

**CITY OF SAN ANTONIO  
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT  
GRANTS MONITORING AND ADMINISTRATION DIVISION**



**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION  
(CHDO)  
POLICY, PROCEDURE, AND STANDARDS**

Effective October 9, 2013

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## **EXECUTIVE SUMMARY**

**The purpose of this Policy and Procedure Manual is to provide guidance regarding the CDHO participation with HOME set-aside funding including the new certification process and revised HOME criteria per the 2013 HOME Final Rule.**

The Home Investment Partnership (HOME) Program is a U.S. Department of Housing and Urban Development (HUD) grant program administered by the City of San Antonio, as a participating jurisdiction (PJ). Per HUD HOME regulations defined at 24 CFR 92.2 and implemented at 92.300 and 92.500, PJs are required to set-aside 15 percent of their HOME allocation for Community Housing Development Organizations (CHDOs). These CHDO funds can be obtained by qualified/certified non-profit organizations that act as an owner, developer, or sponsor of a HOME-eligible project. A CHDO may serve in one of these roles or in a combination of roles, such as being owner and developer.

# CHDO POLICIES

## *Eligible Activities*

A CHDO acting as owner, sponsor or developer may use the 15 percent CHDO set-aside for the following activities:

- Acquisition and/or rehabilitation of rental or homebuyer property;
- New construction of rental or homebuyer property; and
- Direct financial assistance to homebuyers of HOME-assisted property developed or sponsored by the CHDO.
- **CHDO set-aside HOME funds must be used during the construction or rehabilitation of the property.**

## *Ineligible CHDO Activities*

Ineligible uses of the HOME CHDO set-aside are:

- Homeowner rehabilitation;
- Tenant-based rental assistance (TBRA); and
- Down Payment and/or closing cost assistance to purchasers of housing not developed with HOME CHDO funds.

## *Operating Expenses*

Up to 5 percent of the City's HOME allocation may be used to provide funds for CHDO operating expense assistance. This allocation does not count toward the 15 percent set-aside funds used by CHDOs for projects. To be eligible for CHDO operating assistance, the CHDO must have a currently funded affordable housing project or submit a funding request at the same time it applies for a qualified affordable housing project.

CHDO operating expense assistance may not exceed whichever is greater:

- \$50,000 each fiscal year, or
- Fifty percent (50%) of CHDO's total annual operating expenses for that year.

Such costs may include:

- Salaries, wages, and other employee compensation and benefits
- Employee education, training, and travel
- Rent; utilities; communication costs; taxes; insurance
- Equipment; materials and supplies

The City reserves the right to require key CHDO staff or key CHDO Board Members to attend certain training as a condition of receiving funds awarded under this solicitation. The purpose of such training would be to increase the CHDO's capacity to carry out its mission to develop affordable housing, or for other purposes at City's discretion. Any requirement to attend training will be specified in the Grant Agreement between the CHDO and City.

CHDOs applying for operating expense funding must be prepared to submit details on current CHDO funded activities or provide detail of CHDO's plans to apply for CHDO funds for a project that is owned, developed, or sponsored within 24 months, as required in §92.300(e).

The terms and conditions upon which the 24 month expectation is based on, is as follows:

- A schedule of ownership, development or sponsorship performance milestones
- Detail of training or capacity building efforts
- Quarterly performance reports detailing achievements in CHDO project readiness
- A responsive CHDO proposal is submitted to the City

The City reserves the right to reduce the amount of or not award operating assistance based on its evaluation of the CHDO's production and/or overall performance. The consequences of failure to receive funding for a CHDO project within 24 months is ineligibility for future operating expense funding for a period of 2 years.

### *Performance*

The City is responsible for ensuring that HOME funds are used in accordance with all program requirements and written agreements, and shall take appropriate action when performance problems arise. The performance and compliance of each CHDO must be reviewed at least annually in accordance. With respect to written agreement, the City has the right to require specific performance expectations to ensure a timely and effective use of HOME funds.

### *Fund Reimbursement*

The City shall provide CHDO set aside funds in accordance with terms specified in the City's Housing Policy document corresponding to the type of CHDO development activity unless otherwise authorized by the City. In all cases, the City must have an executed contractual agreement to initiate any payments or reimbursements.

For CHDO development and operating expense activities, the City will not issue payments from City coffers except through a reimbursement process whereby the CHDO's funds are expended in accordance with HUD requirements and then submitted for reimbursement with appropriate documentation.

For CHDO multi-family rental activities, the CHDO may request city funds be deposited into an escrow account at the time of closing. The escrow account must be maintained by a separate federally insured account and be contractually bound through an escrow agreement executed with the City detailing escrow instructions containing the terms of release of payments.

### *Procurement*

CHDO organizations acting in a CHDO developer, owner, or sponsor capacity for CHDO eligible projects are not subject to the requirements of 24 CFR Part 84 in regard to the procurement of goods and services. However, federal funding requires all recipients to ensure cost reasonableness for all

transactions; the CHDO must ensure all costs are considered reasonable in accordance with cost and price analysis as described on page 15 of the City's sub-grantee procurement guide.

### *Match Requirements*

The City is required to make contributions to housing that qualifies as affordable housing under the HOME Program. Due to the City meeting the per capita income and poverty rate thresholds, the HOME Program must ensure match contributions of not less than 12.5 percent of the HOME funds drawn down. While CHDO projects trigger match requirements CHDO Operating Expense activities do not trigger HOME match requirements.

Eligible forms of matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

- (1) Cash contributions from nonfederal sources
- (2) Forbearance of fees - State and local taxes, charges or fees.
- (3) Donated Real Property
- (4) The cost, not paid with Federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects
- (5) Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government, or an agency or instrumentality of a State or local government or a political subdivision of a State and repayable with revenues from the affordable housing project financed
- (6) The reasonable value of donated site-preparation and construction materials, not acquired with Federal resources.
- (7) The reasonable rental value of the donated use of site preparation or construction equipment.
- (8) The value of donated or voluntary labor or professional services in connection with the provision of affordable housing.
- (9) The value of sweat equity provided to a homeownership project, under an established component of a participating jurisdiction's program, up until the time of project completion (i.e., submission of a project completion form).
- (10) The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability or receiving HOME tenant-based rental assistance during the term of the tenant-based rental assistance contract.
- (11) The direct cost of homebuyer counseling services provided to families that acquire properties with HOME funds including ongoing counseling services provided during the period of affordability.

### *CHDO Proceeds*

The City of San Antonio will allow CHDO's to retain proceeds from the sale of the housing, if the non-profit is acting as owner or developer and is using set-aside funds.

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. 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. CHDO proceeds may not be contributed as match.

#### *Conflict of Interest*

No employee, officer, or agent of the CHDO shall participate in the selection or in the award or administration of a contract supported by HOME funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

No officer, employee or agent of the CHDO shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be immediately referred to the City of San Antonio's Office of Grants Monitoring and Administration. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

#### *Resale/Recapture Policies*

To ensure that HOME investments yield affordable housing over the long term, HOME regulations impose occupancy requirements over the length of an affordability period. If a house purchased with HOME funds is sold during the affordability period, recapture or resale provisions as per 24 CFR 92.254 shall apply to ensure the continued provision of affordable homeownership.

The City of San Antonio (COSA) has adopted a recapture provision for all Homebuyer Activities using HUD HOME funds as a Direct Homebuyer Subsidy or if the project includes both a Direct and Development Subsidy.

The City of San Antonio shall require that Resale provisions be used in the event that **only** a Development Subsidy is used to make the home affordable (i.e. funding construction to the developer).

CHDO's must follow policies as prescribed in Appendix VI of the City's Housing Policy describing Program Recapture/Resale Requirements for Homebuyer Activities.

#### *Other Federal Requirements*

CHDO's must comply with federal requirements related to the following other federal requirements:

##### **Affirmative Marketing**

Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race,

color, national origin, sex, religion, familial status, or disability. A CHDO may have a tenant preference policy, however it must conform within the boundaries of the City's AFFH Plan as described in "Civil Rights, Affirmatively Furthering Fair Housing and 504/ADA Policy" document.

### **Minority Outreach**

The CHDO shall include, to the maximum extent possible, the use of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into as a result of the HOME funding.

### **Environmental Review**

The CHDO shall comply with 24 CFR Part 85 regarding the environmental review requirements as stated through the City's Environmental Policy, Procedures, and Standards document.

