



HOMEfires - Vol. 13 No. 1, April, 2016

Q. Can a PJ receive credit for a HOME commitment that it made prior to its 24-month commitment deadline but did not set up in IDIS prior to its deadline?

A. Yes. A HOME participating jurisdiction (PJ) may receive credit for a commitment of HOME funds to a State recipient or subrecipient or to a specific local project that it made prior to the commitment requirement deadline. The PJ must submit the written agreement, along with supporting documentation demonstrating that it met all pre-commitment requirements prior to executing the agreement, for HUD review and approval.

The total funds committed by each HOME PJ and entered in IDIS are reflected on HUD's [HOME Deadline Compliance Status Reports](#) generated at the end of each month. Sometimes, HUD's [HOME Deadline Compliance Status Report](#) indicates that a HOME PJ has a commitment shortfall at the time of its statutory two-year commitment requirement deadline because, while it has committed funds to State recipients or subrecipients or to specific local projects, it has not yet entered those commitments in IDIS. HUD expects PJs to set up and fund activities in IDIS in a timely manner. But before deobligating the shortfall amount, HUD, through its field offices, allows the PJ to submit documentation of commitments not reflected in IDIS at the time of the PJ's commitment requirement deadline.

This HOMEfires summarizes the requirements for committing HOME funds contained in [Notice CPD-15-09](#), and describes the required documentation and procedure to receive credit for HOME commitments not entered in IDIS prior to the commitment requirement deadline.

Background

The HOME statute and 2013 HOME Final Rule require HUD to reduce or recapture HOME funds that are not committed within 24 months after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Investment Partnership Agreement (42 USC 12748; 24 CFR § 92.500(d)(1)(B)). Pursuant to the statutory requirement that HUD keep each PJ informed on the status of its HOME account (42 USC 12748(h)), HUD provides the [HOME Deadline Compliance Status Reports](#), which PJs can use to track monthly compliance with the commitment deadline requirement. The report can be found on the HOME Reports web page: <https://www.hudexchange.info/manage-a-program/home-deadline-compliance-status-reports/>.

The [HOME Deadline Compliance Status Reports](#) only reflect commitments entered in IDIS, and commitments not yet entered are not counted in the calculation. For this reason, a shortfall on the report as of the PJ's deadline date does not always mean that the PJ has not met its requirement. For instance, a PJ may have a fully executed HOME written agreement but the funds were not entered in IDIS prior to its deadline, resulting in a commitment shortfall. HUD permits PJs to submit documentation of program or project commitments not reflected in IDIS at the time of the PJ's commitment requirement deadline.

Commitment Requirements

The HOME Final Rule at §92.2 defines **commitment** as:

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

HOME commitments include commitments to programs (to be undertaken by an eligible State recipient or subrecipient) and commitments to specific local projects. The HOME regulations require that certain requirements must be met prior to the execution of a written agreement committing funds to a specific local project. In accordance with the definition of a commitment to a specific local project (at §92.2 "Commitment"), the underwriting and subsidy layering requirements (at §92.251(b)), and the written agreement requirements (at §92.504(c)), the PJ must meet these requirements prior to executing a written agreement for a development project:

- identify a specific project (with address or legal description)
- assess the market demand for the project
- complete environmental requirements (HOME commitments that are conditional commitments pending completion of environmental review may count toward the PJ's 24-month commitment deadline)
- secure all necessary financing
- establish a budget
- examine the sources and uses and determine costs are reasonable
- complete underwriting and subsidy layering
- assess the experience and financial capacity of the developer
- determine that construction will begin within 12 months
- establish a completion schedule

Additionally, all CHDO reservations must be project-specific commitments of funds and the PJ must meet these pre-commitment requirements prior to executing the written agreement with the CHDO.

When providing HOME assistance to a homebuyer, either to purchase a project developed with HOME funds or as direct homebuyer assistance (e.g., downpayment assistance), the PJ must underwrite the individual buyer to determine the appropriate amount of assistance prior to executing a written agreement with the buyer.

These “pre-commitment” requirements must be documented by the PJ and retained in the project file. Please see [HUD Notice CPD-15-09 “Requirements for Committing HOME Funds”](#) (published November 13, 2015) for more information on compliance with these HOME requirements.

Acceptable Documentation

The documentation that demonstrates that a PJ has made a commitment of HOME funds includes: (a) a written agreement that complies with the requirements of §92.504(c); and, for commitments to specific local projects, (b) documentation that demonstrates compliance with the pre-commitment requirements ([see bulleted list above](#)). To demonstrate that the parties properly executed the written agreement before the commitment deadline, the signature page must contain the signatures of all parties and the date of execution. An agreement dated only on the first page is not acceptable as a HOME commitment. Given the importance of the execution and dating, HUD recommends that PJs have the signatures on the agreement notarized or otherwise formally attested to. If the signatures of the parties to the agreement have different dates, the last dated signature becomes the HOME commitment date.

