

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

Special Attention of:

Notice: CPD 97-9

All Secretary's Representatives

All State/Area Coordinators

Issued: September 12, 1997

All CPD Division Directors

Expires: September 12, 1998

All HOME Coordinators

All HOME Participating Jurisdictions

Cross Reference:

SUBJECT: HOME Program Income, Recaptured Funds, Repayments and
CHDO Proceeds

1. PURPOSE

The purpose of this Notice is to provide guidance to HOME participating jurisdictions (PJs) on the requirements governing program income, recaptured funds, repayments and proceeds from CHDO set-asides.

II. BACKGROUND

The HOME program is authorized by Title 11 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), as amended (42

U.S.C. 12701 et seq.). The purpose of HOME is to expand the supply of affordable housing for low- and very low-income families. The Act requires that any repayment of HOME funds drawn from a jurisdiction's HOME Investment Trust Fund, and any payments of interest or other return of investment of such funds, shall be deposited in the jurisdiction's HOME Investment Trust Fund account. Funds in the account may only be used for HOME eligible housing.

The Act further provides for a 15% set-aside of HOME funds for investment only in housing to be developed, sponsored or owned by community housing development organizations (CHDOs). The HOME Final Rule gives participating jurisdictions the option of permitting a CHDO to retain proceeds resulting from the investment of its set-aside funds, provided the proceeds are used for housing activities to benefit low-income families.

The requirements of [OMB Circular No. A-87](#) and those sections of 24 CFR part 85 specified in [24 CFR 92.505\(a\)](#) apply to participating jurisdictions, State recipients and any governmental subrecipients receiving HOME funds. The requirements of [OMB Circular No. A-122](#) and those

DGHP: Distribution: W-3-1

sections of 24 CFR part 84 specified in 24 CFR 92.505(b) apply to subrecipients receiving HOME funds that are non-profit organizations that are not governmental subrecipients. States are also subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

III. PROGRAM INCOME

Program income is defined for the first time in the September 16, 1996, HOME Final Rule. However, program income requirements are not new and have a statutory basis. Program income is the repayment, interest and return on the HOME investment. Not all funds received by a participating jurisdiction are program income. However, for most participating jurisdictions, program income is the most significant category of funds received. Program income may be generated by HOME assisted activities which are administered by a participating jurisdiction, subrecipient or State recipient, or by activities funded from matching contributions. Program income may also be generated by housing which is developed, sponsored or owned by CHDOs when the participating jurisdiction requires the CHDO proceeds to be returned to the local HOME account. Funds generated by CHDOs are discussed more fully under Section VI. CHDO Projects: Proceeds, Program Income and Recaptured Funds.

A. DEFINITION OF PROGRAM INCOME

HOME program income is defined in the Definitions section of the HOME Final Rule at [24 CFR 92.2](#). Program income means gross income received by the participating jurisdiction, subrecipient or State recipient which is directly generated from the use of HOME funds (including HOME program income) and matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds or match used. Following is a list of examples. Please note that this is not an exclusive list.

- (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
- (2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed with HOME funds or matching contributions, less costs incidental to generation of the income (Note: rental income from property owned by entities other than the participating jurisdiction, a State recipient or a subrecipient does not constitute program income);
- (3) Payments of principal and interest on loans made using HOME funds or matching contributions;
- (4) Proceeds from the sale of loans made with HOME funds or matching contributions;

- (5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
- (6) Interest earned on program income pending its disposition; and
- (7) Any other interest or return on the investment permitted under §92.205(b) of HOME funds or matching contributions (Note: this does not include recaptured funds, repayments or CHDO proceeds).

Income generated by a project which is funded with program income, is also HOME program income. Note that the Final Rule at 24 CFR 92.2 defines HOME funds as funds made available through allocations and reallocations, plus program income.

Also note that interest earned on funds in the participating jurisdiction's local HOME account or on HOME funds retained by subrecipients or State recipients also constitutes HOME program income.

If a jurisdiction is no longer a participating jurisdiction when the program income is received, the funds are not subject to the HOME program income requirements, pursuant to 24 CFR 92.503(a)(2).

B. ACCOUNTING FOR PROGRAM INCOME

Participating jurisdictions must maintain records which adequately identify the source and application of their HOME funds (including program income) as part of the financial transactions of their HOME program, consistent with generally accepted accounting principles and the requirements of 24 CFR part 85.20. States which are participating jurisdictions must expend and account for HOME funds in accordance with State laws and procedures, as required by 24 CFR 85.20(a). States are also governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205 which prescribe rules and procedures for the transfer of funds between the Federal Government and States, including interest accrual provisions.