### **Displacement, Relocation, and Acquisition**

The CHDO shall ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

### **Temporary Relocation**

If a CHDO plans to relocate residents temporarily such tenants must be provided:

- 1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
- 2) Appropriate advisory services, including reasonable advance written notice of:
  - (i) The date and approximate duration of the temporary relocation;
  - (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
  - (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
  - (iv) The provisions of related to out-of pocket expenses

### *Relocation assistance for displaced persons*

If a CHDO displaces a person, that person must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). This applies to any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

- 1) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of an application to the City, if the applicant has site control and the application is later approved; or
- 2) After the date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or
- 3) Before the notice by the owner to move permanently from the property, if the City determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- 4) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  - A. The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
    - a. The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
    - b. The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;
  - B. The tenant is required to relocate temporarily, does not return to the building/complex, and either
    - a. The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
    - b. Other conditions of the temporary relocation are not reasonable; or
  - C. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

A person does not qualify as a displaced person if

- 1) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the City determines that the eviction

was not undertaken for the purpose of evading the obligation to provide relocation assistance.

- 2) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, it's possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

### **Labor Provisions**

Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing pursuant to the Davis-Bacon Act. The contract for construction must contain these wage provisions if HOME funds are used for any eligible project costs.

When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance.

The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units.

***Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.***

CHDO's shall ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;

- 1) Conduct on-site inspections and employee interviews;
- 2) Collect and review certified weekly payroll reports;
- 3) Correct all labor standards violations promptly;
- 4) Maintain documentation of administrative and enforcement activities; and
- 5) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

### **Lead Based Paint Requirements**

HUD's lead based paint regulations at 24 CFR Part 35 will apply. Respondents should be aware that either compliance with the requirements of the State or compliance with the

requirements of OSHA, is sufficient to meet HUD's Part 35 requirements. For HUD funded rehabilitation activities, lead hazard evaluation and reduction activities must be carried out for all projects constructed before 1978. In all cases, notification must be made to the homeowner/buyer in the form of the HUD Lead Hazard Information Pamphlet and Disclosure or an acceptable alternative pamphlet.

The required evaluation and reduction activity is dependent upon the amount of HUD funding used for the project.

For cases where **less than or equal to \$5,000** will be spent on the rehabilitation:

*Testing:* Paint Testing of surfaces that will be disturbed by the rehabilitation activities must occur.

*Lead Hazard Reduction:* Surfaces, which are disturbed during rehabilitation, must be repaired. Safe work practices must be used. After the rehabilitation activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

For cases where **\$5,001 to \$25,000** will be spent on the rehabilitation:

*Testing:* Paint testing of surfaces to be disturbed by rehabilitation must occur. In addition, a risk assessment must be performed.

*Lead Hazard Reduction:* Interim controls must be used. This means that friction and impact surfaces would be addressed. Interim controls include paint stabilization and cleaning. Safe work practices must be used. After the rehabilitation activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

For cases where **more than \$25,000** will be spent on the rehabilitation:

*Testing:* Paint testing of surfaces to be disturbed by rehabilitation must occur. In addition, a risk assessment must be performed

*Lead Hazard Reduction:* Abatement of hazards is the required approach. Abatement involves permanently removing lead based paint hazards, often through paint and component removal, replacement, encapsulation and enclosure. Interim controls and paint stabilization may be used on the home's exterior if it is not involved in the rehabilitation. Safe work practices must be used. After the lead hazard reduction activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

### **Section 3 Program**

The City's Office of Grants Monitoring and Administration is committed to compliance with the HUD Section 3 regulations 24 CFR Part 135. It is our desire to ensure compliance with the City's Section 3 goals, to the greatest extent feasible, through the awarding of contracts to Section 3 business concerns and through the employment and training of Section 3 residents. In general, Section 3 requires outreach, prior to awarding contracts and subcontracts to construct a project under the program. Respondents must conduct outreach to low-income individuals living in the area where the project is located and to certain businesses located in the area in which the project is located. The intent of the Section 3 requirements is to encourage

employment of such individuals and businesses in connection with the construction of the project.

Respondents are required to complete and submit the attached Section 3 Utilization Plan. The Section 3 Goals are as follows:

1. 30% of the aggregate number of new hires shall be Section 3 Residents
2. 10% of all covered contracts shall be awarded to Section 3 Businesses
3. 3% of all covered non-construction contracts shall be awarded to Section 3 Business

# CHDO PROCEDURES

## *Certification Procedure*

The 2013 HOME Final Rule requires that the City must certify an organization as meeting the definition of “community housing development organization” and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. To meet this requirement, the City will conduct certifications as part of the solicitation process for selecting CHDO set-aside activities. Solicitations will be done in accordance with City procurement policies and procedures. The following is the process for obtaining CHDO certification during solicitation.

### CHDO Certification Process

- 1) Complete the appropriate CHDO Application (Attachment I, II, or III) and the required supporting materials.
- 2) Submit the application to the City of San Antonio in accordance with the instructions provided in the RFQ/RFP solicitation.
- 3) The application submitted with the solicitation proposal will be evaluated to ensure the agency meets the criteria for qualifying as a CHDO.
- 4) If the application is not complete or if the organization does not meet the requirements for CHDO certification, the solicitation may be deemed non-responsive.

The City also recognizes there may be situations whereby an organization may wish to receive a “CHDO Certification” without submitting a specific project. The City will accept a voluntary CHDO Application whereby if the organization meets the criteria set forth; can receive “CHDO Acknowledgement” from the City that the organization “meets the criteria to be considered a CHDO”.

### CHDO Acknowledgement Request Process

- 1) Complete the appropriate CHDO Application (Attachment I or II) and the required supporting materials.
- 2) Submit the application to the City of San Antonio’s Department of Planning and Community Development’s Grants Monitoring and Administration Division.
- 3) The application will be evaluated to ensure the agency meets the criteria for qualifying as a CHDO.
- 4) The City will respond in writing within 30 days of receipt of the CHDO application.

## *Invoicing Reimbursement Procedure*

In accordance with the contractual requirements for project reimbursement, the CHDO shall follow the following procedure to receive reimbursement for CHDO eligible expenses:

- 1) A signed invoice billing package including, request for payment cover sheet, a summary of expenditures, vendor forms must be completed with supporting documentation.
- 2) Supporting documentation at shall include a copy of vendor invoices, proof of payment received by the vendor, release of liens (if applicable), cancelled checks, paid bills, payrolls, time and attendance records, contract award documents, etc...
- 3) Upon receipt of the complete invoice reimbursement package the City shall review eligible costs and submit to the City's Finance Department to issue payment.
- 4) After payment is issued, the City will complete IDIS draw down to reimburse the City from HOME funds provided by the U.S. Treasury.

#### *Performance Reporting Procedure*

CHDO's shall submit to the City in a manner acceptable to the City regular performance reporting information as cited in the agreement between the CHDO and the City.

#### *Match Procedure*

CHDO's will be required to document eligible match for each project undertaken with HOME funds in accordance with eligible match requirements as described above policy section. Upon completion of each project, CHDO shall provide a report to the City with the following

- 1) Project Number
- 2) Date Project Committed
- 3) Project Address
- 4) Project Type
- 5) HOME Funds Expended
- 6) Date HOME \$ Expended
- 7) Amount of Match Liability Incurred
- 8) Value of Match Contribution
- 9) Type of Match
- 10) Date Match Recognized

City staff shall collect all match information reported by the CHDO and enter into the City's Master Match Log for record keeping and reporting purposes.

City staff shall ensure that all match information is report by the CHDO prior to project closeout.

#### *CHDO Proceed Recording Requirements*

CHDO's and the City are responsible for tracing the ultimate distribution of HOME funds in a CHDO homebuyer project.

1. CHDO shall determine the total HOME investment, which is a combination of any HOME funds provided to the CHDO to be used in the development phase of the project for acquisition, construction/rehab and soft costs.

2. CHDO shall determine if the project had costs in excess of sales prices, and therefore is eligible to write off part or all of the HOME development funds as “Development Subsidy” that does not have to be mortgage to the buyer(s). The Development Subsidy write-off is eligible only using the recapture method, and not the resale method.
3. CHDO calculates the total HOME Buyer Subsidies
  - a. Rollover purchase subsidies from CHDO development funds (in essence, this is the portion of the HOME development funds that are not written off as Development Subsidy, which can be in the form of down payment assistance or purchase assistance, and must be mortgaged to the home buyer
  - b. Closing Cost Assistance – which does not have to be mortgage as it falls outside of the sales price/fair market value of the property; and/or
  - c. New buyer assistance funds that are made available to the buyer at closing and were not originally invested as development funds in the CHDO project
4. CHDO determine HOME funds to be repaid
  - a. When CHDO funds are invested in the development phase of the project (e.g., as a construction loan), some of these funds may be repaid from net sales proceeds. They may also be retained by the CHDO as CHDO proceeds – at the City’s option. This step is designed to calculate what funds are available for repayment, or to be retained by the CHDO as proceeds. Any such repayments are considered program income to the City.
  - b. If repayment is mandated, then it is appropriate to allow the CHDO to draw any remaining developer fee due from the unit, after paying closing costs (realtor, legal and recording costs, etc.) and other construction loans. Then any net proceeds are available for repayment, if required by the City.
5. CHDO shall reconcile HOME Funds & CHDO Proceeds
  - a. The final step in the process is to take the four previous calculations to reconcile the ultimate allocation of all HOME funds invested in that unit.
  - b. Take the total HOME investment in the unit, and subtract funds allocated as Development Subsidies, Buyer Subsidies, and any Repayments from Sales Proceeds.
  - c. The net result is any CHDO funds that are to be retained by the CHDO as CHDO proceeds.
  - d. Again, CHDO proceeds are the option of the City to permit them to be retained or to be repaid as program income to the City. If CHDO proceeds are permitted, they must be reinvested as required by 92.300(a)(2) – either to be used for HOME-eligible or other housing activities to benefit low-income families. The City is responsible for monitoring the reuse of CHDO proceeds.

