

CHDO Toolbox for HOME PJs

Tools for Managing Your CHDO Relationships

INCLUDING THE FOLLOWING TOOLS:

Seven Practices for Promoting Effective CHDOs

CHDO Quickfinder

Expanded Assessment Tool of CHDO Qualifications & Capabilities

CHDO Project Evaluation & Underwriting Checklist

CHDO Agreement Required Provisions Checklist

Sample CHDO Written Agreement

Expanded CHDO Conflict of Interest Policy

CHDO Proceeds Worksheet

PREPARED BY:

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I. The PJ-CHDO Relationship

1 Introduction

This guide is a compilation of management methods and tools that are designed to help HOME Participating Jurisdictions (PJs) to improve, expand or repair their relationships with CHDOs.

It has been co-sponsored by the National Community Development Association, the National Association of County Community Economic Development, the National Association of Housing and Redevelopment Officials and the Council of State Community Development Agencies. Funding has been provided through the HUD Community Development Technical Assistance (CDTA) program.

The guide is a deliberate attempt to offer advice to PJs beyond HUD rules and guidance. It is not a comprehensive guide to CHDO requirements. But if you already know the basic requirements, it will serve as a strategic guide to management practices beyond the guidance of the regulations that can help you to get the most out of your CHDOs and the HOME funds you provide them.

2 CHDO Requirements and Resource Materials

Chapter 3 includes a quick reference guide – labeled a “**CHDO Quickfinder**” – to HUD rules and requirements for CHDOs. It is an overview, and not a complete discussion of the requirements. The regulation and other HUD guidance should always be consulted for a comprehensive explanation of CHDO requirements, including:

- ◆ Regulations: 24 CFR Part 92
 - 92.2 Definition of CHDO
 - 92.300 – 92.303
 - 92.504(c)(3) Written Agreements for Developers (including CHDOs)

- ◆ Notices addressing CHDO issues:
 - CPD-97-11 – CHDO notice (under revision)
 - CPD-01-13 – CHDO reservations
 - CPD-96-09 – CHDO operating expenses
 - CPD-97-09 – CHDO proceeds
- ◆ Other Key HUD References:
 - HOMEfires Vol 2 No 1 (3/99) – Eligible activity chart
 - Building HOME training manual Chapter 8

These items can be downloaded from the HUD HOME Program web site at: www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm. Hard copies also may be ordered from Community Connections Clearinghouse at 1-800-998-9999 or www.comcon.org.

Changes to the HOME and CHDO rules and guidance are expected. Jurisdictions are strongly encouraged to sign up for the mailing list offered at the HOME Program web site noted above. The mailing list provides notification of new materials and program changes that are being posted on the HOME web site. By signing up for the mailing list, and checking the web site at least monthly, you should be able to keep current with changes to the HOME Program.

3 Why Work with CHDOs?

Over the last couple of decades, nonprofits have been playing a rapidly expanding role in the production and operation of affordable housing and the delivery of services to low- and moderate-income families. They have taken over an increasing number of service delivery functions formerly conducted by government, and they are increasingly active in the physical development of low-income neighborhoods and revitalizing areas.

Why should you make the effort to work with CHDOs? First of all, you're required to! One of the stated purposes of the National Affordable Housing Act of 1990 (the Act that created the HOME Program) is "to expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary and affordable housing". NAHA established two fundamental obligations for PJs with respect to CHDOs (in Section 231(a)):

1. **The CHDO Set-Aside** – jurisdictions must "reserve not less than 15 percent of (HOME) funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations"; and
2. **Affirmative Outreach and Assistance to CHDOs** – jurisdictions must "make reasonable efforts to identify community housing development organizations that are capable or can reasonably be expected to become capable of carrying out elements of the jurisdiction's housing strategy and to encourage such community housing development organizations to do so."

In addition, the Consolidated Plan regulations at 24 CFR Part 91 requires HOME jurisdictions to consult with housing and service providers, and also requires jurisdictions to address institutional capacity needs and coordination. Consequently, communities must foster direct relationships with nonprofit providers as part of their housing delivery system in order to qualify for Federal funding.

Furthermore, HUD is implementing the performance measurement system known as SNAPSHOT. While the score encompasses overall program performance on commitment, completion and

occupancy, one of the "double-weighted" factors is CHDO project completions. If your CHDO performance is lagging, it will diminish your overall standing in the SNAPSHOT measurement system.

But the PJ-CHDO relationship can't just be "shot-gun" marriage produced by a Federal threat or obligation. The PJ-CHDO relationship can and must be based on much more than simply "qualifying for the funds."