The participating jurisdiction is not required to identify program income by program funding year. However, the participating jurisdiction must be able to identify which projects generated program income and which projects received program income, including the amount. The participating jurisdiction must also be able to reasonably predict anticipated program income during the next program year. Thus, the participating jurisdiction's financial management system should enable the PJ to track program income receivable (such as the amount and date of principal and interest due on a HOME loan).

The participating jurisdiction is responsible for ensuring that the required program and financial records are maintained for both HOME assisted projects which it administers and projects which are administered by its State recipients or subrecipients. 24 CFR 92.508 identifies the records which must be maintained.

C. INTEREST EARNED ON HOME ACCOUNTS

The HOME Final Rule and 24 CFR Part 85 do not specify whether the participating jurisdiction's HOME account must be interest bearing. In accordance with 24 CFR 92.502(c)(2), HOME allocation funds drawn from the U. S. Treasury account must be expended for eligible costs within fifteen days from the date the funds are drawn down.

Participating jurisdictions which are not States may retain interest earned on HOME funds drawn down from the U.S. Treasury, provided the interest is earned within this fifteen day period. The participating jurisdiction may retain any interest earned on other funds in its designated account (such as program income, recaptured funds and repayments) for eligible program costs, regardless of the time period during which the interest is earned.

Participating jurisdictions which are States are governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

D. EXCESS DRAWDOWNS

Any HOME funds which are drawn down in excess of cash needs must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account. In accordance with 24 CFR 92.502(c)(2), for participating jurisdictions which are not States, HOME funds which are drawn down and not expended for eligible costs within fifteen days of drawdown, must be returned to HUD. Any interest which is earned on these HOME funds after fifteen days, from the initial drawdown, belongs to the U.S. Treasury and must be promptly remitted to the Treasury at least quarterly (except that amounts up to \$1 00 per year may be retained for administrative expenses). Participating jurisdictions which are States are governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

E. DISBURSEMENT OF PROGRAM INCOME

HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before drawdown requests are made for HOME funds in the United States Treasury account, in accordance with 24 CFR 92.502(c)(3). Therefore, program income which is deposited into the local account must be used before additional HOME allocation funds are drawn down. A participating jurisdiction may not draw down HOME allocation funds while allowing program income to accumulate in its local account. Available program income must be used to pay the next eligible program cost (or portion thereof).

Participating jurisdictions are not required to use extraordinary procedures to determine the amount of program income available at the time of a drawdown request. If the participating jurisdiction's accounting system reports on cash balances at reasonable, periodic intervals (not to exceed 30 days), then the participating jurisdiction can wait until its report is generated to determine the cash balance (including program income) on hand. The HOME program does not require that "excess" program income on hand at the end of a participating jurisdiction's program year be returned to its HOME Investment Trust Fund U.S. Treasury account.

F. PROGRAM INCOME AND CONSORTIUMS

Program income derived from consortium activities undertaken by or within a consortium member unit of general local government is program income of the consortium. The Consortium Agreement may permit a member to retain program income for other HOME activities within that member's boundaries, provided the member uses the program income before additional HOME funds are drawn down for use within its boundaries. In accordance with 24 CFR 92.503(a)(3), any program income on hand when a consortium member terminates its participation in the consortium, as well as any future program income (accounts receivable), is program income of the remaining consortium (i.e. the participating jurisdiction) and may not be retained by the former consortium member.

G. SUBRECIPIENT AND STATE RECIPIENT PROGRAM INCOME

In accordance with 24 CFR 92.503(a)(1), a participating jurisdiction may authorize a subrecipient or State recipient to retain program income for additional HOME projects pursuant to a Written Agreement.

Any program income retained by a subrecipient or State recipient must be disbursed by that subrecipient or State recipient before it receives additional HOME funds. When determining whether there are funds available in a participating jurisdiction's Trust Fund local account, program income retained by its subrecipients and State recipients is treated separately. For examples program income which is available in the account of one State recipient would not prevent the State from drawing down funds for another State recipient or subrecipient which has no funds in its account.

Upon expiration of a Written Agreement, any program income on hand as well as any future program income (accounts receivable) must be returned to the participating jurisdiction, as specified in the Written Agreement.

