions should also have general agreement about their roles and responsibilities, how effective communications and reporting will be

assured, and how each jurisdiction will be held accountable to meet their obligations. By clarifying roles and processes up-front, the consortium can avoid disagreements that result from lack of communication, or lack of understanding about performance expectations. These communication systems should remain in effect, and be improved upon, throughout the life of the consortium.

Chapter 2:

Obtaining and Renewing Consortium Status

This chapter reviews the process for becoming a consortium and the actions necessary to maintain and renew consortium status. It also covers the HOME requirements that remain in place even if a consortium chooses to disband. This chapter is appropriate for new consortia going through the designation process for the first time as well as existing consortia with questions about changes in their membership or renewing their status as consortia.

The Process for Designation of a Consortium as a HOME PJ

To gain access to HOME funds, the proposed consortium must go through a three-step process:

1. Approval and designation as a consortium;
2. Approval and designation as a PJ to receive a HOME allocation; and
3. Execution of HOME Investment Partnership Agreement and receipt of funds.

Consortium designation must be the first step in the process because HUD cannot include a consortium in the formula allocation process until it has formally approved the consortium. Further, before a consortium can become a HOME PJ and receive HOME funds, it must meet the threshold requirements in the formula allocation process, and meet certain “application” requirements.

Step 1: Designation as a Consortium

To obtain HUD approval to form a new consortium, the proposed members must submit a number of documents to HUD. Key submissions to the HUD Field Office include:

- **Notice of intent.** The local governments **must** submit a written notice of their intent to form a consortium by March 1 of the Federal fiscal year prior to funding in order to be included in the formula allocation that year.¹
- **State certification.** By June 30, the prospective consortium **must** submit a written certification from the state that the consortium will direct its activity to alleviate housing problems within the state. The Governor or his/her designee **must** sign this certification. Note, if the member jurisdictions are located in more than one

state, a certification from each affected state is required. The state certification is a statutory requirement found in section 216(2)(b) of the Cranston-Gonzalez National Affordable Housing Act. It is codified in the HOME Program regulations at 24 CFR 92.101.

- **Consortium agreement.** Also by June 30, the prospective consortium **must** submit a legally binding cooperation agreement signed by all participating members of the consortium. This agreement **must** address eleven required elements. These are identified in Attachment 1, *Elements of an Effective Consortium Agreement*. The importance of this agreement and the process for drafting it are discussed in the next section of this chapter.
- **Legal opinion.** Also by June 30, the prospective consortium must submit a legal opinion in which the lead entity’s legal counsel cites applicable law to conclude that the terms and provisions of the agreement are fully authorized under state and local law.

The HUD Field Office reviews all submissions for compliance with the eligibility requirements described above and provides necessary information to HUD Headquarters. HUD reviews the consortium’s submission to ensure that:

- The submission is complete and accurate;
- The documentation is sufficient to conclude that the consortium has legal standing; and
- The consortium has administrative capacity to carry out the HOME Program.

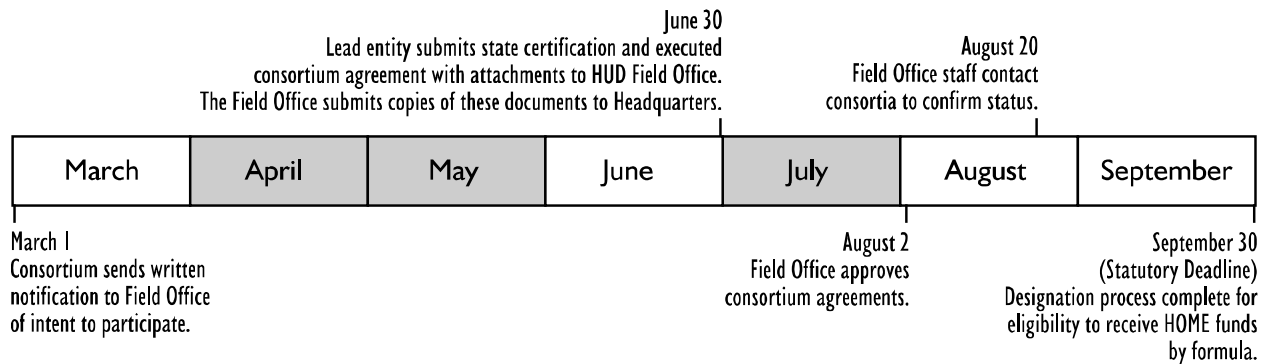
Consortia that designate as lead entity any of the following entities will be presumed to have capacity: an urban county or metropolitan city in good standing with HUD, or a jurisdiction or

existing public agency that has relevant experience successfully administering HOME or Community Development Block Grant (CDBG). Other entities must provide documentation to demonstrate their capacity. Such documentation should be in sufficient detail to demonstrate to HUD that the entity has relevant experience and

current staff capacity to successfully administer a Federal program, in compliance with all Federal program, reporting, and record-keeping requirements.

All approved consortia **must** be designated by September 10th each year.

Timeline for Consortium Designation



For more information about the consortium application process

HUD has outlined the consortium application process in great detail in HUD Notice CPD 06-04, *Notice of Procedures for Designation of Consortia as a Participating Jurisdiction for the HOME Program*, issued April 11, 2006. Jurisdictions should refer to this Notice when preparing an application to HUD for consortium status. This Notice and any new information for consortia about the HOME Program are available on the HOME website at http://www.hud.gov/offices/cpd/affordable_housing/programs/home/consortia/index.cfm. A copy of the HUD Notice is also available from the HUD Field Office.

Step 2: Designation as a HOME PJ

Once HUD has approved new consortia, it can include those consortia in its formula to distribute HOME funds during the next fiscal year. Once these calculations are completed, HUD notifies each consortium of its formula allocation. The date of notification varies year to year based upon the timing of Congressional appropriations.

Before it can become a HOME PJ and access these HOME funds, the newly designated consortia must submit information that, in

essence, constitutes an application to HUD for participation in the HOME Program. The new consortium **must**:

1. Submit a written notification to HUD that it intends to participate in the HOME Program. This written notification is due no later than 30 days after the Field Office formally notifies a consortium of its allocation amount. Note, the notice of intent to participate is required of all new consortia, even if one or more of its members was a PJ on its own (such as an urban county or a city) in a prior fiscal year.
2. If the new consortium's formula allocation is more than \$500,000 and less than \$750,000, it must provide HUD with evidence that will meet the \$750,000 threshold. In years where the Congressional appropriation to the HOME Program is less than \$1.5 billion, these amounts are lowered to \$335,000 and \$500,000 respectively. This evidence must be either:
 - a. Authorization from the state to transfer a portion of its HOME allocation to the consortium;
 - b. A letter from the Governor or designee indicating that the required state funds have been approved and budgeted for the consortium; or

-
- c. A letter from the chief executive officer of the lead entity indicating that the required local funds have been approved and budgeted.
 3. Prepare and submit a Consolidated Plan for HUD approval. The Conplan is due within 90 days of providing HUD the written notification of the consortium's intent to be a PJ.

For a first-time consortium, the preparation of a Conplan is an enormous undertaking, and includes time-consuming tasks such as undertaking a housing market analysis, determining an action plan for investing HUD funds, and implementing a citizen participation process to enable residents to comment on proposed activities. A new consortium must develop a citizen participation plan that establishes policies and procedures for making the Conplan, activities, and performance reports available to the public. (See 24 CFR 91.401 and 91.105.) The citizen participation process must include a public comment period of at least thirty days, and at least one public hearing during the development phase of the Conplan. For entitlement communities that have a citizen participation planning process in place, the consortium should consult with the HUD Field Office about whether that process is sufficient. If the entitlement community's existing citizen participation plan needs to be changed, note that the amendments are also subject to the citizen participation process (including public hearing and public comment period).

For a new PJ, the Conplan deadline is triggered by HUD's notice to the consortium of its allocation amount and the consortium's notice of intent to participate. Therefore, new consortia should consult with their HUD Field Offices to plan and discuss when this official notice should be given, in order to ensure the consortium has ample time to complete a viable Conplan. Some new consortia will choose to begin their consolidated planning process before receiving official notice of their formula allocation and deadlines have been triggered. The deadlines and the consolidated planning process are described in more detail in Chapter 3.

HUD must review the Conplan within 45 days of receipt to determine if the proposed plan is consistent with the purposes of HOME and if it is complete. To be deemed complete, the plan must have been developed with the required citizen participation process and consultation, must have addressed all of the required elements, and must have the required certifications.

When the consortium has complied with all the requirements of this section, it will be designated as a PJ upon approval of its Conplan by the Field Office. Once the consortium is designated a PJ, it remains a PJ for subsequent fiscal years, and need not meet threshold allocation requirements annually.

Step 3: Execution of the HOME Investment Partnership Agreement

HUD makes funds available to a consortium (and all HOME PJs) through the execution of a HOME Investment Partnership Agreement. This agreement is executed between HUD and the lead entity. Through its execution, HUD makes funds available to the lead entity by establishing a HOME Investment Trust Fund at the U.S. Treasury. (Note, the lead entity must also establish a local HOME Investment Trust Fund.) It further obligates the lead entity to undertake affordable housing in accordance with HOME requirements. It establishes that the housing assisted with HOME funds must qualify as affordable housing throughout the affordability period.

The HOME Investment Partnership Agreement is important for another reason. It is the date from which the "clock starts ticking" on the commitment and expenditure of HOME funds. HOME regulations impose deadlines to commit and expend funds for affordable housing, and to reserve funds for housing that is owned, developed, or sponsored by community housing development organizations (CHDOs), as follows:

- Funds **must** be committed to affordable housing projects within 24 months after the last day of the month in which HUD notifies the PJ of the execution of the Agreement. [See 24 CFR 92.500(d)(1)(B).]

- Funds **must** be reserved for CHDOs within 24 months after the last day of the month in which HUD notifies the PJ of the execution of the Agreement. [See 24 CFR 92.300(a) and 92.500(d)(1)(A).]
- Funds **must** be expended within five years after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Investment Partnerships Agreement. [See 24 CFR 92.500(d)(1)(C).]

Information on commitment and disbursement reservations is tracked by IDIS as discussed in Chapters 3 and 4.

Executing a Consortium Agreement

As mentioned above, the proposed consortium must submit a consortium agreement to HUD before a consortium can be approved. [See 24 CFR 92.101(a)(2)(ii).] The development of a consortium agreement that both meets HUD's requirements and codifies members' expectations for consortium goals and operations can help create a solid foundation for the consortium.

Purpose and Contents of the Consortium Agreement

The consortium agreement is a legally binding cooperation agreement that is executed by all members of the consortium. This agreement formalizes the relationship among all consortium members. It establishes the consortium's three-year qualification period, commits each member to participate for the duration of the qualification period, and describes member jurisdictions' roles and responsibilities—particularly those of the lead entity.

Attachment 1, *Elements of an Effective Consortium Agreement*, enumerates the elements that are required and recommended to be included in a consortium agreement. The consortium agreement must include authorizing resolutions from each member's governing body.

Developing the Consortium Agreement

To develop the consortium agreement, the proposed members must consider a number of

specific elements that HUD requires in the consortium agreement. In addition, there are a number of additional considerations a consortium should codify in this agreement.

The consortium agreement is the ideal place to address issues related to the **governance, organization, and management** of the consortium. The clarification of roles, responsibilities, and expectations of consortium members will help the administration of consortium activities to run more smoothly, and will minimize problems that often occur as the result of misunderstandings or miscommunication. Ideally, the consortium agreement will describe the obligations of each member jurisdiction to the consortium. These obligations include contributing to the development of the Conplan, identifying eligible CHDO partners, securing sources of match, reporting to the lead entity, and more.

The consortium also faces a number of **strategic** decisions about how it will operate and meet its HOME obligations, where it will invest HOME funds, and what will happen to assets and program income that result from HOME investments. These strategic decisions are discussed in Chapter 5. The consortium should have resolved these issues in the development of the Conplan. It is highly recommended that the consortium codify these decisions (either specifically or by reference to the Conplan) in the consortium agreement as well.

Signing the Consortium Agreement

Once the content is established, an authorized official from each jurisdiction member **must** sign the consortium agreement.

- Signatures of all member jurisdictions must appear on the same page, or the agreement must contain language permitting the agreement to be executed in counterparts, each of which shall be an original and all of which together constitute one and the same agreement.
- Whenever the consortium adds a member during the qualification period, the lead entity **must** execute an amendment to the consortium agreement, signed by the

authorized representatives for the lead entity and the new member. Other members are not required to sign this amendment unless the consortium agreement requires it. If a new member is being added when the qualification period is being renewed, and the previous agreement contained a provision for automatic renewal, the consortium can either execute an amendment or execute a new consortium agreement.

Amending a Consortium Agreement

A consortium agreement can and should be amended if important issues have been omitted, or as circumstances change and new information warrants. The agreement should specify the consortium's process for amendments. The consortium may choose to permit the lead entity to amend certain elements of the agreement with notice to other members, such as the addition of member jurisdictions during the qualification period, or changes to monitoring or reporting requirements. Amending other clauses might be reserved for the full consortium body. The consortium must submit an amended consortium agreement to the HUD Field Office. The HUD Field Office provides copies of the amended consortium agreement to HUD Headquarters whenever the amendment can affect the formula allocation: membership changes, fiscal year date changes, or qualification period changes.

Renewing Consortium Status

Many consortia will choose to renew their consortium agreement in order to continue to receive annual formula allocations of HOME funds. In addition, many consortia may find that they need to make changes to their membership at times. This section discusses HUD's procedures related to the renewal of the consortium: the term of the consortium, how to renew or make changes to consortium membership, and what to do in the event that the consortium disbands.

Term of a Consortium

HUD's initial consortium designation lasts for a three-year period called the "qualification period."

The three-year period is based on the Federal fiscal year, and for each year during this period a consortium is eligible to receive HOME funds through the annual formula allocation. At the end of the qualification period, if the consortium wishes to be eligible to continue receiving annual allocations of HOME funds, the consortium must renew its status with HUD as a consortium. Subsequent renewals are also for three-year terms.

At the option of the consortium, the consortium can have an automatic renewal clause in its consortium agreement to facilitate the renewal process.

Renewals

An existing consortium **must** submit a letter of intent to the HUD Field Office by March 1 specifying that it plans to continue participation as a consortium. Although the submission requirements are far fewer than for initial designation, the renewal process follows the same general timeline.

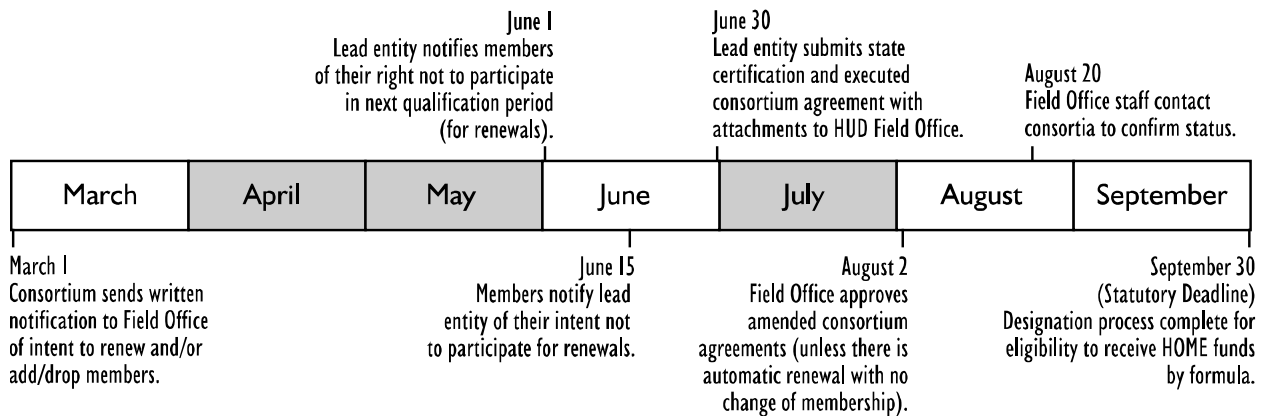
Term of a Consortium

A consortium is formed for a three-year period, during which time the consortium receives an annual HOME allocation. The consortium agreement must also be renewed every three years in order for the consortium to continue to receive HOME funding annually. The term of the consortium agreement can expire, or the consortium can choose not to renew it.

Whether or not the consortium chooses to renew its agreement for the purposes of qualifying for a new formula allocation, the consortium may have obligations that extend beyond the life of the agreement. HUD holds the lead entity responsible for meeting these responsibilities, including:

- Expending and reporting remaining HOME funds on eligible activities;
- Accounting for, and appropriately spending, program income; and
- Monitoring long-term affordability requirements, as applicable, for rental and homebuyer projects funded with HOME.

Timeline for Renewing Consortium Status



Consortia should codify their approach to renewals in the consortium agreement. Consortia can choose to renew through an automatic renewal clause that is included in the consortium agreement, or they may re-negotiate and re-execute a consortium agreement every three years.

Automatic renewal. The consortium must specify that it will use an automatic renewal option in the consortium agreement. In June, when it is time for renewal, a new consortium agreement is not needed but the lead entity is responsible for confirming that each member wishes to continue to participate in the consortium.

- On about June 1, the lead entity **must** provide a written notice to each consortium member notifying it of its right not to participate for another successive three-year period. The lead entity must provide a copy of these notices to the HUD Field Office.
- The lead entity **must** also notify each consortium member if there are any amendments that will be required to the agreement. These changes vary based on the consortium’s need, and might include changes to the management process, voting, distribution of funds, or other administrative matters. Failure of the lead entity to provide these notifications will void the automatic renewal provisions in the agreement.
- The consortium **must** secure a new state certification that its activities will alleviate housing problems in the state.

- The lead entity **must** submit to HUD, by about June 30, the state certification and notice if there are no membership changes. In the event a new consortium agreement is executed, the HUD Field Office is to receive a copy at this time.

Renegotiated renewal. If the consortium does not establish automatic renewal in the consortium agreement, then the consortium **must** negotiate a new consortium agreement and have it signed by all participating members. Note, in general, if a consortium wishes to continue to receive HOME funds for as long as it is eligible, an automatic renewal is the easiest way to do this.

The new consortium agreement **must** be submitted to HUD by June 30.

Making Changes to the Consortium Membership

During the qualification period, existing members may not leave the consortium but new members may be added through an amendment. At the end of the three-year term, members may be added or removed from the consortium, but a new consortium agreement is required.

Changing the Lead Entity

Under some circumstances, a consortium may need to change its lead entity. This can be done only when the consortium renews its consortium status with HUD. A change in the lead entity will result in a change in the consortium’s name in IDIS, and its grant number. (Note, the consortium can legally form and operate under

any name of its choice, but in IDIS it will always be referred to by the name of the lead entity.) HUD will expect the exiting lead entity and the new lead entity to develop a plan for transferring responsibilities, to ensure that any outstanding long-term obligations are met. HUD will hold the outgoing lead entity responsible for projects that were initiated under its consortium agreement. The new lead entity assumes responsibilities for all activities moving forward.

Adding New Members

A consortium agreement can be amended to add new members during a consortium's three-year qualification period. Once added, the member's geography is considered for the allocation of HOME funds in the remaining fiscal years of the qualification period.

To add a new member, the consortium must notify HUD in the year prior to when the additional membership goes into effect. The schedule and submission documentation are similar to those established for new consortia. By March 1, the consortium must submit a letter of intent to the HUD Field Office, describing its intention to add a new member. Then, by June 30, the consortium must provide the Field Office with 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 or authorized official of the lead entity and the Chief Executive Officer or authorized official of the new member. The HUD Field Office will notify HUD Headquarters of the change.

Unless the consortium agreement specifies otherwise, HUD considers the lead entity to be authorized to amend the agreement, including adding new members on behalf of the entire consortium.

Dropping a Member

A jurisdiction within a consortium may decide that it no longer wishes to be part of a consortium, or a lead entity may wish to drop a member due to nonperformance. A consortium can drop members only once the initial qualification period is over, at renewal time. Dropping a member means that the jurisdiction is dropped for

purposes of receiving additional HOME funds. Once dropped, this jurisdiction's geography will not be included in the formula distribution of HOME funds and that the jurisdiction will no longer be a party to the consortium agreement.² The lead entity remains responsible for projects for the entire period of affordability even in the areas where the member dropped out. Depending on the terms of the subrecipient agreement executed with the lead entity, the departing jurisdiction may also have some trailing obligation(s) to the lead entity. Terms and procedures for dropping a member for nonperformance should be clearly detailed in the consortium agreement.

