

Attachment # 21

Community Housing Development Organizations (CHDO)

MIAMI-DADE
PUBLIC HOUSING AND COMMUNITY DEVELOPMENT

FY 2015
COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDO)

Carrfour Supportive Housing, Inc.

CODEC, Inc.

Little Haiti Housing Association

Opa-Locka Community Development Corporation

St. John Community Development Corporation *

* Pending verification

** CHDO entities must comply with the federal guidelines established by U.S. HUD Notice CPD 12-007 and the 2013 HOME Final Rule. Agencies non-compliant with these guidelines will not be re-certified until compliance guidelines are met.



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

Special Attention of:

Notice: CPD 12-007

All State/Area Coordinators
Regional Directors for CPD
CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

Issued: 5/8/2012
Expires: 5/8/2013

Cross References:

Subject: Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements

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I. BACKGROUND

The *Consolidated and Further Continuing Appropriations Act of 2012* (P.L. 112-55) imposed new requirements on projects that receive FY 2012 funds from the HOME Investment Partnerships Program (HOME). The purpose of these requirements is to improve project and developer selection by participating jurisdictions (PJs) and ensure that there is adequate market demand for FY 2012 HOME projects.

The law requires that:

- 1) PJs must repay any HOME funds invested in projects that are not completed within four years of the commitment date, as determined by a signature of each party to the written agreement. HUD may grant a one year extension upon determination that the failure to complete the project is beyond the control of the PJ.
- 2) PJs may only commit FY 2012 HOME funds to a project after it has underwritten the project, assessed the developer capacity and fiscal soundness of the developer being funded, and examined the neighborhood market conditions to ensure that there is an adequate need for the HOME project. The PJ must certify, at the time HOME funds are committed, that these actions have been taken for each project.
- 3) PJs must convert any FY 2012 HOME homeownership unit that has not been sold to an eligible homebuyer within six months of construction completion to a HOME-assisted rental unit.
- 4) PJs may only provide FY 2012 HOME funds for development activities to Community Housing Development Organizations (CHDOs) that have demonstrated that they have staff with demonstrated development experience.

HUD has incorporated these requirements as special conditions attached to the FY 2012 Funding Agreement (HUD Form 40093). A copy of the conditions is included in Attachment A.

These requirements are applicable to all projects that receive FY 2012 HOME funds, including all 2012 CHDO set-aside funds. For the purposes of this Notice, a ***FY 2012 HOME-funded project*** is defined as any HOME activity set up in Integrated Disbursement and Information System (IDIS) under a 2012 Consolidated Plan/Annual Action Plan Project. A Consolidated Plan/Annual Action Plan Project may consist of one or more HOME projects set up as HOME activities in IDIS. HOME projects are set up in IDIS as HOME activities.

This Notice explains how these new requirements apply to PJs' FY 2012 HOME projects, how PJs must comply with the requirements, and how HUD will determine PJ compliance with these requirements using data entered into IDIS. Please note that these requirements are separate from changes published in the December 16, 2011 HOME proposed rule. Although there are similarities between the law and proposed regulatory changes, the *Consolidated and Further Continuing Appropriations Act of 2012* requires HUD to immediately implement these

requirements on all FY-2012 HOME-funded activities.

II. IMPLEMENTATION OF FY2012 HOME APPROPRIATION LAW

1) Four-Year Project Completion

Requirement: FY 2012 HOME funds used for projects not completed within four years of the commitment date, as determined by a signature of each party to the written agreement, must be repaid to the HOME Investment Trust Fund. HUD may grant a one-year extension if it determines that the circumstances that led to the failure to complete the project by the deadline were beyond the PJ's control.

For the purpose of complying with this requirement, *completion* shall mean that all necessary construction work has been completed and the project has received a certificate of occupancy or other local certification indicating that construction or rehabilitation has been completed and the project is ready for occupancy. For owner-occupied rehabilitation projects, completion means that all rehabilitation work has been completed, the PJ or its designee has performed a final inspection, and the homeowner has accepted the work, as indicated by a final sign-off.

Applicability to HOME Projects: This requirement is applicable to all HOME activities set up in IDIS under a 2012 Consolidated Plan/Annual Action Plan, regardless of the grant year from which the funds are disbursed.

