

# **Community Housing Development Organizations(CHDOs) Under the HOME Program**

- I. **BACKGROUND:** Among the purposes of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, are: (1) to promote partnerships between States, units of general local government and nonprofit organizations, and (2) to expand nonprofit organizations' capacity to develop and manage decent and affordable housing. To assist in achieving these purposes, participating jurisdictions (PJs) under the HOME Investment Partnership (HOME) Program must reserve not less than 15 percent of their HOME allocations for investment in housing to be developed, sponsored, or owned by Community Housing Development Organizations (CHDOs). Each participating jurisdiction must identify CHDOs that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved housing strategy. A CHDO is a specific type of nonprofit organization as defined in Sect. 92.2 of the HOME final rule, 24 CFR part 92, published in the Federal Register on September 16, 1996. Although many nonprofit organizations share common characteristics with CHDOs, not all non-profits qualify as CHDOs under the HOME program. Only nonprofit organizations that have been certified by HOME participating jurisdictions as CHDOs can receive funds from the minimum 15 percent set-aside. CHDOs play an important role in developing affordable housing. It is essential, therefore, that participating jurisdictions be encouraged to build and strengthen partnerships with them.

## 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.