Commitments not in IDIS

HUD uses IDIS to make an initial determination of compliance with the 24-month commitment requirement. HUD allows PJs to submit documentation of HOME commitments executed prior to the commitment requirement deadline, but not in IDIS at the time of the deadline. Specifically, the same documentation that supports commitments in IDIS is evidence of a HOME commitment that has not been entered into IDIS—a legally-binding written agreement committing HOME funds to a specific local project or to a program to be undertaken by a State recipient or subrecipient, along with the documentation supporting that the PJ has met all pre-commitment requirements.

If HUD identifies a commitment requirement shortfall, and the PJ has evidence of commitments that have been made but not yet entered into IDIS, the PJ must provide the following to the HUD CPD field office for review and approval:

For commitments to programs to be undertaken by a State recipient or subrecipient:

- HOME written agreement
 - Signed and dated prior to deadline date

For commitments to development projects:

- HOME written agreement
 - Signed and dated prior to deadline date
 - Identifies a specific project address or legal description
- Market assessment for project
 - Dated prior to commitment date
 - Includes documentation of PJ's review
- Evidence the Request for Release of Funds OR language in the written agreement conditioning the commitment on completion of the environmental review requirements (including language prohibiting choice limiting actions from being undertaken)
- Firm financing commitments
 - Dated prior to the commitment date
- Project budget
- Sources and uses
 - Includes documentation of PJ's determination that HOME costs are eligible and reasonable
- Underwriting and subsidy layering analysis
 - Must be reviewed and approved by PJ, with dated signatures
- Assessment of experience and financial capacity of the developer
- Documentation to support feasibility of construction beginning within 12 months
- Project completion schedule

For tenant-based rental assistance:

- HOME written agreement with tenant or unit owner
 - Signed and dated prior to deadline date

For commitments to homebuyers:

- HOME written agreement
 - Signed and dated prior to deadline date
 - Identifies a specific project address
- Documentation to support underwriting of the buyer

When the PJ owns the land and/or is the developer:

If the PJ owns the land and/or is the developer, and consequently, there will not be a written agreement committing funds to another entity, HUD will accept as a HOME commitment evidence that construction is expected to start within 12 months. If the construction will be undertaken by contractors, such evidence should include an executed contract for construction of the project, along with completed architectural plans and, if required, the construction permit. If the construction will be undertaken by the PJ's employees, the evidence should include completed architectural plans and, if required, the construction permit, along with a schedule for construction work. Because "land banking" is prohibited in the HOME Program, a PJ may only acquire land with HOME funds with the

intention to convey it to a developer for a HOME project— there must be an actual project before the PJ may use HOME funds for acquisition, and the PJ must document that construction on the specific project will begin within 12 months.

NOTE: A PJ may never set up a project or subgrant in IDIS before it executes a legally-binding HOME written agreement committing the funds to the specific local project or program and has met all the pre-commitment requirements. Doing so is a violation of the HOME regulations and HUD must recalculate the PJ's compliance with the 24-month commitment requirement. In addition, a PJ may not enter conditional commitments pending completion of environmental review into IDIS prior to completion of the ER process and submission and approval of the Request for Release of Funds and Certification.

HUD Procedure for Reviewing Commitments not in IDIS

If the [HOME Deadline Compliance Status Report](#) indicates a shortfall at the time of the PJ's commitment requirement deadline, the HUD field office must request and review documentation submitted by the PJ as evidence of commitments made prior to the deadline, but not entered in IDIS at the time of the deadline. The field office must consult with OAHP on the review. The amount of additional commitments counted toward the PJ's total commitments at the time of its deadline and the remaining commitment requirement shortfall must be communicated to the PJ after OAHP confirms the amount to be accepted. OAHP requires the field office to submit a completed checklist, found as an attachment to [HUD Notice CPD-15-09 "Requirements for Committing HOME Funds"](#), for each specific local project or program that was not entered in IDIS at the time of the PJ's commitment requirement deadline. This must include verification by the field office that the agreements were not set up as HOME activities in IDIS as of the date of the PJ's commitment requirement deadline.

HOME PJs with questions about this HOMEfires should [contact their local HUD CPD Field Office](#). CPD Field Offices should direct their questions to HUD's Office of Affordable Housing Programs.