If the consortium uses an automatic renewal clause to effectuate renewals, the lead entity **must** notify each member jurisdiction of their right to withdraw from the consortium prior to the end of the term (by June 1). Within two weeks (by June 15), the jurisdiction must provide written notice to the lead entity of its intention to withdraw. If the consortium uses an automatic renewal, the consortium agreement must be amended to exclude the jurisdiction.

If there are any changes in the composition of the consortium, the consortium must submit a new consortium agreement, or an amended consortium agreement to the HUD Field Office by June 30.

Disbanding a Consortium

A consortium's full "natural" life cycle lasts until all of its allocated HOME funds have been expended for HOME-eligible activities. Even after the funds have been expended, the lead entity retains certain obligations throughout the entire period of affordability—for monitoring, program income, and in the event there is a need for repayment or recapture of HOME funds. See Chapter 4 for these ongoing obligations of the lead entity.

In some circumstances, however, a consortium may desire or seek to disband prior to this time. For instance, the consortium may choose to disband if one or more members become eligible for a direct HOME allocation in their own right, or if the working relationship between members is not productive.

Under some circumstances, HUD may revoke the consortium's status because HUD determines that the consortium is either unable or unwilling to carry out the HOME requirements in compliance with program regulations. For example, if a consortium fails to carry out any housing activities in accordance with its Conplan, HUD might take such action. When HUD intends to revoke a consortium's status, it must provide reasonable notice and an opportunity for a hearing.

If a consortium chooses to disband prior to the satisfaction of its obligations to carry out HOME activities, it must notify the HUD Field Office, and develop a plan for how its obligations will be met. The HUD Field Office can assist the consortium with understanding the extent of its outstanding obligations.

When a consortium disbands, all HOME requirements remain in place. The lead entity is legally bound to meet HOME Program rules until the end of the affordability period on any project developed during the consortium qualification period. Specifically, this means that the lead entity must observe requirements regarding program income, repayments of HOME funds, recaptured funds and long-term monitoring. These requirements are discussed in detail in Chapters 4 and 5.

Because these obligations remain in place, the consortium should address in its consortium agreement how such long-term obligations are addressed irrespective of the consortium's status. This will be discussed in more detail in Chapter 4.

Chapter 3:

Key HOME Regulatory Requirements

When consortia choose program activities to meet local needs, they must ensure that their projects are carried out in compliance with all HOME requirements. This chapter provides an overview of the key administrative, program, and project requirements of the HOME Program. The descriptions are brief; therefore, additional resources for detailed information have been identified throughout the chapter. This guidance does not substitute for a full review of the HOME Program regulation.

HOME Program Purpose and Activities

The primary purpose of the HOME Program is to increase the supply of affordable housing for low-income households. The most fundamental of all HOME requirements are designed to ensure that HOME investments meet this purpose:

- Income targeting requirements ensure that low-income people are served;
- Rent restrictions and maximum property value requirements ensure that HOME-assisted housing is affordable; and
- The requirements for income targeting and housing affordability are imposed for an affordability period to ensure that HOME-assisted housing increases the PJ's supply of affordable housing for a period of five to twenty years.

Within the scope of these fundamental rules, HOME PJs have the opportunity to identify and choose the housing activities that will best meet local housing needs. Eligible activities under HOME include homeowner rehabilitation, homebuyer assistance, rental housing, and tenant-based rental assistance (TBRA). PJs develop a Conplan to help target their activities towards their communities' needs and priorities.

The rest of this chapter discusses HOME requirements as they apply to administration, program design, and project implementation. Consortia should consider their capacity and willingness to abide by and enforce these requirements over the long-term.

Resources on the HOME Program

For more information about the HOME Program and its requirements:

- HOME Program Final Regulation at 24 CFR Part 92, and
- HUD Office of Affordable Housing Programs' website at www.hud.gov/homeprogram/.

HOME Administrative Requirements

A number of administrative requirements apply across all HOME-eligible activities. This section reviews the administrative requirements that may have special implications or present special challenges for a HOME consortium. These include using HOME administrative funds, consolidated planning, written agreements, the commitment and disbursement of HOME funds, monitoring, and record-keeping and reporting.³

Administrative Costs

HOME rules allow PJs, including consortia, to use ten percent of their HOME funds for administrative costs. (This includes ten percent of their annual allocation plus ten percent of any program income generated by their HOME investments.) Eligible uses for administrative funds include salaries, wages, and related costs for staff persons responsible for the HOME Program. They also include other planning and administrative costs such as supplies, legal services, preparing the Conplan, implementing fair housing activities, and more.

A consortium can choose how to allocate administrative funds. It can provide all the administrative funds to the lead entity in recognition of the additional administrative costs borne by the lead, or it may allocate some portion of the funds to individual members to cover their administrative costs. No matter how the funds are allocated, they are limited to ten percent of the total allocation – i.e., the consortium is not permitted to allocate ten percent of the funds to members for administrative costs and an additional ten percent for the lead entity. Chapter 5 of this guide discusses the consortium’s strategic decisions about how to allocate and use a consortium’s administrative funds effectively.

Resources on HOME Administrative Costs

Requirements related to eligible administrative and planning costs are found in the HOME Program regulation at 24 CFR 92.207.

For additional guidance on defining and allocating administrative costs, see HUD Notice CPD 96-09, *Administrative Costs, Project-Related Soft Costs, and Community Development Housing Organization (CHDO) Operating Expenses Under the HOME Program*, issued December 20, 1996. This Notice is available from the HUD Field Office or online at the HOME Program website *CPD Notices*, at <http://www.hud.gov/offices/cpd/lawsregs/notices/1996/96-9.pdf>.

Consolidated Plan

HOME stresses a coordinated approach to affordable housing. Therefore, prior to receiving any HOME funds, every PJ— including every HOME consortium-- must develop a Conplan to explain how the PJ will use its Federal housing and community development funds. Completing the Conplan can help the consortium determine what activities and organizations to fund in each coming year. The Conplan is the consortium’s application for Federal funds under HUD’s formula grant programs as well as its strategy to pursue its housing and community development programs based on its program year.

The Conplan is a three- to five-year plan that describes community needs, resources, priorities, and proposed activities to be undertaken with

HUD programs including HOME, Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). The Conplan must include five main components including (1) a description of the lead agency or entity responsible for the development of the Conplan and the process undertaken to develop the Plan, (2) a housing and homeless needs assessment, (3) a housing market analysis, (4) a strategic plan (three- to five- years in length), and (5) a one-year Action Plan.

A new consortium must submit a complete Conplan. After the first year, generally, the consortium need only submit the Action Plan and Certifications. The Action Plan is an annual update to the Conplan that describes the specific planned uses of the covered HUD programs. Both the Conplan and the Action Plan are subject to the citizen participation requirements to provide each jurisdiction’s citizenry an opportunity to review and comment on the consortium’s plans.

For a new consortium and other PJs that have not previously submitted a Conplan, the timeline for submitting the Conplan is as follows:

- Within 30 days of receiving notice of its formula allocation, the consortium **must** submit a written notification to the HUD Field Office of its intent to be a PJ.
- Within 90 days of providing notification of intent, the consortium **must** submit the Conplan to the Field Office.
- The Conplan **must** be submitted at least 45 days before the start of the consortium’s program year.

Therefore, if the HUD Field Office and the new consortium provide their respective notices at the last possible date, the maximum amount of time a new consortium has to prepare a Conplan is 120 days. It is important that the jurisdiction have sufficient time to develop its housing market analysis and meet the citizen participation requirements. Developing a Conplan is more complicated for a consortium than it is for other local PJs because it requires the consolidation of

data and demographic information and the development of a housing plan across jurisdictions. In addition, some member jurisdictions may have their own planning requirements associated with participation in other covered HUD programs. Consortia should work informally with the HUD Field Office to identify the start of the program year and determine the amount of time they will need to develop the Conplan. With good communication with the consortium, the Field Office will be better able to time its formal notice of the consortium's allocation amount so that the Conplan deadlines are attainable. It is important for consortia to work collaboratively with the Field Offices in this regard, because once the Field Office issues formal notice of the allocations, the deadlines will be in effect. These deadlines are statutory and cannot be waived by HUD.

The Conplan or Annual Action Plan must be submitted to the HUD Field Office for review and approval at least 45 days before the start of the consortium's program year. Therefore, if the new consortium uses the maximum 120 days to develop its Conplan, the HUD Field Office has an additional 45-day review period before approval of the consortium's Conplan and the beginning of its program year.

Chapter 5 identifies the choices consortia must make to organize the consolidated planning process, and describes how to prepare a Conplan.

Resources on the Conplan

The Conplan requirements for consortia are found in 24 CFR Part 91 Subpart E. This is available online at http://www.access.gpo.gov/nara/cfr/waisdx_03/24cfr91_03.html.

For more information about consolidated planning and recent updates and clarifications about HUD consolidated planning requirements, see HUD's website at <http://www.hud.gov/offices/cpd/about/conplan/index.cfm>.

Written Agreements

When a HOME PJ forms a partnership with another entity, its primary enforcement and monitoring tool available is the written agreement. Jurisdictions joining to form a consortium must have an executed consortium agreement before the consortium will be eligible to receive HOME funds. The lead entity must execute a subrecipient agreement with a member jurisdiction before that jurisdiction can receive HOME funds. In fact, before any HOME funds can be disbursed to any entity (including subrecipients, state recipients, homeowners, homebuyers, contractors, CHDOs, and other nonprofit or for-profit developers), the PJ must execute a written agreement that ensures compliance with all HOME requirements.

In a consortium, the development, execution, and enforcement of written agreements are key responsibilities of the lead entity. As such, these are discussed more fully in Chapter 4.

Resources on Written Agreements

The HOME regulation at 24 CFR 92.504 outlines the requirements related to written agreements.

Attachment 2 of this guide, *Required Provisions in HOME Written Agreements*, identifies specific requirements that must be included in HOME written agreements

Commitments and Disbursements

The HOME Program has required timeframes for activities to be completed, which are written into the program's statute and regulations. These timeframes help to ensure that the Federal funds allocated to this program are drawn down and set to work rapidly.

- PJs have 24 months from the end of the month that HUD signs the HOME Investment Partnership Agreement to enter into a legally binding agreement with a subrecipient or contractor to use a specific amount of HOME funds to produce affordable housing or tenant-based rental assistance; or to execute a written agreement to reserve a specific amount of funds for a CHDO.

- PJs have five years total from the Agreement to expend the funds.
- PJs have 24 months to reserve funds for housing that is owned, developed or sponsored by CHDOs.

When a PJ is unable to meet these timeframes, HUD recaptures and reallocates funds to other PJs. It is, therefore, extremely important to track the commitment and disbursement of funds.

To meet this responsibility, it is critical for the consortium to enter project data into IDIS for project set-up, draw downs from the U.S. Treasury, and disbursements and completions to the project, called activities in IDIS. The consortium must therefore have clearly defined procedures and responsibilities for reporting necessary information and entering it into IDIS in a timely fashion.

Depending on the governing structure of the consortium or the capacity of the consortium members and the relationships between them, some consortia may encounter challenges in committing and disbursing funds. These challenges will be discussed in more detail in Chapter 5 of this guide.

Resources on Commitments and Disbursements

The HOME regulation establishes specific deadlines related to commitment of HOME funds, reservation of CHDO funds, and disbursement of HOME funds at 24 CFR 92.500(d).

For more information on the requirements related to project commitments and disbursements, see HUD Notice CPD 01-13, *Commitment, CHDO Reservation, and Expenditure Deadline Requirements for the HOME Program*, issued October 12, 2001.

This notice is available online at <http://www.hud.gov/utilities/intercept.cfm?offices/cpd/lawsregs/notices/2001/01-13.pdf>.

Record-keeping and Reporting

To ensure compliance with HOME requirements, the HOME Program requires that PJs, including consortia, keep records of their activities and report activities to HUD.

Consortia must establish and maintain sufficient documentation to demonstrate compliance with program requirements for all their programs and projects. Consortia must retain this documentation for five years after program/project completion. For projects that are subject to an affordability period, the retention period extends to five years until the expiration of that period.

In addition to record-keeping, consortia must report to HUD. Reporting requirements include:

- **IDIS.** Consortia must report to HUD on an ongoing basis through the IDIS system. In IDIS, consortia must set up each activity to be undertaken with HOME funds, report on progress with each draw down of funds, report on beneficiary data, and then close out the activity when it is complete. It allows HUD to report on the use of HOME funds nationally, but it also serves as a useful tool for PJs to track their own performance. Consortia must enter project information into IDIS as it carries out its projects and activities. Consortia must enter completion information into IDIS and change the activity status to “complete” within 120 days of the final draw given to a project/activity.
- **Consolidated Annual Performance and Evaluation Reporting (CAPER).** The CAPER is a summary of program accomplishments and an assessment of progress toward the needs and objectives set out in the consortium’s Conplan.

The lead entity has primary responsibility for ensuring that the appropriate documentation is maintained. It will find that imposing reporting requirements upon its subrecipients will facilitate its monitoring responsibility. Chapter 4 provides guidance to lead entities on making this requirement operational.

Resources on Record-keeping and Reporting

The HOME regulation at 24 CFR 92.508 describes record-keeping and reporting requirements.

Monitoring

Consortia must monitor all recipients of HOME funds. This means the lead entity must monitor member entities, other subrecipients, and CHDOs that are carrying out project activities. Monitoring responsibilities last the duration of the project, including the affordability period. If a member leaves the consortium before a project within its geographic boundaries is complete or the affordability period has expired, the consortium remains responsible for monitoring that project.

Since the lead entity is held accountable to HUD for compliance with HOME rules, the monitoring responsibility is discussed in greater detail in Chapter 4.

Resources on Monitoring

For more information on monitoring, see:

- Office of Affordable Housing Program's website entitled *HOME Monitoring Tools*, <http://www.hud.gov/offices/cpd/affordablehousing/trailling/web/checkup/performance/monitoringtools.cfm>. From this site, there are many useful links that will assist PJs in developing monitoring plans, assessing risks, and checklists to facilitate the monitoring process; and

Community Planning and Development Monitoring Handbook, available online at <http://www.hud.gov/offices/cpd/library/monitoring/handbook.cfm>. This handbook is used by HUD monitors to monitor all CPD programs. Chapter 7 covers the HOME Program.

Program Requirements

HOME has a number of requirements that apply to the consortium's programs, regardless of activity (homebuyer, homeowner rehabilitation, tenant-based rental assistance, or rental development). These requirements cover eligible

activities, match, the CHDO set-aside, income targeting, and other Federal requirements.

Eligible Activities

Eligible activities under HOME include homeowner rehabilitation, homebuyer activities, rental housing, and tenant-based rental assistance. HOME funds must be used for eligible housing expenditures; other non-housing activities are not eligible for HOME funds, such as commercial development and supportive services.

See the HOME rule at 24 CFR 92.205 for a full description of HOME-eligible activities.

Match Requirements

The HOME Program requires PJs to make a contribution to HOME-funded affordable housing in the form of contributions from non-Federal sources—that is, private, local and nonprofit sources. Specifically, every PJ⁴ incurs a 25 percent matching obligation for all non-administrative HOME funds that it expends. The match can be in cash or non-cash form, but it must be a permanent contribution to affordable housing, from a non-federal source. It can come from a public or private source including local public agencies, state agencies, charitable organizations, lending institutions, corporate donors, or others.

Consortia have choices in how they address match. They can require a project-by-project match, require each member to provide a certain match, provide all match through the lead entity, or allow any other arrangement that ensures they reach their match requirements. These options are discussed in more detail in Chapter 5 of this guide.

Resources on Match

See the HOME regulation at 24 CFR 92.218 through 92.222 for the match requirements.

For additional information on match requirements, see HUD Notice CPD 97-03, *HOME Program Match Guidance*, issued March 27, 1997. This Notice is available online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/admin.cfm>.

CHDO Set-aside

To encourage the development and growth of nonprofits dedicated to affordable housing development, HOME established a new type of housing nonprofit called a community housing development organization (CHDO). A CHDO is a private, nonprofit organization that meets a series of qualifications described in the HOME regulations. All PJs, including consortia, must use a minimum of 15 percent of their annual allocation for housing that is owned, developed, or sponsored by CHDOs.

As with match, some consortia find it easier to have the lead entity handle all allocations to CHDOS, while others ask each member to allocate 15 percent of its funds to CHDOs. Either way, the lead entity remains ultimately responsible for meeting the set-aside requirements. Chapter 5 of this guide will discuss these options in more detail.

Resources on Working with CHDOs

See the HOME regulation at 24 CFR Part 92 Subpart G for requirements related to community housing development organizations.

HUD Notice CPD 97-11, *Guidance on Community Housing Development Organizations (CHDOs) Under the HOME Program*, issued October 8, 1997 provides guidance on working with CHDOs. This Notice is available online at http://www.hud.gov/offices/cpd/affordable_housing/lawsandregs/notices/index.cfm; and

CHDO Toolbox for HOME PJs is a model program guide issued by HUD that provides tools and tips for CHDOs. This publication, HUD-20004-08-OAHP, was issued in July 2004 and is available through Community Connections at 1-800-998-9999, or online at http://www.hud.gov/offices/cpd/affordable_housing/library/modelguides/index.cfm.

Income Targeting

The mission of the HOME Program is to provide housing opportunities for low-income households. Consequently, the HOME Program has certain

income targeting requirements that apply to the program. Specifically:

- All HOME funds must be used to assist low-income households, that is, households with incomes at or below 80 percent of the area median income.
- For rental housing and tenant-based rental assistance, initially 90 percent of the beneficiaries **must** be households that have incomes that are at or below 60 percent of the area median income.
- For rental housing with five or more HOME-assisted units, 20 percent of the units must also be occupied by tenant families with incomes at or below 50 percent of the area median income.

For owner-occupied housing, income must be determined and verified at the time assistance is delivered. The low-income occupancy requirements for rental and homebuyer activities apply for a certain affordability period (described below under Project Requirements). The household's annual income must be verified with source documentation prior to occupancy. For rental housing, it can be certified by the tenant annually, and must be re-verified by the PJ every six years.

The consortium must document that these income targeting requirements are met. This means collecting project information from members throughout the reporting process as discussed above and monitoring projects for income eligibility, as discussed below.

Resources on Income Targeting

See the HOME regulation for the requirements related to qualification as affordable housing, for rental housing at 24 CFR 92.252 and for homeownership housing at 24 CFR 92.254.

The income limits for each market area, as determined by HUD, are available online at http://www.hud.gov/offices/cpd/affordable_housing/programs/home/limits/income/index.cfm.

HUD's publication, *Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition*, provides step-by-step guidance on how to determine a household's eligibility for the HOME Program. It describes the technical requirements of each of the three definitions a PJ can use to define annual income, and provides ample examples of how each is applied and affects the eligibility determination. It contains sample forms that can be used by the PJ. This publication (HUD 1780-CPD, issued January 2005) is available through Community Connections at 1-800-998-9999, or through HUD's website at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.

HUD has an online income calculator that enables PJs to enter income data from their clients and determine income eligibility. This tool is available at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm>.

Other Federal Requirements

In addition to the HOME Program rules, there are a number of other Federal requirements that apply across most Federal programs, including the HOME Program. These requirements are incorporated into the HOME rule by reference and apply to HOME activities. These include rules and regulations on nondiscrimination and equal access (fair housing and equal opportunity and handicapped accessibility); employment and contracting (equal economic opportunity, labor practices, and contracting and procurement practices); environmental reviews; lead-based paint; and acquisition, relocation, and displacement rules.

Resources on Other Federal Requirements

The HOME Program regulation covers the requirements related to other Federal requirements at 24 CFR Part 92 Subpart H.

For more information on other Federal requirements:

- **Overview to cross-cutting Federal requirements** is provided in an interactive web-based training, *Crosscutting Federal Requirements*. This online training is available

at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/crosscutting/>.