The participating jurisdiction retains responsibility in accordance with 24 CFR 92.504(a) for HOME activities which are carried out by its subrecipients and State recipients. The participating jurisdiction must account for the source and application of HOME funds received by its subrecipients or State recipients. The participating jurisdiction must ensure that its subrecipients and State recipients meet the standards for financial management systems of 24 CFR Part 85.20 or 24 CFR part 84.21, as applicable, including controls for the receipt and expenditure of program income. The participating jurisdiction's Written Agreement with its subrecipients and State recipients should clearly identify the procedures to be followed.

Participating jurisdictions must carefully monitor each subrecipient and State recipient to ensure adequate program performance in accordance with the terms of the Written Agreement. If a subrecipient or State recipient is accumulating a substantial amount of program income, the participating jurisdiction needs to take appropriate actions to address this performance issue. These actions may include requesting that the subrecipient or State recipient return the program income to the participating jurisdiction's Trust Fund local account.

H. USE OF PROGRAM INCOME

The Resources Section of the Consolidated Plan's Action Plan must describe the Federal resources, including program income, which are expected to be available to address priority needs and specific objectives during the consolidated program year, pursuant to 24 CFR 91.220 for local governments, 24 CFR 91.320 for State governments and 24 CFR 91.420 for consortia. Participating jurisdictions must also describe the activities to be undertaken with the Federal resources which have been identified.

Activities assisted with HOME program income are treated the same as those assisted with the HOME allocation. All HOME program rules and requirements apply. For example, all costs financed with program income must be HOME eligible. The amount of program income must be included when calculating the total amount of HOME assistance for the purposes of allocating costs in accordance with 24 CFR 92.205(d) and designating Home-assisted units in accordance with 24 CFR 92.2520). In addition, the amount of assistance provided by program income must be included when determining compliance with the following requirements: 24 CFR 92.250(a) concerning the maximum per-unit subsidy amount; 24 CFR 92.250(b) concerning subsidy layering; 24 CFR 92.252(b) concerning additional rent limitations; 24 CFR 92.252(e) concerning applicable affordability periods for rental housing; and 92.254 concerning applicable affordability periods for homeownership housing.

1. PROGRAM INCOME AND REVOLVING LOAN FUNDS

The HOME program does not permit the establishment of Revolving Loan Funds. However, when a subrecipient or State recipient administers only one HOME activity (such as a rehabilitation loan program) and the participating jurisdiction has authorized that program income may be retained, the activity may operate in a manner which is similar to some Revolving Loan Funds. In such cases, program income is deposited directly into the State recipient or subrecipient account for use in funding additional HOME projects. All requirements governing the receipt and expenditure of HOME program income must be met in administering the funds in this account. These requirements include the prohibitions against drawing down additional HOME funds from the U.S. Treasury before using cash balances in the designated account, and accumulating program income. Participating jurisdictions may not authorize the establishment of multiple HOME accounts for the same subrecipient or State recipient in order to create "de facto" Revolving Loan Funds.

J. PROGRAM INCOME AND THE ADMINISTRATIVE COST CAP, CHDO SET ASIDE AND MATCHING CONTRIBUTIONS

The amount of program income deposited in the Trust Fund local account increases the amount a participating jurisdiction may expend on eligible administrative and planning costs. In accordance with 24 CFR 92.207, a participating jurisdiction may use additional HOME funds for eligible administrative and planning costs in an amount up to 10% of the program income amount deposited in its Trust Fund local account during the program year. Only program income deposited in the local Trust Fund account may be included when making

this calculation. Program income which is retained by State recipients or subrecipients may not be included, and therefore such income does not increase the amount of funds which may be used for administrative and planning costs. If the participating jurisdiction does not expend the full amount authorized for eligible administrative and planning costs during the program year, it may use any remaining balance during subsequent program years.

The amount of program income deposited in the Trust Fund local account during a program year is not included when calculating the minimum amount of HOME funds which must be reserved for projects which are developed, sponsored or owned by CHDOS. In accordance with 24 CFR 92.300(a), compliance with this requirement is based on reserving within 24 months, an amount for CHDO projects which is not less than 15% of the HOME allocation. Likewise, the amount of program income deposited during a program year does not increase the maximum amount of funds which may be used for CHDO capacity building [(24 CFR 92.300(b)], CHDO operating expenses ([24 CFR 92.208](#)) or CHDO project-specific technical assistance, site control and seed money loans ([24 CFR 92.301](#)).

The amount of program income deposited in the Trust Fund local account during a program year is not included when calculating the amount of required matching contributions. In accordance with [24 CFR 92.218](#), matching contributions must total not less than 25% of the funds drawn down from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year (except for funds drawn for certain identified purposes).