# CHDO STANDARDS

## *Development Capacity*

To qualify as a CHDO, the 2013 Final Home Rule requires that a nonprofit have paid employees and contracted staff with housing experience appropriate to the role the nonprofit expects to play in projects (i.e., developer, sponsor, or owner) in order to receive a CHDO designation. For instance, a CHDO that undertakes rental development activities must demonstrate internal capacity to development housing of that type. A nonprofit that will undertake property ownership and management must demonstrate ownership/management experience.

The requirement for development capacity can no longer be demonstrated through the use of consultants with development experience, except during the first year of operation as a CHDO, provided that the consultant trains the CHDO staff. In addition, the capacity requirement cannot be met through the use of volunteers or staff that is donated by another organization.

## *Certification and Recertification*

The City has three certification applications that may be completed as described below

### **New CHDO Certification Application (Attachment I)**

A new CHDO certification application must be completed by those organizations that have not been certified previously within the past 18 months.

### **CHDO Re-Certification Application (Attachment II)**

A Re-certification application may be completed and submitted by those organizations that have received a certification in the previous 3 to 18 months.

### **CHDO Affidavit (Attachment III)**

The CHDO Affidavit form may be utilized by those organizations that have received a certification within 90 days of the affidavits submission.

## *Underwriting Standards*

For each CHDO set aside project identified for assistance with federal funding, underwriting and (if applicable) subsidy layers shall be performed to ensure the funding in the project is at an appropriate level to neither over subsidize the project nor inject the project to long term sustainability and affordability risk. CHDO's shall utilize standards as described in the City's Underwriting and Subsidy Layering Policy document.

## *Definitions*

### **Affordability Period**

Occupancy restrictions for varying lengths of time for those homeowners assisted with HUD HOME funds. The affordability period affects the terms of the resale/recapture of the property if sold during the affordability period.

**CHDO** - a private nonprofit organization that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A CHDO may be sponsored or created by a for-profit entity, but:

(i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;

(iii) The CHDO must be free to contract for goods and services from vendors of its own choosing; and

(iv) The officers and employees of the for-profit entity may not be officers or employees of the CHDO.

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member LLC that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) and meets the definition of CHDO.

(5) Is not a governmental entity (including the PJ, public housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO;

(6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by:

- (i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, “community” may be a neighborhood or neighborhoods, city, county or metropolitan area; and
- (ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of § 92.300(a)(2). A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

**CHDO Proceeds** - Proceeds which the CHDO is permitted to retain are not HOME program income and, therefore, are not subject to the HOME requirements.

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. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds.

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

**Commitment** - The City has executed a legally binding written agreement, a sub-recipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down payment assistance; or has met the requirements to commit to a specific local project. An agreement between the City and a sub-recipient that is controlled by the City (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment.

*Commit to a specific local project* means:

- If the project consists of rehabilitation or new construction (with or without acquisition) the City (or sub recipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the City, the project has been set up in IDIS, and construction can reasonably be expected to start within twelve months of the project set-up date.
- If the project consists of acquisition of standard housing and the City (or sub-recipient) is acquiring the property with HOME funds, the City (or sub-recipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the City (or sub-recipient) within six months of the date of the contract. If the project consists of acquisition of standard housing and the City (or sub-recipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the City (or sub-recipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.

**Developer** - *Rental housing* is “developed” by the CHDO if the CHDO is the owner of multi-family or single family housing in fee simple absolute (or has a long term ground lease) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families. To be the “developer,” the CHDO must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the CHDO must own the housing during development and for a period at least equal to the period of affordability.

Housing for *homeownership* is “developed” by the CHDO if the CHDO is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for sale to low-income families.

- To be the “developer” the CHDO must arrange financing of the project and be in sole charge of construction. The CHDO may provide direct homeownership assistance when it sells the housing to low-income families and the CHDO will not be considered a sub-recipient. The HOME funds for down payment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.
- The City shall determine and set forth in its written agreement with the CHDO the actual sales prices of the housing or the method by which the sales prices for the housing will be established.

### **Displaced Person**

A displaced person means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or

moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds.

### **Effective Period**

CHDO's must meet the definition of CHDO throughout the period of agreement.

### **Expenditure Deadline**

The City has 5 years for expenditure of CHDO set-aside funds will be applicable on January 1, 2015 and will be implemented by HUD for all deadlines that occur on or after that date. Consequently, CHDO receiving a commitment of set aside funds will be expected to expend and complete activities based on a reasonable performance based metric negotiated prior to a commitment of funds.

**Housing** – Includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farm worker dormitories).

**Low-income families** - Families whose annual incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance.

**Owner** - Rental housing is “sponsored” by the CHDO if it is rental housing “owned” or “developed” by a subsidiary of a CHDO, an LP of which the CHDO or its subsidiary is the sole general partner, or an LLC of which the CHDO or its subsidiary is the sole managing member.

- The subsidiary of the CHDO may be a for-profit or nonprofit organization and must be wholly owned by the CHDO. If the LP or LLC agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another CHDO.
- The HOME funds must be provided to the entity that owns the project.

**Project** - A site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building.

**Project Completion** - all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the IDIS, except that with respect to

rental housing project completion, project completion occurs upon completion of construction and before occupancy.

### Set Aside

U.S. Department of HUD mandates that a minimum of 15% of the city's annual HOME allocation be reserved for use by Community Housing Development Organizations.

Sponsor – Rental housing is “sponsored” by the CHDO if it is rental housing “owned” or “developed” by a subsidiary of a CHDO, an LP of which the CHDO or its subsidiary is the sole general partner, or a LLC of which the CHDO or its subsidiary is the sole managing member.

- The subsidiary of the CHDO may be a for-profit or nonprofit organization and must be wholly owned by the CHDO. If the LP or LLC agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another community housing development organization.

HOME-assisted rental housing is also “sponsored” by a CHDO if the CHDO “developed” the rental housing project that it agrees to convey to an identified private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

1. The private nonprofit organization may not be created by a governmental entity.
2. The HOME funds must be invested in the project that is owned by the CHDO.
3. Before commitment of HOME funds, the CHDO sponsor must select the nonprofit organization that will obtain ownership of the property.
  - (A) The nonprofit organization assumes the CHDO's HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.
  - (B) If the housing is not transferred to the nonprofit organization, the CHDO sponsor remains responsible for the HOME assistance and the HOME project.

Very low-income families - Families whose annual incomes do not exceed 50% of the median family income for the area. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

**ATTACHMENT I**  
**CHDO New Certification Application**

# **CITY OF SAN ANTONIO**

## **DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**



## **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) NEW CERTIFICATION APPLICATION**

Effective October 9, 2013

# CITY OF SAN ANTONIO CHDO CERTIFICATION APPLICATION

Organization Name	
DUNS Number	
Tax ID Number	
Mailing Address	
Contact Name / Title	
Contact's Email Address	
Contact's Phone Number	
Board President Name	
Board President's Email Address	
Board President's Phone Number	
Organization's Fax Number	

Please describe the CHDO eligible activities your organization plans to undertake?

Please list each geographic area to be considered for CHDO Certification:

Area Name	Area Description

I certify that the submission of this application has been approved by a 2/3 vote of the Board of Directors.

\_\_\_\_\_  
Board President Signature

\_\_\_\_\_  
Date

# CITY OF SAN ANTONIO

## CHDO CERTIFICATION CHECKLIST

Please complete the applicant portion of this checklist. Include the requested information in the Attachments indicated and check-off the item in the checklist. Articles of Incorporation, By-Laws, Charters, Memorandums of Understanding, Contracts, Certifications and Resolutions must be signed and dated by the Board President or other authorized signor. Incomplete applications will not be considered.