CHDOs bring many attributes to the table:

- ◆ **Housing production and preservation** – CHDOs can add significantly to the local affordable housing stock, and tend to be committed to permanently affordable housing, yielding long-term returns on the public investments in affordable housing.
- ◆ **Leverage and Match** – CHDO projects have the ability to raise funds that are not always available to public agencies and for-profits, adding to the overall funding for affordable housing. CHDOs also have the ability to generate more than their share of HOME Match requirements.
- ◆ **Volunteer contributions** – CHDOs tend to attract staff and volunteers who are dedicated to serving the low- and moderate-income population and contribute time and in-kind resources to community development activities.
- ◆ **Political support** – CHDOs are organized specifically to undertake activities that benefit low- and moderate-income persons, and they involve low- and moderate-income persons directly in the organization through board, committee and membership structures. As a result, CHDOs tend to have significant community connections that can galvanize broad community support around the issues of affordable housing and local housing programs.

- ◆ **Adaptability in responding to changing community needs** – As nonprofit organizations, they are likely to have more flexibility of structure and procedures than public agencies, enabling them to adapt quickly to changing environments and needs.

Despite all those positive attributes, some nonprofit organizations lack the financial strength and business discipline to be viable ongoing development entities. They have limited ability to pay and retain skilled personnel, which contributes to turnover. Many lack the working capital to cover planning and predevelopment costs and meet project equity requirements. They have to seek operating support regularly, and this may divert attention or delay their ability to implement projects on a timely basis. Well-intentioned and community-based boards and staff might lack some of the key management skills needed for cost-effective implementation of projects and programs.

PJs and CHDOs need one another to be successful, not only in the HOME Program but more broadly in addressing community development needs. As with all symbiotic relationships, each side needs certain things from the other to succeed.

- ◆ **What do communities need from nonprofits, including CHDOs?**
 - Sustained effort and timely project completion;
 - Stability of staff and organization;
 - Strong connections, and involvement of, the low- and moderate-income residents of the community;
 - Leveraging of foundation and other funds available only to nonprofits; and
 - Development and expansion of capacity and the ability to carry expanding roles in community development.

- ◆ **What do nonprofits need from communities to successfully fill this role?**

- Access to operating support;
- Access to seed money and predevelopment funds;
- Access to training and capacity building in housing development and management;
- Access to gap financing;
- Access to other conventional lenders and public funders;
- The opportunity to earn reasonable developer fees; and
- Predictable pipelines of projects to sustain staffing.

HOME is a key resource in building and sustaining this symbiotic relationship, but alone it is insufficient to address all of these needs. Moreover, CHDOs need to be diversified in their sources of support to be able to survive changes in any program. HOME funds have to be used strategically and within the limitations of the program.

Unfortunately, not every community enjoys successful PJ-CHDO relationships. We see two common and challenging PJ-CHDO situations:

1. PJs that have enough CHDOs, but can't seem to get them to deliver housing activities that address the PJ's housing priorities in a timely and cost effective manner; and
2. PJs that just don't have enough nonprofits – they either have a shortage of housing nonprofits or have trouble recruiting existing nonprofits to qualify for CHDO designation.

This guide is intended to provide some perspective and a few tools for strategic management of the PJ-CHDO relationship.

4 The Essence of the PJ-CHDO Relationship

The foundation for successful management of the PJ-CHDO relationship under the HOME Program can be built upon four basic principles:

1. CHDO status and funding is not an entitlement.
2. CHDOs are developers, not subrecipients.
3. CHDO benefits (operating expenses, pre-development loans, and proceeds) are useful, but optional.
4. PJs have an affirmative obligation to provide technical assistance to CHDOs.

While the HOME Program establishes the set-aside and several additional benefits that can be offered to CHDOs, no individual CHDO is “entitled” to receive anything beyond CHDO designation and technical assistance. **Entitlement is a dangerous precedent.** When the risks of losing current and future funding are minimized, it can diminish the urgency to perform and can undermine the authority of the PJ. The PJ must be in control of CHDO funding in the same way it must control all other HOME funding.

The second principle – CHDOs are developers – is critical to understanding the limits of the relationship. Under HOME, a subrecipient administers a program or activity on behalf of the PJ. The subrecipient steps into the shoes of the PJ and assumes all administrative responsibilities (except intergovernmental clearance and environmental review). However, when HOME funds are expended on “development” of properties owned or controlled by the CHDO, such projects cannot be subrecipient activities. Because CHDOs are developing properties under their control, they must be treated as

developers and operate within the narrow parameters of a development agreement.

It is common to use the term “partnership” when talking about relationships with CHDOs and other nonprofit developers. But this term is somewhat misleading. While the relationship is symbiotic and hopefully you are collaborating and cooperating with nonprofit developers, you are not “partners.” The partner term implies equal roles or a peer relationship. However, when it comes to HOME, the PJ is a funder or lender and the CHDO is a developer. Instead of “partners,” you are “investors” in your CHDOs and their projects on behalf of the public. As a fiduciary of public funds, you must make certain that your investment is cost-effective and meets the priorities of the jurisdiction’s Consolidated Plan and the requirements of the regulations. You must retain full authority to oversee the activities of the developer and control disbursements.

