



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

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

Notice: CPD-14-08

Issued: April 18, 2014
Expires: **This NOTICE is effective until it is amended, superseded, or rescinded**

Supersedes CPD 12-007
Cross Reference: 24 CFR Part 92

Subject: Operating Guidance for Implementing FY2012 and FY2013 HOME Appropriations Requirements

Contents

I. PURPOSE..... 2

II. BACKGROUND 2

III. APPLICABILITY 3

IV. IMPLEMENTATION OF FY2012 and FY2013 HOME APPROPRIATION LAWS..... 5

1) Four-Year Project Completion Deadline..... 5

2) Assessment of Project Underwriting, Developer Capacity, and Market Need..... 7

3) Six-Month Deadline for Sale of Homebuyer Units..... 10

4) CHDO Development Capacity 11

Attachment A: FY2012 HOME Grant Agreement..... 13

Attachment B: FY2013 HOME Grant Agreement14

Attachment C: Applicability Chart..... 15

Decision Charts: Determining the Applicability of the 2012/2013 Appropriations Requirements and the 2013 Final Rule to HOME Projects.....16-17

I. PURPOSE

This Notice explains how the FY2012 and FY2013 Appropriations requirements apply to Participating Jurisdictions' (PJs') 2012 and 2013 HOME projects, how PJs must comply with the requirements, and how HUD will determine PJ compliance with these requirements using data entered into the Integrated Disbursement and Information System (IDIS). The Notice also explains how the implementation and applicability of these requirements is affected by the HOME Final Rule published on July 24, 2013.

II. BACKGROUND

The *Consolidated and Further Continuing Appropriations Act of 2012* (P.L. 112-55) imposed new requirements on projects that receive FY2012 HOME Investment Partnerships Program (HOME) funds. *The Consolidated and Further Continuing Appropriations Act of 2013* (P.L. 113-6) imposed the same statutory requirements on projects that receive FY2013 HOME funds. The purpose of these requirements is to improve project and developer selection by PJs and ensure that there is adequate market demand for a project before HOME funds are invested.

These laws require that:

- 1) PJs must repay any HOME funds invested in projects that are not completed within four years of the date funds are committed, 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 was beyond the control of the PJ.
- 2) PJs may only commit FY2012 and FY2013 HOME funds to a project after it has underwritten the project, assessed the development 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 to a project, that it has taken these actions with respect to the project being funded.
- 3) PJs must convert any FY2012 and FY2013 HOME-assisted 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 FY2012 and FY2013 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 FY2012 and FY2013 Funding Agreements (HUD Form 40093). A copy of the conditions is included in Attachment A and Attachment B.

On July 24, 2013, HUD issued a Final Rule amending the HOME Program regulations. The 2013 HOME Rule contains provisions similar to those contained in the 2012 and 2013 Appropriation Laws. These provisions are applicable to all projects to which funds are committed on or after August 23, 2013. To eliminate situations in which a project would be subject to both the 2012/2013 Appropriation Laws and the provisions of the 2013 HOME Final Rule, Congress included language in the *Consolidated Appropriations Act, 2014 (H.R. 3547)* stating that any project that is subject to the 2013 HOME Rule provisions (i.e., because HOME funds had been committed to it on or after August 23, 2013) would not be subject to the 2012/2013 Appropriation Laws requirements irrespective of the source year of the funds. As a result, while PJs must carefully ensure compliance with the requirements that apply to each specific project they undertake, no HOME project will be subject to both 2013 Final Rule and 2012/2013 Appropriation Laws requirements.

III. APPLICABILITY

For the purpose of implementing these requirements, a ***FY2012 or FY2013 HOME-funded project*** is defined as **any HOME activity set up in the IDIS and designated as a 2012 or 2013 Consolidated Plan/Annual Action Plan Project regardless of the grant year from which the funds are actually disbursed** (hereafter referred to as “Action Plan Project”). An Action Plan Project may consist of one or more HOME projects set up as HOME activities in IDIS. The 2012/2013 Appropriation requirements will only apply to a project to which HOME funds were committed before August 23, 2013. In other words, a 2012/2013 Action Plan project for which a legally binding written agreement was executed on or after August 23, 2013 is subject only to the 2013 Final Rule requirements. Consequently, no HOME project will be subject to both the Appropriation Laws and 2013 HOME Rule requirements.