Checklist	PCD Use Only	
Organizational Status and Mission	Adequate	Deficient
<p>The nonprofit is organized under state or local laws, as evidenced by <b>Attachment A</b>:</p> <p><input type="checkbox"/> A Charter, OR</p> <p><input type="checkbox"/> Articles of Incorporation</p>		
<p>The nonprofit has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) , as evidenced by <b>Attachment B</b>:</p> <p><input type="checkbox"/> A 501(c)(3) or (4) Certificate from the IRS, OR</p> <p><input type="checkbox"/> A group exemption letter under Section 905 from the IRS that includes the CHDO.</p>		
<p>The nonprofit's primary purpose is the provision of low- and moderate income housing. As <b>Attachment C</b>, provide and highlight the appropriate area in your:</p> <p><input type="checkbox"/> Charter,</p> <p><input type="checkbox"/> Articles of Incorporation,</p> <p><input type="checkbox"/> By-laws, OR</p> <p><input type="checkbox"/> Resolutions</p>		
<p><b>Strategic Plan</b></p> <p>The organization has produced a strategic plan that specifies an action plan for housing development, as provided in <b>Attachment D</b>.</p>		
Board Composition	Adequate	Deficient
<p>At least 1/3 of board membership consists of residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations, as evidenced by:</p> <p><input type="checkbox"/> Completion of the Certification of Low Income Representation</p> <p>AND</p>		

<p>Highlight the relevant text as <b>Attachment E</b>, in one of the following:</p> <p>_____ By-Laws,          _____ Charter, OR          _____ Articles of Incorporation</p>		
<p>A CHDO may be chartered by a State or local government, however, the State or local government may not appoint:</p> <p>(1) 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 may be public officials. As <b>Attachment F</b> highlight the relevant text in one of the following which describes the process for selecting the remaining 2/3 members:</p> <p>_____ By-laws,          _____ Charter, OR          _____ Articles of Incorporation</p>		
<p>No more than one-third of the governing board members may be public officials (including any employees of the PJ) or appointed by public officials, and government-appointed board members may not, in turn, appoint any of the remaining the board members. Provide as <b>Attachment G</b> and highlight relevant areas in your organization’s:</p> <p>_____ By-laws,          _____ Charter, OR          _____ Articles of Incorporation</p>		
<p>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 <b>Attachment H</b>, highlight the relevant text in one of the following which describes the process for selecting the remaining 2/3 members:</p> <p>_____ Charter, OR          _____ Articles of Incorporation</p>		
<p><i>Please place narrative and supporting documentation of the following in Attachment I</i></p>		
<p><b>Board Representation</b></p>		



<p>_____ In the for-profit organization's By-laws</p> <p>AND</p> <p>If sponsored or created by a for-profit entity, the CHDO is free to contract for goods and services from vendor(s) of its own choosing, as evidenced by <b>Attachment K-2</b>:</p> <p>_____ By-laws,  _____ Charter, OR  _____ Articles of Incorporation</p>		
<p>If sponsored by a religious organization, the CHDO is a separate secular entity from the religious organization, with membership available to all persons regardless of religion or membership criteria, as evidenced by <b>Attachment L</b>:</p> <p>_____ By-laws,  _____ Charter, OR  _____ Articles of Incorporation</p>		
<p><b>Relationship and Service to the Community</b></p>	<p><b>Adequate</b></p>	<p><b>Deficient</b></p>
<p>The organization has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by <b>Attachment M</b>:</p> <p>_____ Statement signed by the Board President that details at least one year of experience in serving each community, OR</p> <p>_____ For newly created organizations formed by local churches, service or community organizations, a statement signed by the Board President that details that its parent organization has at least one year of experience in serving each community for which Certification is sought.</p>		
<p>The organization provides a formal process for low-income, program beneficiaries to advise the organization in decisions regarding design, siting, development, &amp; management of all HOME-assisted affordable housing projects. As <b>Attachment N</b>, highlight the relevant text in one of the following:</p> <p>_____ The organization's By-laws, OR  _____ Resolutions, AND  _____ A written statement of operating procedures approved by the governing body.</p>		
<p><b>Needs</b></p> <p>Current plans are well grounded in an understanding of current housing conditions, housing needs, and need for supportive services, as evidenced by <b>Attachment O</b>:</p>		

<p>_____ Narrative statement of any current plans with supporting analysis of the local housing market and housing needs of low-income households.</p>		
<p><b>Relations</b> The organization has a positive reputation and a strong relationship with its community, as evidenced by <b>Attachment P:</b></p> <p>_____ Supporting documentation</p>		
<b>Financial Management and Capacity</b>	<b>Adequate</b>	<b>Deficient</b>
<p>The organization conforms to the financial accountability standards of 24 CFR 84.21, “Standards for Financial Management Systems”, as evidenced by <b>Attachment Q:</b></p> <p>_____ A notarized statement by the president or CFO; OR          _____ A certification from a CPA, OR          _____ A HUD approved audit summary</p>		
<p>No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by <b>Attachment R:</b></p> <p>_____ A Charter, OR          _____ Articles of Incorporation</p>		
<i>Please place narrative and supporting documentation of the following in Attachment S</i>		
<p><b>Audit</b> Does the organization have an annual audit? Is the most recent audit current?</p>		
<p><b>Audit findings</b> Were there management or compliance findings in the last two years? Are finding resolved?</p>		
<p><b>Budgeting</b> Does the organization do annual budgeting of its operations and all activities or programs? Does it track and report budget versus actual income and expenses?</p>		
<p><b>Reporting</b> Is financial reporting regular, current and sufficient for the board to forecast and monitor the financial status of the corporation?</p>		
<p><b>Cash flow management</b> Does the organization know its current cash position and maintain controls over expenditures? How regularly does it experience cash flow problems?</p>		

<p><b>Internal controls</b> Does the organization have adequate internal controls to ensure separation of duties &amp; safeguarding of corporate assets? Is there sufficient oversight of all financial activities?</p>		
<p><b>Procurement/Conflict of Interest</b> Does the organization have a conflict of interest policy governing employees and development activities, particularly in procurement of contract services and the award of housing units for occupancy?</p>		
<p><b>Insurance</b> Does the organization maintain adequate insurance – liability, fidelity bond, workers comp, property hazard, &amp; project?</p>		
<p><b>Financial stability</b> Does the current balance sheet and budget indicate sufficient funds to supports essential operations? To what extent does the organization have a diversified and stable funding base for operations? What revenue sources is predictable year-to year? Does the CHDO have an established fundraising program for both capital &amp; operational needs?</p>		
<p><b>Portfolio Financial Condition</b> If the organization has a portfolio of properties, are they are in stable physical and financial condition? Does it collect adequate management fees from the properties?</p>		
<p><b>Liquidity</b> Does the organization have liquid assets available to cover current expenses? Does it have funds available for predevelopment expenses or equity investments required for development?</p>		
<p><b>Development Capacity</b></p>	<b>Adequate</b>	<b>Deficient</b>
<p>The organization has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by <b>Attachment T:</b></p> <p>_____ 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. Please use the attached Experience Certification Form, OR</p> <p>_____ *Contract(s) with individuals who have housing experience similar to projects to be assisted with HOME funds to train appropriate key staff of the organization. The contract shall include the training plan and activities to be accomplished. Please include attached Experience Certification Form and a copy of the</p>		

executed contract.  <i>*The qualifications and experience of consultants is no longer relevant unless the CHDO is in its first year of operation and it is using a consultant to train its staff.</i>		
<i>Please place narrative and supporting documentation of the following in Attachment U</i>		
<b>Portfolio</b> Does the organization’s portfolio of projects/properties evidence competent management and oversight? Do the properties have adequate funding?		
<b>Previous Performance</b> Has the organization engaged in CHDO activities previously? Did it perform competently?		
<b>Management capacity</b> Does the current management have the ability to manage additional development activities? Does the organization have the capabilities to analyze alternative housing projects?		
<b>Procedures</b> Are the corporate lines of authority for development activities clear? Are policies & procedures in place governing development activities?		
<b>Project management</b> Does the organization have procedures for monitoring the progress of a project? Does it have the capacity to monitor project-level cash flow and schedule?		
<b>Personnel</b> Does the organization have staffs that are assigned responsibilities for housing development? Are personnel policies and job descriptions clear?		
<b>Staff skills</b> How strong are staff in the following areas: <ul style="list-style-type: none"> <li>• Legal/financial aspects of housing development</li> <li>• Management of real estate development Oversight of design &amp; construction management</li> <li>• Marketing, intake</li> <li>• Property management (if applicable)</li> </ul>		
<b>Training</b> Are staffs encouraged to obtain training and develop new skills? What is their potential for learning skills that they currently do not have?		