The third principle stresses that the unique forms of CHDO assistance – i.e., operating expenses, pre-development loans, and CHDO proceeds – are **strategic options** that the PJ can choose to provide or not provide to some or all CHDOs. Some CHDOs or projects may need one or more of these benefits to succeed, but others might not. While likely it is the easiest route politically to just split up the pie among the CHDOs, by doing so PJs lose their ability to target the funds for leverage, and can risk fostering a sense of entitlement among CHDOs. PJs should reserve the flexibility to make strategic decisions about when and how to use these options, if at all.

The fourth principle is a reminder that, while you don’t owe CHDOs any particular financial benefits, you do owe CHDOs help and guidance. You can deliver it directly, or use HUD’s extensive CDTA and CHDO intermediary network to help CHDOs

increase their capacity and earn the opportunity to spend HOME funds. Be sure to talk with your local HUD CPD office about the availability of CHDO TA.

Make no mistake about it – you need CHDOs as much as they need you. There are mutual benefits to the symbiotic relationship, but there are definite roles and the PJ must retain management control.

5 So How Many CHDOs Do You Need?

Before you proceed to the next chapter on tools for managing your CHDO relationships, it is critical for you to determine how many and what role(s) you'd like your CHDOs to play. If you don't know or can't articulate what roles you want them to play, how can you expect them to deliver the priority projects you need? Consider the following questions.

First, how many CHDOs can your community support? CHDOs (and other nonprofits) need to have a steady pipeline of projects to sustain them. Consider the following questions:

- ◆ How many “slots” do you have for CHDOs in your HOME Program? That is, how many CHDO projects can you fund every couple of years (on the assumption that CHDO projects on average may one to two years to complete)? Don't just limit your answer to the minimum CHDO set-aside of 15%, but to whatever portion of your HOME funding realistically could be put toward viable CHDO projects.
- ◆ How many CHDOs/nonprofits can be supported by the overall mix of local funding (HOME, CDBG and other funds)? What other funding sources are available to support nonprofit projects locally? No CHDO or other nonprofit should be entirely dependent on one program (HOME

or otherwise) for funding. Diversification is essential to long-term health.

- ◆ How many CHDOs will keep the environment competitive and not an entitlement situation? Everyone does a little better job when they have to compete. If you have the ability to fund three CHDOs every two years, then having four or five competing for those funds removes the sense of entitlement and creates a little healthy competition.
- ◆ Have the CHDOs and other nonprofits maximized their efforts to obtain state, private, and other Federal funding? The competitive environment encourages creativity in leveraging other funding sources. Is your community getting its fair share of other nonprofit funding resources?

These questions should help you come to a general conclusion regarding the number of CHDO/nonprofit projects or organizations the local funding environment can support or needs to have a competitive environment.

Second, what do you want your CHDOs to do? Go back to your ConPlan analysis of needs and strategic goals. What priority needs did you identify that CHDOs could or should address?

- ◆ Development of additional rental housing?
- ◆ Preservation (acquisition and rehab) of existing rental housing?
- ◆ Development of special needs and homeless housing?
- ◆ Development of homebuyer units or projects?
- ◆ Other (non-CHDO) activities (e.g., management of local programs such as downpayment assistance)?

Compare this list of priority needs to the types of projects your CHDOs have been doing. Are they

addressing all needs, or are certain needs being ignored?

Third, what are your current CHDOs and nonprofits capable of doing? How do their capabilities compare to your priority needs? Can

they meet all of your needs, or do you need other organizations with different capabilities? What are the gaps in capacity that you need to fill?

You may want to use the following matrix to help you summarize your analysis:

Type of Housing	PJ Priority (Hi-Med-Low)	Existing CHDO Capacity	Capacity Gap
Rental Housing Development			
Existing rental housing rehab/mgt			
New home buyer opportunities			
Homebuyer acquisition/rehab			
Housing for special populations			
Homeless trans/perm housing			
Other non-CHDO activities			

Based on this analysis, you should be able to answer the following questions:

- ◆ Are there enough capable CHDOs to do the volume of CHDO activities year in and year out without backlog or performance problems?
- ◆ Are there enough capable CHDOs to create an environment of competition, where individual CHDOs do not have a sense of entitlement or certainty of funding regardless of what they choose to do and how they perform?
- ◆ Are there CHDOs capable of developing and operating all of the different types of housing you need developed (ownership, rental, special needs and homeless)?

If any of these questions elicit a negative conclusion, then you either have to improve the capacity of the existing CHDOs or consider recruiting some new ones.

With this perspective on your needs for CHDOs, proceed to the next chapter for a discussion of strategic management practices and tools.

