

Quick Overview of CHDO Proceeds

CHDO Proceeds are a return that comes back to a CHDO as a result of its investment in a CHDO-developed homeownership unit. CHDO proceeds are not rental income or recaptured homebuyer funds.

HUD allows a CHDO to retain CHDO proceeds only if:

- 1) The CHDO has been funded out of the CHDO set-aside.
- 2) The Written Agreement for the development which will generate proceeds explicitly states that the CHDO is allowed to retain proceeds.
- 3) The Written Agreement identifies the activities the proceeds will be used for, and any requirements such as deadlines, recordkeeping, reporting, and monitoring.
- 4) The proceeds are used for housing activities that benefit low-income families, consistent with 92.300(a)(2) and 92.300(6)(ii) and the Written Agreement.

OHFA CHDO Proceeds Guidelines:

- CHDO proceeds may not be banked and must be fully expended within 24 months of the date they are generated.
- CHDO proceeds must benefit low-income families. Only 20% of proceeds may be used for CHDO overhead or operating expenses. Supportive services (case management, counseling, work training, etc.) are not considered overhead or operating expenses.
- CHDO proceeds which are used to fund project reserves on other HOME developments must be approved by OHFA and should not exceed 20%.
- CHDO proceeds may be used to operate housing assistance programs which are not permissible under the HOME regulations including weatherization, emergency repair, and outfitting residences for the elderly or disabled.
- CHDO proceeds may be used for the acquisition of land or property to be used in future HOME developments or for the construction of non-HOME low-income units.
- CHDO proceeds may be used to provide homebuyer assistance or provide housing loans to low-income borrowers.
- CHDO proceeds uses not listed above must be approved by OHFA on a case-by-case basis.
- OHFA and the CHDO must agree on all intended uses of proceeds, and a fully executed Attachment J must be completed before any proceeds are expended. The executed and amended Attachment J becomes part of the written agreement.
- If the CHDO later wishes to amend its elected uses of CHDO proceeds, an updated Attachment J must be provided and approved by OHFA prior to further expenditure of proceeds.
- If a CHDO uses proceeds in a way not compliant with the executed Attachment J, the CHDO may be required to return proceeds to OHFA as program income or may become ineligible to retain future CHDO proceeds.
- The CHDO must keep a log of CHDO proceeds uses. This log must include the date, activity description, and expenditure amount of CHDO proceeds. The log must be made available to OHFA staff on an annual basis.

The below excerpts have been taken directly from CPD Notices 97-09 and 97-11 and 24 CFR 92.300 which provide guidance on this resource.

24 CFR 92.300 (6)(ii)

The participating jurisdiction must determine and set forth in its written agreement with the community housing development organization 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 the participating jurisdiction or may be retained by the community housing development organization.

While proceeds retained by the community housing development organization are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

CPD Notice 97-11

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 a 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).

CPD Notice 97-09

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 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.

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.