HUD Implementation: Using IDIS data, HUD will generate monthly, PJ-specific reports that will assist PJs in identifying any HOME activities set up in IDIS under 2012 Consolidated Plan/Annual Action Plan Projects that may fail to reach the four-year completion deadline. The reports will use an activity's initial IDIS funding date to identify HOME projects that may be approaching the four-year deadline and are not yet complete. For the purpose of tracking compliance with this requirement, the IDIS initial funding date is an adequate approximation of the commitment date of each HOME project. Since the *Consolidated and Furthering Appropriations Act of 2012* ties this requirement to the date a written agreement is executed, PJs should establish their own tracking process and use this report to assist in identifying possible incomplete projects.

Should a PJ request a one-year extension to the four-year deadline, HUD will require the PJ to submit the written agreement for the project to establish the date that the written agreement was executed by the parties. If granted, the one-year extension will be based on the date the agreement was executed. For example, if an activity's initial funding date in IDIS is two months after the execution date of the written agreement, HUD will use the date of the written agreement as the official project start date, and will only grant the PJ an additional 10 months to complete the project.

HUD will post the reports on the HOME Reports website:
(<http://www.hud.gov/offices/cpd/affordablehousing/reports/>).

PJ Compliance: PJs should evaluate the readiness of each project before setting it up in IDIS as a HOME activity under a 2012 Consolidated Plan/Annual Action Plan Project to ensure compliance with the four-year completion requirement. PJs should establish a process to track a project's four-year completion deadline based on the date of the executed written agreement. Reviewing the reports HUD posts each month on the HOME Reports website will also assist in determining when PJs may need to take action. HUD may grant a one-year extension of the completion deadline to HOME projects that have not progressed due to circumstances beyond the PJ's control. The PJ must submit the extension request to its local HUD Field Office at least 90 days before the project's four-year deadline. All extension requests must include the following:

- Documentation supporting the PJ's claim that the project will not be completed by the four-year deadline due to circumstances beyond the PJ's control.
- A signed and dated copy of the written agreement committing funds to the project.
- A detailed project completion schedule, with milestones, that will ensure the project is completed within one year or less.
- Proof that adequate financing has been secured to ensure project completion.

2) **Assessment of Project Underwriting, Developer Capacity, and Market Need**

Requirement: Before entering into a legally binding written agreement to provide HOME funds to a HOME activity set up in IDIS under a 2012 Consolidated Plan/Annual Action Plan Project, a PJ must:

- Underwrite the project or evaluate the underwriting of another funder;
- Assess the development capacity and fiscal soundness of the developer; and
- Examine neighborhood market conditions to ensure adequate need for each project.

Applicability to PJ Activities: This requirement applies to all HOME activities set up in IDIS under 2012 Consolidated Plan/Annual Action Plan Projects, and must be completed before entering into a legally binding written agreement to provide HOME funds.

HUD Implementation: When committing funds to a HOME activity set up in IDIS under a 2012 Consolidated Plan/Annual Action Plan Project, the PJ must certify in IDIS that it has conducted an underwriting review, assessed developer capacity and fiscal soundness, and examined neighborhood market conditions to ensure adequate need for the project. This certification (see bullet (iv) below) is included as part of a broader certification required for all HOME activities in IDIS.

Since the Project Underwriting, Developer Capacity, and Market Need certification (bullet (iv)) is included with other certifications required for all HOME activities, it will appear in IDIS regardless of whether the project involves development activities that

necessitate project underwriting, assessing developer capacity and financial soundness, and an examination of neighborhood market conditions. This certification will also appear for IDIS activities *not* identified as HOME FY 2012 Action Plan projects.

Certification (iv) below is not applicable to an activity that does *not* involve development activities that necessitate project underwriting, assessing developer capacity and financial soundness, and an examination of neighborhood market conditions (e.g., this certification is not applicable to tenant based rental assistance, homeowner rehabilitation, CHDO operating expenses), *or* if the PJ is committing HOME funds to an activity *not* set up in IDIS under a 2012 Consolidated Plan/Annual Action Plan Project. However, the remaining sections of the certification (i.e., (i), (ii), (iii), and (v)) are applicable to all HOME IDIS activities.