II. Seven PJ Practices for Promoting Effective CHDOs

Below are seven recommendations regarding the management of CHDOs that we have chosen to call (with apologies to Stephen Covey) the “Seven PJ Practices for Promoting Highly Effective CHDOs.”

1. **Make them compete**
2. **Don't make reservations – make commitments**
3. **Execute thorough written agreements**
4. **Impose performance standards**
5. **Pay CHDOs as developers, not administrators**
6. **Monitor performance at least quarterly**
7. **Train, train, train**

Drawn from the first decade of experience with CHDOs, these practices create an alternative paradigm for managing the PJ-CHDO relationship.

The seven practices are matters of management discretion. In no way are they to be interpreted as “requirements.” You may decide not to adopt them, or choose to incorporate any of the practices as you see fit. Together, however, they create a much more productive environment for nurturing successful CHDOs.

If you choose to adopt the management paradigm, keep in mind that it may be difficult to change old habits and expectations. It is much harder to take away something (e.g., entitlements, benefits, administrative costs) once it has been given. Even if you decide you want to move toward this management model, it might be best to devise a transition that allows your agency and the CHDOs to adjust to the new management style.

So, get ready to change the way you manage your CHDO relationships!

1 Make Them Compete!



We like a reasonable level of competition as the basis for all recommendations that follow. Competition forces everyone to sharpen their pencils and do a better job of planning their projects and packaging their project applications. In addition, the awareness of competition keeps organizations performing after contracts are awarded, because performance is necessary to maintain good standing for future awards.

On the other hand, an exclusive arrangement where the same CHDO gets funded each year may foster a sense of entitlement. Entitlement breeds complacency, if not backlogs. Where possible, make them compete.

At the same time, keep in mind that excessive competition can be wasteful and counter-productive, diverting a lot of nonprofit effort toward the competition rather than performance. And, there may not be enough funding to sustain the entire nonprofit population. As noted in the previous chapter, it is healthy to have a few more CHDOs than your available funding slots – but not an excessive supply of CHDOs.

To make sure that your process is competitive, consider the following suggestions:

1. **Nurture enough capable CHDOs to maintain a competitive environment** – This is what creates and sustains the competitive environment. But make sure they are capable, of course. Some thoughts on recruiting new CHDOs:
 - a. **Recruit New CHDOs** – Look first for existing nonprofits with proven track records of performance. Some nonprofits may be reluctant to make board changes to meet CHDO requirements, but they can create CHDO subsidiaries while maintaining their overall

structure and broader focus. Conduct outreach to regional nonprofits that serve more than your jurisdiction, Community Action Agencies, Habitat style organizations, faith-based organizations and special needs agencies.

b. **Monitor existing CHDOs for changing conditions** – Nonprofits that lose key staff or board members might experience a dramatic change in ability to deliver. When changes occur, intervene early to train new staff and keep the organization on course.

c. **Qualify CHDOs based on capacity, not just regulations** – The CHDO Checklist in CPD-97-11 is not sufficient. A CHDO that is qualified but not capable is unlikely to be able to perform adequately in a demanding program such as HOME. Attached is a **CHDO Assessment tool** to help you focus on issues of nonprofit capacity as well as the regulatory requirements of CHDO qualification. Where deficiencies exist, determine the appropriate TA or training to provide.

2. **Run an RFP or other type of competitive application process** – The application for funding is the competitive arena. RFPs or similar solicitations create a level playing field for all the potential CHDOs. Some RFP suggestions:

a. **Tell them what projects you want** – The choice of projects should not be left to the CHDO. When you issue the RFP, make clear the types and locations of projects in which you are most interested, consistent with the ConPlan. Require them to respond to priority needs.

b. **Make performance a threshold or factor for award** – As you infuse your HOME Program with the expectation of “performance,” make timely and cost effective

performance on current and past awards a threshold factor for award. Some PJs establish percentage thresholds of drawdown or completion on prior awards to be considered for new funding. Others make it a competitive factor for award rather than a threshold.

3. **Consider using CHDO Operating Expenses and Pre-Development Loans to fund project planning & application** – Some CHDOs resist or fail to succeed in a competitive application process because of their lack of working capital to pay the upfront costs of putting together an application. If you face this problem with your CHDOs, consider using CHDO Operating Expenses or Pre-Development Loans to cover some of the upfront planning costs.

One PJ gave each of three newly designated CHDOs \$5,000 - \$10,000 of CHDO Operating Expense funds to help them conduct the preliminary planning and feasibility work for potential projects, with the understanding that the CHDOs would submit a project application for funds in 90 – 120 days. This investment helped the PJ to identify that two of three were capable of undertaking projects, but the third was not yet ready. The PJ avoided the more costly mistake of committing and expending CHDO project funds for a project that was unlikely to be completed in a timely manner or at all.