K. PROGRAM INCOME AND INCOME TARGETING

In accordance with [24 CFR 92.216](#) "Income targeting: Tenant-based rental assistance and rental units", HOME funds made available during a fiscal year must be invested so that not less than 90% of all families receiving rental assistance or occupying rental units assisted from a fiscal year HOME allocation are families whose annual incomes do not exceed 60% of the median family income for the area. When calculating whether the income targeting requirement has been met, program income must be included.

When program income is used in combination with HOME allocation funds for the same rental assistance or rental units, no separate record keeping for the program income investment is required. For such activities, the income targeting requirement is met for the program income investment to the same extent that it is met for the investment of the fiscal year HOME allocation.

When the participating jurisdiction (or subrecipient or State recipient) funds a rental assistance activity or activities solely with program income, then the participating jurisdiction must document that the income targeting requirement has been met as follows. The participating jurisdiction must record all rental assistance activities which are wholly set-up or committed with program income during a fiscal year. Upon completion of these activities, the participating jurisdiction must record the income of the families receiving the rental assistance or occupying the rental units and combine this data with the data on families who are assisted with the corresponding fiscal year HOME allocation. The combined total of assisted families is then used to determine whether the income targeting requirement has been met for the fiscal year HOME allocation plus program income.

In accordance with 24 CFR 92.217 "Income targeting: Homeownership", HOME funds made available during a fiscal year must be invested so that 100% of these funds are invested in dwelling units that are occupied by households that qualify as low-income families. When program income is used in combination with Home allocation funds for the same homeownership activity, no separate record keeping for the program income investment is required. When the participating jurisdiction (or subrecipient or State recipient) funds an entire homeownership activity or activities with program income, the participating jurisdiction must document that 100% of the program income funds have been used for homeownership assistance which meets the requirements of 24 CFR 92.217.

L. PROGRAM INCOME AND HOME DEADLINES

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 24 month CHDO commitment deadline required by 24 CFR 92.500(d)(1), since compliance with this deadline is determined by the amount of HOME funds reserved regardless of whether future costs are paid with program income or the HOME allocation.

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 24 month HOME funds commitment deadline required by 24 CFR 92.500(d)(2), since compliance with this deadline is determined by the amount of HOME funds committed regardless of whether future expenditures are funded with program income or the HOME allocation.

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 25% match requirement required by 24 CFR 92.218, since compliance with the matching requirement is based on the percent of HOME allocation funds drawn down from the jurisdiction's HOME Investment Trust Fund Treasury account during the fiscal year. Program income must be expended before additional HOME funds are drawn down from the Treasury.

However, the amount of program income may affect a participating jurisdiction's ability to meet the five year expenditure deadline required by 24 CFR 92.500(d)(3). Since program income must be disbursed before additional HOME funds are drawn down from the U.S. Treasury account, a participating jurisdiction with significant amounts of program income may find that it has an unanticipated balance of unexpended HOME allocation funds at the end of the deadline period. A participating jurisdiction must give careful attention to program design and management to ensure that it is able to expend both program income and its HOME allocation within the regulatory deadline timeframes.

M. C/MI AND PROGRAM INCOME

The Cash and Management Information System (C/MI) does not record the receipt of program income. Since program income is deposited in the Trust Fund local account (or retained by an authorized subrecipient or State recipient) and not in the U.S Treasury account, program income is not drawn down through the C/MI system.

A project is set-up in C/MI for the estimated amount of the HOME funds which will be needed. The estimated amount of program income is not identified in the C/MI at project set-up since program income must be used to pay the next cost and can not be set aside for a specific project. Thus, it is difficult for a participating jurisdiction to estimate at set-up how much program income will be used to fund a project. Upon completion of a HOME rental or homeownership (but not TBRA) project, the actual expenditure of any program income is reported on the HOME Program Income line on the HOME C/MI Project Completion Report. At that time, any HOME allocation funds set-up but not expended (because program income was available or for other reasons) are available to commit to other HOME projects.

In the limited circumstances where program income may be used to fully fund a project, a participating jurisdiction may find it useful to set up a project in C/MI with at least \$1 of HOME allocation funds, in order to use the C/MI system to report the total use of HOME allocation and program income used for a completed project. There is no similar provision for TBRA since there is no TBRA completion report. In those cases where sufficient program income is available to fund an entire project, and the participating jurisdiction chooses not to set up the project in the C/MI system, the project would not be reported through C/MI. However, the project would be reported as part of the Consolidated Plan annual performance report.