If a PJ executed a written agreement committing funds to a project designated as a 2012 or 2013 Action Plan project prior to August 23, 2013, but then amends the written agreement to increase the HOME funds being provided to the project on or after August 23, 2013, the 2013 HOME Rule requirements will apply to the project.

Which Requirements Apply?
Sample Scenarios

<u>Scenarios</u>	2013 Rule	2012/2013 Appropriations	Pre-2013 Rule
<ul style="list-style-type: none"> ✓ Funds committed prior to August 23, 2013 ✓ Project is a 2011 (or prior) Action Plan project 			X
<ul style="list-style-type: none"> ✓ Funds committed prior to August 23, 2013 ✓ Project is a 2012 or 2013 Action Plan project 		X	X
<ul style="list-style-type: none"> ✓ Funds committed on/after August 23, 2013 ✓ The Action Plan year of the project does not matter 	X		
<ul style="list-style-type: none"> ✓ Funds committed prior to August 23, 2013 ✓ Project is a 2012 or 2013 Action Plan project ✓ Written agreement amended on/after August 23, 2013 to add additional HOME funds to the project 	X		

For CHDO set-aside projects:	2013 Rule	2012/2013 Appropriations	Pre-2013 Rule
<ul style="list-style-type: none"> ✓ Funds reserved and committed to a specific project prior to August 23, 2013 ✓ Funds are not FY2012 or FY2013 CHDO set-aside funds 			X
<ul style="list-style-type: none"> ✓ Funds reserved and committed to a specific project prior to August 23, 2013 ✓ Funds are FY2012 or FY2013 CHDO set-aside funds 		X	X
<ul style="list-style-type: none"> ✓ Funds reserved prior to August 23, 2013 ✓ Funds not committed to a specific project until on/after August 23, 2013 ✓ Funds are FY2012 or FY 2013 CHDO set-aside funds 	X		
<ul style="list-style-type: none"> ✓ Funds reserved and committed to a specific project on/after August 23, 2013 ✓ If does not matter what FY set-aside the funds are from 	X		

HUD posts a list of all 2012 and 2013 activities in the *2012/2013 HOME Activities Reports* online at <https://onecpd.info/resource-library/home-activities-reports/>. This report can assist PJs in identifying their universe of projects to which the 2012 and 2013 Appropriations requirements apply. This report includes all projects with a 2012 or 2013 program year in IDIS that have an initial funding date prior to August 23, 2013. The initial funding date approximates the commitment date of each HOME project, which is the date the written agreement is executed. It is the dated written agreement that HUD will use for the purpose of determining the applicability of the 2012/2013 Appropriation requirements. To ensure the usefulness of IDIS as a tracking tool, PJs should ensure the timely set-up of all HOME commitments in IDIS.

IV. IMPLEMENTATION OF FY2012 and FY2013 HOME APPROPRIATION LAWS

1) Four-Year Project Completion Deadline

Requirement: All 2012/2013 Action Plan projects to which the 2012/2013 Appropriation requirements apply are required to be completed within four years of the date that HOME funds are committed to the project, as determined by a dated signature of each party to the written agreement. If a project is not completed by the deadline, the PJ must repay any HOME funds invested in the project to its HOME Investment Trust Fund account. 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 to which funds were committed prior to August 23, 2013 that were set up in IDIS as a 2012 or 2013 Action Plan Project, regardless of the grant year from which the funds are disbursed.

HUD Implementation: Using IDIS data, HUD generates *2012/2013 HOME Activities Reports* monthly. These are PJ-specific reports that can assist PJs in identifying any HOME activities set up in IDIS as 2012 or 2013 Action Plan Projects that may fail to meet the four-year completion deadline. The reports 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 only approximates the commitment date of each HOME project. Since the Appropriation Laws of 2012 and 2013 tie 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.

The 2012/2013 *HOME Activities Reports* are posted on the HOME Reports website: <https://onecpd.info/resource-library/home-activities-reports/>

Should a PJ request a one-year extension to the project completion 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. Any extension granted 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 would use the date of the written agreement as the official project start date, and would only grant the PJ an additional 10 months to complete the project.

PJ Compliance: PJs should evaluate the readiness of each HOME project before setting it up in IDIS 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 a PJ in determining when it 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 copy of the written agreement committing funds to the project which includes the dated signature of each party;
- A detailed project completion schedule, with milestones, that will ensure the project is completed within one year or less; and
- Proof that adequate financing has been secured to ensure project completion.