CHDO Operating Expense funds were used in this case because they do not have to be project-specific. However, they must be invested in a CHDO that has a funded project, or is expected to be funded, in the next two years (see 92.208 and 92.300(e).) The PJ had enough funds to assist two CHDOs per year, so they had four “CHDO” slots available – sufficient for them to meet the regulatory standard of a reasonable expectation of funding the three new CHDOs.

Remember that CHDO Operating Expenses are not project funds – they do not have to be repaid in the event the project does not go forward. Also, Operating Expense funds do not require environmental clearance nor do they trigger HOME Match requirements. However, the CHDO Operating Expense written agreement must reflect the requirements of 92.300(e).

Pre-Development Loans could be used in a similar manner if the project has been identified as an eligible HOME Project. There are two levels of pre-development lending specified in 92.301. TA/site control loans generally can be used prior to environmental review, but the seed money loans should be granted only after environmental clearance. The pre-development loan written agreement should reflect the requirements of 92.301.

4. **Select CHDO projects based on sound underwriting** – Determining CHDO project eligibility isn't sufficient. You have limited HOME funds to invest. You need to make a wise commitment and expenditure of funds in affordable housing projects that can be delivered as quickly as possible, but that will also remain viable for the compliance period and beyond. This requires careful underwriting.

Consider the four-step process for selection as outlined in the attached **CHDO Project Evaluation and Underwriting Checklist**:

- a. **Threshold Review** – First determine if the project can meet the HOME regulatory requirements, or if there are any “deal killers” in the proposed project that may render it ineligible for HOME CHDO funding. Review the application for HOME project eligibility, CHDO eligibility and cost eligibility.

- b. **Factors for award** – After threshold review has removed any clearly ineligible projects, factors for award can be applied to determine the order in which projects will be underwritten and funded. See the earlier comments about previous performance.

- c. **Underwriting Risk Analysis** – Assess the market, borrower and project risk factors to determine if the project is feasible and viable as a housing development project. Risk analysis is a combination of the traditional financial analyses and non-financial risk factors.

The key market factors are affordability and market comparability. The key borrower risk factors are capability and liquidity – whether the developer has the skills to do the development and the funds to meet the capital advance requirements of the project. The key project risk determination is viability. It's not enough to get the project built; it also has to last for the compliance period or longer.

A **CHDO Project Evaluation and Underwriting Checklist** is included with the CHDO tools in Chapter 3 to help you identify the risk factors.

- d. **Investment Terms** – The final step is to determine the appropriate terms for the public investment, including the size of the investment, subordination to other debt, whether the investment is a loan or grant, the loan term and compliance period, whether interest will be charged or amortization required, assignability to another buyer, and other such terms for the HOME subsidy. This is also covered in section 4 of the **CHDO Project Evaluation and Underwriting Checklist** in Chapter 3.

5. If you have more than enough good projects, fund more than the 15% – The 15% is a floor, not a ceiling. If you have more than the minimum, HUD’s cumulative method of tracking CHDO commitments essentially provides a carry-forward credit for the extra commitment to future years. This gives you a buffer for when some future CHDO project falls apart or fails to materialize. Also, given the long-term nature of some CHDO project development phases, forward funding conditioned on future years allocations may be a method for giving CHDOs a preliminary commitment that allows them to plan and seek other funding sources.

Once again, the goal is to have enough capacity to spend your CHDO funds quickly and effectively. A little bit of competition should help you to achieve a better mix of projects and more cost effective expenditure of HOME funds.

2 Don’t Make Reservations – Make Commitments



CHDO reservations are inferior to project commitments from a management perspective. Reservations require only the designation of a particular CHDO to receive funding, but not necessarily a specific project. Initially, the Congress and HUD put in the step of the CHDO “reservation” as a designation step that had to occur within 18 months, so that CHDO projects might be identified by the 24-month project commitment deadline. However, in response to complaints by PJs with limited CHDO capacity, HUD gave PJs some additional flexibility by slipping the reservation requirement to 24 months. This may have relieved the commitment pressure in the early years, but it also may have set an unfortunate precedent for the long-term management of CHDOs.

We are not fans of the “reservation” option. Reservations create a sense of entitlement to the CHDO that relieves the CHDO of the time pressure to package a viable project that qualifies for commitment. In fact, when HUD began compiling the SNAPSHOT performance measures at the end of 2002, there were 61 PJs with all their CHDO funds reserved but no completed CHDO units. Reservations don’t always translate into production.

Furthermore, the award of funds to an organization rather than a project may foster a sense that HOME funds can be secured by politics rather than professional performance.

So, unless you are up against the commitment deadline and at risk of losing the CHDO funds, skip the reservation step. Go directly to the commitment step, and make your CHDOs apply like all other developers for a project-specific commitment.