- **Lead-based paint requirements** are reviewed in an interactive web-based training, *Lead-Safe Housing Rule*. This training is available online at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/>.
- **Fair housing requirements, including accessibility and employment and contracting issues** are discussed in *Fair Housing for HOME Program Participants*, a series of model program guides issued by HUD in May, 2005. This publication series, HUD-2005-10-CPD, is available from Community Connections at 1-800-998-9999 or online at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.
- **Relocation requirements** are discussed in HUD Notice CPD 05-02, *Notice of Implementation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) Final Rule Effective February 3, 2005*. Issued April 13, 2005. This Notice is available online at <http://www.hud.gov/offices/cpd/affordablehousing/aw/sandregs/notices/index.cfm>.
- **Environmental review requirements** are covered in HUD Notice CPD 01-11, *Environmental Review and the HOME Investment Partnerships Program*. Issued July 17, 2001. This Notice is available online at <http://www.hud.gov/offices/cpd/affordablehousing/aw/sandregs/notices/index.cfm>.
- **Prevailing wage requirements** are discussed in HUD Letter LR-96-04, "Application of Federal Labor Standards to HOME Projects," issued August 21, 1996.

Project Requirements

In addition to administrative and program requirements, HOME also has a number of requirements that apply to specific project-related activities. The following is a brief description of the types and nature of the HOME project requirements. Consortia must have systems in

place to implement and document compliance with all of these requirements.

Eligible Costs

Within the eligible activities, most project costs are allowable under HOME. These include hard and soft costs for new construction, rehabilitation, reconstruction, or conversion; site improvements; acquisition of land or property; demolition; relocation; refinancing; capitalization of project reserves; direct housing payments for tenants; and direct assistance to homebuyers.⁵ Note, HOME funds cannot be used to aid the same project twice during its affordability period, except in certain circumstances.

Resources on Eligible Costs

See the HOME rule at 24 CFR 92.206 through 92.212 for a more detailed discussion of eligible costs.

Rental Housing Affordability

To ensure that HOME-assisted rental housing is affordable to low- and very low-income tenants, HOME restricts the rents that can be charged for assisted units. On an annual basis, HUD determines and issues to each PJ, the maximum rents (High HOME Rents and Low HOME Rents) that tenants can be charged for rent and utilities in a HOME-assisted unit in that area. The rent limits are issued for a variety of bedroom sizes. At least 20 percent of the units must be rented at no more than the Low HOME Rents, to households whose incomes are at or below 50 percent of annual area median income. The remaining HOME-assisted units must be rented at or below the High HOME Rents.

Rents of HOME-assisted units are controlled throughout the affordability period, as identified in Exhibit 3-1. These restrictions must be secured by a deed restriction or covenant running with the land.

Resources on Rental Housing

See the HOME regulation at 24 CFR 92.252 for requirements related to qualification as affordable housing for rental housing.

The rent limits for each market area are available online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/index.cfm>.

Guidance and relevant information for PJs undertaking rental housing development is available online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/rental.cfm>.

Guidance and relevant information for PJs undertaking tenant-based rental assistance programs is available online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/tenant.cfm>.

An online training related to combining HOME with low-income housing tax credits is available at the HOME Program's website, *HOME and Low Income Housing Tax Credits (LIHTC)*, at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/>.

HUD has issued a number of HOME model program guides for PJs on various aspects of developing rental housing programs with HOME funds, including:

- *Asset Management: Strategies for the Successful Operation of Affordable Rental Housing*. HUD 2018-CPD, May 2000.
- *Financing Rental Housing Under the HOME Program: Second Edition*. HUD 1414-CPD, September 1994.
- *Using HOME with Low-Income Housing Tax Credits*. November 1998.
- *Tenant Based Rental Assistance: A HOME Program Mode*. HUD 1658-CPD, January 1997.
- *Rental Housing Development and HOME: Four Case Studies*. HUD 1584-CPD, April 1996.

These model program guides are available through Community Connections at 1-800-998-9999, or through HUD's website at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.

Homeownership Housing Affordability

HOME funds can be used in a variety of ways to support a consortium's homeownership activities: homeowner-occupied rehabilitation programs, direct homebuyer assistance (including direct loans to homebuyers, as well as downpayment and/or closing cost assistance), and/or development of for-sale housing. As previously noted, all households assisted with HOME in any homeownership program must be low-income.

In order to ensure that HOME-assisted housing is affordable to low-income households, the value of any property assisted with HOME funds may not exceed 95 percent of the median purchase price for that type of housing for the area. For properties requiring rehabilitation, the PJ must secure an after-rehabilitation value estimate to determine value. For HOME-assisted for-sale properties that do not require rehabilitation, the sales price may not exceed this limit. Note, the HOME Program does not define what is affordable to a homeowner in terms of monthly housing costs (that is, as a percentage of the principal, interest, property taxes, and insurance, or "PITI").

For homebuyer programs (not including homeowner-occupied rehabilitation programs), long-term affordability is ensured by either (1) restricting the resale of the property to a subsequent low-income buyer at an affordable price, or (2) recapturing the HOME investment and reinvesting those funds in other HOME-eligible activities. The PJ must determine how it will implement each of these options, and must identify in its Conplan the option it chooses and how it will be implemented.

Resources on Homeownership Housing

See the HOME Program regulation at 24 CFR 92.254 for requirements related to the qualification of homeownership housing as affordable housing, including requirements related to resale and recapture provisions.

Guidance and relevant information for PJs undertaking homeowner rehabilitation programs is available online at

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/rehab.cfm>.

Guidance and relevant information for PJs undertaking homebuyer assistance programs is available online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/topical/homebuyer.cfm>.

HUD has issued a number of publications to assist PJs in the development of homebuyer programs, including the following model program guides:

- *Fitting the Pieces Together: Using Private and Public Financing Tools with HOME-Assisted Homebuyer Programs*. HUD-2003-14-CPD, February 2004.
- *HOME Program Rehabilitation Tune-up*. HUD-2003-13-CPD, January 2004.
- *Using HOME to Develop a Homebuyer Assistance Program*. HUD 1782-CPD, June 1999.
- *Using HOME Funds for Homebuyer Programs: Structuring Recapture and Resale Provisions*. HUD 1674-CPD, May 1997.

These model program guides are available through Community Connections at 1-800-998-9999, or through HUD's website at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.

Eligible Types and Levels of Assistance

HOME allows many forms of financial assistance or subsidy including interest bearing loans, non-interest bearing loans, deferred loans, grants, interest subsidies, equity investments, loan guarantee and loan guarantee accounts, and other forms of assistance approved by HUD. HOME does place a minimum and maximum amount of subsidy on the assistance. The minimum amount of HOME funds is \$1000 per housing unit in a project. This does not apply to TBRA. The maximum per-unit subsidy is the 221(d)(3) limit, with some exceptions. These limits are available through the HUD Field Office or online at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/subsidylimits.cfm>.

HOME also requires a subsidy layering analysis to confirm that no project receives more HOME and other governmental funds than necessary to provide affordable housing. The consortium must adopt written layering guidelines and evaluate each project in accordance with them.

Resources on Levels of Assistance

See the HOME Program regulation at 24 CFR 92.250(a) for the requirements related to maximum levels of assistance, and at 24 CFR 92.250(b) for subsidy layering requirements.

For more guidance on subsidy layering, see HUD Notice CPD 98-01, *Layering Guidance for HOME Participating Jurisdictions When Combining HOME Funds With Other Government Subsidies*. Issued January 22, 1998. This Notice is available online at <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/index.cfm>.

Eligible Properties

Properties receiving HOME funds must meet certain criteria concerning ownership, title, maximum value, and the geographic area in which they are located. Specifically, proper documentation must be in place indicating clear ownership of the property. The property must not exceed the established maximum property value for the given area. And, the property must be located within the geographic boundaries of a member jurisdiction of the consortium. For homeownership housing, properties must be the beneficiary's primary residence.

Resources on Eligible Properties

See the HOME Program regulation at 24 CFR 92.254 for more information on these requirements.

Property Standards

HOME-funded properties must also meet established minimum property standards. Depending on the nature of the activity being undertaken, these standards might be state and local standards, model building or energy codes, local rehabilitation standards, or the Section 8 Housing Quality Standards. Handicapped accessibility and site and neighborhood standards may also apply.

Resources on Applicable Property Standards

For more information on applicable property standards, see 24 CFR 92.251.

Affordability Period

To ensure that the HOME goal of providing affordable housing over a period of time is met, most HOME projects are subject to an affordability period as shown in Exhibit 3-1

During the affordability period for rental projects, the PJ must ensure income targeting, housing affordability, and property standard requirements are met. For homeownership properties, the PJ must enforce applicable resale or recapture provisions. HUD holds the lead entity accountable for long-term monitoring and compliance of HOME-assisted projects. These long-term compliance requirements are discussed in greater depth in Chapter 4.

The periods of affordability are addressed in the HOME Program regulation at 24 CFR 92.254(a)(4) for homeownership housing, and at 24 CFR 92.252(e) for rental housing.

Exhibit 3-1: HOME Affordability Periods

Activity	Average HOME investment per unit	Minimum Affordability Period
Rental housing rehabilitation or acquisition	Less than \$15,000	5 years
	\$15,000 - \$40,000	10 years
	Greater than \$40,000 per unit	15 years
Rental housing rehabilitation – Refinance	Any \$ amount	15 years
Rental Housing – New construction or acquisition of new housing	Any \$ amount	20 years
Homeownership housing assistance – all forms	Less than \$15,000	5 years
	\$15,000 - \$40,000	10 years
	Greater than \$40,000 per unit	15 years



Chapter 4:

Responsibilities of the Lead Entity

This chapter discusses the lead entity’s responsibility for maintaining compliance with HOME Program rules. It lists these specific responsibilities and identifies the steps a lead entity can take to ensure its obligations are fulfilled.

This chapter is a “must–read” for any jurisdiction considering becoming a lead entity or for an existing lead entity that wishes to assess its performance in meeting its responsibilities. However, all member jurisdictions of consortia should read and understand the administrative responsibilities accepted by the lead entity so that they can support the lead entity and help to ensure full compliance.

The specific topics covered in this chapter include: executing written agreements with all consortium members; managing the HOME allocation, commitment, and disbursement of HOME funds; monitoring projects; ensuring long-term affordability in projects; and reporting to HUD on consortium activities.

Accountability of the Lead Entity

Although a consortium is a partnership of several local government jurisdictions, the lead entity of the consortium takes full responsibility for fiscal management of HOME and compliance with HOME rules and other applicable Federal regulations. Member jurisdictions may carry out HOME activities in their jurisdictions under a subrecipient agreement, but the lead entity retains ultimate accountability to HUD. This means that if HUD finds evidence of noncompliance on the part of the consortium or one of its member jurisdictions, HUD will hold the lead entity accountable for corrective action.

Noncompliance might include the inappropriate expenditure of HOME funds; the failure of the consortium to commit HOME funds in a timely manner; or failure to meet HOME Program requirements (listed and discussed in Chapter 3).

Since HUD holds the lead entity accountable, the lead entity should take steps to ensure that the consortium has developed sufficient systems to allocate, commit, disburse, and monitor HOME funds. The lead entity must also be able to hold consortium members accountable for compliance with HOME requirements. The lead entity will need to institute systems for its members to report on their activities, conduct regular monitoring, and establish a framework for taking corrective actions in the event of noncompliance. Before problems occur, the lead entity should be clear with member jurisdictions about how it will carry out its monitoring obligations and what actions it will

take to address any noncompliance by member jurisdictions.

Executing Written Agreements

Written agreements are the primary enforcement and monitoring tool for lead entities to use when working with members, subrecipients, community housing development organizations (CHDOs), developers, and other partners. Written agreements allow the consortium to codify roles and responsibilities, specify HOME Program and other requirements, provide guidance on expected program performance and outcomes, and provide enforcement mechanisms that can be used to ensure that funds are spent in accordance with HOME rules.

A lead entity will be able to hold a member jurisdiction accountable only for what it has agreed to in its written agreement. It is critical for a lead entity to see that its written agreements are sufficient to protect its own interests in the event things go wrong.

The lead entity should play a key role in the development and execution of the two most important agreements required by a consortium—the consortium agreement and the subrecipient agreement. The consortium agreement formalizes the membership and governance of the consortium. Every member of the consortium must sign this agreement. Each member jurisdiction that carries out HOME-funded programs or activities on behalf of the consortium

is a subrecipient to the lead entity. A subrecipient agreement must be executed between the lead entity and a member jurisdiction before any HOME funds can be disbursed to that jurisdiction. Each of these agreements is described in more detail below.

Consortium Agreements

As discussed in Chapter 2, the consortium agreement is a legally binding cooperation agreement that is executed by all members of the consortium. This agreement formalizes the relationship among all consortium members. It establishes the consortium’s three-year qualification period, commits each member to participate for the duration of the qualification period, and describes member jurisdictions’ roles and responsibilities—particularly those of the lead entity. The consortium agreement must include authorizing resolutions from each member’s governing body and a legal opinion from the lead entity affirming that the agreement is authorized under state and local law.

The lead entity plays a key role in developing the consortium’s agreement and is responsible for submitting it to HUD. It is also responsible for renewals. These procedures are described in Chapter 2.

The lead entity should be sure that the consortium agreement clearly defines the responsibilities of the member jurisdictions in implementing HOME activities and holds them accountable for compliance with HOME requirements. Also, the lead entity should make certain that the agreement specifies how it will enforce HOME requirements if a jurisdiction leaves the consortium, particularly during any project’s period of affordability.

The lead entity has administrative responsibility to maintain the consortium agreement and manage any changes -- for example, executing an amendment whenever the consortium adds a member with signatures by the authorized representatives for the lead entity and the new member. (Other members are not required to sign this amendment unless the consortium agreement requires it.)

Subrecipient Agreements

Members of the consortium that carry out HOME activities on behalf of the consortium are considered subrecipients to the lead entity. Any member jurisdiction administering its own programs or projects in its jurisdiction **must** execute a subrecipient agreement with the lead entity before HOME funds can be disbursed to that jurisdiction. The subrecipient agreement must incorporate a number of required elements, including the scope of activities and all HOME requirements that are applicable to the activities. However, consortia subrecipient agreements also need to address the sensitive issues surrounding when a lead agency must enforce requirements in a peer jurisdiction. Lead entities need to be careful to spell out how it will ensure that these requirements are being carried out, and the consequences to the member jurisdiction in the event of nonperformance or noncompliance. The written agreement must identify specific remedies for any breach of any provision of the agreement. In identifying these remedies, the lead entity should consider the need for remedies both during project implementation and during the period of affordability. [See 92.504(c)(2)(ix).]

The subrecipient agreement must remain in place until all projects subject to the agreement are completed. If the agreement involves a rental or homeownership project that is subject to a period of affordability, the lead entity **must** retain the ability to monitor the project throughout its affordability period.

See 24 CFR 92.504(c)(2) for a list of the required elements of a subrecipient agreement. The required elements, as well as recommended elements, are also reviewed in Attachment 3, *Elements of a Subrecipient Agreement*.

While the consortium agreement describes the consortium’s governing principles, the subrecipient agreement is activity-specific and focuses on the specific issues and decisions that are required to carry out the consortium’s HOME activities. The two agreements should be consistent and complement one another. For instance, the consortium agreement may state, in general terms, that each member jurisdiction that

participates in the consortium must contribute matching funds on a project-by-project basis. The subrecipient agreement then delineates for the project(s) it covers, what, how much, and on what schedule the match must be contributed; the form of match that will be contributed; and the consequences in the event the match is not contributed.

The subrecipient agreement must describe how the HOME activity or project will be carried out, and specify the levels of authority that the member jurisdiction (the subrecipient) has to carry out the activities. For each HOME activity/project, the agreement should specify:

- Who has the authority to execute contracts with developers, contractors, nonprofit partners, or beneficiaries;
- Who retains program income;
- What reporting requirements are imposed by the lead entity;
- Who enters data into, and draws funds down from, IDIS; and
- How assets will be treated during the affordability period.

It should also clearly state what happens when things go wrong, such as treatment of assets should the consortium disband or a member leave the consortium; and failure to comply with HOME requirements. For a full list of topics to be covered in a subrecipient agreement, see Attachment 3, *Elements of a Subrecipient Agreement*.

The subrecipient agreement can and should be amended if any change in activities occurs.

Note, in addition to member jurisdictions, a consortium may choose to use other subrecipients to administer a portion or all of its HOME Program activities. The lead entity or a member jurisdiction **must** execute a subrecipient agreement with each of these entities as well. No HOME funds may be disbursed to any subrecipient without a subrecipient agreement.

Written Agreements with Developers and Owners

Once the lead entity has executed a contract with the jurisdiction as a subrecipient (or another subrecipient), there may be other partners that carry out the HOME activities. These partners might include developers, CHDOs, or other nonprofit or for-profit contractors. Before a lead entity or one of its subrecipients can disburse any HOME funds to any other partner, there **must** be a written agreement with that partner.

The subrecipient agreement between the lead entity and the member jurisdiction should specify who has the authority to execute agreements with developers and owners, whether or not the lead entity is a party to these agreements, and what reporting to the lead entity about the activities of other partners is required.

Although each member jurisdiction may have its own local contract formats, it is prudent for the lead entity to provide a standard written agreement for all its subrecipients to use. Locally-required terms and conditions can be included as an attachment to, or at the end of, the lead entity's agreement. This will ensure that necessary HOME requirements are specified and it will facilitate monitoring for the lead entity. See Attachment 2, *Required Provisions in the HOME Written Agreements*.

Enforcing Written Agreements

The lead entity is responsible for compliance with the HOME rules, but its ability to hold its member jurisdictions accountable for compliance with the HOME requirements is only as effective as its written agreements.

An effective lead entity addresses any issues of nonperformance as they come up and before one-time instances of nonperformance become habitual or persistent issues of noncompliance. For example, if a member entity fails to provide a required report to the lead entity, the lead entity should take pro-active steps to secure the report through reminders or site visits. A missing report

may reflect a simple oversight, lack of progress on a project, or general organizational issues. Without following up, the lead entity will not know the nature of the problem. With active and consistent progress report analysis, site visits, and consortium meetings, a lead entity will have a fairly accurate sense of how a jurisdiction is doing.

The subrecipient agreement must include information about the how HOME funds will be used, including tasks to be performed, a schedule for completing the tasks, and a budget. This agreement must provide enough specificity so that the lead entity can monitor progress against specific interim milestones in the agreement. [See 24 CFR 92.504(c)(2)(i).] Without this specificity, performance problems are far more difficult to address.

In the event of performance problems or potential issues with a member jurisdiction, the lead entity should relay concerns to the member jurisdiction early in the process, work with member jurisdictions to solve problems, and provide or secure technical assistance as needed and appropriate. The lead entity should consider a range of actions that it might take to keep a subrecipient jurisdiction in compliance, and these actions should be included in the subrecipient agreement, and any other applicable written agreement, including:

- The lead entity should retain the authority to withhold any remaining undisbursed project or program funds for noncompliance with a consortium agreement or subrecipient agreement.
- The lead entity should specifically reserve the right to require a member jurisdiction or subrecipient to repay HOME funds for noncompliance with HOME requirements, particularly those related to maintaining the affordability of HOME-assisted housing. This is only prudent, since HUD holds the lead entity accountable for repayment of funds in the event the activities it administers fail to meet HOME requirements, or in the event that housing that is assisted with HOME funds fails to meet the affordability requirements.

- The lead entity should also reserve the right to withhold approvals of new funds, programs, or projects for any member jurisdiction that is not in compliance with HOME requirements.

Managing HOME Funds

The lead entity is responsible for seeing that HOME funds are spent in accordance with HOME requirements and in a way that is consistent with the consortium's Consolidated Plan and Annual Action Plan. Lead entities are also responsible for managing HOME funds to ensure that they are used appropriately and safeguarded against fraud and abuse. This responsibility starts with ensuring that environmental reviews are conducted prior to any commitment of HOME funds. The lead entity should have systems in place to commit funds to eligible projects, track project progress, and make timely payments to contractors and vendors. Generally the lead entity commits funds in the IDIS system, and draws down funds as appropriate, but these functions can be delegated to a member jurisdiction. In either case, the lead entity must track disbursements to make sure that HOME funds are spent within the timeframes required by HUD.

Prior to Funding Commitment

Under the HOME Program, completion of the environmental review process in accordance with 24 CFR Part 58 is mandatory before a PJ or any of its partners may take any physical action on a site, or make a commitment or expenditure of HOME or other HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. (Note, non-HUD funds include any other Federal, state, local, private or other funds.) Local HOME PJs and their partners may **not** commit HOME funds until HUD has approved the Request for Release of Funds and related certification (RROF) unless the activity has been determined exempt in accordance with 24 CFR 58.34 and 58.35(b).