<p><b>Member involvement</b> Is the organization's membership active and in support of housing activities?</p>		
<p><b>Use of consultants</b> To what extent does the CHDO have access to and make use of qualified development consultants? How well do consultants interact with staff? Is the consulting focus on training staff?</p>		
<p><b>Funding access</b> Does the organization have funds available as equity in housing development projects? Does the organization have the ability to raise funds for the capital requirements of a project? How strong are relationships with funders of housing? With lenders?</p>		
<b>Housing as Primary Purpose</b>	<b>Adequate</b>	<b>Deficient</b>
<p>Certification is available only to organizations whose primary purpose is to provide and develop affordable housing. Please provide as <b>Attachment V</b>, a copy of the following:</p> <p>_____ Copy of current fiscal year's full operating budget categorized by program</p> <p>AND</p> <p>_____ Description of current and planned affordable housing activity</p>		

**CITY OF SAN ANTONIO**  
**CHDO CERTIFICATION APPLICATION**  
**EXPERIENCE ASSESSMENT FORM**

Please attach signed copies for each staff whose experience should be considered for meeting the Development Experience/Capacity requirement. Attach one copy for each project. Resumes should also be attached.

Category	Description
Staff or Consultant Name	
Mailing Address	
Phone Number	
Email	
Project Name	
Project Location	
Project Type <i>(Rental / Homeownership, # of Units, Population Served)</i>	
Date of Occupancy	
Sources of Funds	
Description of Staff / Consultant Role in Project	
Project References <i>(Name Address Phone)</i>	

*I certify that the information provided above is accurate and give my consent to contact references listed.*

\_\_\_\_\_  
**STAFF SIGNATURE**

\_\_\_\_\_  
**DATE**

**CITY OF SAN ANTONIO**  
**CHDO CERTIFICATION APPLICATION**  
**CERTIFICATION OF LOW INCOME REPRESENTATION**

Each board member representing the interests of low-income families in the Applicant's target community must complete this certification. Please maintain a copy of this certification in your files and send in a copy to GMA. These certifications will be reviewed during monitoring visit by the City.

Board Member Name: \_\_\_\_\_

I certify that I am a current member in good standing of the governing board for \_\_\_\_\_ (name of the Applicant organization) and that I represent the interests of low-income families in the Applicant's target community.

---

**Please check and complete one of the following:**

\_\_\_\_ I am a low-income resident of \_\_\_\_\_, the Applicant's target community.

*In order to qualify under this criteria, the board member must be a low-income resident of a community that the CHDO is certified to serve. **Low-income** is defined as 80% or less of area median family income.*

\_\_\_\_ I am a resident of a low-income neighborhood in \_\_\_\_\_, the Applicant's target community.

*In order to qualify under this criterion, the board member must live in a low-income neighborhood where 51% or more of the residents are low-income. The board member does not have to be low-income. **Neighborhood** means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government.*

\_\_\_\_ I am an elected representative of \_\_\_\_\_ (insert name of neighborhood organization), a low-income neighborhood organization within \_\_\_\_\_, the Applicant's target community.

*In order to qualify under this criterion, the board member must be elected by a low-income neighborhood organization to serve on the CHDO Board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups.*

**The group must be a neighborhood organization and IT MAY NOT BE THE CHDO ITSELF. If the board member is qualifying under this criterion, please attach copy of signed resolution from the neighborhood organization naming the individual as their representative on the CHDO.**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

**CITY OF SAN ANTONIO**  
**CHDO CERTIFICATION APPLICATION**  
**CERTIFICATION OF BOARD STATUS**

Applicants must complete the following Certification of Board Status and submit it along with their application for CHDO certification. Please list each board member by name, then place a check indicating the representation that member brings to the Board. Please list only current or approved board members. Do not list prospective board members who have not been approved to join the board.

Board Member Name and Residential Address	Low-Income	Public Institution	Religious Organization	For Profit	# of Years on Board	Occupation and Place of Employment	Areas of Expertise/ Experience

I certify that the above listing of current, participating board members is accurate.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

# CITY OF SAN ANTONIO

## CHDO CERTIFICATION APPLICATION

### CERTIFICATION OF SIGNATURES AND ADDRESSES

The Board of Directors of \_\_\_\_\_ met on the \_\_\_\_\_ day of the month of \_\_\_\_\_, \_\_\_\_\_ and authorized the below named individuals to sign contracts, amendments, disbursement requests and other documents requiring such signatures as a part of the CHDO Certification program:

Name & Title	Signature
--------------	-----------

Name & Title	Signature
--------------	-----------

Name & Title	Signature
--------------	-----------

In addition, the following individuals have been authorized to service as the primary and secondary contacts for the organization for matters relating to the CHDO Certification Program. Additionally, include the corresponding address to which all correspondence and payments to the organization shall be sent.

Category	Primary Contact	Secondary Contact
Name:		
Title:		
Address:		
Phone		
Email:		

*Changes to authorized signatures, contact persons or address shall be made in writing to the City's Department of Planning and Community Development.*

\_\_\_\_\_  
**BOARD PRESIDENT SIGNATURE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**BOARD SECRETARY SIGNATURE**

\_\_\_\_\_  
**DATE**

**ATTACHMENT II**  
**CHDO Re-Certification Application**

# **CITY OF SAN ANTONIO**

## **DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**



## **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) RECERTIFICATION APPLICATION**

Effective October 9, 2013

Please list below the names of your HOME eligible project(s) either begun, in process, or completed:

Name of HOME Eligible Project	# of Units	HOME Activity*	Location

\*A HOME eligible activity is defined as activities in the areas of homeowner rehabilitation, homebuyer activities, and rental housing that are eligible to receive HOME funds from the City of San Antonio.

**Describe and attach relevant documentation related to the following questions:**

Keep in mind that having low-income representatives on the board of directors does not satisfy the requirements of the low-income advisory process. The low-income advisory process is designed to report the outreach efforts made by the CHDO to the low-income community and must be adhered to as outlined in the CHDO's bylaws.

In what ways was low-income input sought and implemented in the past year and what were the results?

How have the low-income residents and program beneficiaries in your service area been involved with the CHDO to advise on policies and procedures, program design, site location(s), and the development and management of affordable housing?

Are there any unique approaches you have taken to obtain feedback, such as the formation of neighborhood advisory councils, tenant committees etc.?

Discuss any challenges the CHDO has encountered in obtaining feedback from low-income residents and what avenues will be pursued to overcome these barriers.

Please provide any additional information about the HOME eligible project(s) that began, progressed, or completed this fiscal year. If no HOME eligible projects were begun, progressed, or completed this fiscal year, please explain and include a rationale detailing why your organization wishes to remain a CHDO.

Did your organization complete at least one fair housing activity listed below?

**Fair Housing Presentations/Trainings**

# of Presentations/Trainings Sponsored or Co-Sponsored:

Description of Audience (i.e. – general public, specific organization or group etc.):

Fair Housing Topics Addressed:

Estimated Attendance:

Estimated # of Complaints and/or Questions Addressed:

Additional Comments:

**Fair Housing Forums**

# of Forums Sponsored or Co-Sponsored:

Description of Audience:

Fair Housing Topics Addressed:

Estimated Attendance:

Estimated # of Complaints and/or Questions Addressed:

Additional Comments:

**Fair Housing Marketing Efforts**

Types of Written and/or Electronic Materials Developed (i.e. brochures, logos, display boards, resolutions, website etc.):

Types of Materials Distributed and to Whom:

Types of Materials Displayed and Where:

Description of Newspaper and/or Radio Ads:

Additional Comments:

**Attendance at Fair Housing Activity/Training/Workshop Sponsored by Another Organization**

Name of Activity/Training/Workshop:

Date of Activity/Training/Workshop:

Name of Sponsoring Organization:

Names of Staff and/or Board Member(s) Who Attended Activity/Training/Workshop:

Additional Comments:

Please note any additional fair housing activities not addressed above:

### Training and Technical Assistance Received

Did either one or more members of staff attend at a minimum of two trainings, workshops, or conferences?

Organization Staff	
Name of Training/Workshop/Conference:	
Date of and Brief Description of training/Workshop/Conference:	
Name(s) and Title(s) of Staff Who Attended:	
List Any Certifications Received:	

Did either one or more board members attend at a minimum of one training, workshop, or conference that included topics to address organizational capacity building and/or capacity to develop affordable housing.

Board Members	
Name of Training/Workshop/Conference:	
Date of and Brief Description of training/Workshop/Conference:	
Name(s) and Title(s) of Staff Who Attended:	
List Any Certifications Received:	

*Provide additional Trainings or Direct Technical Assistance Received in an attachment as necessary.*



## CERTIFICATION OF LOW-INCOME REPRESENTATION

Each board member representing the interests of low-income families in the Applicant's target community must complete this certification. Please maintain a copy of this certification in your files and send in a copy to Office of GMA. These certifications may be reviewed during monitoring visits by the City. Note: the board member does need to check at least one of the three criteria listed below but does not need to indicate the specific way in which he or she represents low-income community interests.