**2013 HOME Rule Requirement—
Four-Year Completion Deadline**

The 2013 HOME Rule, at §92.205(e)(2), imposed a four-year project completion deadline on all projects to which HOME funds are committed on or after August 23, 2013. Under the 2013 Rule, project “completion” occurs when the definition of completion at §92.2 is met and not at *construction* completion, as required by the Appropriation Laws. This definition of “completion” specifies that all construction work must be complete and the property standards must be met; the final drawdown of HOME funds must be disbursed; and the project must be marked as “complete” in IDIS. For homebuyer projects, the final transfer has occurred and the beneficiary information is entered into IDIS. For rental projects, the project can be completed in IDIS with units marked as “vacant,” but the PJ is responsible for entering beneficiary data once the units are occupied.

The 2013 HOME Rule allows a PJ to request a one-year extension of the four-year deadline, if the PJ can demonstrate that the project will be completed within the one-year timeframe.

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 or 2013 Action Plan Project, a PJ was required to have:

- Underwritten the project or evaluated the underwriting of another funder;
- Assessed the development capacity and fiscal soundness of the developer; and
- Examined neighborhood market conditions to ensure adequate need for each project.

Applicability to PJ Activities: This requirement applies to 2012/2013 Action Plan activities to which funds were committed before August 23, 2013 and which are development activities necessitating project underwriting, assessing developer capacity and financial soundness, and an examination of neighborhood market conditions.

The requirement is not applicable to tenant-based rental assistance, homeowner rehabilitation, or CHDO operating expenses. For 2012 and 2013 projects that involve downpayment assistance only, a PJ is required to underwrite the project to ensure that the level of assistance is appropriate but does not need to assess the capacity and fiscal soundness of the developer or examine the market conditions. For more information on the applicability of each component of this requirement to various HOME activities, please see Attachment C.

The requirements must have been met before entering into a legally binding written agreement to provide HOME funds to a project.

HUD Implementation: When committing funds to a HOME activity set up in IDIS under a 2012 or 2013 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 (the HOME Activity Funding Certification).

Since the Project Underwriting, Developer Capacity, and Market Need certification (bullet (iv)) is included with other certifications required for all HOME activities, it appears in IDIS even when the project does *not* involve development activities that necessitate project underwriting, assessing developer capacity and financial soundness, and an examination of neighborhood market conditions.

HOME Activity Funding Certification

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

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

PJ Compliance: PJs must have developed and implemented 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 have met this requirement by procuring 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 are provided the appropriate documentation or written approval from the appropriate staff responsible for compliance to confirm that these reviews have been conducted. 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.

**2013 HOME Rule Requirements—
Project Assessment Requirements**

The same project assessment requirements—underwriting the project, assessing the developer's capacity and fiscal soundness, and assessing the current market demand for the project—are included as provisions in the 2013 HOME Rule, at §92.250(b). PJs must ensure that these project assessment requirements are met for any project to which funds are committed on or after August 23, 2013. The PJ must ensure that these requirements have been met *before* executing the written agreement committing funds to the project. PJs will continue to certify to compliance with these requirements in accordance with bullet (iv) of the HOME Activity Funding Certification in IDIS (see above).

3) **Six-Month Deadline for Sale of Homebuyer Units**

Requirement: Any HOME homebuyer unit that was set up under a 2012/2013 Action Plan project that has not been sold to an eligible homebuyer within six months of construction 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, or the PJ must repay the HOME investment.

Applicability to PJ Activities: This requirement is applicable to all HOME homebuyer activities to which funds are committed before August 23, 2013 that are set up in IDIS under 2012/2013 Action Plan Projects.

HUD Implementation: HUD considers 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.

If the PJ has an established lease-purchase program and executes a lease-purchase agreement with an income-eligible tenant/homebuyer within the six-month deadline, HUD considers the property to be under contract and in compliance with this requirement.

Using IDIS data, HUD is now generating the *2012/2013 HOME Homebuyer Activities Report*, which identifies HOME homebuyer activities set up under 2012 or 2013 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. The *2012/2013 HOME Homebuyer Activities Report* is posted monthly on the HOME Reports website: <https://onecpd.info/resource-library/home-activities-reports/>

HUD has no authority to waive or otherwise make exceptions to this requirement.

PJ Compliance: PJs must monitor all HOME homebuyer activities set up under 2012 or 2013 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, or the HOME funds invested in the units must be repaid. 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. If the PJ is unwilling or unable to convert the unit to a rental unit, at the expiration of the six month deadline HUD will make a determination of non-compliance with the requirement, and will require repayment.

