

III. CHDO Requirements and Eligible Activities

In order for a CHDO to be eligible for set-aside funds, the CHDO must be organized and structured according to the standards provided in the HOME regulations (as described in Attachment A), and must develop, own or sponsor the HOME-assisted housing ([92.300](#)). In any of these capacities, the CHDO must have effective project control. Where these conditions do not exist, the CHDO is operating as a subrecipient and CHDO set-aside funds may not be used. Because tenant-based rental assistance, existing homeowner rehabilitation projects, and direct homeownership assistance are not eligible development, ownership or sponsorship activities, the CHDO set-aside may not be used for these purposes, except that the Final Home Rule in [92.300\(a\)\(1\)](#) permits a CHDO to use its CHDO set-aside to provide direct homeownership assistance (e.g., downpayment assistance) in connection with housing it also develops, sponsors or owns using CHDO set-aside funds.

CHDOs, as entities operating independently of the participating jurisdiction, differ from not-for-profit subrecipients in that the uniform administrative requirements in [92.505](#) (including those related to procurement of goods and services), the audit requirements in [§92.506](#), and the conflict of interest provisions found in [§92.356](#) do not apply to them, except for [92.356\(f\)](#) which applies to all owners, developers and sponsors, including CHDOs. Subsection [92.356\(f\)\(1\)](#) prohibits any officer, employee, agent or consultant of the owner, developer or sponsor, whether private, for profit or nonprofit, from occupying a HOME-assisted affordable housing unit in a project. This provision does not apply, however, to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. The method for obtaining an exception to this prohibition is explained in [§92.356\(f\)\(2\)](#).

In order to determine the eligibility of projects under the CHDO set-aside, the following definitions for "developer", "owner", and "sponsor" will be used:

A. CHDO as a "Developer"

A CHDO is a "developer" when it (1) either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project; and (2) performs all the functions typically expected of for-profit developers, and assumes all the risks and rewards associated with being the project developer.

- 1) For rental housing, the CHDO must obtain financing, and rehabilitate or construct the project. If it owns the property, the CHDO may maintain ownership and manage the project over the long term, or it may transfer the project to another entity for long-term ownership and management. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

or

- 2) For homebuyer programs, the CHDO must obtain project financing, rehabilitate or construct the dwelling(s), and have title of the property and the HOME loan/grant obligations transferred to a HOME qualified homebuyer within a specified timeframe. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

In both of the above scenarios, developer fees negotiated with the PJ are eligible soft costs under Section 92.206 of the HOME regulations.

B. CHDO as "Owner"

The CHDO is an "owner" when it holds valid legal title to or has a long term (99 year minimum) leasehold interest in a rental property. The CHDO may be an owner with one or more individuals, corporations, partnerships or other legal entities. If it owns the project in partnership, it or its wholly owned nonprofit or for-profit subsidiary must be the managing general partner with effective control (i.e., decision-making authority) of the project. The CHDO may be both owner and developer, or may have another entity as the developer.

C. CHDO as "Sponsor"

A CHDO is a "sponsor" for HOME-assisted rental or homebuyer housing according to the circumstances outlines below. (In either case, the CHDO must always own the property prior to the development phase of the project.):

- 1) For HOME-assisted rental housing, the CHDO may develop a project that it solely or partially owns and agrees to convey ownership to a second non-profit organization at a predetermined time prior to or during development or upon completion of the development of the project. The HOME funds are invested in the project owned by the CHDO. The CHDO sponsor selects prior to commitment of HOME funds the non-profit organization that will obtain ownership of the property. The non-profit assumes from the CHDO the HOME obligation (including any repayment of loans) for the project at a specified time. If the property is not transferred to the non-profit organization, the CHDO sponsor remains liable for the HOME loan/grant obligation.