Board Member Name: \_\_\_\_\_

I certify that I am a current member in good standing of the governing board for \_\_\_\_\_ (name of the CHDO organization seeking recertification) and that I represent the interests of low-income families in the Applicant's target community.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Please check and complete one of the following:

\_\_\_\_ **I am a low-income resident of \_\_\_\_\_, the Applicant's target community.**

In order to qualify under this criteria, the board member must be a low-income resident of a community that the CHDO is certified to serve. **Low-income** is defined as 80% or less of area median family income.

\_\_\_\_ **I am a resident of a low-income neighborhood in \_\_\_\_\_, the Applicant's target community.**

In order to qualify under this criterion, the board member must live in a low-income neighborhood where 51% or more of the residents are low-income. The board member does not have to be low-income. **Neighborhood** means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

\_\_\_\_ **I am an elected representative of \_\_\_\_\_, a low-income neighborhood organization within \_\_\_\_\_, the Applicant's target community.**

In order to qualify under the third criteria, the person must be elected by a low-income neighborhood organization to serve on the CHDO Board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups. **The group must be a neighborhood organization and IT MAY NOT BE THE CHDO ITSELF. If the applicant is representing a low-income neighborhood organization, please attach copy of signed resolution from the neighborhood organization naming the individual as their representative on the CHDO.**

**BUDGET**

Please submit your organization’s most recent audit or independent financial statements, if they are available, and complete the following:

Operating Budget for Prior Fiscal Year				
Source of Revenue	Amount of Revenue:		Type of Expense	Amount of Expense:
Federal Government Revenue:			Personnel Costs:	
State Government Revenue:			Personnel Benefits:	
Local Government Revenue:			Supplies and Materials:	
Private Foundation Revenue:			Public Relations and Information:	
Earned Income Revenue:			Overhead Costs:	
Revenue from Individuals:			Contractual Services:	
Other Revenue Sources (specify):			Other Expenses (specify):	
<b>Total Budget Revenue:</b>			<b>Total Budget Expense:</b>	

Project or Program Budget for Prior Fiscal Year			
Name of Project/Program	Income	Expenses	Profit (Loss)

**FINANCIAL ACCOUNTABILITY STANDARDS**

To conform to the financial accountability standards of 24 CFR 84.21, “Standards for Financial Management Systems”, please attach one of the following:

1. A notarized statement by the president or CFO
2. A certification from a CPA or
3. A HUD approved audit summary

## ORGANIZATIONAL CHANGES

Has the organization amended its articles of incorporation or by-laws since it was last recertified as a CHDO?

Yes  No If yes, please attach an amended copy.

Has the organization revised its tax-exempt status with the IRS since it was last recertified as a CHDO?

Yes  No If yes, please attach an amended copy.

Has the organization revised its purpose or mission since it was last recertified as a CHDO?

Yes  No If yes, provide a copy of the by-laws or board resolution with this change.

Has the organization had a change in staff capacity since it was last certified (or recertified)?

Yes  No If yes, can current staff demonstrate capacity for carrying out HOME-funded activities?

Yes  No If yes, describe capacity below:

If no, does the organization have a contract with a consultant to train appropriate staff members?

Yes  No If yes, describe scope of work below:

**ADDITIONAL ACTIVITIES**

Does your organization administer a City funded Rehabilitation Program?

If YES, please summarize your activities this fiscal year:

Does your organization administer a City funded Down Payment Assistance program (DPA)?

If YES, please summarize your activities this fiscal year:

Please provide a brief description of any other additional activities, funding or partnerships that were significant to your organization this fiscal year:

**CITY OF SAN ANTONIO**  
**CHDO CERTIFICATION APPLICATION**  
**EXPERIENCE ASSESSMENT FORM**

Please attach signed copies for each staff whose experience should be considered for meeting the Development Experience/Capacity requirement. Attach one copy for each project. Resumes should also be attached.

Category	Description
Staff or Consultant Name	
Mailing Address	
Phone Number	
Email	
Project Name	
Project Location	
Project Type <i>(Rental / Homeownership, # of Units, Population Served)</i>	
Date of Occupancy	
Sources of Funds	
Description of Staff / Consultant Role in Project	
Project References <i>(Name Address Phone)</i>	

*I certify that the information provided above is accurate and give my consent to contact references listed.*

\_\_\_\_\_  
**STAFF SIGNATURE**

\_\_\_\_\_  
**DATE**

**ATTACHMENT III**  
**CHDO Affidavit**

# **CITY OF SAN ANTONIO**

## **DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT**



## **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) CERTIFICATION AFFIDAVIT**

Effective October 9, 2013

## CHDO AFFIDAVIT

<b>Name of Applicant</b>	_____
<b>Organization</b>	_____
<b>Address, City, State, Zip</b>	_____
<b>Date of Last Certification</b>	_____

**I hereby certify that:**

1. The above mentioned organization has received a certification from the City of San Antonio within the past 90 days.
2. The above mentioned organization maintains it is organized under State or local law.
3. The above mentioned organization maintains it has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
4. The above mentioned organization maintains is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A CHDO may be sponsored or created by a for-profit entity, but:
  - (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
  - (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;
  - (iii) The CHDO must be free to contract for goods and services from vendors of its own choosing; and
  - (iv) The officers and employees of the for-profit entity may not be officers or employees of the CHDO.
5. The above mentioned organization maintains it has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes, the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4)
6. The above mentioned organization maintains it is not a governmental entity and is not controlled by a governmental entity.
7. The above mentioned organization maintains it has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

8. The above mentioned organization maintains it has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
9. The above mentioned organization maintains its accountability to low-income community residents by:
  - (i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations.
  - (ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;
10. The above mentioned organization maintains it has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds.
11. The above mentioned organization maintains it has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization.
12. All statements I have provided in this affidavit herein are true; that I am authorized to sign this affidavit and to make these statements, on behalf of the above mentioned organization; and that the organization understands that misrepresentation of any facts which lead to the improper allocation and expenditure of public funds may result in legal action against the organization for retrieval of any such funds and appropriate penalties.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**ATTACHMENT IV**  
**CPD Notices**

# **CPD Notice 97-11**



### 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:

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

<<>>  
Preliminary financial applications;

<<>>  
Initial feasibility studies;

<<>>  
Engaging a development team;

<<>>  
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.

## **CPD Notice 97-09**

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.

## **CPD Notice 96-09**

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

Special Attention of:

Notice CPD 96-9

All Secretary's Representatives

All State/Area Coordinators

Issued: December 20, 1996

All Regional Directors for CPD

Expires: December 20, 1997

All CPD Division Directors

All HOME Program Coordinators

All HOME Participating Jurisdictions

Cross References:

SUBJECT: Administrative costs, project-related soft costs, and  
community development housing organization (CHDO) operating  
expenses under the HOME Program

I. PURPOSE

This Notice defines administrative costs and project-related soft costs in the HOME Program ([24 CFR Part 92](#)), clarifies the distinction between them, and provides guidance to participating jurisdictions (PJs) on how to categorize costs.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act (NAHA), which established the HOME Program, did not provide authority for PJs to use HOME funds for costs incurred for administering their local HOME programs. On October 28, 1992, the Housing and Community Development Act of 1992 (HCDA) amended NAHA to permit each PJ to use up to ten percent of its total Fiscal Year HOME allocation to defray administrative costs and up to five percent for Community Housing Development Organization (CHDO) operating expenses. In addition, HCDA of 1992 permitted PJs to use a portion of their fifteen percent CHDO set-aside, during the first 24 months of participation in the HOME Program, for CHDO capacity building. The Department implemented these provisions of HCDA 1992 immediately, and incorporated them through amendments to the HOME interim rule published in the Federal Register on December 22, 1992, and June 23, 1993.

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Under the original HOME regulations, administrative costs were ineligible. These costs were defined as all staff costs, whether for overall HOME program administration or for project delivery. When the statute was amended in 1992 to permit the use of HOME funds for administrative costs, the revised HOME regulations retained the definition of administrative costs and imposed the statutory 10 percent cap on these costs.

In early 1993, the Department formed a task force to review policy inconsistencies between the HOME and Community Development Block Grant (CDBG) programs. As a result of that review, the Department made regulatory changes to the definition of administrative costs under the HOME Program to bring it into conformance with the CDBG program rules. [These changes were included in an interim rule published in the Federal Register on April 19, 1994.] Specifically, HUD amended the HOME Program definition of administrative costs. This notice discusses the circumstances under which a PJ might choose each option.