For consortia, the lead entity is the Responsible Entity for the environmental review. The responsibility to conduct environmental reviews and make determinations **cannot** be assumed by a

subrecipient member jurisdiction. However, the member jurisdiction may assist the lead entity in gathering information used in completing the environmental review process.

For more information on the environmental review requirements, see:

HUD website on Part 58 at www.hud.gov/cpd/envregul.html, and

HUD Notice CPD-01-11, *Environmental Review and the HOME Investment Partnerships Program*, issued July 17, 2001.

Monitoring Commitment and Expenditure Timeframes

HOME rules require that funds be committed to projects in two years [24 CFR 92.500(d)(1)(B)]; reserved for housing that is owned, developed, or sponsored by CHDOS in two years [24 CFR 92.300(a) and 92.500(d)(1)(A)]; and expended in five years [24 CFR 92.500(d)(1)(c)]. When these deadlines are missed, the consortium's funds are subject to recapture by HUD. Therefore, consortia must have internal procedures and rules to assure that these deadlines are met. If member jurisdictions are expected to identify and commit funds to projects or CHDOs, then the subrecipient agreement should specify the deadlines for commitment or reservation that will give the consortium ample time to find alternative HOME-eligible activities in the event a member jurisdiction does not secure project commitment(s) in a timely manner. The lead entity should develop procedures for managing the funding deadlines, and monitor its subrecipients to see that they are making steady progress to meet these deadlines. For an example of such procedures, see Attachment 4, *Sample Procedures for Managing Expenditure Deadlines*.

Disbursing HOME Funds

HOME funds drawn from the U.S. Treasury account **must** be expended for eligible costs within fifteen days. [See 24 CFR 92.502(c)(2).] For many PJs, including many consortia, this deadline is met by using general fund money for expenditures, and then drawing down funds from U.S. Treasury to reimburse the general fund. For

consortia, it may be the consortium member that makes expenditures from its general fund in order to carry out HOME projects. The jurisdiction requests reimbursement of HOME funds from the lead entity. The lead entity then reviews the expenditure documentation, draws down the appropriate amount of HOME funds from the U.S. Treasury, and releases funds to the jurisdiction. This option requires either the lead entity or its subrecipient have access to working capital from its general fund. It has the advantage of providing the lead entity ample time to review payment requests and release funds.

Alternatively, the lead entity can establish a system whereby the subrecipient jurisdiction submits invoices for payment directly to the lead entity. This type of system is preferable for small municipalities that may not have the working capital required in a reimbursement system. However, this system requires the lead entity to work quickly to review payment requests, draw funds from the U.S. Treasury, and disburse funds to the vendor.

Regardless of which system is employed, the option should be identified in the consortium agreement or the subrecipient agreement.⁶ It is essential that the lead entity require that all requests for payment by a member jurisdiction be accompanied by documentation that describes the work to be completed, demonstrates that the work is in compliance with HOME requirements, and verifies that any required match has been contributed. Before making any payments or reimbursements out of HOME funds, the lead entity must ensure that all applicable HOME Program requirements have been met by the entity requesting the funds. Ideally, for construction activities, a representative of the lead entity will also physically inspect all work.

Tracking Match

As discussed in Chapter 3, HOME requires that PJs contribute match as a permanent contribution to affordable housing. (See 24 CFR 92.218.) Chapter 5 discusses some of decisions that a consortium must consider in order to see that its match obligations are met. This obligation applies to the consortium's HOME Program overall, and

HUD holds the lead entity accountable for meeting the consortium's match obligations. The consortium can choose to have member jurisdictions share in the burden of contributing match, but this does not relieve the lead entity of its obligation.

Match liability is incurred every time HOME funds subject to match are drawn down from the jurisdiction's HOME Investment Trust Fund Treasury account. The liability **must** be satisfied at the end of the Federal Fiscal Year (ending September 30) in which it occurred. The lead entity must track the match contributions for the consortium to be sure that its obligations have been met. To do this, the lead entity will need accurate and timely tracking systems so that it knows when the match obligation is incurred, and when it is met. A sample match log is provided at the HOME Program website at http://www.hud.gov/offices/cpd/affordable_housing/library/forms/index.cfm.

For more information about meeting the match requirements, see HUD Notice CPD 97-03, *HOME Program Match Guidance*, issued on March 27, 1997 and HUD Notice CPD 04-06, *Notice of Procedures for HOME Program - Match Reductions for Fiscal and Severe Fiscal Distress, and for Major Presidentially Declared Disasters Under the Stafford Act*, issued June 4, 2004.

Managing Program Income

The lead entity is responsible for tracking program income. Program income is the gross income received by the consortium generated from the use of HOME funds or matching contributions. Program income includes proceeds for the sale or long-term lease of property, income from rental properties, payments on loans, interest on program income, and other interest or return on investments of HOME funds. (See definition of program income at 24 CFR 92.2.)

A consortium must decide who retains program income and how it will be used-- the jurisdiction whose project generated the program income can retain it for subsequent activities to be carried out

by the jurisdiction, or it can be returned to the lead entity for use by the lead entity or another consortium member. Decisions related to the receipt, deposit, and expenditure of program income should be codified in the subrecipient agreement and any other applicable written agreements. This is discussed in more detail discussed in Chapter 5.

Regardless of who retains the program income, however, HUD always holds the lead entity responsible for **tracking** the receipt and use of program income. The lead entity must establish an effective method for tracking program income as it is generated and disbursed so that HOME requirements for the timely disbursement of program income are met. [See 24 CFR 92.503(a).] Specifically, the lead entity must monitor its program income funds to ensure that the program income is expended before additional HOME funds are drawn from the U.S. Treasury.

The lead entity should develop its own system for tracking program income. Whether the funds are physically returned to the lead entity for deposit into the local HOME account, or if the funds are retained by a member jurisdiction, the lead entity **must** have a system for knowing when program income has been generated, how much has been generated, where it is (local HOME account or member jurisdiction account), and when it is used. The lead entity should rely primarily on its own tracking system to account for its program income. This information is all subject to HUD review and monitoring.

In addition to its local tracking system, however, the lead entity must track its program income in IDIS so that HUD can also monitor the receipt and use of program income, and accurately report on projects funded with program income. Currently, the IDIS system does not have a program income module to automatically track program income receipts and draws. As a result, in IDIS, the lead entity should receipt program income **only** when it is also ready to draw funds for a HOME-eligible expense. In other words, the lead entity should receipt and draw the program income at the same time.

When to Track Program Income in IDIS

Scenario: The lead entity of ABC Consortium receives \$500/month as repayment of a HOME loan after the period of affordability has expired. These funds are considered program income. The lead entity deposits these funds in its local HOME Investment Trust Fund account. It maintains an accounting of these funds for its own records. As of the end of March, the lead entity's records showed that the consortium had \$2,500 of program income on hand. The consortium schedules settlement with a homeowner for the last week of May. It plans to make a HOME loan for \$20,000 for its homeowner rehabilitation program. In the first week of May, the lead entity will have \$3,000 in program income in its local account. It receipts these funds in IDIS and draws them in anticipation of the May settlement. In addition, it draws an additional \$17,000 in entitlement funds (EN) from IDIS.

To receipt program income, the lead entity must create a program income (PI) subfund in the IDIS system. The PI subfund needs to be created for each program year if the consortium wants to track its program income by program year/annual allocation as recommended by HUD. IDIS tracks the draws made from PI, but the draws are not a transfer of funds from the Treasury account because the funds remain in the local account.

Up to ten percent of a consortium's program income can be used for administrative costs, and up to five percent may be used for CHDO operating expenses. Program income used for these purposes must be for eligible administrative costs in accordance with 24 CFR 92.207 and eligible CHDO operating expenses, in accordance with 24 CFR 92.208. Program income that is used for administrative costs or CHDO operating expenses should **only** be tracked locally, however. These funds should not be receipted in IDIS at any time. If the consortium chooses to use program income for eligible administrative or CHDO operating costs, it should only receipt the balance of the funds that are used for eligible activity expenses. For instance, if the consortium chooses to use five percent of its program income for administrative costs, and none of its program income for CHDO operating expenses, then it

would locally track and account for the five percent, and receipt the balance in IDIS, or 95 percent of the funds. Further, it only receipts the balance of funds when it is ready to draw them for another eligible HOME activity.

Note, recaptured funds from homebuyer recapture notes, repayment funds from projects that did not meet the affordability requirements, and CHDO proceeds that a CHDO is allowed to retain are **not** program income and must be treated separately. Recapture and repayment funds are discussed below.

See HUD Notice CPD-97-09, *HOME Program Income, Recaptured Funds, Repayments, and CHDO Proceeds*, issued September 12, 1997 for further information on program income.

Contact the HUD Field Office for additional guidance on when and how to track program income in IDIS.

Managing Recaptured Funds

Lead entities must also track recaptured funds. Recaptured funds are funds generated by a homebuyer program that uses a recapture provision. There are no recaptured funds if the initial homebuyer resides in the property for the duration of the affordability period, or if the homebuyer program is administered with a resale provision. The recaptured funds are the funds that are repaid to the PJ upon the sale of the property during the period of affordability, in accordance with the recapture provisions in use by the PJ. [See 92.503(c).] Note, loan repayments, or other returns on investment in a homebuyer program are considered program income, not recaptured funds.

Recaptured funds are similar to program income in that they can be retained by the consortium or the subrecipient jurisdiction, but they are subject to slightly different rules. All recaptured funds must be used for HOME eligible activities. None can be used for administrative costs.

Recaptured funds are deposited in the PJ's local HOME account and **must** be used for the next eligible HOME project. The PJ must receipt recaptured funds in IDIS the same way it receipts

program income. That is, the funds are tracked locally, and when the consortium has an eligible HOME expense it receipts the funds in IDIS and draws them. Note, however, that the PJ is not entitled to a percentage of the recaptured funds for administrative and planning costs, or CHDO operating expenses. Once the amount subject to recapture is repaid during the affordability period, the project remains an eligible HOME project and the units and beneficiaries are counted as completions in IDIS. This is new guidance. At this writing, these projects are not to be cancelled, nor should draws be revised, because cancelling these project(s) in IDIS results in an under-representation of the HOME production data.

Managing HOME Repayments

Repayments are funds that the PJ repays to the HOME account because housing that was assisted with HOME funds fails to meet the affordability requirements, or a project that has received a HOME investment was terminated before completion. [See 24 CFR 92.503(b).] Repayments are made to whichever HOME account they were drawn from (that is, the local account or the Treasury account).

When HOME funds must be repaid to the PJ's U.S. Treasury account, the PJ can return funds in the form of a check or wire transfer of funds, as follows:

- Any sums greater than \$2,000 must be wired. Wired funds must be sent using Department of Treasury's Financial Communications System (TFCS). There are specific procedures that must be followed to effectuate a wire transfer of funds. The consortium should consult with the HUD Field Office for guidance.
- Remittance to the account for less than \$2,000 can be sent by check. The check should be sent to HUD's Miscellaneous Lockbox at Bank of America, Attn: HUD CPD/HOME IDIS, P.O. Box 27703, Atlanta, GA 30384-7303. The memo field of the check should clearly indicate the consortium's Grant Number and Account Number.

Monitoring and Long-Term Compliance

The lead entity is responsible for managing the day-to-day operations of the consortium's HOME Program activities and ensuring that HOME funds are used in accordance with HOME requirements. [See 24 CFR 92.504(a) for a description of the PJ's responsibilities.] Implementation of HOME Program activities by other entities, including other members, does not relieve the lead entity of this responsibility. Consequently, the lead entity or its member jurisdictions must monitor HOME-funded programs and projects, from inception through the end of each project's affordability period. For rental housing, this monitoring must include ongoing annual reports and periodic on-site file and unit inspections. [See 24 CFR 92.504(d).]

Since HUD holds the lead entity accountable for compliance, it is generally most effective for the lead entity to rely on its own staff to conduct monitoring. The lead entity may delegate monitoring, or portions of monitoring, to consortium members, or even contract out its monitoring function. However, the lead entity should only delegate or contract out monitoring functions when it has confidence in the third party monitor and its monitoring processes and systems. Even then, the lead entity should carefully review monitoring reports and follow up on any findings, and periodically monitor the third party's monitoring system. The lead entity must always retain the right to access member files and records and retain its own documentation of compliance.

The lead entity must retain sufficient documentation to demonstrate to a potential HUD monitor that all of the consortium's programs and projects are compliant with HOME rules. See 24 CFR 92.508 for the record-keeping requirements under the HOME Program. For more information on monitoring, see:

- HOME Program website, *HOME Monitoring Tools*, at <http://www.hud.gov/offices/cpd/affordablehousing/raining/checkup/performance/monitoringtools.cfm>.

- *Monitoring HOME Program Performance*, HUD-2030-CPD, issued October 2000. This guide is available through Community Connections at 1-800-998-9999 or online at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.⁷

For new lead entities or those unfamiliar with monitoring, HUD offers a monitoring training course entitled, *Monitoring HOME: Ensuring Program Compliance*. For information about scheduled training sessions, see <http://www.icfboston.com/icfboston/bcd/cpd/bcdcpd.nsf/webpages/MonitoringHOME1ad.html> or contact the local HUD Field Office.

Compliance Monitoring During Implementation

HUD regulations require the PJ to monitor all subrecipients, project developers and owners, and contractors at least annually during implementation of the project. [See 24 CFR 92.504(a).] The lead agency may assign the member jurisdictions to oversee implementation as discussed above, except that the lead agency **must** oversee the member subrecipients, and must ensure that their monitoring meets regulatory requirements.

Long-term Compliance

The long-term nature of some HOME requirements poses challenges for many PJs, but these challenges are magnified for consortia. Rental and homeownership housing that is acquired, developed, or constructed with HOME funds must remain affordable to income-eligible households for some period of time and the lead entity must ensure that there is compliance throughout the affordability period of five to twenty years.

For rental housing developed with HOME funds, lead entities remain responsible for periodic monitoring during the period of affordability. The lead entity must monitor all HOME-funded rental projects on at least an annual basis to verify that the projects remain in compliance with HOME requirements related to tenant income, rent restrictions, unit mix and occupancy, lease

provisions, and affirmative marketing. On-site inspections of units must also be made on a periodic basis to ensure that property standards continue to be met. While the lead entity can delegate the day-to-day management of these projects, it retains ultimate accountability of the project and therefore must maintain its own evidence of rental project compliance.

Homeownership housing also carries HOME requirements during an affordability period. Whether the consortium enforces income targeting and affordability requirements through a resale provision or a recapture provision, the lead entity must ensure that the terms of those provisions are met. [See 24 CFR 92.254.] If the required deed restriction or covenant running with the land is properly executed and recorded, the resale or recapture provisions should be somewhat self-enforcing. However, there should also be some procedure for checking for compliance with the ongoing principal residency requirement, such as a “do not forward” letter, phone call, or other intermittent method to follow up.

The lead entity must consider how it will monitor these projects in the event of a sale to ensure that the terms established by the consortium are met. If the consortium uses a recapture provision in its homeownership projects, the lead entity must ensure that the appropriate amount of HOME funds is recaptured, particularly in the event net proceeds are insufficient to recover the full HOME investment and the buyer’s investment. See 24 CFR 92.254(a)(5)(ii) for a fuller discussion of these requirements.

The lead entity must also ensure that these funds are invested in additional HOME-eligible activities whether they are retained by the member jurisdiction or returned to the lead entity for deposit in the U.S. Treasury account. The lead entity must also consider what happens and how it will intervene in the event a property forecloses during the affordability period. In the event of a foreclosure, HUD permits the affordability restrictions to be dropped for the purposes of clearing title to the property. However, it does not relieve the PJ of the responsibility of providing affordability in the unit.

As previously discussed in this chapter, if a project goes out of compliance during the period of affordability, and other corrective action is insufficient, HUD may require the lead entity to repay the HOME funds for the project. Lead

entities should consider how they will keep their subrecipients responsible for this ongoing compliance, and specify these conditions in their subrecipient agreements with members.

Team Monitoring to Ensure Compliance

Developing effective monitoring systems can be a challenging endeavor for any HOME PJ. For HOME consortia, however, this task is made more daunting by the fact that the lead entity needs to monitor both the member jurisdictions and the consortium's subrecipients and developers. **Maricopa County, AZ**, the lead entity for the eight-member Maricopa HOME Consortium, has met this challenge by developing an innovative two-tiered monitoring system: the Consortium uses peer monitoring review to monitor member activities; and standard monitoring procedures to monitor its other housing partners.

In addition to providing the lead entity necessary feedback to ensure HOME compliance, Maricopa's monitoring approach has added benefits: it promotes cooperation among Consortium members, CHDOs, and subrecipients; it results in more efficient use of administrative funds; it eliminates duplicate monitoring activities; and it ensures a more consistent approach to monitoring throughout the County. All member jurisdictions participate in the process, and reap the benefits—opportunities for networking, education, and technical assistance among participants.

Monitoring teams generally consist of at least one program compliance specialist and at least one financial specialist. For peer review, each Consortium member is reviewed annually by a team consisting of rotating personnel from the other members of the Consortium. Subrecipients and CHDOs are also monitored annually, typically by the Consortium member(s) who is responsible for administering the specific HOME agreement with that entity. Often, when Consortium members use the same CHDOs or subrecipients for different activities in their respective jurisdictions, the members work together to monitor these partners, for efficiency and consistency in the monitoring process.

The monitoring teams use experienced HOME staff from the member jurisdictions. If there is new staff or a new member jurisdiction, they join the team as an extra member. This provides them training in both the program and in the monitoring process.

Peer reviews and monitoring visits are used to generate findings, concerns, and suggestions for improvements to program/financial systems. The monitoring team documents the issues identified during the monitoring visit in a letter to the entity being monitored. The results are also shared in summary fashion with all member jurisdictions. This monitoring approach provides for an atmosphere of continuous improvement within the Consortium. Member jurisdictions benefit from using the monitoring process as a learning opportunity to find best practices and more effective program tools (e.g., procedures, applications, etc.).

The Maricopa HOME Consortium is made up of eight member jurisdictions including Maricopa County and the cities/town of Chandler, Gilbert, Glendale, Mesa, Peoria, Scottsdale, and Tempe. On July 1, 2006, the cities of Avondale and Surprise will also join the Consortium. Maricopa County is lead agency of the Consortium, and takes the lead in coordinating monitoring efforts.

Record-keeping and Reporting

A lead entity needs strong systems for record-keeping and reporting, and must require that its subrecipient jurisdictions have the same. [See 24 CFR 92.508.] Without accurate record-keeping and reporting, it is difficult to enforce program rules and to demonstrate to HUD, as well as other local stakeholders, that the job was well done and the public funds were invested for a sound and appropriate purpose. These records also help managers make day-to-day decisions that enhance program performance and improve program delivery systems.

Record-keeping

As discussed in Chapter 3, consortia must establish and maintain sufficient records to document compliance with all HOME Program rules and related Federal requirements. In the subrecipient agreement, the lead entity must specify those records that the member jurisdiction must retain. [See 24 CFR 92.504(c)(2).] Some of the key records are listed here:

- The lead entity should retain the following records:
 - **PJ designation** (i.e., the consortium agreement and records documenting where the consortium secured funds to fill an allocation gap to reach threshold for participating in HOME, if applicable);
 - **Program records** that describe and codify the consortium's decisions about how it will implement HOME Program activities;
 - **Financial records** that describe the source and application of funds and document transactions of the U.S. Treasury and local HOME accounts;
 - **Program administration records** to demonstrate compliance with program-wide rules, such as written agreements, CHDO set-aside requirement, uniform administrative requirements, inspections, and monitoring; and

- **Records that reflect any policies or decisions adopted by the consortium** as they relate to HOME Program requirements (such as match or CHDO set-asides), and the other Federal requirements should be retained by the lead entity (such as an affirmative marketing policy or a relocation policy).
- The lead entity should determine, and specify in the subrecipient agreement, which entity/jurisdiction should retain the following types of records that relate to program activity. In general, these records should be retained by the entity that generates the documentation in the course of implementing HOME activities. If these records are retained by the subrecipient, the lead entity **must** monitor the subrecipient to ensure that the records are, in fact, retained.
 - **Project records** that identify the specific HOME-funded projects that have been funded. Project records **must** include all documentation needed to demonstrate that project requirements have been met. For example, this might include documentation confirming income verifications to demonstrate that all beneficiaries are income-eligible, or rent determinations to demonstrate that HOME-assisted units are affordable. For a complete listing of the elements included in project files, by activity type, see the model program guide *Monitoring HOME Program Performance*, HUD-2030-CPD, issued October, 2000. This guide is available from Community Connections at 1-800-998-9999, or on the HOME website, *HOME Model Program Guides*, at <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.
 - **CHDO records** that include a determination of CHDO eligibility, written agreement for reservation of CHDO funds, use of CHDO funds and eligibility to qualify as part of set-aside, or use of operating funds.
 - **Records to document compliance with other Federal requirements** that are

specific to projects or program activities. These will include records related to affirmative marketing and minority and women business outreach; compliance with rules related to acquisition, relocation, displacement, and replacement of housing; environmental review; labor standards; lead-based paint activities; conflict of interest provisions; debarment and suspension.