A participating jurisdiction, subrecipient or State recipient may not allow program income to accumulate for the purpose of funding an entire project with program income, or for any other purpose. A project may be fully funded with program income only if full expenditure will occur immediately (for example, a down payment assistance project which is set-up the day before the closing) or in the case of certain subrecipient or State recipient activities (see Section III. I. Program Income and Revolving Loan Funds). Otherwise, the project must be set-up in C/MI for the estimated amount of HOME funds that are needed for the project.

N. IDIS AND PROGRAM INCOME

The CPD Integrated Disbursement and Information System (IDIS) is designed to record the receipt and use of HOME program income. Note that HUD through IDIS does not actually collect or disburse the program income. A participating jurisdiction sets up a Program Income Fund through IDIS to record the receipt of program income. Once the Program Income Fund is set-up, IDIS automatically applies the program income reported to the next activity or activities for which a drawdown is requested. Participating jurisdictions also have the option of correlating each program income receipt with the IDIS activity which generated the program income. The IDIS User Manual provides specific instructions on the IDIS program income process and identifies the various reports which can be generated.

O. PROGRAM INCOME AND MATCH

To be recognized as a cash contribution, matching funds must be non-federal and permanently contributed to affordable housing or to the HOME program. Therefore, in accordance with 24 CFR 92.220(a)(1), to receive match credit for the full amount of a loan to a HOME assisted project or to affordable housing that is not HOME assisted, all repayment, interest or other return of the investment from the match contribution must be deposited in

the participating jurisdiction's HOME Investment Trust Fund local account (or in a designated subrecipient or State recipient account in accordance with the Written Agreement). If such funds are not deposited in the required account, the participating jurisdiction can not take match credit for the full loan amount. Requirements for how to determine the grant equivalent of such loans are set forth in 24 CFR 92.220(a)(1)(iii). Further guidance is provided in [Notice CPD 97-03](#) "HOME Program Match Guidance" (as may be updated).

IV. RECAPTURED FUNDS

Recaptured funds are HOME funds which are recouped by the participating jurisdiction (or subrecipient, State recipient or CHDO) when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a)(4). The amount of the recapture is determined by the recapture requirements established by the participating jurisdiction in accordance with 24 CFR 92.254(a)(5)(ii). In accordance with 24 CFR 92.503(c), recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account, unless the participating jurisdiction permits a subrecipient, State recipient or CHDO to retain the recaptured funds pursuant to the Written Agreement required by 24 CFR [92.504](#). The Written Agreement must state that upon termination, recaptured funds must be returned to the participating jurisdiction.

Recaptured funds deposited in the local HOME account (or subrecipient, State recipient or CHDO account pursuant to the Written Agreement), become part of the HOME funds available for payment of the next program cost. Thus, recaptured funds must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used (see guidance under Section III. Program Income). However, unlike program income, since recaptured funds represent a return of the original HOME investment, 10% of the recaptured funds may not be used for eligible administrative and planning costs.

The C/MI system does not provide for a separate tracking or accounting for recaptured funds. Participating jurisdictions which are using IDIS, must report recaptured funds as additions to the IDIS Program Income fund, in the same manner as program income is reported. This ensures that IDIS automatically applies reported recaptured funds to the next activity or activities for which a drawdown is requested.

Participating jurisdictions must enforce the recapture agreements and account for the source and application of recaptured funds, in accordance with the record keeping requirements of 24 CFR [92.508](#). If a subrecipient, State recipient or CHDO is permitted to retain recaptured funds, participating jurisdictions must monitor to ensure compliance with all applicable HOME requirements and the terms of the Written Agreement.

Participating jurisdictions may establish affordability periods which exceed the minimum periods established by the HOME regulations. Any funds recouped after the period mandated by 24 CFR 92.254(a)(4) constitute program income.

V. REPAYMENTS

Repayments are HOME funds which the participating jurisdiction must repay because the funds were invested in a project which was terminated before completion (either voluntarily or involuntarily), or invested in housing which failed to comply with the affordability requirements specified in 24 CFR 92.252 or 92.254. Repayments also include the repayment of project specific CHDO technical assistance, site control and seed money loans pursuant to 24 CFR 92.301, when the participating jurisdiction does not waive loan repayment and the project is terminated before completion.

In accordance with 24 CFR 92.503(b)(3), if the HOME funds were originally disbursed from the participating jurisdiction's HOME Investment Trust Fund U.S. Treasury account (i.e., the HOME allocation), they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account (i.e., program income or recaptured funds), they must be repaid to the local account. Repayments may not be made to a subrecipient, State recipient or CHDO account.