HOME Activity Funding Certification

By requesting the disbursement of Federal funds, the representative of the Participating Jurisdiction using this system certifies that he/she is authorized to execute the certifications set forth herein, and, on behalf of the Participating Jurisdiction, further certifies that, in accordance with the requirements in 24 CFR Part 92:

- (i) the Participating Jurisdiction has fully executed a written agreement that meets the requirements of the regulations applicable to the IDIS activity for which the funds are to be used;
- (ii) the IDIS activity for which the funds are to be used meets the definition of a commitment and the requirements of the definition of a commitment pursuant to the regulations applicable to the IDIS activity;
- (iii) the Participating Jurisdiction has not drawn and will not draw funds for the IDIS activity unless it has fully executed a written agreement committing the funds;
- (iv) *for HOME projects identified as 2012 Action Plan activities in IDIS, if the activity involves acquisition, construction, or rehabilitation of rental or homebuyer projects, including downpayment assistance, the Participating Jurisdiction has conducted an underwriting review, assessed developer capacity and fiscal soundness, and examined neighborhood market conditions to ensure adequate need for the project for which these funds are to be used;* and
- (v) All of the statements and claims made herein are true and correct. Pursuant to 18 USC § 1001, 31 USC § 3729, et seq., and 24 CFR Part 28, false or fraudulent statements or claims are subject to up to 5 years imprisonment and civil penalties up to \$10,000 plus up to 3 times the amount of damages sustained by the Government for each fraudulent act committed.

While bullet (iv) of the certification, which HUD will implement in April 2012, will only be required for HOME activities set up in IDIS under 2012 Consolidated Plan/Annual Action Plan Projects, HUD has proposed a similar requirement in the recently published HOME proposed rule. If that provision is made effective in a HOME final rule,

certification (iv) will apply to all HOME activities funded from all allocations in the future, not just HOME activities set up in IDIS under 2012 Consolidated Plan/Annual Action Plan Projects.

PJ Compliance: PJs must develop and implement written policies and procedures for underwriting projects, evaluating the development and fiscal capacity of developers, and ensuring that there is adequate need for projects based on neighborhood market conditions. PJs may procure the services of a third party to undertake these evaluations. However, the PJ is ultimately responsible for the day-to-day management and oversight of its HOME program in accordance with §92.504(a). Consequently, the PJ must ensure that individuals responsible for entering data in IDIS have the appropriate documentation or written approval from the appropriate staff responsible for compliance to confirm that these reviews have been conducted. The IDIS certification will require the PJ to enter the name of the person responsible for ensuring compliance with these requirements. PJs should be aware that false or fraudulent statements or claims made in IDIS in regard to the PJ's certification that these assessments have been conducted are subject to criminal or civil penalties.

3) **Conversion of Homebuyer Units to Rental Units**

Requirement: Any FY 2012 HOME homebuyer units that have not been sold to an eligible homebuyer within six months of completion must be converted to a HOME rental unit that complies with all HOME requirements for the period of affordability applicable to such rental units.

Applicability to PJ Activities: This requirement is applicable to all HOME activities set up in IDIS under 2012 Consolidated Plan/Annual Action Plan Projects.

HUD Implementation: HUD will consider a homebuyer unit "sold" if the PJ has a ratified sales contract for the unit within six months of completing project construction. For the purpose of complying with this requirement, ***completing project construction*** shall mean that all necessary construction work has been completed and the project has received a certificate of occupancy or other local certification indicating that construction or rehabilitation has been completed and the project is ready for occupancy. (Using IDIS data, HUD will identify HOME homebuyer activities set up under 2012 Consolidated Plan/Annual Action Plan Projects in IDIS that are in final draw and those HOME homebuyer activities with more than 90 percent of the HOME funds drawn yet no draws in the past six months. Reports identifying these activities will be posted monthly on the HOME Reports website (<http://www.hud.gov/offices/cpd/affordablehousing/reports/>). The FY 2012 HOME appropriation language does not provide HUD with the authority to waive or otherwise make exceptions to this requirement.