- The subrecipient should retain program administration records that document the subrecipient's compliance with written agreements and uniform administrative requirements.

HUD monitoring checklists identify specific documents and records that must be retained by a PJ (including a consortium) to demonstrate compliance with program, project, general administrative, and other Federal requirements. These checklists are available online at <http://www.hud.gov/offices/cpd/affordablehousing/training/checkup/performance/monitoringtools.cfm>.

Reporting

In addition to keeping records, the lead entity is responsible to report to HUD on the activities of the consortia. Since the consortium's activities may be carried out by the lead entity **and** a number of different subrecipients, the lead entity will need to establish reporting systems for its subrecipients to ensure that it has timely and accurate information about the progress of projects and programs.

Through IDIS, the lead entity reports to HUD on an ongoing basis, throughout project implementation until project completion. HUD uses IDIS to report the progress of HOME nationally, and to assess how well HOME PJs are undertaking their activities. IDIS generates a number of reports for PJs to help them identify projects in the system that may be lagging behind schedule; track commitment and expenditure rates; assess the status of CHDO reservation of funds, and more. In addition, the HOME website, *HOME Reports*, provides quarterly reports on the status of the HOME Program by PJ in the

form of production reports and "SNAPSHOTS" of program accomplishments. The SNAPSHOTS have the added value of enabling the PJ to assess its progress relative to other similarly situated PJs. These are available at <http://www.hud.gov/offices/cpd/affordablehousing/reports/index.cfm>. These reports provide valuable information for PJs in assessing their own program progress. To use these tools to the maximum benefit, it is very important that PJs ensure that the data entered into IDIS is complete and accurate.

Many lead entities retain the responsibility for entering data into IDIS for their subrecipients as a key means for ensuring that the subrecipients provide information on the progress of projects. In such a system, the member jurisdiction would submit a progress report of its project activities along with its requests for funding draws from IDIS. These reports would include information on program income received and/or expended; match liability incurred and match contributions made. In the event the progress is not in accordance with the timeline established with the lead entity, the lead entity is in a position to intervene immediately to remedy the situation.

Most PJs also use set-up and completion forms as part of processing. These forms are available in Appendix F of the IDIS reference manual, available on the IDIS website, *IDIS Reference Manual*, at: <http://www.hud.gov/offices/cpd/systems/idis/library/refmanual/index.cfm>.

On an annual basis, the lead entity must also report to HUD on a number of specific elements related to the administration and accomplishments of the consortium's HOME activities. The Consolidated Annual Performance Report (Form HUD-40107), also known as the "CAPER," includes the following components:

- Narrative and self-assessment of program progress;
- Program income;
- HOME match report;

- Minority and women business enterprise participation;
- Minority owners of rental property; and
- Relocation and real property acquisition.

The lead entity is only able to meet these reporting requirements if those carrying out project activities report to the lead entity. The written

agreement should specify how often the lead entity should receive this information. It is highly recommended that the lead entity request this information from its partners on a quarterly basis. This will give the lead entity ample time to review and consolidate the information and identify and address any related problems **prior** to submitting it to HUD.

Communicating, Reporting, and Performance Measurement

The lead entity of the Salt Lake County HOME Consortium, **Salt Lake County, UT**, has fostered strong lines of communication among its member jurisdictions and other funded entities. On a regular basis (often weekly but at least monthly), developers and others convene at the county's offices to brief county staff on the status of projects, funding concerns, and other issues. The county staff encourages collaboration and partnership, stemming from the collaborative culture of the small community of Salt Lake County, where generally it is agreed that "working together solves more than working apart."

The lead entity also requires monthly reports from every funded entity such as member jurisdictions, CHDOs, for-profit developers, and other funded entities. The monthly report consists of information on the status of the project during development, occupancy status upon completion, and beneficiary information during lease up.

The lead entity has encouraged dialogue among Consortium members to articulate how it defines "success" in each project or program. Defining success has been an effective exercise in helping the Consortium think through its intended program outcomes. This is a part of Salt Lake County's overall performance measurement initiative, targeted at all housing and service providers to determine a common set of performance measurement criteria. The Consortium's efforts in this area are likely to be of benefit as it implements the new CPD Performance Measurement System.

While the lead entity plays a strong role in the operations of the Consortium, the Consortium as a whole retains certain types of policy and planning decision-making responsibilities. For instance, the Salt Lake County HOME Consortium has developed a housing committee that reviews applications that are submitted to the county for HOME funding. The committee represents a broad array of practitioners: member jurisdictions, realtors, financial experts, and others with experience in affordable housing development. A committee with such a wide range of expertise and perspectives has been important to the Consortium's success in participating in a regional planning effort for affordable housing in Salt Lake County.

Communicating with Consortium Members

In a well-functioning consortium, the lead entity retains an accurate picture of its members' activities. This can be achieved through formal or informal means—ideally, it is done with a combination of both. Formal communication might include regular reporting activities like those described above, or specified notification processes (such as when the lead entity notifies members of their right to withdraw at the end of the qualification period, described in Chapter 2).

The quarterly production reports and SNAPSHOTs give the lead agency an opportunity to distribute this information and engage members in a discussion of how to correct or update information reported into IDIS and how to improve overall performance. These reports should not be viewed only by the lead agency.

The lead entity also gains valuable information through informal means of communication, as well. A considerable amount of information about projects, progress, and problems can be gleaned from regular meeting updates, or simple e-mail exchanges. It is recommended that lead entities encourage an informal exchange of information as often as possible, and impose a more formal reporting structure on its members on at least a quarterly basis. Reporting should be done more frequently as the scale and complexity of projects increases.

To some extent, the communication among consortium members is dictated by the organizational structure of the consortium. If a consortium operates with a board or committee structure, then communications can be facilitated through regular meetings of that board or committee. Consideration of how the structure influences or enhances communication should be among the considerations when designing the consortium structure.

Managing Organizational Growth through Effective Communication

As an entity made up of many distinct jurisdictions, consortia must organize in a way that ensures effective communication and reporting. As the number of jurisdictions in a consortium increase, the more important this function becomes. The **Newton HOME Consortium** in Massachusetts has had to work consciously to ensure an effective communications and reporting system. It started as a four-member consortium and quickly grew to its current membership of eight jurisdictions. Four additional jurisdictions plan to join the Consortium as of July 2006.

The lead entity, the City of Newton, MA, has consciously organized some formal and informal reporting structures to develop an environment of collegiality, and to ensure that members receive and provide needed information so that the Consortium runs smoothly. All member jurisdictions participate in a Consortium Council meeting every two months. These meetings serve many purposes. The primary goal of the meetings is to share ideas and best practices within the membership. The lead entity and other members are able to share policy and administrative matters, such as any new or revised HOME Program information. In addition, jurisdictions provide project updates and progress reports for existing activities of the Consortium. One of the most useful features of the meetings, however, is as an opportunity to showcase recently-completed HOME activities. While any completed project deserves celebration, the presenters are asked to emphasize not only their successes, but information about how and why the program was designed as it was, and detailed information about development challenges and how they were resolved.

This emphasis on sharing information about problem-solving has led to a collaborative spirit among Consortium members. As a group, the Consortium has found a number of creative

solutions to shared problems. For instance, as a team, the Consortium members help each other meet the lead entity's requirement that Consortium members must have project that is ready-to-go within one year of a HOME annual allocation, in order to get HOME funds from that year's allocation. This requirement is important to ensure that the Consortium as a whole is on track to meeting HOME Program commitment and expenditure deadlines. Informally, the members work together and share information about delays (such as site control issues or environmental concerns) so that they can identify and support those projects that are truly ready-to-go. Members have even gone so far as to lend one another funds to meet short-term cash flow crises to ensure projects keep moving, and to ensure that commitment and/or CHDO reservation requirements are met. This collaboration is essential to make the Consortium work successfully in committing and spending its HOME funds.

To date, the member jurisdictions of the Newton Consortium include: Bedford, Belmont, Brookline, Framingham, Lexington, Lincoln, Natick, Needham, Newton, Sudbury, Waltham, and Watertown.

Acting as a Liaison with HUD

HUD considers the lead entity as the PJ. HUD conducts all communications with the consortium through the lead entity, and the lead entity is responsible to HUD for all submissions to HUD, distribution of HOME materials, and the enforcement of all HOME requirements.

The lead entity is responsible for all submissions to, and communications with, HUD. This includes all required submissions such as the Conplan (Strategic Plan and Annual Action Plan) and the CAPER.

The lead entity is responsible for tracking all HOME communications and guidance, and for providing the appropriate information to all member jurisdictions, other subrecipients, and developers. This includes distribution of the annual HOME Program limits (e.g., incomes, rents, and price/value), as well as any new notices, guidance, or other HOME documents that are issued. The lead entity should monitor the HOME website at <http://www.hud.gov/homeprogram/> to stay up-to-date on policy and operational guidance that is issued. A convenient way to keep track of changing requirements, limits, and guidance is by subscription to the HOME mailing list, which can be accessed at the HOME website under the tabbed heading called "Contact Us," found on the **right-hand** side of the page. (Note that the "Contact Us" tab on the left-hand side of

the page accesses HUD-wide information and departments.)

When HUD monitors the consortium's activities and programs, it schedules and conducts the monitoring through the consortium's lead entity and its offices. By reviewing HUD's Community Planning and Development monitoring guide, the lead entity can become familiar with the elements and required provisions that HUD will review. This guide is available at <http://www.hud.gov/offices/cpd/library/monitoring/index.cfm>. Chapter 7 of the guide contains the checklists that HUD uses to monitor a HOME Program. HUD will issue any findings to the lead entity, and hold the lead entity responsible for responses to findings.

In addition, the lead entity is responsible for providing its member jurisdictions with any technical assistance that they might need in order to participate in HOME. HUD also offers help in this regard. At this writing, HUD Field Offices each have an allocation of technical assistance resources that are available to PJs and their CHDOs (or nonprofits interested in becoming CHDOs) through Community Development Technical Assistance (CDTA).

Lead Entity Responsibilities After Member Withdrawal or Termination of a Consortium

Chapter 2 discusses the withdrawal of a member of the consortium at the end of consortium agreement term. The lead entity is responsible for executing a closeout agreement to ensure that projects started within the departing jurisdiction continue to meet all HOME requirements throughout implementation as well as any applicable period of affordability. If a member entity withdraws from the consortium while projects are still open or under compliance agreements, the lead entity should consider provisions in the closeout agreement addressing the following:

- **Identification of active HOME projects.** The agreement should identify any uncompleted project(s) and the responsibilities of the withdrawing jurisdiction and the lead entity for ensuring completion of the project(s) in compliance with HOME requirements. The agreement should also identify any HOME projects that are completed but are still under compliance agreements.
- **Program income.** Once a member jurisdiction withdraws from the consortium, any program income derived from consortium activities undertaken by or within that jurisdiction continues to be the consortium's program income. The closeout agreement should provide for the return of any program income the jurisdiction may receive after closeout. These funds continue to be subject to HOME rules and oversight by the consortium. [See 24 CFR 92.503(a).] Program income is also discussed earlier in this chapter.
- **Repayments.** Any HOME funds invested in housing that does not meet HOME affordability requirements during the affordability period is terminated before completion, lost as affordable housing through foreclosure or deed in lieu of foreclosure, or determined to be ineligible **must** be repaid by the PJ. The lead entity is

directly responsible for repayments to HUD, but it may wish to ensure that the closeout agreement allows it to collect unrecovered funds from a departing member jurisdiction. [See 24 CFR 92.503(b).] Repayments are also discussed earlier in this chapter.

- **Recaptured funds.** The closeout agreement should provide that recaptured funds received from a homebuyer program during the period of affordability should be deposited into the local HOME Investment Trust Fund account, although the agreement could permit a member that no longer participates in the consortium to retain the recaptured funds as a HOME subrecipient, subject to all HOME rules and oversight by the lead entity for the expenditure of the recaptured funds. [See 24 CFR 92.503(c).] Recaptured funds are also discussed earlier in this chapter.
- **Records retention and disposition.** Even upon dissolution of the consortium, the lead entity is responsible for seeing that HOME's record-keeping requirements are met, as discussed earlier in this chapter.
- **Monitoring.** The lead entity has continuing monitoring responsibilities during the period of affordability for all activities funded by the consortium, even after a member withdraws. The closeout agreement should ensure project access to the lead entity and the cooperation of the withdrawing member in enforcing monitoring and compliance.

Chapter 2 discusses the disbanding of a consortium. As noted, the consortium cannot disband until all funds awarded under the consortium agreement have been expended. However, after the consortium has been disbanded, HUD will continue to hold the lead entity responsible for monitoring and enforcement for all projects for the life of the minimum period of affordability. The requirements for project monitoring, program income, repayment, and recapture apply as noted above.

Chapter 5:

Critical Decisions for Consortium Operations

This chapter highlights the key operational decisions that a consortium must make to function successfully. A new consortium should make these decisions before executing a consortium agreement. Existing consortia can gain from this chapter by using it to assess their current systems and operations and identify which of these critical decisions they want to revisit or change.

Introduction

As indicated in the previous chapters of this guide, all HOME PJs are subject to a wide range of HOME Program requirements, such as affordability, income eligibility, and unit quality. The PJ's responsibilities do not end with compliance, however. It must also ensure that its programs are well managed and successful in meeting the needs of low-income households.

In state and locality-based PJs, HOME funds are allocated to a single recipient agency. This agency distributes funds, manages the program, and ensures regulatory compliance. In implementing its HOME Program activities, the agency's executive staff is able to make operational decisions about how the HOME Program funds will be managed and how projects and activities will be funded. Consortia, however, must discuss and negotiate many of these operational decisions to take into consideration each member jurisdiction's community needs, resources, and priorities.

Both new and existing consortia must make a number of decisions regarding their operations. For purposes of this discussion, the operational decisions have been broken down into six key areas, as indicated in Exhibit 5-1.

At the first decision point, the consortium members must choose an organizational structure

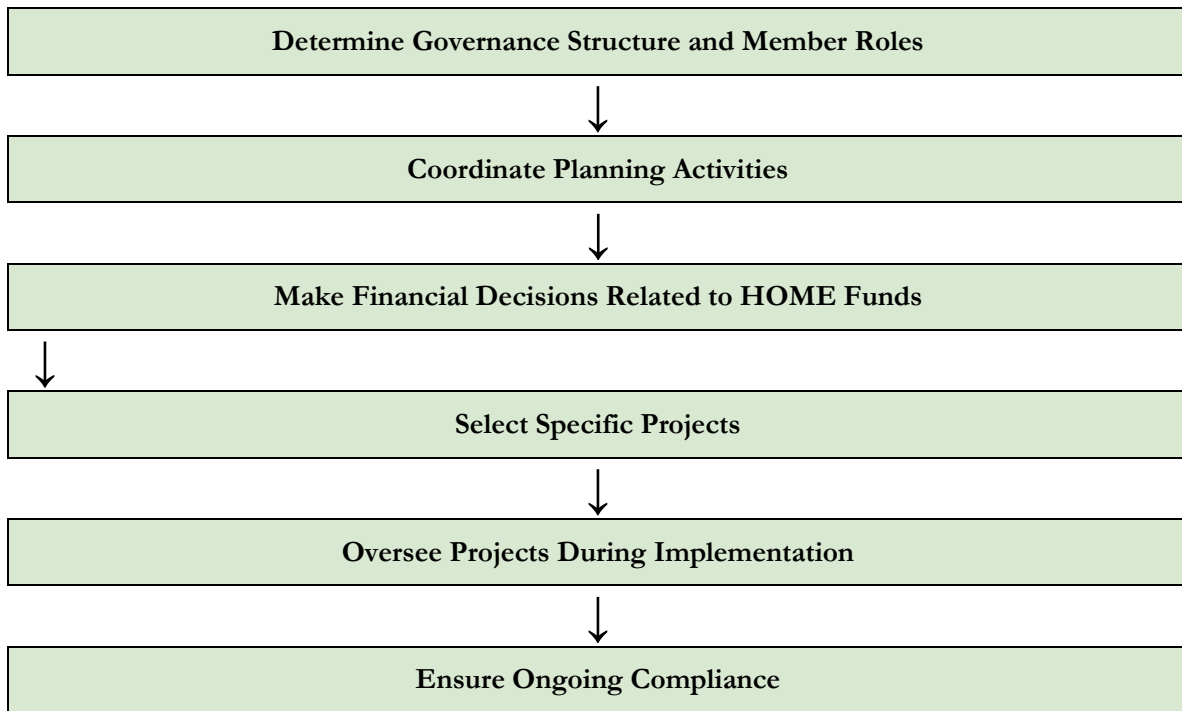
for the consortium and determine which organization will act as the lead entity. This process includes determining the roles of each member and the means of communication between the members.

The consortium must also decide how it will coordinate its planning efforts and the roles that individual members will play in the planning process needed to develop the required Consolidated Plan. The process of collecting the necessary data and citizen input can be significantly more complex for a consortium than other PJs because of the need to collect and analyze information across jurisdictions. As part of the planning process, and on an annual basis, the consortium must make programmatic choices about how it will invest its HOME funds, and how it will distribute funds among its members.

The consortium must decide how it will meet certain financial requirements, related to administrative funds, the CHDO set-aside, program income, and match.

The consortium will also need a process for soliciting, reviewing, and selecting specific projects. This process may be centralized in the lead entity or other single agency or it may be decentralized and shared among jurisdictions, but in either case, it must ensure that each project is eligible and within the spirit of the consortium's Conplan.

Exhibit 5-1: Operational Decisions Framework



The consortium must decide who will oversee project implementation. The lead entity, individual members, contractors, nonprofit organizations, and other partners may all play a role in this oversight; however, ultimately, they must be responsible to the lead entity and to the overall program goals and rules. Consequently, the consortium must establish expectations for program implementation. These decisions must be codified in subrecipient agreements.

Finally, the consortium needs to make operational decisions related to how it will ensure compliance over the long-term. This includes making choices about who will conduct compliance and monitoring tasks such as rental unit inspections and tracking of resale/recapture provisions. If the consortium or its members act as a lender, the consortium will need to decide how loan servicing will be conducted. Finally, consortia will need to develop procedures around responsibilities for reporting and record-keeping.

The following sections of this chapter discuss each of these key decision points and some possible models for approaching these choices.

The consortium’s approach to key operational and strategic decisions should be reflected in its Conplan, and should also be codified in the consortium agreement.

Determine Governance Structure and Member Roles

Ideally, a HOME consortium acts as a unified body using HOME funds in a coordinated effort to address an area’s housing needs. One of the most important issues for the consortium is to determine how its key decisions will be made. Consortia have used a variety of models to reach this end:

- The consortium establishes a governing board or board of directors to make all or most of the key decisions on behalf of the consortium;
- The consortium empowers the lead entity to make all or most of the key decisions on behalf of the consortium; or
- The consortium is governed by a combination approach. Typically, this model empowers

the lead entity with the authority to make most operational decisions, with a governing board empowered to make funding allocation decisions, or a limited number of other key operational decisions.

Governing Board with Far-reaching Authority

The use of a governing board with primary authority to address program design and implementation issues throughout the consortia jurisdictions can be an effective method for jurisdictions of generally equal size, authority, and capacity. This type of governing structure empowers each jurisdiction equally. By approaching key decisions as a team, the consortium is in a reasonably good position to stay focused on the regional housing needs, rather than the specific needs of any one jurisdiction over another.

From an implementation perspective, however, there are some challenges to this approach. Operationally, it is difficult to make timely decisions through a board that meets only periodically. Further, it will be important for the governing board to consider that some issues may arise that divide the board, and a mechanism for resolving difficult issues should be in place. For the lead entity, it may be difficult to relinquish considerable control to a governing board when HUD holds the lead entity itself accountable for compliance with HOME rules. Finally, the consortium will need to address the question of who best represents the interests of the group, and what combination of these interests should be reflected in the governing board's membership—is it staff, elected officials, citizens or private business interests, or some combination of these? For each jurisdiction, the answer might vary.