Repayments deposited in the local HOME account become part of the HOME funds available for payment of the next program cost. Thus, repayments must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used. (See guidance under Section III. Program Income). However, unlike program income, since repayments represent a return of the original HOME investment, 10% of the repayment funds may not be used for eligible administrative and planning costs.

The C/MI system does not provide for a separate tracking or accounting for repayment funds. Participating jurisdictions which are using IDIS, must report repayment funds as additions to the IDIS Program Income fund, in the same manner as program income is reported. This ensures that IDIS automatically applies reported repayment funds to the next activity or activities for which a drawdown is requested.

Participating jurisdictions must enforce the repayment requirements. The participating jurisdiction must ensure that the full amount of any required repayment is made to the appropriate Trust Fund account, even when it is unsuccessful in obtaining the required repayment from a subrecipient, State recipient, CHDO, project owner, project developer or other entity.

VI. CHDO PROJECTS: PROCEEDS, PROGRAM INCOME AND RECAPTURED FUNDS

The HOME Final Rule at 24 CFR 92.300(a)(2) gives participating jurisdictions the option of permitting CHDOs to retain any proceeds resulting from the CHDO's investment of its CHDO set-aside funds or requiring the CHDO to return these proceeds to the participating jurisdiction. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds. Proceeds which are returned to the participating jurisdiction constitute HOME program income and are subject to all of the HOME program income requirements. Proceeds which the CHDO is permitted to retain are not HOME program income and, therefore, are not subject to the HOME requirements, except as described below. This option provides CHDOs with an equity stake in their projects.

Examples of CHDO proceeds are 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.

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.

A. USE OF CHDO PROCEEDS

The CHDO must use any CHDO proceeds which it is authorized to retain, for HOME-eligible or other housing activities to benefit low-income families, as required by 24 CFR 92.300(a)(2). A participating jurisdiction may use its own definition of "low-income" family. Examples of affordable housing activities which may be funded with CHDO proceeds include: emergency repairs, project operating costs and reserves, housing refinancing costs, CHDO operating expenses and homebuyer counseling.

CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). 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.

B. WRITTEN AGREEMENT

The participating jurisdiction (or subrecipient or State recipient) must execute a Written Agreement with the CHDO in accordance with 24 CFR 92.504(c)(3). The Agreement must specify whether any proceeds resulting from the use of the CHDO set-aside, may be retained by the CHDO or must be returned to the participating jurisdiction (or subrecipient or State recipient).

If the CHDO proceeds are retained, the Written Agreement must identify the HOME eligible or other housing activities to benefit low-income families which will be funded with the proceeds, as well as any other requirements, such as expenditure deadlines, which must be met. The participating jurisdiction may establish more stringent requirements than those required by the HOME Final Rule. The Written Agreement also must clearly identify the records to be maintained by the CHDO and any reports which must be submitted. The participating jurisdiction must monitor the CHDO's compliance with the terms of the Written Agreement.

HOME requirements continue to apply as long as a CHDO receives and uses CHDO proceeds, even if the CHDO proceeds are received or used after the Written Agreement has expired. For example, if a CHDO's Written Agreement expires after a five year affordability period, but the CHDO has developed a project which includes a CHDO financed loan with a ten year repayment term, the HOME requirements governing CHDO proceeds apply to the

repayments received during the full ten year term. The participating jurisdiction's Written Agreement with the CHDO should identify the requirements which apply to any CHDO proceeds which are received after the agreement's expiration date.

C. CHDOS ACTING AS SUBRECIPIENTS

If a CHDO is functioning in the capacity of a subrecipient, any funds generated from HOME assisted activity are program income and not CHDO proceeds. Therefore, such funds are subject to the HOME requirements pertaining to program income. The HOME Final Rule at 24 CFR 92.300(a)(1) clarifies that a CHDO, in connection with housing it develops, sponsors or owns using CHDO HOME funds, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient, at the option of the participating jurisdiction.

D. RECAPTURED FUNDS

CHDO proceeds do not include funds which are recaptured by the CHDO because the assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the affordability period, as required by 24 CFR 92.254(a)(5)(ii). Recaptured funds are subject to the requirements of 24 CFR 92.503(c). Recaptured funds must be deposited in the participating jurisdiction's HOME Trust Fund local account. Participating jurisdictions may not authorize CHDOs to retain recaptured funds.