PJ Compliance: PJs must monitor all HOME homebuyer activities set up under 2012 Consolidated Plan/Annual Action Plan Projects in IDIS to ensure that there is a ratified contract for sale within six months of completing construction. Units in HOME homebuyer projects that do not have a ratified contract for sale within six months of

construction completion must be converted to HOME rental units and operated in compliance with all applicable rules. Accordingly, HUD recommends that PJs develop or modify existing policies and procedures that take this possibility into account, and identify potential partners in the community with the capacity to manage rental units if this conversion becomes necessary.

4) **CHDO Development Capacity**

Requirement: PJs may not reserve FY 2012 HOME funds to a CHDO for development activities unless the PJ has determined that the CHDO has staff with demonstrated development experience. The PJ must ensure that the current CHDO staff has experience developing projects of the same size, scope and level of complexity as the activities for which HOME funds are being reserved or committed.

Applicability to PJ Activities: This requirement applies to all reservations and commitments of CHDO set-aside funds made from a PJ's FY 2012 HOME allocation in which the CHDO is acting as the developer.

HUD Implementation: Any time a PJ subgrants HOME funds from its 2012 CHDO set-aside (CR) subfund to a CHDO for a project, the PJ must certify in IDIS that it has carefully evaluated the development capacity of the CHDO staff, and has determined that the CHDO staff has the knowledge, skills, and experience necessary to undertake eligible CHDO set-aside projects. .

HOME CHDO Reservation Certification

By reserving these Federal funds, the representative of the Participating Jurisdiction using this system certifies that he/she is authorized to execute the certification, and, on behalf of the Participating Jurisdiction, further certifies that, in accordance with the requirements in Public Law 112-55:

For 2012 CHDO set-aside funds that will be committed to a CHDO project, these funds are being reserved for development activities that are to be carried out by the designated community housing development organization and the organization has demonstrated that it has staff with demonstrated development experience.

PJ Compliance: PJs must develop and implement written policies and procedures for assessing CHDO staff capacity, and ensure that adequate documentation of the assessment is included in the appropriate files. HUD defines CHDO staff as paid employees who are responsible for the day-to-day operations of the CHDO. Staff does not include volunteers, board members, or consultants.

The PJ must ensure that individuals responsible for entering data in IDIS have the appropriate documentation or written approval from the staff responsible for compliance

to confirm that a CHDO has demonstrated development experience. The IDIS certification will require the PJ to enter the name of the person responsible for ensuring compliance with this requirement. PJs should be aware that false or fraudulent statements or claims made in IDIS in regard to the PJ's certification that this assessment has been conducted are subject to criminal or civil penalties.

HUD will issue supplemental guidance with respect to these requirements as necessary, as well as specific instructions for implementing these requirements in IDIS. Any questions on this guidance should be addressed to the local HUD Field Office.

Attachment A

***Special Conditions**

HOME funds used for projects not completed within 4 years of the commitment date, as determined by a signature of each party to the agreement shall be repaid, except that the Secretary may extend the deadline for 1 year if the Secretary determines that the failure to complete the project is beyond the control of the participating jurisdiction.

No HOME funds may be committed to any project unless each participating jurisdiction certifies that it has conducted an underwriting review, assessed developer capacity and fiscal soundness, and examined neighborhood market conditions to ensure adequate need for each project.

Any homeownership units funded with HOME funds which cannot be sold to an eligible homeowner within 6 months of project completion shall be rented to an eligible tenant.

No HOME funds may be awarded for development activities to a community housing development organization that cannot demonstrate that it has staff with demonstrated development experience.

The 2013 HOME Final Rule and the 2012/2013 Appropriations Acts

Introduction

Activities funded with HOME FY2012 and 2013 Program Year funds are subject to the requirements of the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013. The Acts impose four requirements that are similar to the new requirements of the 2013 HOME Rule. The Appropriations Acts require these provisions to go into effect “immediately,” and HUD has defined this to mean that they apply to any projects that receive FY2012/2013 HOME funds, including all FY2012/2013 CHDO set-aside funds. This includes any HOME activity set up in IDIS under a FY2012/2013 Consolidated Plan/Annual Action Plan project. Any FY2012/2013 project to which the PJ commits funds after the effective date of the 2013 Rule is subject to the requirements of both the Acts and the Rule. Where these requirements differ, the more restrictive rule applies.