Lead Entity with Far-reaching Authority

For some consortia, empowering the lead entity to make most key decisions on behalf of the consortium is a logical decision. For consortia where one jurisdiction is larger, has more technical capacity, and has organized information and record-keeping systems in place, using the capability of the lead entity is an effective option.

The disadvantages of a powerful governing board are the key advantages of using the lead entity as the key decision-maker for a consortium. By consolidating the power and authority of the consortium within one entity, decisions can be made in a timely manner, the lead entity can enforce its written agreements to ensure compliance with appropriate authority, and while not eliminated completely, the likelihood of a division on the board over operational issues is minimized.

Shared Authority Between a Governing Board and Lead Entity

For some consortia, it makes sense to establish a governing board that makes key decisions about HOME activities and specific funding allocations, while enabling the lead entity to retain authority to make decisions about other key operational issues. In this way, the governing board can control the impact of the HOME funds on the region, without holding up day-to-day decision-making, reporting, and financial management. Sharing authority can be effective when there is a range of capabilities represented by the jurisdictions in the consortium. This option is also particularly effective when the governing board has a regional perspective on the housing issues and needs; it can be more difficult when each jurisdiction comes to the group with strictly a locally-based perspective.

Sharing authority requires more planning and thought in the development stage of forming a consortium, in order to foresee the types of issues that might arise and determine how they will be addressed.

Governance Questions

Many consortia will fit one of the described models, but for any group of jurisdictions, there may be any number of ways to share responsibility that will be influenced by the technical and leadership capacity of various members, the housing needs the group chooses to address, and the history and existing relationships of the members. Regardless of the specific structure the consortium chooses to follow, it should consciously address several key questions:

- What are the distinct roles of each different member?
 - Who coordinates the consortium’s planning activities and what are the responsibilities of each member?
 - What are each member’s responsibilities with regard to HOME administrative funds, match, CHDO set-aside, and program income?
 - Who participates in project selection decisions?
 - Who participates in project implementation and in what capacity?
 - How is long-term compliance achieved?
- The remaining sections discuss these questions and their implications.

Consortia Governance Varies Around the Country

HOME consortia governance varies among jurisdictions due to staff capacity, program experience (typically prior HOME and CDBG administration), and decision-making across a range of jurisdictions.

Often, consortia have a strong local government with prior experience that is able to take on the role of lead entity; but other consortia rely upon different entities to function as the lead entity or administer part of their responsibility. Consortia draw from a variety of entities to meet this purpose: regional planning commissions, councils of government, nonprofit organizations such as development districts who function as subrecipients, or for-profit consulting firms. Regardless of the type of entity, the consortium must identify its best source of expertise and experience in order to ensure its HOME requirements are met.

Consortia must then adopt a model of governance that is compatible with the group’s expertise, experience, and administrative or political style. These consortia exemplify the range of choices available:

- **Strong lead entity.** Many consortia use a strong lead entity approach to governance. For instance, the **City of Asheville, NC** is the lead entity for the Asheville HOME Consortium, and it carries out all oversight of the Consortium’s activities. Member jurisdictions are able to apply for and receive HOME funds from the Consortium to carry out specific HOME activities in their jurisdictions. The lead entity provides technical assistance and oversight to be sure these activities are carried out appropriately. The City of Asheville was the community with the most experience in managing housing and community development programs prior to establishing the HOME Consortium, so its designation as lead entity was a logical step.
- **Governing body.** **Maricopa County, AZ HOME Consortium** has a governing body that meets monthly to make decisions on funding and to share information on projects. Communication is highly important during the monthly meeting process. Consortium members share certain administrative responsibilities, such as tracking match and program income, monitoring funding partners such as CHDOs and subrecipients, and administering their own programs funded by the governing body. The lead entity, Maricopa County, is responsible for preparing the Consolidated Plan, data entry into IDIS, and overall financial management of the HOME activities. Consortium governance by a governing body of relatively equal and similarly situated entities, with shared administrative responsibilities among members can be successful, as Maricopa County illustrates.
- **Subrecipient or contractor.** A Council of Governments (COG) administers HOME program activities on behalf of the **Lenoir HOME Consortium**. The COG is a contractor of the City of Lenoir, the lead entity. The Consortium chose the COG because

it had administered state HOME activities previously and also had experience in CDBG and economic development administration (EDA) programs. Currently, the COG has 36 contracts with small cities in the area that participate in the state's program. Also, the COG has operated successful homeownership programs and has developed relationships with productive neighborhood-based nonprofit organizations. The Consortium's member jurisdictions include 24 cities and four counties which represent a largely rural area. The City of Lenoir manages the Consortium's finances, and the COG administers all other aspects of the program.

Coordinate Planning Efforts

To focus the PJ's approach to affordable housing, HOME requires a Conplan. As discussed in Chapter 3, the Conplan explains how the consortium will use its HOME, Community Development Block Grant (CDBG), and other Federal housing and development funds. The document serves as part of the consortium's application to HUD to become a HOME PJ and articulates the consortium's strategy for affordable housing. The plan's development helps the consortium determine its needs and priorities and serves as the basis for decisions about the projects and activities to fund. Every HOME PJ must develop a Conplan but consortia face special challenges in this regard because they need to collect information across jurisdictions and develop a broad strategy that meets more diverse needs.

In its Conplan, the consortium must address the housing needs and goals for the entire geographic area that it covers. Each CDBG entitlement jurisdiction can submit its own non-housing plan, but the housing plan **must** be consolidated for the consortium. Generally, the lead entity takes the lead in preparing the consortium's Conplan, but it needs support from member jurisdictions to provide data and assist in the citizen participation process. Specifically, the consortium should consider the following issues, when it decides how to organize its planning efforts:

- **Relationship with other Conplans.** The Conplan covers HOME, CDBG, HOPWA, and ESG. While the consortium receives HOME funds jointly, individual jurisdictions may receive other funds individually and thus have their own Conplan requirements. The consortium must determine how to

consolidate all housing program planning into one Conplan for the consortium.

- **Citizen participation.** The Conplan process requires citizen participation in the form of community meetings and public comment periods. The consortium **must**, therefore, have a citizen participation plan to ensure that community participation takes place and involves citizens from member jurisdictions. The consortium may rely on individual members to conduct citizen meetings or the consortium may choose to have one member or agency responsible for the entire citizen participation process.
- **Data collection and analysis.** The Conplan requires a Housing and Homeless Needs Assessment as well as a Housing Market Analysis. These studies must describe these needs and conditions for all individual communities that are members of the consortium. The consortium may ask individual jurisdictions to supply data or it may engage one member, or perhaps a contractor, to conduct a consortium-wide analysis.
- **Action Plan.** The Action Plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan. The Conplan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.
- **Conplan timeline.** For a new consortium or PJ, the Conplan is due to HUD 90 days after providing HUD the notice of intent to become a PJ. The 90-day deadline can be particularly challenging to consortia, which

have to collect housing needs and market data and obtain citizen input across multiple jurisdictions. The consortium, should therefore, develop a strong understanding among members about the process and each member's role in providing necessary information. As discussed in Chapter 3, the consortium's timeline for developing the plan may in fact begin prior to the submission of the notice of intent.

In making decisions on how to complete its Conplan, the consortium should keep in mind the diversity of consortium jurisdictions and their housing markets, their past experience with planning activities, and its own need for consolidated planning. The goal is to implement an efficient and inclusive process that provides a useful plan.

Make Financial Decisions Related to HOME Funds

Choosing how to invest HOME funds is the most important decision any PJ makes. Careful investments of HOME funds result in high levels of production to address housing needs efficiently and effectively. The Conplan process helps the consortium identify the key types of activities that it will support, but there are a number of other financial decisions in HOME that consortia should consider up-front:

- Which jurisdictions will receive a share of HOME administrative funds?
- How will the consortium's match obligation be met?
- How will the consortium meet its obligation to reserve funds for CHDOs?
- If programs generate program income, who will retain those funds, and for what purpose?

How Should a Consortium Share HOME Administrative Funds Among Members?

Most PJs want to maximize their resources so that as many funds as possible are invested in housing activities, not administrative and operating costs. Nonetheless, there are a number of administrative

responsibilities that must be carried out in order to run housing programs effectively. Most consortia find that the administration of the HOME Program requires most, if not all or more, of the maximum allowable allocation for administrative costs under the HOME Program (ten percent of the annual allocation plus ten percent of any program income generated).

Some consortia determine that they will require additional administrative funds, and they supplement the HOME administrative costs with contributions from each member jurisdiction or the lead entity. Consortia whose HOME allocations are relatively limited should consider this option seriously. It is difficult to administer the HOME Program and meet its requirements without sufficient staffing, and without technically knowledgeable professional staff. In HUD's experience, consortia that do not spend sufficient administrative funds to staff appropriately are not able to perform under the HOME Program.

Presuming that the full ten percent or more is needed to effectively plan, administer, and monitor HOME Program activities, the consortium must determine if or which jurisdictions will receive HOME administrative funds. Some consortia decide to allocate administrative funds based on a proportional share, so that each jurisdiction receives ten percent of the consortium's allocation to administer its projects or programs. Some consortia provide administrative funds as a percentage of the project costs that are allocated to each jurisdiction. Still other consortia allocate the maximum allowable HOME administrative funds to the lead entity. Since the lead entity holds accountability to HUD, it is typically the jurisdiction that incurs the most administrative cost.

There are a number of things the consortium should consider when making decisions about the allocation of administrative funds:

- If the HOME administrative funds are not sufficient, which member jurisdictions will be able, and/or required, to contribute additional funds?
- If the administrative funds are shared, how much will each jurisdiction be allocated, and

will that amount be sufficient for the consortium to carry out its necessary administrative responsibilities?

- Are there administrative needs that the consortium may want to secure to build its capacity, such as hiring technical staff, contracting out certain aspects of program administration, or training needs? If so, are the administrative funds sufficient to cover these additional costs?

- How are the administrative responsibilities shared, and should the administrative funds be shared accordingly? If some jurisdictions (such as the lead entity) have a larger administrative burden to carry out aspects of the consortium's planning, program administration, reporting, and monitoring, the consortium should make sure these entities have sufficient administrative funds to carry out their responsibilities.

In the long run, equitable distribution that is based on actual administrative burden and needs will support smooth consortium operations and bolster the longevity of the consortium.

Sharing Administrative Responsibilities in Stark County, OH

In **Stark County, OH**, HOME administrative responsibilities are shared between the lead entity, Stark County, OH, and the two member jurisdictions: Alliance and Massillon. Each member is responsible to participate equally in the consolidated planning process, oversee projects in their jurisdictions, report program income, find CHDO projects, secure appropriate match for HOME projects, and approve projects. The Consortium generally uses nearly ten percent of its allocation on administrative costs. These funds are shared between all the members to cover costs related to undertaking the HOME administrative responsibilities.

Each member jurisdiction also assumes responsibility for monitoring HOME projects and activities that are funded in its boundaries. This includes responsibility for the collection and review of monthly status reports, as well as on-site monitoring visits on at least an annual basis. The monthly status reports provide financial progress and project progress for that period of time. The reporting form also requires information about any concerns or issues with the project that might indicate an issue with it moving forward toward completion.

Unlike other jurisdictions with housing and/or community development departments, the Stark County Regional Planning Commission (RPC) is the administering department for the lead entity of the Stark County/Alliance/Massillon HOME. The RPC not only administers HOME, it oversees the Community Development Block Grant (CDBG) program and transportation/regional planning efforts. The RPC is also involved in much of the comprehensive planning efforts that are undertaken that are funded with CDBG and HOME. As a result, the RPC has centralized community development and affordable housing production on a countywide basis.

Who is Responsible for Securing Matching Funds?

For each dollar of HOME Program funds expended, the consortium must generate \$.25 in non-federal match in the form of cash, assets, services, labor, or other resources valuable to the HOME Program. (See 24 CFR 92.218.)⁸ The

consortium must consider how this obligation will be met, how the satisfaction of this obligation will be tracked, documented, and reported, and who/how non-cash sources of match will be valued.

Although the match obligation is a program-wide requirement and match obligations need not be

met on a project-by-project basis, many consortia choose to meet their matching obligations this way. This means that for each project or program that the consortium chooses to fund, the project must generate its own match. If projects and program activities are carried out by a number of member jurisdictions, each jurisdiction is responsible for identifying and securing matching funds.

Notwithstanding this popular approach to match, the consortium can also choose to pool its matching funds (typically through the lead entity). Since match does not have to be invested in the same project that generates it, and can be invested in either HOME-assisted or HOME-eligible projects,⁹ pooling match can provide the consortium with some additional flexibility for meeting the match requirement. It also supports decision-making about projects that is based on strategic need, rather than potential to meet match.

Pooling matching funds requires more conscious planning about match from the consortium as a whole, and may require an up-front review of all the proposed program activities, in order to assure match funds will be sufficient. Pooled matching funds enable the consortium to realize the full potential of match to be generated and invested across programs, projects, and activities. Pooling funds is a good option for consortia whose jurisdictions have a variety of housing needs, and who are planning a variety of activities. Some HOME Program activities are likely to generate outside resources (for match), such as rental housing development and some types of special needs housing. Other activities are not likely to generate match, such as homeowner-occupied rehabilitation projects or tenant-based rental assistance programs. For instance, if the consortium is planning the rehabilitation of a large public property that has already received funding commitments from a local foundation, it may have excess match that may be needed to offset the match obligation incurred by a homeowner rehabilitation program that does not generate any match.

Regardless of how the consortium decides to share the burden of match, there are some related decisions that should be considered:

- The consortium must identify who is responsible for tracking and reporting match obligations and match “credits.” HUD requires that the PJ satisfy its match by the end of the Federal fiscal year in which the match “debt” was incurred. This requirement can only be met if the consortium keeps track of how much match obligation is incurred and how much match has been contributed to projects. It should also make some effort to project what match will be incurred in the near future, particularly toward the end of the fiscal year. As discussed in Chapter 4, typically, the job of tracking match falls to the lead entity, since it is usually charged with the related task of setting up projects and drawing down of funds. The lead entity must keep the match log, or have it when monitored. Related to tracking match, the lead entity (or another designated jurisdiction) should be controlling the timing of funding draw-downs, in relationship to the matching requirements.
- When the match function is disbursed across a number of different entities, the consortium should consider how to ensure that the jurisdictions understand what the eligible forms of match are, and how to determine the value of non-cash contributions.

If possible, the jurisdiction should develop a strategy for finding match and addressing unexpected match shortfalls.

How Will the Consortium Satisfy Its CHDO Set-aside Requirement?

The consortium must develop a strategy for how it will meet the CHDO set-aside requirement that a minimum of 15 percent of each annual HOME allocation must be reserved for housing that is owned, developed, or sponsored by eligible CHDOs. (Note, a consortium may also choose to invest more than the minimum 15 percent.) The consortium must consider a number of factors regarding its approach to meeting this CHDO set-aside obligation.

The first decision concerns selection of participating CHDOs. The selection can be centralized with the lead entity or the board, or it can be done by each member jurisdiction. This decision should be influenced by how many jurisdictions are involved relative to the number of eligible CHDOs that are represented in each jurisdiction or in the area as a whole, and in the context of the consortium's overall project selection process. Consortia with limited funds should also consider whether or not there are sufficient funds to distribute to more than one CHDO.

Many consortia choose to centralize the function of identifying eligible CHDOs to participate in the consortium's HOME Program. Centralizing decision-making about CHDOs with the consortium governing body or the lead entity gives the consortium the opportunity to plan the use of CHDO funds from a coordinated and broad-based perspective. This approach works well in the context of a centralized project selection process because the CHDO activities can be planned in the context of other projects and programs of the consortium.

Delegating the responsibility for identifying CHDOs to member jurisdictions provides member jurisdictions with shared responsibilities in this regard. Where there are a limited number of CHDOs, sharing this obligation may result in those CHDOs becoming over-extended, however.

Where there are not a sufficient number of qualified CHDO partners, the consortium has a number of choices about how to build the capacity of area nonprofit organizations or

CHDOs, so that they might become eligible, or more qualified, to undertake set-aside activities. The consortium might choose to invest HOME funds in developing the capacity of CHDOs through the use of HOME funds for operating expenses, seed money grants, or other technical assistance. (See 24 CFR 92.301.) In addition, in the consortium's first 24 months as a PJ, it has the added option of investing up to 20 percent of its required 15 percent of the CHDO set-aside, but not more than \$150,000 during the first 24 month period, for developing the capacity of CHDOs in the area. [See 24 CFR 92.300(b).]

While addressing how CHDO projects will be selected, there are some other operational issues the consortium should consider:

- Is there a sufficient number of CHDOs, with sufficient capacity, to meet the consortium's set-aside obligation for a number of years? If not, who will have the authority to determine whether or not the consortium will use its HOME funds for CHDO capacity-building, and in which nonprofit organizations will these funds be invested?
- Who will determine whether or not a nonprofit organization meets the CHDO definition in accordance with HOME requirements, including an assessment of the organization's capacity to carry out the planned project?
- How will lead entity be made aware of CHDO selections, in order to track the consortium's progress toward meeting the 24-month reservation deadline?
- Once selected, who will execute a written agreement with the CHDO for the project?

Building CHDO Capacity to Address Housing Needs

Addressing housing problems in a large, sparsely populated geographic area that has few capable affordable housing providers is a big challenge. However, the **Northeast Minnesota HOME Consortium** is tackling this challenge head-on, with the assistance of two well-established nonprofit organizations. The Consortium consists of St. Louis County, an urban county entitlement jurisdiction and the lead entity of the Consortium, and four non-urban counties: Cook, Itasca, Koochiching, and Lake. The Consortium, which excludes the city of Duluth, a Metropolitan City under the CDBG program, is characterized as primarily rural. Spanning over 16,000 square miles, this Consortium represents one of the largest geographic areas of HOME consortia nationwide.

Due to the limited housing development capacity in the four non-urban counties, one of the key goals of the Consortium when it formed was to develop the technical capacity in the region. Specifically, it targeted two community action program (CAP) agencies that serve the region: Arrowhead Economic Opportunity Agency (AEOA) and Kootasca Community Action. Together, these two agencies serve the five counties that participate in the Consortium-- AEOA serves three of the five counties and Kootasca serves the other two counties.

Initially, the Consortium's primary focus was to qualify the agencies as CHDOs. Once that was accomplished, it provided, and continues to provide operating funds to support these organizations, and help them secure and retain qualified housing staff. The Consortium envisioned creating opportunities for these two CHDOs to develop their technical capacity and develop "model programs" that could be delivered throughout the five counties and shared between the two CHDOs. Kootasca focused its initial efforts on developing a purchase/rehabilitation program for single family housing, and AEOA focused its initial efforts on developing a downpayment assistance program. The two agencies have trained one another and now both programs are offered in all five counties, with the two CAP agencies serving as the Consortium's subrecipient to administer them.

In addition to these two programs, the Consortium provides roughly 25 percent of its annual HOME allocation to the CHDOs to undertake rental or homeownership housing development activities. These activities satisfy the Consortium's CHDO set-aside requirement. The Consortium itself also administers a small Housing Development Fund, a pool of HOME funds that can be accessed competitively by nonprofit entities (including the CHDOs) for housing development activities. Specifically, this funding can be used for rental housing or other forms of permanent supportive or transitional housing that serve the homeless population in the region.

By collaborating and sharing best practices, these two organizations have been able to achieve more, and strengthen this Consortium's ability to build regional capacity and provide affordable housing opportunities throughout the region.

Is Program Income Retained by Jurisdictions or Returned to Consortium?

Before executing a subrecipient agreement with any jurisdiction member, the lead entity must know whether the program income generated by the project activities will be returned to the consortium, or if the subrecipient jurisdiction will be allowed to retain the program income. Retention of program income must be addressed in the subrecipient agreement, as discussed in Chapter 4.

In deciding who retains program income, the consortium may wish to consider what the subsequent use of these funds will be, and assess how the subsequent use fits into its housing strategy and overall project selection process. For instance, if a member jurisdiction is administering a homeowner rehabilitation program and is making repayable low-interest loans to low-income buyers, the program will generate program income as the loans are repaid. If the consortium wants to continue to support this program activity, it would be logical to enable the jurisdiction to retain these funds to reinvest in this program.