3 Put It In Writing!



So you have selected the CHDO projects you want to fund. The next step is to set them up in IDIS and let them begin to use the funds, right? Wrong!

The rule at 92.504(b) requires you to have a written agreement with a CHDO (or any other recipient of HOME funds) before you *disburse* funds. But 92.502 says that you may set up a project after you “commit” funds, and the definition of Commitment in 92.2 defines commitment (for a rehab or new construction project – the likely categories for most CHDO projects) as having “executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within 12 months of the agreement date.” Bottom line: you need a written agreement at the commitment stage.

Sure, you will execute a note and mortgage at the time of closing, and these documents will replace, amend or incorporate the written agreement, but the closing is too late to document the relationship. Much of the CHDO work in planning and preparing the project will have already occurred by the closing. Significant errors already may have been made by the time of closing, and delays and other performance problems are likely to have already surfaced. Without a written agreement, pre-closing problems may be difficult to address.

(Remember that environmental review is required before a firm commitment can be made. If environmental review is not completed prior to the execution of the written agreement, it must be conditional, and contain the wording in CPD-01-11.)

Is the written agreement just a regulatory requirement you have to meet to satisfy? Emphatically NO! It's actually one of the most important steps in managing your relationship with the CHDO.

As good fences make good neighbors, so do good agreements make good business associates. You are about to enter a business relationship. It has to be specific and arms-length. It has to be documented so that each party knows what is expected of the other.

So what do you need in the CHDO written agreement? We can start with the regulatory requirements to make sure we're covered, but we can't stop there. Performance is not just about regulatory compliance; it's about delivering on time, on budget and within scope.

92.504(c)(3) indicates the minimum requirements for a written agreement, and there are some additional regulatory requirements listed elsewhere in the regulation. Attached is a checklist you may wish to use to review your CHDO agreement for the

required elements. Here are thoughts to keep in mind when developing written agreements:

- ◆ **Be explicit.** Don't just say in the agreement that "the CHDO must comply with Section so-and-so of 24 CFR Part 92". Be specific. For example, if your PJ utilizes a local housing code as its property standard, the agreement should state the specific standards, rather than merely indicating compliance with 92.251. Sure, it would be lazy on their part to not bother to read the requirements that are referenced, but it is lazy on your part to not specify the requirements in the first instance. It sends a message that it wasn't important enough to you to be specific.
- ◆ **Set performance standards.** Be sure to include interim deadlines and performance standards that can be used to monitor progress and pay developer fees. See the discussion of performance standards below.
- ◆ **Identify procurement requirements.** As developers, CHDOs are subject to any procurement standards that you indicate in your agreement. Failure to specify procurement standards means that no procurement standards are applicable. They are not automatically subject to either the PJs standards at 24 CFR 85.36 or the nonprofit subrecipient standards at 84.41-.48. Your choices include:
 - Applying your procurement standards (or a modified version);
 - Applying the nonprofit subrecipient standards; or
 - Requiring the CHDO to develop its own procurement policy for review and approval by the PJ.

While you can choose to apply the public procurement standards, these may be unnecessarily

restrictive and costly for a CHDO to implement. For example, the publication of bids by legal notice may be unnecessary, and it may not always be cost-effective to require a sealed bid scenario. Set standards that ensure an appropriate level of competition, and reserve your right to review and approve bids if needed for less experienced CHDOs.

- ◆ **Address Conflict of interest.** The award of financial benefits (both contracts and unit benefits) to persons who appear to have inside information or undue influence is perhaps the most likely source of negative public attention to the program. You must be alert to potential conflicts before they occur. In the HOME Program, HUD requires potential conflict of interest to be addressed before it can occur. The regulation permits PJs to grant exceptions to the conflict of interest provisions for developers in advance.

For CHDO developers, 92.356(f) only restricts the award of rental unit occupancy to related parties. Obviously, this doesn't address all conflict situations. For example, one CHDO produced five homebuyer units, all of which were awarded to officials or staff of the CHDO – a questionable application of the “self-help” housing concept to say the least! Another CHDO awarded construction contracts without competition to a general contractor who serves on the board.

HUD is considering an extension of the conflict standards to also address award of contracts and other forms of HOME assistance. Whether or not HUD extends the conflict of interest provisions applicable to CHDOs, we strongly recommend that you extend the provisions to all contract and unit benefits through the written agreement. An **Expanded CHDO Conflict**

of Interest Policy is included with the tools in Chapter 3 to help you consider a broader policy.

Remember, you are in a position to grant an exception in advance to a potential conflict of interest situation if you determine that fair procedures have been put into place to prevent the conflict. But once a conflict of interest accusation has arisen, it is very hard to eliminate the conflict after the fact, and even harder to overcome the damage done to reputation of the CHDO and your program.