The April 19, 1994 interim rule removed the definition of administrative costs from §92.2 and redefined it at '92.207 as eligible administrative and planning costs. Administrative costs now include all general management, oversight and coordination costs. Project-related soft costs are costs incurred by the owner or the PJ that are associated with the financing and/or development of affordable housing. Staff and overhead costs that are directly related to carrying out a project and/or to provide relocation assistance were redefined and included as both project-related soft costs at §92.206(d)(6) and (f)(2), respectively, and as administrative costs at §92.207(.b).

The Multifamily Housing Property Disposition Reform Act of 1994 permitted the use of CDBG funds for HOME general management, oversight and coordination costs, which are analogous to costs eligible under 24 [CFR Part 570.206](#). CDBG funds can be used for HOME project costs, provided the HOME project meets CDBG national objectives.

On September 16, 1996, the Department published a final rule for the HOME Program. The final rule made numerous changes to clarify requirements and ease administration of the program. Among these changes, a new section, § 92.212, has been added to explain the circumstances under which a PJ may incur costs prior to the award of its fiscal year HOME allocation.

### III. ADMINISTRATIVE COSTS

A PJ may use up to ten percent of its annual HOME allocation to pay administrative and planning costs for the HOME Program. A PJ may also use up to 10 percent of any HOME program income received during the program year for administrative and planning costs. Allowable administrative costs, chargeable to the 10 percent cap, may be incurred by the PJ, state recipients, or subrecipients. It is up to the PJ to determine how administrative funds are to be allocated among subrecipients or, in the case of State PJs, State recipients.

A PJ cannot charge points on HOME loans and include them in the cost of a loan to repay a PJ's administrative costs. PJs may not charge monitoring, servicing, and origination fees in HOME-assisted projects. However, PJs may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications (§92.214 (b)). Such fees are applicable credits under [OMB Circular A-87](#).

The following are included in the definition of administrative costs, as described in §92.207: (a) general management, oversight and coordination; (b) staff and overhead; (c) public information; (d) fair housing; (e) indirect costs; (f) preparation of the Consolidated Plan and (g) other Federal requirements. Of these costs, it is only (b), project-related or relocation-related staff and overhead costs and (g) certain environmental costs that a PJ has the option to charge as either administrative costs or project-related soft costs. These will be discussed more fully in Section V. All other administrative costs, as described below, may be charged only to the administrative category:

#### General Management, Oversight, and Coordination Costs

General management, oversight, and coordination costs are always categorized as administrative costs. These include staff salaries, wages and other costs related to the planning and execution of HOME activities such as: program coordination, management and evaluation; travel costs incurred for official business in carrying out the program; administrative services performed under third party agreements, such as legal, accounting and audit services; other costs for goods and services required for the administration of the program, such as rental or purchase of equipment, insurance, and utilities; and the costs of administering tenant-based rental assistance.

By accepting HOME funds, a PJ assumes the responsibility for meeting all HOME requirements over time. To meet this obligation, the PJ will incur administrative costs related to activities such as annual reviews of information on rents and tenant income in HOME-assisted rental properties; post-completion property inspections in accordance with § 92.504(e) during the period of affordability; environmental review, whether program-wide or project-specific; disbursement of HOME funds; and the information and financial management of HOME funds.

HOME funds may be used to pay the cost of providing tenant-based rental assistance (TBRA) to individuals or families (that is, security deposit payments and direct rental assistance to the tenant). However, costs related to providing TBRA are always administrative costs and never project-related soft costs.

TABLE 1 includes some examples of general management, oversight and coordination costs.

TABLE 1: EXAMPLES OF GENERAL MANAGEMENT, OVERSIGHT AND COORDINATION COSTS\*

- \* providing local officials and citizens with information about the program
- \* preparing program budgets and schedules preparing reports and other documents related to the program for submission to HUD outreach activities
- \* renting office space and the cost of utilities
- \* purchasing equipment, insurance, and office supplies
- \* monitoring program activities to assure compliance with program requirements
- \* coordinating the resolution of audit and monitoring findings
- \* evaluating program results against stated objectives in the action plan of the Consolidated Plan
- \* program or neighborhood wide environmental reviews
- \* In accordance with [OMB Circular A-87](#), Attachment B, C.2.

#### Public information

These are the costs incurred to provide information to the general public about the HOME program, or to residents and citizen organizations to encourage their participation in the planning, implementation or assessment of projects being assisted with HOME funds.

#### Fair housing

Any activities undertaken to affirmatively further fair housing in accordance with the PJ's certification in its Consolidated Plan are administrative costs.

## Indirect costs

Indirect costs may only be charged to the HOME Program under a cost allocation plan prepared in accordance with OMB Circulars A-87 (Cost Principles for State and Local Governments) or A-122 (Cost Principles for Nonprofit Organizations), as applicable. Indirect costs (such as rent, utilities, maintenance and other costs that are shared among several departments of the PJ) are always categorized as administrative costs.

## Preparation of the Consolidated Plan

Because an approved Consolidated Plan is a required under 24 CFR Part 91 for participation in the HOME Program, costs related to the its preparation are eligible administrative costs under the HOME Program . This includes the cost of document preparation, public hearings, consultations and publication.

## IV. ELIGIBLE PROJECT-RELATED SOFT COSTS

Costs related to the development or financing of HOME-assisted housing are related soft costs of a project and are eligible under the HOME Program, as outlined in §92.206(d). These costs must be "reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds." (As stated earlier, costs associated with a TBRA program are not project-related soft costs.) Some of these costs may be for services required by private lenders. Services charged as project-related soft costs may be performed by a third party, the PJ, a subrecipient, or a State recipient.

Staff and overhead costs that are directly related to a project and/or to the provision of relocation services, and certain information services and environmental costs can be charged either as administrative costs or project-related soft costs. These will be discussed more fully in Section V.

TABLE 2 illustrates a variety of costs that are eligible under the HOME Program and always categorized as project-related soft costs:

TABLE 2. PROJECT-RELATED SOFT COSTS

- \* architectural, engineering or related professional services required to prepare plans, drawings, or specifications of a project
- \* costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees
- \* costs of a project audit that the PJ may require with respect to the development of the project
- \* an initial operating deficit reserve which is a reserve to meet any shortfall in project income during the period of rent-up (of a new construction or rehabilitation project) and which may only be used to pay operating expenses, scheduled payments to replacement reserves, and debt service
- \* impact fees that are charged for all projects within a jurisdiction

V. PJ CHOICE: ADMINISTRATIVE OR PROJECT-RELATED SOFT COSTS

PJs must choose whether to charge certain costs as project-related soft costs or as administrative costs. Costs eligible under either category fall into three primary areas: (1) staff and overhead costs directly related to carrying out a project, including certain fair housing and housing counseling activities; (2) staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project; and (3) environmental review costs directly related to the project. These costs can be charged either as administrative costs or project-related soft costs, regardless of whether they are incurred by the PJ, a State recipient, subrecipient or third party contractor. However, if these costs are incurred by an owner or developer (including a CHDO) in whose project HOME funds are invested, they can only be charged as project-related soft costs. It should be noted that if a PJ has contracted with

another entity (contractor or subrecipient) to perform administrative tasks (including project-related tasks), a PJ must have a written agreement with each entity receiving HOME funds in accordance with §92.504(b).

TABLE 3 helps identify the types of costs that can be either administrative costs or project-related soft costs:

TABLE 3. ADMINISTRATIVE OR PROJECT-RELATED SOFT COSTS

- \* processing of applications for HOME assistance
- \* appraisals required by HOME program regulations
- \* preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared
- \* project underwriting
- \* construction inspections and oversight
- \* project document preparation
- \* costs associated with a project-specific environmental review
- \* costs associated with informing tenants or homeowners about relocation rights or benefits
- \* costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by §92.351

Consider this example: A developer submits a proposal to a PJ to newly construct several properties for HOME-assisted homebuyers. The proposal includes, among other things, a market feasibility study and an appraisal conducted by the developer. As a prudent lender, the PJ should assess this information by:

- 1) assessing the project's feasibility and borrower's qualifications,
- 2) conducting its own credit check for all investors,
- 3) reviewing architectural plans, work specifications and cost estimates to determine that they meet the PJ's standards, comply with local codes, and that the costs are reasonable, and
- 4) evaluating the developer's appraisal, or conducting its own, to determine that the project's after-rehabilitation value will not exceed 95% of the area's median purchase price.

Costs associated with this assessment of information can either be administrative costs or project-related soft costs.

When categorizing costs related to the provision of information services (for example, program, project, and fair housing information), PJs must consider who is incurring such costs. When costs are incurred by a property owner, they are project-specific and must be charged to the project. For instance, the affirmative marketing costs incurred by a project owner are costs associated with marketing a specific project for that owner's benefit. On the other hand, when costs are incurred by a PJ, State recipient, subrecipient, or third party contractor thereof, the costs might be categorized either as administrative costs or as project-related soft costs. For example, PJ staff might conduct affirmative marketing for several projects throughout its jurisdiction. It could charge each project individually for these costs, or charge these costs as administrative costs.