Program income need not be reinvested in the same HOME-eligible activities, however. Should the consortium have additional activities it wishes to fund, or should the homeowner rehabilitation program no longer be a priority of the consortium, the consortium may choose to have the jurisdiction return the program income so that the consortium can choose which additional activities will be supported, in the context of the overall housing strategy.

As discussed in Chapter 4, regardless of who retains program income, the lead entity must track the consortium's receipt and re-use of program income in IDIS, in order to document compliance, and to enable HUD to capture the production data that results from the reinvestment of these funds.

The consortium must remember to consider:

- How the program income will be reported and re-used. Remember, program income

must be spent **prior** to drawing down funds from the U.S. Treasury. In addition, program income must be reported to HUD on an annual basis. This cannot be proven unless the PJ receipts the program income in IDIS.

- If jurisdictions retain the program income, how will the consortium (or lead entity) ensure that those funds are being used for HOME-eligible purposes? Further, how will the consortium continue to monitor these new HOME activities?

Select Specific Projects

While the Conplan process will result in decisions about the general types of housing activities the consortium will undertake, and the amount of HOME funds that will be invested in each activity, the consortium still needs to establish a method for soliciting, reviewing, and selecting specific projects. Project selection is a critical decision for any PJ, and the consortium is well-advised to think through the most effective process to meet its needs.

A number of consortia distribute a lump sum of funds to member jurisdictions, and each jurisdiction is empowered to make project selection decisions within its geographic boundaries. Many other consortia, however, reserve this critical decision for its governing board, or sometimes its lead entity.

Empowering jurisdictions to make their own project selection decisions supports the concept that each jurisdiction understands its own housing needs best. This system also seems to assure that each jurisdiction “gets its fair share.” This type of system, however, has some distinct disadvantages. Foremost, project selection decisions are made in an isolated and uncoordinated fashion; there is generally no attempt to assure that projects are consistent with the Conplan, as required. Further, for most consortia, not all member jurisdictions have sufficient capacity to evaluate and underwrite projects effectively—many less experienced jurisdictions cannot evaluate the viability of a project; sometimes a less experienced jurisdiction is unable to evaluate whether or not a project is eligible for HOME funds. Selecting projects that are not viable HOME projects wastes time for the

consortium, and sometimes results in project set-up costs and expenditures that must be repaid.

A governing board is typically in a good position to establish project selection criteria—that is, it establishes standards for evaluating projects that consider the desirability and appropriateness of a project, including its eligibility and consistency with the Conplan; the likelihood of site control; the capacity of the developer and property manager (if applicable); the project timeline; the number of units to be developed; the overall cost and per unit cost of the project; and the project underwriting. The selection of viable projects upfront helps the consortium meet HOME requirements, including those related to timely commitment and expenditure of funds.

In considering the appropriate process for project selection, the consortium must ensure, at a minimum, that each project is eligible and consistent with the consortium's Conplan. It must identify who will make that determination and how. In addition, the consortium should consider:

- What are the criteria for selecting projects? Who has the authority to establish these criteria? Are all jurisdictions subject to the same criteria and rules?
- If projects are solicited through a competitive process, such as a Request for Proposal (RFP) process, who will issue the RFPs, review and analyze proposal submissions, and select projects?
- How will the consortium ensure equity or a sense of fairness about the selection process?
- Does the lead entity have final approval for projects, since it is held responsible?

Related to the project selection process, the consortium should also determine who makes key program design decisions for the HOME activities it will undertake. Some of these decisions may be written into RFPs, or otherwise established as across-the-board decisions for all projects of the consortium. Some decisions may vary project-by-project. Either way, the consortium should identify key project or program design issues and establish a process for making these decisions. Some of these issues might include, for instance:

- How much subsidy will be provided for a project, and in what form (such as a loan or grant)?
- What definition of income will be used to determine the income eligibility of beneficiaries? Will different definitions be used for different activities? Will all jurisdictions be required to use the same definitions?
- Who determines the number and designation (fixed or floating) of HOME-assisted units in rental properties?
- Who determines whether a homebuyer program uses a recapture or resale provision?
- Who determines if the consortium wants to impose stricter requirements than those of the HOME Program (such as extending the affordability period or increasing income targeting)?
- If a member jurisdiction administers a housing program (such as a homeowner or rental rehabilitation program), must it change its program to conform to the consortium's criteria, or can it continue to administer its program as it has?

Emphasizing Fair and Strategic Decisions in Project Selection Process

For most communities, project selection is difficult because there are many more needs than resources available. This may result in political pressures on the project selection process. Nonetheless, most PJs seek to fund projects that are ready-to-go, undertaken by experienced development teams, and have strategic importance because they are likely to meet the community's housing needs. Consortia also seek these types of projects, but they have an added pressure in that members often desire that funds be invested in their jurisdictions. Often, there are not sufficient HOME funds to undertake projects in every consortium jurisdiction.

The experiences of Contra Costa County, CA and Morris County, NJ highlight two of the many ways that consortia can seek to implement fair project selection procedures.

Collaborative Application Processes in Contra Costa County, CA

Many consortia struggle with the decision to provide “equal” funding for all member jurisdictions or to fund the projects that have the most strategic importance in the region and are ripe for development by an experienced team. An urban county right outside of San Francisco, the **Contra Costa County HOME Consortium**, has created a project selection process that strives to balance these two competing needs. The Consortium's application process is completely competitive. The Consortium has found, however, that its process of focusing project selection based on the strategic need and developer capacity has, in the long-term, also worked toward geographic allocation of assisted units.

Contra Costa County has several member jurisdictions: Concord, Antioch, Pittsburg, and Walnut Creek. Each of these communities receives CDBG funds. In order to secure additional funding for housing, they worked collaboratively to create a Consortium and secure HOME funds to ensure specific housing needs were met in their communities.

This Consortium issues an annual notice of funding availability (NOFA) in the fall of each year. The NOFA encourages projects that are ready for development and have secured other funding sources. Developers work with the member jurisdiction in which the project will be located. These members generally provide their own redevelopment funds for these projects through a California program that enables communities to form a redevelopment agency and develop a plan for implementation. The redevelopment funds typically provide the HOME match obligation toward a specific project.

After the applications are received, a citizen-based committee reviews the submissions. The committee represents all the different geographic areas of the HOME Consortium. While each jurisdiction has interest in seeing that the Consortium's investments are distributed geographically, this is not a stated preference in the NOFA. The Consortium members are able to implement the NOFA preferences, and have found that over time there has been relative equity in the distribution of investments.

Building on the success of the Consortium, the member jurisdictions have recently adopted one single application for CDBG funds that is used by all the member jurisdictions. Applicants indicate on the application from which jurisdiction it is requesting CDBG funds.

This type of collaboration has led to increased production and has minimized the administrative time needed to develop housing and community projects throughout Contra Costa County.

Ranking Projects in Morris County, NJ

The Morris County Community Development Division is under the county's Planning Department and is the lead entity of the **Morris County HOME Consortium** in New Jersey. The HOME Consortium is made up of all thirty-nine (39) municipalities in Morris County including two Community Development Block Grant (CDBG) entitlement cities: Dover Township and Parsippany-Troyhills Township. All the members are part of Morris County's jurisdictional boundaries. The County allocates funds on a competitive basis in an annual application process. Applicants include the member jurisdictions as well as nonprofit developers of affordable housing, including CHDOs.

The County staff reviews the applications for HOME-eligible elements, ensures financial capacity of the project, and works with applicants to review outstanding questions on the status of the project to ensure it is "ready" for funding.

Funds are awarded through an interesting ranking system. The County has a regional planning body called Community Development Revenue Sharing (CDRS) that is made up of the seven regions of the County. Directly under CDRS is a housing subcommittee that has seven representatives who rotate on a bi-yearly basis. The housing subcommittee works with county staff to review and approve the HOME applications. The subcommittee listens to applicant presentations, discusses each application, ranks applications, and approves proposed funding amounts.

The ranking process is a little different than in other communities. Rather than ranking projects as a group, Morris County has developed a system where individual members of the subcommittee use a "silent voting process." Each member ranks projects individually on their own voting sheet. This voting sheet is handed in anonymously to county staff who compiles the results to generate the subcommittee's overall ranking of projects. Once the overall ranking is established, subcommittee members discuss the rankings, and explore whether or not any revisions to the ranking would be appropriate. Based on that discussion, the subcommittee establishes and approves a final list. The individual rankings help the county minimize bias and "group think" in the project rankings. The discussion is important, however, to clarify project issues. Sometimes it results in revisions to the rankings. For example, in one instance, the subcommittee members increased a CHDO's ranking based on its relative project readiness, because administrators were able to point out that there were impending HOME CHDO reservation deadlines. Not all individual reviewers were aware of this information.

Oversee Projects During Implementation

Housing program and project implementation is complex. It involves a large number of people from different disciplines making decisions based on practical and technical information related to construction, environmental concerns, engineering, marketing, management, and regulatory requirements. The consortium must consider how to ensure that the best possible decisions are made during project implementation.

A consortium can establish operating systems in a number of ways. It can delegate project oversight to each member jurisdiction that carries out a project or program in its boundaries; the lead entity or a member jurisdiction with appropriate capacity can carry out project implementation on behalf of member entities; or the lead entity can share the job with member jurisdictions. Regardless of how and by whom project oversight is carried out, the lead entity is obligated to monitor progress and performance, and to conduct annual on-site monitoring visits.

Project oversight by an experienced member jurisdiction can be an effective method for project implementation. As described in Chapter 4, the jurisdiction should report regularly to the lead entity and the lead entity should monitor its activities. Where the member jurisdiction might lack some area of technical expertise, such as in establishing a system for determining and monitoring prevailing wage rates, or determining income eligibility of applicants, the lead entity might choose to assist or provide technical assistance to its partner in this regard.

Project oversight by a member jurisdiction carries serious risks, however, when the member jurisdiction is relatively small and inexperienced in housing program implementation. A lead entity might consider a number of ways to bolster the expertise of member jurisdictions, such as hiring competent staff and contractors, carefully reviewing roles and responsibilities with the member jurisdiction, or providing or securing technical assistance related to project oversight. However, all of these options have a cost in terms of time and money to the lead entity. This

investment should be weighed against the lead entity's other obligations, and the likelihood that the jurisdiction will have ongoing responsibility under the consortium's HOME Program. If the project is likely to be a one-time opportunity, investing in building the jurisdiction's capacity may not make sense. Regardless of any efforts to build the capacity of an inexperienced partner, the lead entity's best tactic for keeping these projects on track and in compliance with HOME rules is to remain actively engaged in the project.

Some consortia are organized so that the lead entity undertakes all the project implementation on behalf of its member jurisdictions. This approach works well in areas where the lead entity is larger and experienced in housing program implementation, its member jurisdictions are not. This is the case for many urban county consortia. With this approach, the lead entity must be willing to undertake a large volume of work on behalf of a number of jurisdictions.

Although not common, a consortium can also choose to implement projects using a mixture of these approaches. The consortium or lead entity can assess the capacity of each jurisdiction and enter into subrecipient agreements that clearly identify the key pieces of the project implementation process that the member jurisdiction and lead entity would be responsible for. Further, the consortium might choose to build the capacity of one or two member jurisdictions for some piece(s) of project implementation, such as income eligibility determinations, plans and specifications or work write-up reviews, or construction oversight. Those components of the program could then be delegated to the "expert" jurisdiction for all of the consortium's projects. This approach has potential to slowly help member jurisdictions build capacity over the long-term.

By implementing projects with a combination method, the consortium has the advantage of capitalizing on the strengths of each of the consortium members. However, it means that each project must be evaluated and structured individually. Lack of consistency in roles and responsibilities might result in confusion or frustration in staff, and could leave the project at

risk of mistakes. Further, the consortium should be clear about its established standards and processes, to ensure that projects are carried out with some level of consistency. Too much variation project-by-project can also be difficult to monitor.

In deciding the best course for project implementation, the consortium needs to honestly assess the capacity of individual members, and their ability to administer projects or programs in accordance with HOME rules. The consortium may find one approach that works for all its projects, or it may decide that some jurisdictions have the capacity to administer their own projects while others do not.

Ensure Ongoing and Long-term Compliance

As discussed in earlier chapters, HOME Program compliance does not end upon project completion. The consortium must make operational decisions related to how it will ensure compliance for the long term. Since compliance is the primary responsibility of the lead entity, this topic is explored in detail in Chapter 4. As Chapter 4 points out, a prudent lead entity will develop subrecipient agreements and written agreements that hold member jurisdictions accountable throughout the affordability period.

For most consortia, the lead entity undertakes a certain level of monitoring during project implementation and throughout the period of affordability. It may wish to share this burden with member jurisdictions. For rental housing, the consortium must consider property and asset management issues and tasks. At a minimum, the consortium must conduct long-term monitoring and annual site visits to verify compliance with tenant income restrictions, rent restrictions, to determine that prohibited lease provisions are not used and affirmative marketing is carried out. In addition, based on the size of the property, periodic rental unit inspections are required. For homebuyer housing, the consortium must monitor/track resale and recapture provisions, and principal residency requirements.

Sharing the monitoring burden over the long-term may be an attractive option for a lead entity, particularly as the inventory of HOME-assisted units grows and available HOME administrative funds do not. As with delegating other aspects of project implementation, the lead entity must ensure that its member jurisdictions are capable of carrying out the required monitoring. The lead entity should review monitoring reports, and conduct periodic site visits to check on the level of accuracy of its jurisdiction monitors.

Chapter 6:

The Seven Habits of Highly Effective Consortia

This chapter highlights lessons learned from successful consortia and provides an in-depth study of the Asheville, NC Consortium to exemplify these lessons. Successful consortia stress the importance of strong systems, clear communication, and the internal capacity to carry out the responsibilities of the HOME Program. This chapter is useful to both new and existing consortia as they consider the rules and decisions discussed in previous chapters.

Administering HOME Activities for Success

The **Asheville Regional Housing Consortium** in Asheville, NC began as a city-county partnership between the City of Asheville and Buncombe County because Asheville lacked the population base to meet the HOME threshold for funding. The local council of governments, Land of Sky Regional Council, sought to make it a regional effort of four counties and the local governments within them.

The Land of Sky Regional Council covers this area, so these jurisdictions had already worked together on various planning issues. Since the Consortium formed, the only change has been adding smaller towns. Residents of the unincorporated areas of member counties already counted toward the Consortium population. However, in order to count the populations of the incorporated jurisdictions within these counties, each unit of general local government had to sign the consortium agreement.

These small towns were reluctant to join initially because they feared that joining would bring financial liabilities in the form of match requirements. However, they were convinced to join once they understood that there would be no financial liability unless they applied for and received funds. As a result, the Consortium has 14 member jurisdictions, including four counties, which participate in the HOME Program. A fifteenth member government is expected to join in the near future.

The City of Asheville is the lead entity and provides all the oversight and technical assistance to its member jurisdictions. Since it was an entitlement jurisdiction under the CDBG program, the City had several years of experience in housing and community development programs prior to the establishment of the HOME Consortium. As a result, Asheville staff has the capacity to undertake the responsibilities as lead entity.

In the beginning, the Consortium felt it was important to develop a set of by-laws in addition to the required consortium agreement with its member jurisdictions. The by-laws include board of director composition (depends on population), voting, attendance, and other rules and requirements of the Consortium. These by-laws helped to establish expectations for board of directors. The Consortium also knew that a consortium agreement must include not only the required provisions, but also other important information such as roles, responsibilities, and performance requirements.

The Asheville Regional Housing Consortium meets at least every two months and more often as necessary (e.g., during project selection and funding allocation), as dictated by the by-laws. The members also communicate regularly by telephone and email.

The Consortium has a unique competitive project selection process. Asheville staff calculates a "planning level of funding" for each member jurisdiction based upon the HOME formula and four other Census indicators. This number represents a ballpark for "need" within that community similar to the "pro rata share" in homeless programs. The Consortium feels that this calculation helps its member jurisdictions plan more successfully for their projects. In order to receive funding, a member government must submit a funding application to the City of Asheville. The Board of Directors, at its discretion, may choose to fund the member government for more or less than its application amount, but not less than its "planning level," unless the actual project has little or no merit.

The Consortium uses an evaluation criteria form to review projects that are submitted through its competitive project selection process. The criteria are based upon the five-year consolidated strategic plan goals for each of the four counties. The project is scored based upon these goals. This tool has been helpful to ensure that consolidated plan goals are met and projects meet the housing needs in their community.

The Asheville Regional Housing Consortium funds a variety of HOME projects that cover all four eligible activities: homeowner rehabilitation, homeownership, rental, and tenant based rental assistance (TBRA). They have four active CHDOs that work across their Consortium. Typically, the CHDOs receive more than the minimum 15 percent set-aside.

Overall, the success of the Consortium has been dependent upon an initial planning process, the development of thorough documentation, clearly stated goals and objectives, and by an effective project selection process.

The Lead Entity Has the Staff and Resources to Meet Its Responsibilities

The lead entity must have the staff, systems, and resources to use HOME administrative funds effectively to oversee all consortium activities and ensure HOME compliance.

The lead entity and member jurisdictions of the consortium have sufficient funds to effectively administer the program. The consortium must also have staff with the technical and professional experience and expertise to carry out the HOME Program. Sometimes, the lead entity has prior experience working with HOME, CDBG, or a similar program. However, sometimes the lead entity staff may not have this experience, and the consortium may need to secure this expertise from outside sources.

- Typically, consortia find expertise by hiring staff or a contractor with appropriate expertise. The consortium can hire an experienced manager as staff to the group, or it can hire a contractor as a third party to perform administrative duties, without becoming a full-time employee of the lead entity. Most successful consortia conduct a broad search to secure staff or contractors, in order to find qualified persons with demonstrated experience working with HOME or a similar Federal housing program. The costs related to hiring staff or contractors are eligible HOME administrative costs.
- Consortia can also secure expertise by using another government entity or a nonprofit organization as a subrecipient to administer all or a portion of the HOME Program activities. The most common examples of this are the use of a council of governments or a public housing authority.

- Finally, the consortia can choose to train its existing staff, in order to increase its own capacity. There is an up-front administrative cost to this option; however, the consortia should be able to reap some long-term benefit with this approach.

All staff and contractors involved in the administration of HOME must have an appropriate understanding of the HOME Program rules and their impact on how the consortium works. Training may be necessary for consortium members as well.

Members' Responsibilities are Clear and Consistent with Members' Capacity

Consortia are made up of units of local government with a range of capacities. Some larger entities may have been running entitlement programs for years and know how to select, manage, and monitor projects, document compliance, and compile and submit reports. Others may be small counties or cities with little or no housing or community development department. These jurisdictions may lack the experience and capacity to take part in any project management activities. The role of each member must, therefore, be tailored to what it can reasonably accomplish.

If a small entity does not have the capacity to take on the responsibilities, the consortium should assign these responsibilities to a different member jurisdiction. For example, it is common for lead entities to supervise HOME-funded projects, from initiation to completion, on behalf of and inside the geographic boundaries of, a member jurisdiction. Alternatively, a contractor, nonprofit organization, or other public agency may assume the responsibility for such activities. It is critical that consortium member entities are not tasked with activities that they are not capable of carrying out.

If members of the consortium have the experience and resources to oversee HOME-funded projects, they should take on these responsibilities, in their own jurisdictions or even across jurisdictional lines. These jurisdictions may also take on some

of the consortium management tasks identified as lead entity responsibilities (and discussed in Chapter 4) as long as the lead entity remains informed and understands it is still accountable to HUD. As the consortium assigns these responsibilities, it must articulate clear lines of responsibility and reporting requirements. Ideally these are codified in the consortium agreement.

Consortia should consider past experience in assigning responsibilities. For example, if a city is already having trouble spending its housing dollars in a timely manner, it is a poor candidate for lead entity, unless it has a solid plan for improving performance and a method for being held accountable for executing that plan. Other members should take into account the costs of working with a jurisdiction that has performance problems before committing to working in partnership as a consortium.

The Consortium Has Explicit Rules and Procedures

A well functioning consortium usually has explicit rules and procedures for addressing the common issues identified below. As discussed in the previous chapters, an effective consortium considers and plans for critical decisions before it reaches a “point of no return.” Some specific decisions the consortium will make include, how to:

- Establish a common program year;
- Allocate funds to jurisdictions and projects;
- Select and underwrite projects;
- Meet match obligations;
- Manage the CHDO set-aside;
- Oversee project implementation;
- Maintain appropriate records and reporting;
- Use administrative funds;
- Monitor projects; and
- Track and disburse program income.