- ◆ **Specify the Use of CHDO Proceeds.** CHDO proceeds are subject to the provisions of 92.300(a)(1), which essentially limit the first reuse of the funds to affordable housing. At a minimum, this standard must be referenced. However, it may be to the advantage of the PJ to regulate the use of proceeds by more than the minimum. Possible additional requirements could include:

- Permanent or long-term restriction on the use of the funds, or establishing a revolving loan fund;
- Limiting the use to HOME-assisted projects rather than just “affordable housing”, or restricting to a specific use (e.g., homebuyer assistance);
- Reporting requirements on the use and status of the Proceeds Account to the PJ (such as an annual audit requirement); and/or
- Conditions on the use of funds for development staff and operating costs that support development.

One PJ discovered recently that their CHDO had generated nearly \$500,000 in CHDO proceeds over the years by developing a few

units of for-sale housing each year. The funds had accumulated in the CHDO's accounts because the CHDO was not sure how to use the funds. At the same time, the PJ wanted to expand the responsibilities of the CHDO to develop a new subdivision of for-sale homes, but the CHDO only had a part-time executive director.

Through renegotiation of the Proceeds terms of the CHDO agreements, the CHDO agreed to escrow and permanently restrict the use of the Proceeds to projects approved by the City, and to include the funds as a separate schedule in its annual audit submission to the City. In return, the City approved use of the funds to hire a fulltime staff person to manage the subdivision project and to use a portion of the Proceeds along with new CHDO funding to subsidize half of the new homes for low-income buyers. Effectively, the use of CHDO Proceeds produced a faster project with more assisted units.

Chapter 3 includes a tool entitled the **HOME Funds & CHDO Proceeds Reconciliation Worksheet** to assist with the calculation of CHDO Proceeds for a homebuyer project, which is the situation most likely to generate CHDO Proceeds.

Please note: repayments of HOME homebuyer notes/mortgages from resales by the homebuyers are "recaptured funds" that must be repaid to the PJ, and may not be retained by the CHDO as CHDO proceeds.

A **CHDO Agreement Required Provisions Checklist** and a **Sample CHDO Written Agreement** are attached to provide guidance in meeting regulatory requirements as well as addressing these additional management issues.

4 What Gets Measured, Gets Done – Impose Performance Standards



“What gets measured gets done.” Isn't this so true? Don't you respond faster and better when someone is charting your progress? With the heavy demands on schedules and resources – for both PJs and CHDOs – it is easy to let things sit if no one is tracking or demanding timely performance.

HUD is considering providing guidance to PJs on setting performance standards. With or without the HUD guidance, consider inserting performance standards in the contract that allow you to conduct effective ongoing monitoring.

Performance standards are difficult to discuss in general. They need to be project-specific, and there are so many different types of CHDO projects. However, consider incorporating the following into the written agreements and your monitoring of the CHDO:

- ◆ **Interim deadlines/milestones** – While most agreements have a time frame for completion, many agreements fail to include interim time frames, deadlines or milestones. Without these, your ability to conduct progress monitoring is limited. Key milestones for CHDO development projects might include the following, depending upon the type of project:
 - Completion of project designs and specifications
 - Application for (or receipt of) local approvals (zoning, etc.)
 - Site acquisition
 - Full financing commitments
 - Construction closing

- Marketing milestones (such as the selection/ approval of X number or Y percent of buyers or tenants)
- Initial occupancy
- Permanent loan closing (or sale)
- Sustaining occupancy

Several milestones should be incorporated to permit at least quarterly progress monitoring (as discussed later.) Also, milestones should be identified that correspond to the partial release of developer fees (as discussed below).

- ◆ **Completion dates, penalties and requirements for extensions** – While most agreements have completion dates for the project based on the CHDO’s proposal, these are not commonly enforced. CHDOs have been permitted to expect that they can exceed the completion date without consequences or permission. Do not permit this expectation and practice to continue.

The written agreement should stipulate deadlines (either as specific dates or as number of days/weeks/months from the contract start date in cases where the start date is not yet clear).

The written agreement should also specify the criteria for granting extensions, such as:

- Satisfactory progress toward completion;
- Identification of specific impediments that are beyond the control of the CHDO;
- Submission of a revised schedule that reflects reasonable completion of the project; and
- Any penalties, fee adjustments, or other consequences of extensions.

When CHDOs fail to meet the deadline, the written agreement should invoke one or more of the following:

- Probation, including the suspension of eligibility for new CHDO, HOME, CDBG or other PJ funding awards and/or the processing of new projects in the pipeline;
- Withholding of developer fee payments;
- Reduction of developer fees; and/or
- Other forms of penalties designed to encourage the CHDO to restore performance.

Whatever penalties you choose, they should be in the written agreement. The agreement should permit such penalties to be waived in the event the delay is beyond the control of the CHDO, and there should be a way of escalating the penalty if performance continues to lag after due notice.