The non-profit organization must be financially and legally separate from the CHDO sponsor. (The second nonprofit may have been created by the CHDO; nevertheless, it is a separate entity from the CHDO.) The CHDO sponsor must provide sufficient resources to the non-profit organization to ensure the development and long-term operation of the project.

or

- 2) For a HOME-assisted homebuyer program, the CHDO owns a property, then shifts responsibility for the project to another nonprofit at some specified time in the development process. The second nonprofit, in turn, transfers title along with the HOME loan/grant obligations and resale/recapture requirements to a HOME-qualified homebuyer within a specified timeframe.

The HOME funds are invested in the property owned by the CHDO. The other nonprofit being sponsored by the CHDO acquires the completed units, or brings to completion the rehabilitation or construction of the property. At completion of the rehabilitation or construction, the second nonprofit is required to sell (transfer) the property along with the HOME loan/grant obligations to a homebuyer.

This sponsorship role could include a lease-purchase approach whereby the second nonprofit would lease the property to a homebuyer for a period not to exceed three years. At the expiration of the lease, the second nonprofit must sell or transfer the property along with the HOME loan/grant obligations to the homebuyer. If the property is not transferred, the second nonprofit retains ownership and all HOME rental requirements will apply.

IV. Uses of Funds

A. 15% Set-aside

Participating jurisdictions must invest at least 15% of their HOME allocation in housing owned, developed or sponsored by CHDOs (§92.300). Non-profit organizations not meeting the criteria for CHDOs can receive HOME monies. However, these nonprofits are not eligible for any of the funds set aside for CHDOs.

PJs have up to 24 months from the end of the month in which HUD signs the HOME Investment Partnership Agreement to reserve their 15% set-aside for CHDOs. Set-aside funds not reserved for CHDOs within 24 months are recaptured by HUD and are no longer available to the PJ or the CHDO. PJs using the HOME Cash and Management Information (C/MI) must use a specific C/MI form (HUD-40098) to reserve CHDO funds. PJs using IDIS must use the subgrant process to reserve funds to CHDOs as described in Chapter 12 of the IDIS User Manual.

B. Capacity Building Funds

If, during the first 24 months of its participation in the HOME program, a PJ cannot identify a sufficient number of capable CHDOs, up to 20 percent of the minimum CHDO set-aside of 15 percent (but not more than \$150,000 during the 24 month period) may be made available to develop the capacity of CHDOs in the jurisdiction. (While this is no longer an option for participating jurisdictions who received allocations in the beginning of the program, the ability to use capacity building funds is possible for newly designated PJs.) For example, a newly designated PJ receives a HOME allocation of \$400,000. The 15 percent set-aside for CHDOs is \$60,000, of which \$12,000 is available to the new PJ for CHDO capacity building activities. Please

note that the term "capacity building" does not include in its meaning the day-to day or regular ongoing operating expenses of a CHDO.

C. Project Specific Loans

Up to 10% of each PJ's funds set aside for CHDOs may be used for special project-specific loans (§92.301). These loans assure that CHDOs have access to HOME funds upfront for project pre-development expenditures not otherwise available to other developers. All loans may not exceed customary and reasonable project preparation costs and must be repaid to the PJ from construction loan proceeds or other project income. Repayment of these loans may be waived by the PJ in part, or in whole, if there are impediments to project development that the PJ determines are reasonably beyond the CHDO's control. HUD will not require repayment of these funds by the PJ (§92.503(b)(2)).

There are two types of project specific loans: (1) technical assistance and site control loans; and (2) seed money loans. (1) "Technical assistance and site control loans" are to be used to determine the feasibility of eligible projects by CHDOs in the early stages of site development. These loans may be used only to pay the costs of:

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Consulting, legal, engineering, and/or architectural fees;

<<>>
Preliminary financial applications;

<<>>
Initial feasibility studies;

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Engaging a development team;

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Site control and title clearance for the project(s);
and

<<>>
option to acquire property.

(2) "Seed-money loans" may be used to cover preconstruction project costs, including, but not limited to the costs of obtaining:

<<>>
Firm construction loan commitments;

<<>>
Architectural plans and specifications;

<<>>
Zoning approvals; and

<<>>
Engineering studies and legal fees for the project(s).

