

## Chapter 25

### COMMUNITY HOUSING DEVELOPMENT ORGANIZATION

For Program Year 2014, CHDO Operating Assistance will be awarded at the same time as an award of CHDO Set-Aside funds, and as a percentage of the CHDO Set-Aside funds awarded. The CHDO Operating Assistance will be ten percent (10%) of the CHDO Set-Aside funding award, up to a maximum of \$50,000. **(The maximum of \$50,000 is for all CHDO Set-Aside awards in Program Year 2014, and not for each separate award.)** In so doing, OHFA will make an exception to its normal policy that a separate application must be submitted for each different activity and form of assistance. However, **to be awarded the CHDO Operating Assistance, the Awardee must complete all sections of the 2014 HOME Program Application that pertain to CHDO Operating Assistance, and must be eligible to receive CHDO Operating Assistance at the time of application.** HOME funds are to be used by CHDOs for general operating expenses. CHDO operating assistance awards may also be limited by other statutory or regulatory limits or restrictions. CHDO Operating Assistance is separate from, and not intended to supplant, CHDO Set-Aside funds. **Operating Assistance funds cannot pay for project costs.**

**Eligible entities that received an award of CHDO Set-Aside funds in Program Year 2013 and did not receive an award of CHDO Operating Assistance may apply for CHDO Operating Assistance funds only**, so long as the CHDO Set-Aside activity is still an open and active contract such that the CHDO is “currently receiving CHDO Set-Aside funds” as required by the HOME Final Rule.

#### **CHDO Pre-development Loans**

HOME funds are to be used by CHDOs for project-specific pre-development assistance intended to fund up-front, eligible project expenditures. This assistance provides a form of project feasibility “line of credit” that many nonprofit developers need, but often have difficulty obtaining from private sources. All costs must be related to a specific project which, if deemed feasible, would receive HOME funds for development. Project pre-development costs may not exceed customary and reasonable preparation costs.

Community Housing Development Organization (CHDO) means 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 community housing development organization 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 community housing development organization 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 community housing development organization.

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1), 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 limited liability company 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) of the Internal Revenue Code of 1986 and meets the definition of "community housing development organization;"

(5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, Indian 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 community housing development organization; 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 community housing development organization;

(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; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); 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 community housing development organization, 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.

OHFA must certify the 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.

Funds are reserved when OHFA enters into a written agreement with the CHDO committing the funds to a specific local project.

Rental housing is “owned” by the CHDO if the CHDO is the owner in fee simple absolute of multifamily or single family housing (or has a long term ground lease) for rental to low-income families. If the housing is to be rehabilitated or constructed, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The CHDO must own the rental housing during development and for a period at least equal to the period of affordability in §92.252. If the CHDO acquires housing that meets the property standards in §92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability in §92.252.

Rental housing is “developed” by the CHDO if the CHDO is the owner of multifamily 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 in §92.252.

Rental housing is “sponsored” by the CHDO if it is rental housing “owned” or “developed” by a subsidiary of a CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company 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 limited partnership or limited liability company 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.

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.

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 (e.g., downpayment assistance) when it sells the housing to low-income families and the CHDO will not be considered a subrecipient. The HOME funds for downpayment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

OHFA must 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 and whether the proceeds must be returned to OHFA or may be retained by CHDO.

While proceeds that OHFA permits the CHDO to retain are not subject to the requirements of this part, OHFA must specify in the written agreement with the CHDO whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

Funds that are recaptured because the housing no longer meets the affordability requirements under §92.254(a)(5)(ii) are subject to the requirements of this part in accordance with §92.503.

If funds for operating expenses are provided under §92.208 to a CHDO that is not also receiving funds for housing to be owned, developed or sponsored by the CHDO, the OHFA's written agreement with the CHDO must provide that the CHDO is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

OHFA must ensure that a CHDO does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the CHDO's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under §92.208.

### **Additional Resources:**

- [CPD Notice 97-09, HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds](#)
- HOME Final Rule: CHDO Roles: Own, Develop, Sponsor Webcast