The following Appropriations Acts requirements apply:

1. **Four-year completion deadline.** For the purposes of compliance with the 2012/2013 Appropriations Acts, “completed” means that all necessary construction work is completed and a certificate of occupancy is issued (or, in the case of a homeowner rehabilitation project, the project is completed and signed off on by the PJ and homeowner). This definition of “project completion” differs from that in the 2013 Rule. Under the 2013 Rule, a project is not completed until beneficiary data is input into IDIS (in addition to construction completion and final draw of funds).
2. **Assessment of project underwriting, developer capacity, and market need.** This requirement for FY2012/2013 projects and the requirement of the 2013 Rule are substantially equivalent.
3. **Conversion of homebuyer units to rental units.** The 2013 Rule and the 2012/2013 Appropriations Acts apply different deadlines to this requirement. The Appropriations Acts require that the homebuyer unit be sold (interpreted by HUD to mean that it is under a ratified sales contract) within *six* months of construction completion, or it must be converted to a rental unit, or the entire HOME investment must be repaid by the PJ. The 2013 Rule requires that the unit be under a ratified sales contract within *nine* months of completion.
4. **CHDO development capacity.** The Appropriations Acts and the 2013 Rule impose the same requirement that PJs determine a nonprofit has demonstrated capacity to undertake CHDO set-aside activities. Under the pre-2013 Rule (to which FY2012/2013 projects are subject), the CHDO must have *development* capacity, since CHDO set-aside funds always involve some aspect of development. However, the 2013 Rule allows a CHDO to serve as an owner without developing the property. If this is the role the CHDO will serve, under the 2013 Rule, this is the experience that needs to be documented.

More Information About the HOME Final Rule

[Highlights of the Changes in the 2013 HOME Final Rule](#)
[The 2013 HOME Final Rule Effective Dates](#)

Important Resources

[2013 HOME Final Rule, 24 CFR Part 92 \(Changes Only\)](#)
[Section by Section Summary of the 2013 HOME Final Rule](#)

<https://www.onecpd.info/home/home-final-rule/the-home-final-rule-and-the-2012-2013-home-appropriation-act>

Comparison of the 2013 HOME Final Rule and the FY2012 and FY2013 Appropriation Act Requirements

Deadlines

Requirement	FY2012 & FY2013 Requirements	2013 HOME Final Rule
4-Year Completion Deadline	<ul style="list-style-type: none"> • 1 year extension • HUD has no authority to grant further extensions • "Completion" occurs at construction completion 	<ul style="list-style-type: none"> • 1 year extension • HUD has exception authority • "Completion" occurs when definition of completion* is met
Homebuyer Sales Deadline	<ul style="list-style-type: none"> • 6 months • HUD has no exception authority 	<ul style="list-style-type: none"> • 9 months • HUD has exception authority

CHDO Capacity Requirement

Requirement	FY2012 & FY2013 Requirements	2013 HOME Final Rule
CHDOs must have paid staff with capacity	<p>Must demonstrate development capacity</p> <p>This can be done through:</p> <ul style="list-style-type: none"> • Full-time or part-time staff • Independent contractors • Shared staff • Donated staff 	<p>Must demonstrate capacity in the proposed role of the CHDO (own, develop, or sponsor housing), as defined in the 2013 Rule</p> <p>This can be done through:</p> <ul style="list-style-type: none"> • Full-time or part-time staff • Independent contractors • Consultants, but ONLY during 1st year as CHDO

Project Assessment Requirement

Requirement	FY2012 & FY2013 Requirements	2013 HOME Final Rule
<p>Before committing HOME funds to a project, a PJ must:</p> <ul style="list-style-type: none"> • Underwrite the project • Assess the developer's capacity and fiscal soundness • Assess the market demand 	Requirement applies	Requirement applies

*Definition of completion at (§ 92.2): A project is completed when all title transfer requirements are met, all construction work is complete, property standards are met, final drawdown of HOME funds are disbursed for the project, and project completion information is entered into IDIS. For rental projects: completion occurs upon completion of construction but before occupancy.