The activities included under the "technical assistance and site-control loans" category do not require environmental

clearance prior to funds being committed to them. (Please note that an option agreement is allowable prior to the completion of an environmental review only if the cost of the option is a nominal portion of the purchase price. Refer to •58.22 for further guidance.)

HOME funds may not be committed for any "seed-money loans" prior to HUD approval of a request for a release of funds (RROF) for that project as required under environmental regulations ([24 CFR Part 58](#)). (Part 58 applies to any decision by a PJ or CHDO that is choice limiting.)

D. Operating Expenses

Under §92.208, PJs may use up to 5 percent of their annual HOME allocations for the payment of operating expenses for CHDOs. (This is separate and apart from the minimum 15 percent CHDO set-aside and does not count against the PJ's 10 percent administrative funds.) As is the case with PJ administrative funds, HOME funds expended for CHDO operating expenses do not have to be matched by the PJ.

CHDO operating expenses are defined in §92.208 as reasonable and necessary costs for the operation of the CHDO. Such costs include salaries, wages and other employee compensation and benefits; employee education, training and travel; rent; utilities; communication costs; taxes; insurance and equipment, materials and supplies.

If a CHDO is acting only as a subrecipient or contractor, the CHDO is not eligible to receive any of the 5 percent available to the PJ for the payment of CHDO operating expenses. A PJ may provide a portion of its 10 percent administrative funds to a CHDO for costs incurred while the CHDO is acting solely in the capacity of a subrecipient or contractor. However, even in this case, the CHDO can be provided with CHDO operating expense funds if it is expected that it will be receiving CHDO project set-aside funds within 24 months of receiving funds for operating expenses. The PJ must enter into a written agreement with the CHDO specifying the terms and conditions upon which this expectation is based (§92.300(e)).

For any fiscal year, a CHDO may not receive HOME funded support in an amount that provides more than 50% of the organization's total operating budget in the fiscal year or \$50,000 annually, whichever is greater. This includes funds for operating expenses under •92.208, pass-through funds provided through intermediary organizations selected by HUD, and funds provided to the CHDO from the 20% of the minimum CHDO set-aside that are intended to develop their capacity. HOME administrative funds provided by the PJ under •92.207 to a CHDO which is also acting in a subrecipient or contractor capacity do not count toward this cap.

E. Pass-Through Funds

Through direct contract with the Department, many intermediary organizations provide technical assistance and support to CHDOs and potential CHDOs throughout the country. PJs work closely with these intermediary organizations to identify nonprofit organizations they wish to work with to develop affordable housing. In addition to technical assistance, these intermediary organizations can also pass

through to CHDOs a portion of their contract funds to provide housing education and organizational support.

V. CHDO PROCEEDS

The HOME Final Rule at •92.300(a)(2) permits participating jurisdictions to allow a CHDO through the terms of the written agreement to retain any proceeds resulting from the investment of its CHDO set-aside funds for use in HOME eligible or other housing activities which benefit low-income families. This option provides CHDOs with an equity stake in their projects. Examples of CHDO proceeds include funds resulting from: the permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan; the sale of CHDO sponsored rental housing to a second non-profit; the sale of CHDO developed homeownership housing; the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds.

CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for the requirements of •92.300(a)(2). (This paragraph states that HOME funds recaptured because housing no longer meets affordability requirements under •92.254(a)(5)(ii) are subject to HOME requirements.) Thus, the Davis Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

Once CHDO proceeds are used, there are no further HOME requirements which must be met. Funds generated from the use of CHDO proceeds are not CHDO proceeds.

The participating jurisdiction determines what requirements must be met by the CHDO in using the CHDO proceeds which it retains, consistent with •92.300(a)(2). The participating jurisdiction may use its own definition of "low-income". The participating jurisdiction may also authorize a CHDO to use its proceeds to undertake housing activities which are not eligible for HOME funding, such as emergency repairs, ongoing project operating costs or reserves, or additional CHDO operating expenses. If the written agreement expires before all CHDO proceeds are generated, the written agreement must identify the requirements which continue to apply to the use of these CHDO proceeds. At a minimum, the PJ must require that the CHDO continues to use the CHDO proceeds for HOME-eligible or other housing activities which benefit low-income persons.