**2013 HOME Rule Requirement—
Homebuyer Sales Deadline**

The 2013 Final Rule, at §92.254(a)(3), also includes a deadline for sale of homebuyer units for projects to which HOME funds were committed on or after August 23, 2013. Specifically, under the 2013 Final Rule, all HOME-funded homebuyer units must be sold to an eligible homebuyer within **nine** months of construction completion.

4) CHDO Development Capacity

Requirement: PJs must not have reserved FY2012 or FY2013 HOME funds to a CHDO for development activities unless the PJ had determined that the CHDO had staff with demonstrated development experience. The PJ must have ensured that the current CHDO staff had experience developing projects of a similar size, scope and level of complexity as the activities for which HOME funds were being reserved or committed.

Applicability to PJ Activities: This requirement applied to all reservations of CHDO set-aside funds made from a PJ's FY2012 or FY2013 HOME allocation that were also committed to a specific project before August 23, 2013.

[The CHDO capacity requirement contained in the 2013 HOME Rule applies to any CHDO project to which funds are committed on or after August 2013, 2013, regardless of the source year of the funds or whether the funds were previously reserved.]

HUD Implementation: Each time a PJ subgranted funds from its 2012 or 2013 CHDO set-aside funds (CR subfunds) to a CHDO, the PJ was required to certify in IDIS that it had carefully evaluated the development capacity of the CHDO staff, and had determined that the CHDO staff had the knowledge, skills, and experience necessary to undertake eligible CHDO set-aside projects.

PJ Compliance: 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. PJs must have developed and implemented written policies and procedures for further defining and assessing CHDO staff capacity, and ensured that adequate documentation of the assessment was included in the appropriate files.

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. 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.

2013 HOME Rule Requirement—
CHDO Capacity Requirement

The 2013 HOME Rule also requires CHDOs to have paid staff that has the demonstrated experience to undertake a particular project. This capacity assessment and certification must occur each time a PJ provides HOME funds to a CHDO for a specific project. This certification is included as bullet (v) of the HOME Activity Funding Certification (see page 8), and reads:

for CHDO set-aside projects, the PJ certifies the organization meets the definition of “community housing development organization” at §92.2, which includes that the organization has demonstrated capacity to own, develop, or sponsor the housing to which funds are being committed, in accordance with §92.300.

The 2013 HOME Rule also established a new role for CHDOs as “owners” of housing that they do not develop themselves. As such, the CHDO capacity determination under the 2013 Final Rule does not require that a CHDO has *development* capacity if it will act as an owner of housing. As “owner” the CHDO must have paid staff with the capacity to own and manage housing. When functioning as a “developer” or “sponsor” of housing, the CHDO will be required to demonstrate development capacity.

PJs are not permitted to consider the experience of board members or volunteers when making their capacity determination under the 2013 Rule, but they are permitted to consider the capacity provided by consultants during an organization’s first year as a CHDO.