All consortium members should understand how these items are dealt with and what their responsibilities are with regard to each item. For example, there must be a clear, common understanding of the project selection process. Similarly, each member must be aware of its

responsibilities with regard to match and CHDOs. Ideally, these rules are codified in the consortium agreement. If not, the consortium should develop written procedures that document the approach and responsibilities or amend its existing consortium agreement.

The Consortium Has a Detailed Consortium Agreement

The consortium agreement, as discussed in Chapter 2, represents the foundation of a well functioning consortium. While it may be tempting to limit the agreement to the few provisions required by HUD, successful consortia use the agreement to clarify and make explicit the consortium's basic operating principles and the responsibilities of each participating member.

A detailed consortium agreement clearly delineates responsibilities and also manages member expectations. Attachment 1, *Elements of an Effective Consortium Agreement*, provides guidance on the specific provisions that strengthen a consortium agreement.

There is Regular Communication Among Consortium Members

Well functioning consortia have a governing body that meets regularly to make key decisions (such as project selection and fund allocation decisions), monitors progress, and addresses nonperformance in a timely manner.

To act as a unified body, the consortium must have regular communication among members. The lead entity, in particular, should have an accurate picture of what each member is doing, their progress towards spending allotted funds, and the need for any assistance or interventions. Such communication is not hard to coordinate. It can take the form of:

- **Regular meetings.** Consortia should meet regularly – at least quarterly, in most cases. Meetings are important to:
 - Make key decisions. These might include decisions about project selection and funding allocations.

- **Monitor progress.** Informal discussions augment written reports for the lead entity to better understand the progress of projects, the cause of delays or problems, and nonperformance. In the context of a meeting, these issues can be approached as a team.

- **Listserv/email communication.** The lead entity can handle day-to-day communication through emails and listservs to ensure that members are receiving timely and accurate information, and to solicit information from them. This is a good way to remind members to submit reports and share information.
- **Regular reporting.** There is no substitute for timely and accurate reporting by members. The lead entity must be clear with members on their reporting obligations, and should contact them immediately if reports are late or incomplete. The lead entity should review the reports in a timely manner and follow up on any questions raised by the reports. (For instance, if a project is behind schedule, the lead entity should contact the administering jurisdiction and find out why, and how the project will be brought back on schedule.)

HOME Administrative Funds Supplement Existing Capacity

Administrative funds must pay for staff, training, office space and supplies, and information systems for the consortium. With a cap on HOME administrative funds, for many consortia (particularly smaller consortia whose allocations hover at or near the minimum threshold of \$750,000), HOME administrative funds are used most effectively when they supplement existing capacity.

The consortium must assess its projected administrative costs realistically. The 10 percent cap on HOME administrative funds may be insufficient if the consortium needs to develop new information systems, and/or hire multiple new staff people with strong technical expertise. Where the consortium (or one of its members) has a well-trained staff and strong financial and operational systems, the ten percent allocation

should be more than sufficient to cover the additional staff time needed to implement and monitor HOME requirements and may still allow for additional capacity.

One lesson learned from experienced consortia is that HOME administrative funds should not be shared equally and broadly across too many jurisdictions. If each participating member receives a proportional share of the administrative funds, it is not likely to be sufficient for any one jurisdiction to fund the staff and systems necessary for effective HOME administration. By consolidating the funds with the lead, or another jurisdictional entity, the funds can be more effectively used for systems development and program administration.

Most experienced consortia recommend that a consortium keep administrative funds pooled with the lead entity, as the lead entity has the most responsibilities. With an adequately sized and skilled staff, it can often take over responsibilities from members and obtain some economies of scale. In some cases, it is appropriate to allocate a smaller percentage of the administrative funds to members in proportion to their contribution to the administration of the program (but not in proportion to the dollars received). For example, in some consortia, the lead entity retains half the administrative funds and members that perform administrative functions for their projects receive some fraction of the remaining administrative funds.

Some consortia have found that they can use administrative funds for additional administrative projects that benefit the entire consortium, such as market studies, technical studies (for example, on local barriers to affordable housing), program design initiatives, consultants, and other such common projects.

The Consortium Thinks Across Jurisdictional Boundaries

Some consortia manage HOME funds and their associated requirements by simply dividing up the funds among members, according to a formula, and entrusting each member to meet its own jurisdiction's housing needs. Experience has found that this approach does not always result in the most effective distribution of funds and projects, from a regional perspective.

Consortia who truly meet the HOME Program goal to address the most pressing affordable housing needs look less at geographic boundaries in their operations and allocate funds according to local needs, the capacity to use funds, and a regional strategy that addresses the broader housing needs of the consortium as a whole.



Attachment 1

Elements of an Effective Consortium Agreement

The consortium agreement must include certain provisions in accordance with HUD requirements. There are a number of additional elements that are recommended in order to strengthen the consortium agreement as a management tool for the consortium.

Required Elements¹

The following elements **must** be included in the consortium agreement, in accordance with HUD requirements:

- **Program activity.** The consortium members must agree to cooperate to undertake or assist in housing assistance activities for the HOME Program.
- **Representative appointment (i.e., designation of lead entity).** The consortium must authorize one member unit of general local government to act in a representative capacity for all member units for the purposes of the HOME Program.
- **Representative (lead entity) responsibilities.** The agreement must specify that the lead entity will assume overall responsibility for ensuring that the consortium's HOME Program activities are carried out in compliance with HOME rules, including requirements related to the Consolidated Plan. The agreement must not include any provision that would allow a consortium member to obstruct the implementation of the consortium's approved Consolidated Plan.
- **Fair housing.** The agreement must include a provision that specifies that each consortium member will agree to affirmatively further fair housing.
- **Term.** The agreement must specify the three-year qualification period² of the consortium, and must remain in effect until all the HOME allocations the consortium receives in these three years are expended. The agreement must also expressly prohibit any member from withdrawing from the agreement while it is in effect. Note, the qualification period is the consecutive three-year Federal Fiscal Year period during which the consortium is to qualify to receive HOME funds.
- **Program year.** The agreement must state the program year start date for the consortium. All units of general local government in a consortium approved after February 6, 1995 must be on the same program year for CDBG, HOME, Emergency Shelter Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA) programs. Members of a prospective consortium may shorten their program years in order to effectuate this requirement.

¹ The elements that are identified as required are excerpted from *Notice of Procedures for Designation of Consortia as a Participating Jurisdiction for the HOME Program*, Notice HUD CPD 06-04, issued April 11, 2006. This Notice is available at the HOME Program's website, *HOME CPD Notices and Attachments*, at <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/>.

² The agreement may specify a lesser number of fiscal years if one or more urban counties are members of the consortium. A shorter qualification period might be needed in order to coincide with the number of years remaining in the urban county's qualification period. If an urban county consortium member fails to re-qualify as an urban county during the qualification period included in the consortium agreement, the consortium agreement terminates with the last fiscal year for which the urban county qualified. A new consortium agreement must be executed for the succeeding qualification period.

- **Authority to amend the agreement.** The agreement should specify whether the lead entity has the authority to amend the consortium agreement on behalf of all members to add new members to the consortium, or if all consortium members must sign and approve all amendments.
- **Required signatures.** The chief executive officer or an authorized official of each member unit of local government must sign the agreement. The authorized urban county official can sign the agreement on behalf of its participating units of general local government.
- **Authorizing resolutions.** The agreement must include as attachments the authorizing resolutions from the governing body of each member unit of local government that is included in the consortium, or other evidence acceptable to HUD must be submitted saying that the Chief Executive Officer or authorized official has the authority to sign the agreement.

Note, the consortium is required to submit to HUD a legal opinion from the lead entity’s counsel citing applicable law to conclude that the terms and provisions of the agreement are fully authorized under state and local law and that the agreement provides full legal authority to undertake housing assistance activities for the HOME Program. HUD highly recommends that this legal opinion be incorporated as an attachment to the consortium agreement.

Recommended Elements

The consortium agreement is the ideal place to codify decisions that the consortium has made in regards to its governance and management. The consortium agreement should state the consortium’s general policy, and each subrecipient agreement should clarify any details related to specific projects. It is recommended that the consortium include the following elements in the agreement:

- **Effect of consortium formation on existing program design and implementation.** The agreement should indicate that some members’ existing programs may need to be modified if they are to be carried out with HOME funds, but that the consortium’s activities do not impact CDBG-funded programs.
- **Roles and responsibilities of each member jurisdiction.** The agreement should codify the roles and responsibilities of each member jurisdiction. It should specify what each jurisdiction must contribute in order to meet Consolidated Planning requirements and reporting requirements.
- **Decision making process for the consortium/lead entity role.** The agreement should state how decisions will be made, and by whom. It should specify the types of decisions that the lead entity will be able to make, and the types of decisions that must be made by all members of the consortium (either through individual sign-off or governing body).
- **Term and duration of each member’s obligation for compliance.** Although the qualification period for the consortium is three years, the consortium agreement should specify that members have an obligation to abide by HOME requirements throughout the period of affordability for funded projects.
- **Consolidated Plan and CAPER.** The members should agree at the outset how the consolidated planning and reporting processes will be funded and carried out.
- **Allocation of administrative and project funds.** The agreement should specify how these funds will be allocated for administrative and project costs.
- **Communications.** Because the form, timing, and type of communications among members is critical, the agreement should spell out the specifications for notices of meetings, funding awards, monitoring visits, and other important activities.

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- **Management of activities.** The agreement should indicate if members will be managing programs in their own jurisdictions, or if the lead entity will administer activities on behalf of its members.
 - **Meeting the CHDO set-aside requirement.** The agreement should address how the consortium will meet its HOME obligation to spend 15 percent of each annual HOME allocation on projects that are owned, developed, or sponsored by CHDOs. It should specify who will review and determine CHDO eligibility, who will have the authority to select CHDO partners, and who will oversee CHDO projects.
 - **Property Standards.** The agreement should make it clear that members will continue to abide by their own local codes and standards, but acknowledge that in Federally funded projects they are subject to the regulations for addressing lead-based paint hazards.
 - **Match.** The agreement should specify in general terms how the consortium expects to meet its match obligations, particularly if it expects each member jurisdiction to contribute matching funds.
 - **Program income.** The agreement should specify how the consortium will handle program income that is generated by the investment of HOME funds.
 - **Monitoring.** The agreement should clearly state that the lead entity has the right and responsibility to monitor and assure compliance with all HOME requirements during the project implementation and the affordability period. It should specify how the lead entity plans to enforce the provisions of the agreement, including reserving the right for the lead entity to reallocate funds from the member jurisdictions for nonperformance or noncompliance.



Attachment 2

Required Provisions in HOME Written Agreements

Required Provisions (§92.504)	PJ Agreement With...						
	State Recipients	Subrecipients (e.g. Consortia members)	Owners, Sponsors, Developers (e.g. CHDOs)	Contractors	Home-buyers	Home-owners	Tenants (Receiving TBRA)
Use of HOME Funds	✓	✓	✓	✓	✓	✓	
Affordability (§92.252 or §92.254)	✓		✓		✓		
Program Income	✓	✓					
Uniform Administration Requirements (§92.505)	✓	✓					
Project Requirements (as applicable in Subpart F)	✓		✓		✓ §92.254 (a) only	✓ §92.254 (b) only	✓ §92.209 and §92.253 only
Property Standards (§92.251 and §92.355)			✓				
Other Program Requirements (Subpart H except §92.352 and §92.357)	✓	✓	✓	✓ except §92.505, §92.506, and §92.352			
Affirmative Marketing (§92.351)	✓	✓	✓				
Requests for Disbursement of Funds	✓	✓	✓				
Reversion of Assets		✓					
Records and Reports	✓	✓	✓				
Enforcement of the Agreement (§92.252 and 24 CFR Part 85 as applicable)	✓	✓	✓		✓		
Duration of the Agreement	✓		✓	✓			
CHDO Provisions (§92.300 and §92.301)			✓				
Suggested Provisions (not HOME requirements)							
Roles and Responsibilities	✓	✓	✓	✓			
Description of the Project	✓	✓	✓				
Performance Standards	✓	✓	✓	✓			
Conflict of Interest	✓	✓	✓				
Monitoring	✓	✓	✓	✓	✓		
Close-out Requirements	✓	✓	✓				
Non-compliance	✓	✓	✓	✓	✓		



Attachment 3

Elements of a Subrecipient Agreement

Before disbursing funds to any member jurisdiction, the lead entity must execute a subrecipient agreement with that member. In addition, either the lead entity or a member jurisdiction must execute a subrecipient agreement with any other subrecipient that carries out all or a portion of the consortium's HOME program. The subrecipient agreement should specify HOME requirements that apply to the program or project that is being funded.

The following elements **must** be included in a subrecipient agreement:

- **Use of HOME funds.** The agreement must describe how HOME funds will be used, including tasks to be performed, a schedule for completing the tasks, a budget, and the term of the agreement. It should specifically indicate that the proposed uses comply with HOME regulations.
- **Program income.** The agreement must specify if program income is to be remitted to the lead entity, or if it will be retained by the subrecipient jurisdiction. Although not required, the agreement should state what program income is likely to be generated by the project. The agreement should also state that program income must be spent before the consortium can draw down additional funds from the U.S. Treasury.
- **Uniform administrative requirements.** The agreement must specify that the subrecipient is subject to, and must comply with, the uniform administrative requirements governing Federal funds. For governmental entities, these include the requirements of OMB Circular No. A-87 and the following provisions of 24 CFR Part 85: sections 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.44, 85.51, and 85.52. For nonprofit organizations, this includes the requirements of OMB Circular No. A-122 and the following provisions of 24 CFR Part 84: sections 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73.
- **Other program requirements.** The agreement must require the subrecipient to carry out each activity in compliance with cross-cutting Federal regulations, including requirements related to affirmative marketing and minority outreach; displacement, relocation, and acquisition; labor; lead-based paint; and conflict of interest.
- **Affirmative marketing.** The agreement must specify if the program or project is subject to any affirmative marketing requirements. All HOME-funded rental projects with five or more units are subject to an affirmative marketing plan that is developed by the PJ.
- **Fund disbursements.** The agreement must specify that the subrecipient may not request disbursement of funds until the funds are needed for payment of eligible costs, and the amount of the request must not exceed the amount needed. Program income must be disbursed before the subrecipient requests funds from the PJ. Although not required, it is strongly recommended that the agreement also address how requests for disbursements of funds will be handled, i.e., whether members will disburse local funds and then request reimbursement; what documentation will be required; and what timeframes are expected.
- **Reversion of assets.** The agreement must state that, upon expiration of the agreement, any HOME funds or accounts receivable that can be attributed to the use of HOME funds will revert to the consortium or the lead entity. For consortia, the agreement should also specify that should the jurisdiction member stop participating in consortium programs or fail to perform in compliance with program requirements, assets are subject to reversion to the consortium or lead entity.

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- **Records and reports.** The agreement must specify what records must be kept by member jurisdictions and what information or reports that must be submitted to the lead entity in order for the lead entity to meet its record-keeping and reporting obligations to HUD.
 - **Enforcement.** The agreement must specify how the lead entity will enforce its terms of the agreement. The agreement must specify that suspension or termination may occur if the subrecipient materially fails to comply with any term(s) of the agreement. The agreement should include how and when the members will be monitored by the lead entity, and what steps will be taken in cases of nonperformance or noncompliance.
 - **Written agreements with other housing partners.** In order to ensure compliance with HOME requirements by other housing partners, if the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance or contractors, the subrecipient must execute a written agreement.

Attachment 4

Sample: Procedures for Managing Expenditure Deadlines

- Annually and within 15 days of receiving information from HUD about the probable HOME funding level, the lead entity will inform each member jurisdiction of the availability of funds.
- Each member that has projects will respond within 60 days to the lead entity with a formal request that these HOME funds, or a larger amount if desired, be expended in their locality. The request must be accompanied by a pledge of HOME match contributions sufficient to cover their requested HOME allocation.
- The lead entity will convene a meeting of all consortium members to review and prioritize the proposed projects. Projects will be reviewed based on criteria previously established by the consortium, to ensure that those that best meet the housing needs as identified in the Consolidated Plan receive priority consideration.
- Each member's match obligations must be met or exceeded prior to or in tandem with each expenditure of HOME funds in their locality. Appropriate documentation of match or actual match funds must be submitted to the lead entity along with any requests for reimbursement from HOME funds.
- Should a member be unwilling or unable to make a match pledge, they may request that the lead entity use excess match generated by the activities of other members to cover demonstration projects in their community when possible.
- All requests for funding or demonstration projects must include the following:
 - Indication of whether the member or lead entity will identify projects and qualify program participants
 - Identification of the specific housing and building codes to be applied in the jurisdiction
 - An agreement that an identified code official from the member jurisdiction will participate in meetings with staff of the lead entity and oversee all HOME projects in that jurisdiction directly.
- After 60 days, the lead entity reserves HOME funds for member jurisdictions based upon the requests and match pledges submitted.
- Fifteen (15) months after the execution of the HUD HOME funding agreement for any given fiscal year, any locality in which 70% of the allocation has not been formally committed to projects, will have its remaining uncommitted allocation redistributed among the remaining projects in other jurisdictions that have requested additional funds and pledged match. In addition, any locality in which 30% of its allocation has not been expended and properly matched will have its remaining allocation redistributed to other members who have requested funds and pledged match.



ENDNOTES

¹ HUD is subject to a statutory deadline to complete the designation process (in order to run the formula) by September 30. Shortly thereafter, and based upon Congressional appropriation, HUD can make HOME funds available to the consortium at the outset of its next program year. The consortium can determine its program year. However, as noted previously, all member jurisdictions must operate on the same program year for HOME, CDBG, HOPWA, and ESG if any member jurisdiction(s) participates in these programs.

² Note, the jurisdiction is still eligible to receive HOME funds from the state as a state recipient. In addition, the consortium is able to choose to spend HOME funds in that jurisdiction's boundaries through a joint project that serves residents of the consortium and the local jurisdiction. See 24 CFR 92.201(a)(2).

³ Note, there are a number of additional HOME administrative requirements that are not reviewed in this chapter. These include provisions related to conflict of interest, uniform administrative requirements, and restrictions on using HOME funds for religious activities. While important, these do not carry special significance for the administration of HOME consortia. Chapter 4 reviews the lead entity's responsibilities related to fiscal administration of the HOME trust fund. Chapter 5 reviews the choices a consortium faces related to the program income. Consortia that need additional information about administrative requirements that are not discussed in this guidebook are encouraged to refer to Chapter 2 of *Building HOME: A HOME Program Primer*. This training manual can be found at the HOME Program's website, *Building HOME: A HOME Program Primer* at <http://www.hud.gov/offices/cpd/affordablehousing/library/building/index.cfm>. Information about the training course, *Building HOME* is available at the *Community Planning and Development Training Website* at <http://www.icjhosting.com/bcd/cpd/bcdcpd.nsf/webpages/Welcome.html>.

⁴ PJs that are in Presidentially declared disaster areas or meet HUD distress criteria may be eligible for partial or full match reductions. For more information on this topic, see HUD Notice CPD 04-06, *Notice of Procedures for HOME Program - Match Reductions for Fiscal and Severe Fiscal Distress, and for Major Presidentially Declared Disasters under the Stafford Act*, issued June 4, 2004.

⁵ Specific **ineligible** costs include project reserve accounts, match for other programs, public housing operations or modernization, acquisition of PJ-owned property, project-based rental assistance, and tenant-based rental assistance in cases where other assistance, such as Section 8 or Section 17 is mandated.

⁶ The agreement must specify that the subrecipient may not request disbursement of funds until funds are needed to pay eligible costs. The amount of the request is limited to the amount that is needed. See 24 CFR 92.504(c)(2)(iv).

⁷ At this writing, an updated version of this model program guide is forthcoming.

⁸ For additional guidance on the matching requirements, see HUD Notice CPD 97-03, *HOME Program Match Guidance*, issued March 27, 1997. HUD provides for a match reduction in some circumstances. For more information, see HUD Notice CPD 94-06, *Notice of Procedures for HOME Program - Match Reductions for Fiscal and Severe Fiscal Distress, and for Major Presidentially-Declared Disasters under the Stafford Act*, issued June 4, 2004.

⁹ Match can be invested in affordable housing that meets the income targeting and long-term affordability requirements of HOME (i.e., it is "HOME-eligible"), whether or not there are HOME funds in it.

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