Participating jurisdictions also have the option of requiring that CHDO proceeds be returned to the PJ. Proceeds which are returned to the PJ constitute program income, and must be used in accordance with all HOME requirements.

CHDO proceeds do not include any proceeds generated by HOME assisted activity which is undertaken by a CHDO acting as a subrecipient. Such proceeds are program income. CHDO proceeds also do not include funds which are recaptured by a

CHDO in accordance with the homeownership recapture provisions of §92.254(a)(5)(ii).

For a complete discussion of HOME requirements pertaining to program income, recaptured funds, repayments and CHDO proceeds, please refer to Notice CPD 97-09 issued on September 12, 1997.

CHDO CHECKLIST

The information contained in this checklist refers to the definition of Community Housing Development Organizations (CHDOs) in Subpart A, •92.2 of the HOME Rule. The checklist is a tool for participating jurisdictions concerning the documents they must receive from a nonprofit before it may be certified or recertified as a CHDO. For monitoring purposes, PJs should be asked to maintain the completed checklist on file to document compliance with the regulations.

I. LEGAL STATUS

- A. The nonprofit organization is organized under State or local laws, as evidenced by:

_____ a Charter, OR
_____ Articles of Incorporation.

- B. No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

_____ a Charter, OR
_____ Articles of Incorporation.

- C. Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as evidenced by:

_____ a 501(c)(3) or (4) Certificate from the IRS.

OR

Is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue code, as evidenced by:

_____ a group exemption letter from the IRS that includes the CHDO.

- D. Has among its purposes the provision of decent housing that is affordable to low- and moderate-income people, as evidenced by a statement in the organization's:

_____ Charter,
_____ Articles of Incorporation,
_____ By-laws, OR
_____ Resolutions.

II. CAPACITY

- A. Conforms to the financial accountability standards of 24 CFR 84.21, "Standards for Financial Management Systems", as evidenced by:

_____ a notarized statement by the president or chief financial officer of the organization;

_____ a certification from a Certified Public Accountant, OR

_____ a HUD approved audit summary.

- B. Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

_____ resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, OR

_____ contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

- C. Has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by:

_____ a statement that documents at least one year of experience in serving the community, OR

_____ for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community.

The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other official of the organization.

III. ORGANIZATIONAL STRUCTURE

- A. Maintains at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations as evidenced by the organization's:

_____ By-Laws,
_____ Charter, OR
_____ Articles of Incorporation.

Under the HOME program, for urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area (but not the whole state).

- B. Provides a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects, as evidenced by:

_____ the organization's By-laws,
_____ Resolutions, OR
_____ a written statement of operating procedures
approved by the governing body.

- C. A CHDO may be chartered by a State or local government, but the following restrictions apply: (1) the State or local government may not appoint more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing board members are public officials (including any employees of the PJ), as evidenced by the organization's:

_____ By-laws,
_____ Charter, OR
_____ Articles of Incorporation.

- D. If the CHDO is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the CHDO's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the CHDO's:

_____ By-laws,
_____ Charter, OR
_____ Articles of Incorporation.

IV. RELATIONSHIP WITH FOR-PROFIT ENTITIES

- A. The CHDO is not controlled, nor receives directions from individuals, or entities seeking profit from the organization, as evidenced by:

_____ the organization's By-laws, OR
_____ a Memorandum of Understanding (MOU).

- B. A Community Housing Development Organization may be sponsored or created by a for-profit entity, however:

- (1) the for-profit entity's primary purpose does not include the development or management of housing, as evidenced:

_____ in the for-profit organization's By-laws

AND;

- (2) the CHDO is free to contract for goods and services from vendor(s) of its own choosing, as evidenced in the CHDO's:

_____ By-laws,
_____ Charter, OR
_____ Articles of Incorporation.