Homebuyer or tenant counseling are eligible project-related soft costs. However, staff and overhead costs, and other services related to assisting potential owners, tenants, and homebuyers, may be charged as project-related soft costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project as specified under § 92.206(d)(6).

#### Relocation Costs

Required relocation assistance costs are eligible costs under the HOME Program. Such costs include relocation payments and other relocation assistance for permanent and temporary relocation of families, individuals, businesses, nonprofit organizations and farm operations where assistance is required to meet a PJ's relocation responsibilities under the HOME Program. (See §§92.206 (f) and 92.353)

There are two types of relocation costs: (1) relocation payments and (2) other relocation assistance, typically, advisory services. Relocation payments are always project costs and include replacement housing payments, payments for moving expenses, and payments for the reimbursement of reasonable out-of-pocket expenses incurred in connection with temporary relocation.

Other relocation assistance means staff and overhead costs directly related to providing advisory and other services to persons displaced by the project, including the provision of timely written notices, referrals to comparable and suitable replacement housing, property inspections, counseling, and other assistance necessary to minimize hardship.

Before categorizing the cost of other relocation assistance the PJ must, again, assess who is incurring the cost. For example, when a property owner or an owner's agent provides advisory services, the cost of such services are project-related soft costs. However, if a PJ, State recipient, subrecipient, or contractor provides such services the costs may be treated as either administrative costs or project-related soft costs.

PJ considerations when choosing administrative or project cost category

Administrative cap vs. maximum per unit subsidy limits

In deciding whether to charge project-related staff and overhead costs to the administrative or project-related soft cost categories, PJs should be aware of the limits that apply in each circumstance. The amount of HOME funds for administrative costs cannot exceed ten percent of the PJ's Fiscal Year HOME basic formula allocation plus program income, as specified at §92.207. This includes project-related soft costs that a PJ chooses to charge to the administrative category. Conversely, when project costs are charged to a specific project as project-related soft costs, these costs are included in the determination of the PJ's per unit cost, which is limited by the maximum per unit subsidy limits, as specified at §92.250.

Match issues

The HOME statute prohibits the recognition of administrative costs as match, even if the costs are paid with non-Federal funds. HOME funds used for administrative expenses of the PJ and for operating expenses of CHDOs do not have to be matched, thus reducing a PJ's overall match liability. Should a PJ charge staff and overhead costs to a project, those costs would trigger the 25 percent matching requirement.

Viability of project

With the exception of CHDO projects that receive project-specific technical assistance, seed money or site control loans, costs (including relocation costs) related to a project that does not go forward to formal commitment cannot be charged to the project. For relocation expenses, any costs for initial notices or other advisory services for a project that is not completed must be charged to the administrative category.

Mandatory relocation services

Because advisory services are not optional services, PJs must budget for these costs. For example, if a PJ is at, or near, its administrative cost cap, relocation advisory services must still be provided to tenants and homeowners and it might be advisable for the PJ to treat these costs as project-related soft costs. Alternately, if the amount of HOME funds in a project is at or near the maximum per unit subsidy limit, it might be advisable for the PJ to charge these relocation costs to the administrative category.

## VI. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

The HOME Program provides funds specifically for use by nonprofit housing developers that qualify as CHDOS. Each HOME PJ must set-aside a minimum of 15 percent of each annual HOME allocation exclusively for housing that is owned, developed or sponsored by CHDOS. In addition, the HOME Program provides special operating assistance for CHDOs in the form of funds for capacity-building, pass through funds from technical assistance intermediaries and funds for operating expenses.

Section 234 of the NAHA, as amended, limits the amount of operating assistance a CHDO may receive under the HOME Program for any Fiscal Year to an amount that provides no more than 50 percent of the organization's total operating budget in the Fiscal Year or \$50,000 annually, whichever is greater. This limitation applies to any combination of capacity building funds, pass through funds from technical assistance intermediaries and operating expense assistance.

When a CHDO administers a program on behalf of a PJ as a subrecipient, any administrative costs incurred by the nonprofit are treated as administrative costs of the PJ; these are not CHDO operating funds. For example, if a CHDO is administering a HOME-funded owner-occupied housing rehabilitation program on behalf of a PJ, the costs incurred by the CHDO may be charged as administrative costs or as project-related soft costs (where appropriate). These costs would not be eligible for HOME funding as CHDO operating expenses. The HOME final rule eliminated the requirement that administrative funds that a CHDO receives in its capacity as a subrecipient be counted under the 50 percent or \$50,000 limit.

### Operating Expenses

A PJ may use up to 5 percent of its annual HOME allocation for the payment of operating expenses of CHDOs (§92.208). Operating expenses are defined as reasonable and necessary costs for the operation of a community housing development organization. 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.

PJs may normally provide funds for the operating expenses only of CHDOs that are receiving HOME funds to own, develop or sponsor affordable housing. However, in recognition of the need to support and build capacity of new or expanding CHDOS, the regulation also allows PJs to provide operating funds to CHDOs who are not yet receiving set-aside funds when there is a written agreement between the PJ and the CHDO. The agreement must state that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the funds for operating expenses. In addition, it must set forth the terms and conditions upon which this expectation is based.

Project-specific technical assistance, site control loans, and seed money loans

Up to ten percent of the each PJ's CHDO set-aside may be used for activities specified under §92.301, project-specific technical assistance and site control loans, and project specific seed money loans. PJs that reserve more than 15 percent of their HOME allocation for CHDOs may use up to 10 percent of their total CHDO set-aside for such loans. Unlike CHDO capacity building funds, this loan authority is permanently available to Pjs.

Loans may be provided to cover project expenses necessary to determine project feasibility. TABLE 4 illustrates such expenses.

TABLE 4: ELIGIBLE PROJECT-SPECIFIC TECHNICAL, ASSISTANCE & SITE CONTROL LOAN EXPENSES

- \* an initial feasibility study
- \* engineering studies
- \* consulting fees
- \* costs of preliminary financial applications
- \* engagement of a development team
- \* site control and title clearance
- \* legal fees
- \* options to acquire property

Project-specific seed money loans may be made available to CHDOs to cover preconstruction costs the PJ determines to be customary and reasonable. Such costs include obtaining loan commitments, the preparation of architectural plans and specifications, and obtaining zoning or other local approvals.

PJs may waive repayment of these loans, in whole or in part, under §92.301 (a)(3) and (b)(3), if there are impediments to project development that the PJ determines are reasonably beyond the control of the borrower and the project does not go forward. The HOME final rule eliminates match liability for project-specific technical assistance, site control and seed money loans for which the PJ has waived repayment.

These loans cannot be used to pay for administrative costs incurred by the PJ. If the project proceeds and the only HOME funds used are those for project-specific seed money, site control or technical assistance loans, all applicable HOME requirements are triggered for that project.

## Capacity building

PJs must reserve or commit CHDO set-aside funds to specific CHDOs within 24 months of their obligation by HUD. PJs are required under 92.300 (b) to make reasonable efforts to identify CHDOs "that are capable, or can reasonably be expected to become capable," of carrying out elements of the PJ's approved Consolidated Plan.

During the early months of their participation in the program, new PJs may be unable to identify a sufficient number of organizations that qualify as CHDOS. Consequently, these PJs may use a portion of their CHDO set-aside for capacity building. If during the first 24 months of its participation in the HOME Program (commencing on the date that HUD executes the first HOME Investment Trust Agreement with a PJ), a PJ cannot identify a sufficient number of capable CHDOS, then up to 20 percent of the minimum 15 percent CHDO set-aside (in other words, three percent of the PJ's total allocation) may be made available to develop the capacity of CHDOs in the jurisdiction. This capacity building expenditure cannot exceed \$150,000 over the 24-month period.

PJs must commit capacity building funds within 24 months from the obligation date of the HOME Investment Partnership agreement. If set-aside funds are not committed to capacity building within the 24 month period, they must be committed to CHDO projects to avoid being recaptured.

Capacity building funds can be used in various ways: 1) a PJ may contract with an intermediary organization, or other entity, to provide technical assistance to CHDOS, 2) a PJ may provide funds directly to CHDOs to obtain training or technical assistance, or 3) a PJ may pay the costs of CHDO operating expenses, including staffing. However, PJs should be aware that they cannot use capacity building funds to pay their own staff to train a CHDO. This is an administrative cost to the PJ, and capacity building funds may not be used to exceed the ten percent cap on administrative funds.

PJs should assess the types of technical assistance available whether they be from HUD designated intermediary organizations or other technical assistance providers in their area. Capacity building funds should be used to complement, not duplicate, intermediary organizations' and other technical assistance providers' efforts.

## 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 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.