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

Attachment A

FY2012 HOME Grant Agreement

Attachment B

FY2013 HOME Grant Agreement

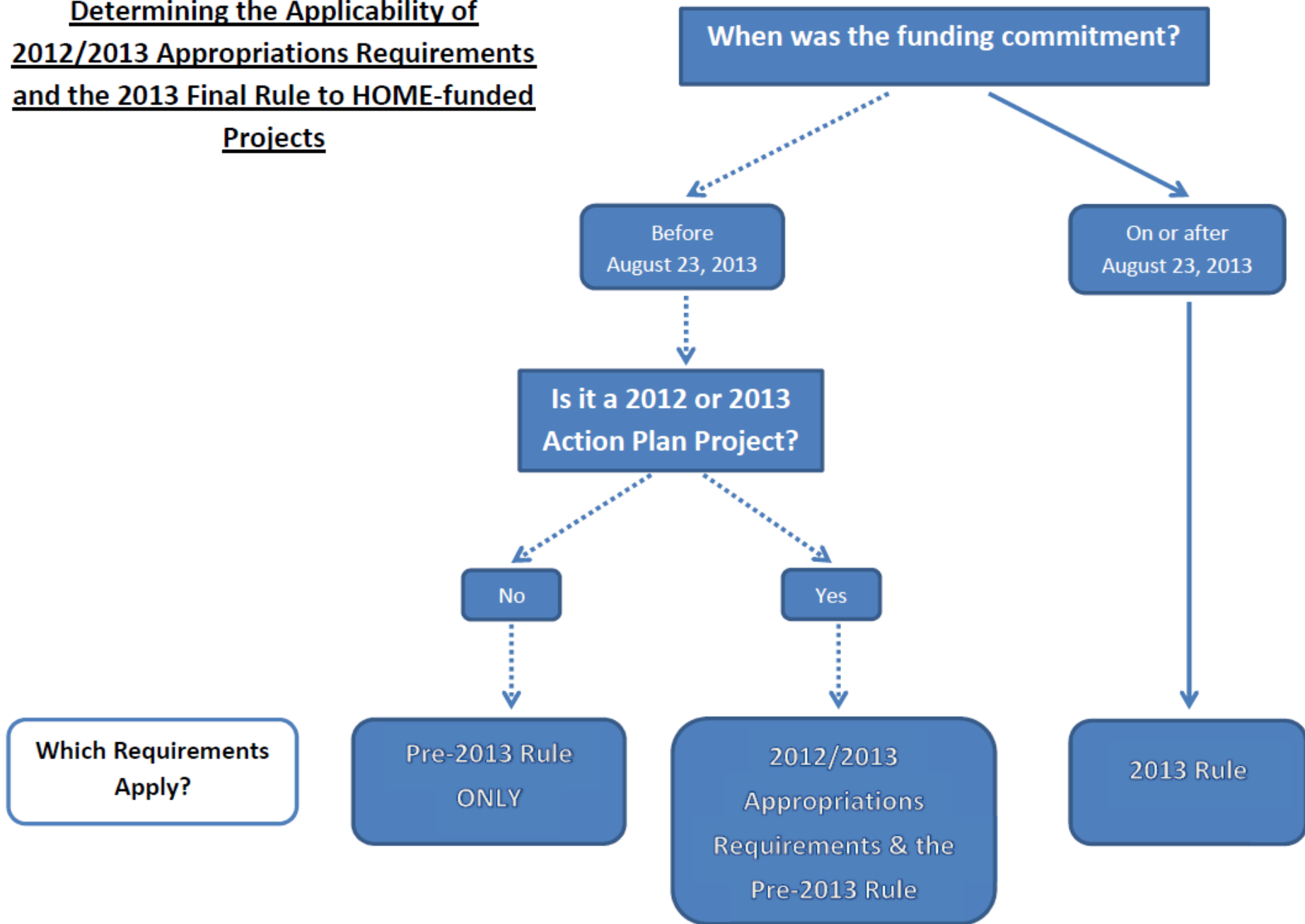
Attachment C

FY2012 and FY2013 HOME Appropriation Law Requirements Applicability Chart

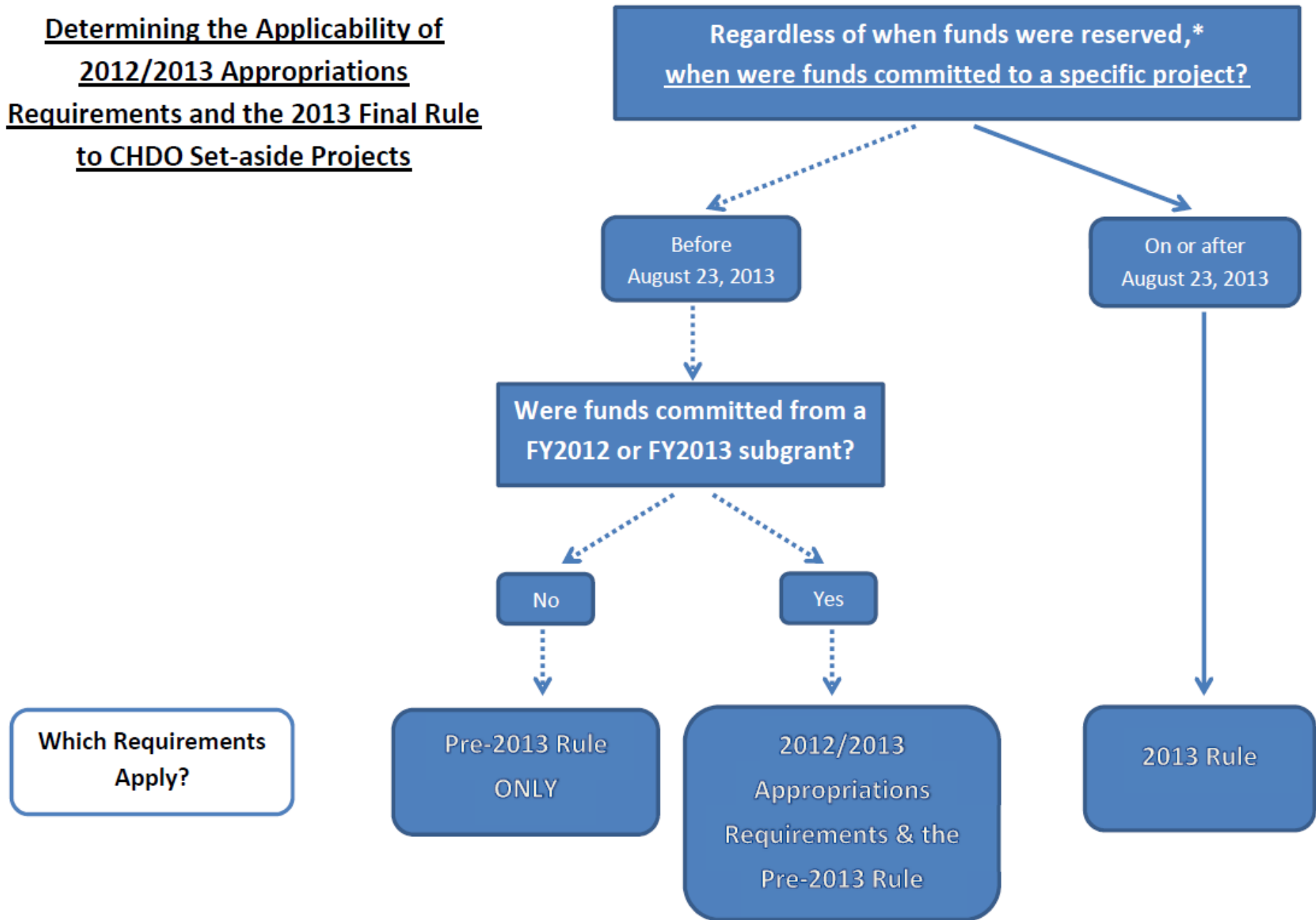
The FY2012 and FY2013 HOME Appropriation Law Requirements apply to all HOME activities identified in the Participating Jurisdiction’s 2012 or 2013 Consolidated Plan/Annual Action Plan. To determine the applicability of each requirement, locate the activity type on the left; an “x” indicates that the requirement applies. The HOME Activity types listed here are based on the HOME activity categories in IDIS.

HOME Activity	FY2012 and FY2013 HOME Appropriation Requirements					
	Four-Year Project Completion	Six-Month Deadline for Sale of Homebuyer Units	CHDO Development Capacity	Assessment of <i>Project</i> Underwriting, Developer Capacity, and Market Need		
				Project Underwriting	Developer Capacity	Market Assessment
Homebuyer*						
New Construction only	x	x	x	x	x	x
Acquisition New Construction	x	x	x	x	x	x
Acquisition Rehabilitation	x	x	x	x	x	x
Acquisition only (e.g. downpayment assistance)	x	n/a	Not CHDO eligible	x	n/a	n/a
Rental						
New Construction only	x		x	x	x	x
Acquisition New Construction	x		x	x	x	x
Acquisition Rehabilitation	x		x	x	x	x
Acquisition only	x		x	x	x	x
Rehabilitation only	x		x	x	x	x
Homeowner Rehabilitation	x		Not CHDO eligible			
HOME Activities not affected						
Tenant Based Rental Assistance						
CHDO Operating Administration			Not CHDO Eligible			
	X= the requirement applies if activity is a 2012 or 2013 Annual Action Plan Project					
*Lease-purchase	In IDIS, lease-purchase is treated as a homebuyer activity. To determine which requirements apply, the PJ should follow the rules for the appropriate homebuyer activity type that the lease-purchase activity is associated with.					

Determining the Applicability of
2012/2013 Appropriations Requirements
and the 2013 Final Rule to HOME-funded
Projects



**Determining the Applicability of
2012/2013 Appropriations
Requirements and the 2013 Final Rule
to CHDO Set-aside Projects**



*The applicability of these requirements is determined at the point when a legally binding written agreement is executed committing funds to a specific project. It does not matter if the PJ had previously reserved funds to the CHDO.