In some cases, PJs have included a designated assignee clause in the written agreement, which permits the PJ to make a determination that the CHDO is not capable of completing the project within the terms of the agreement, and to assign the award to a substitute developer which has been named in the agreement or is designated by the PJ at that time.

5 Pay CHDOs as Developers, Not Administrators



Developers earn developer fees; subrecipients are paid administrative costs. These should not be confused.

Historically, the approach has been to pay the administrative costs of a nonprofit while it developed a project. This has created a sense of development as a paycheck rather than a project – you get paid for working on it, whether or not you succeed.

In the real development world however, developer fees are paid for services rendered. Fees are earned when milestones are reached. Holding payments until milestones are reached creates the proper incentive for the developer to complete the task quickly and successfully.

While we recommend a fee structure for CHDOs, most CHDOs cannot wait until the end of the project to receive their fee. A schedule for fee advances should be negotiated. An initial fee advance of a modest portion (10 – 20%) of the fee might be granted at the time of execution of the agreement to capitalize the CHDO, but any further fee advances should be based on the achievement of documented project milestones (see previous recommendation), such as:

- ◆ Acquisition closing
- ◆ Construction commencement
- ◆ Percentage of construction completed
- ◆ Substantial completion or the certificate of occupancy
- ◆ Permanent closing or sale to homebuyers
- ◆ Sustaining occupancy and full reporting/compliance

The final payment of fees should be held until all costs are incurred and paid, occupancy has been achieved, and the required reports and documentation are submitted.

There is one other advantage of paying developer fees rather than administrative costs: fees that are based on performance only require documentation of the performance milestone. They do not require time sheets, mileage logs and other arduous documentation that is required for administrative costs. So the recordkeeping burden of the CHDO and PJ are reduced substantially through a fee structure.

Another prevalent historical perspective has been that nonprofits should be able to develop housing for less than for-profit developers. This has resulted in nonprofits being under-funded and unable to maintain a steady pace of development.

Fees are the lifeblood of the development business. Fees not only cover the costs of doing the development for which the fees are earned, but also cover the costs of “next project” selection and pre-development planning until fees can be earned on the next deal. Nonprofits that don’t have these funds have to divert their attention to fundraising before they can get on with the next project.

Another common practice is to pay projects the same developer fee based on percentage of cost – say no more than 10% of total development cost excluding fee. But developer costs are not proportional to size; some costs are fixed. The application of a fixed developer fee has resulted in smaller, more complex nonprofit projects being under-funded, and developers having an incentive to increase the size of projects in order to earn a reasonable fee.

In the HOME Program, the inclusion of CHDO Operating Expenses was taken by some PJs to suggest that CHDO development costs should be

covered by the 5% cap. But that is not the intent of CHDO Operating Expenses, and giving a CHDO only 5% of the HOME funds (which are usually only a portion of the total project funding) almost never adequately compensates the nonprofit for its development efforts. In fact, this practice is almost certain to produce long-term organizational viability problems. (CHDO Operating Expenses can be used to partially cover the developer fee, but the fee shouldn't be limited to this amount.)

Also keep in mind that CHDO Proceeds might be generated by a CHDO project. This is particularly true in a homebuyer project where the units will be sold and the CHDO receives net sales proceeds. (See the discussion in the previous section regarding the regulation of CHDO Proceeds through the written agreement. Also see the **HOME Funds & CHDO Proceeds Reconciliation Worksheet** in Chapter 3.) Any CHDO Proceeds must be considered along with CHDO fees as part of the total fees and profit of the project. Where CHDO Proceeds are expected over and above the return of any CHDO equity invested in the project, developer fees can be reduced to give an overall reasonable return to the CHDO for its development effort.

There are a number of approaches that you can take to structuring fees. For example:

- ◆ Adopt a sliding scale fee range – say 15% to 5% of total development cost – with the larger percentages awarded to smaller projects to reflect fixed costs of development. As project size increases, reduce the percentage fee granted.
- ◆ Give a smaller fee on acquisition projects or the acquisition portion of the budget (say 3 – 5%), and a higher fee rate (say 6% - 15%) on the hard and soft costs of construction and rehab.
- ◆ Apply different fee structures based on the complexity of the work involved in the project,

as determined by the scope of work and complexity of financing, management and implementation. Or, award larger fees on projects that have intricate financing schemes to achieve affordability for a lower range of incomes.

- ◆ Offer fee bonuses on projects that are delivered below cost and ahead of schedule, splitting any savings that might be achieved through lower costs and lower construction interest with the developer.

Move beyond the old notions of nonprofit development. Embrace the principal that anyone who develops – for-profit or nonprofit – is entitled to a reasonable market-based fee for development services rendered. Recognize that nonprofits tend to take on more complicated projects than many private developers, and may in fact require larger fees as a percentage of development cost because they are taking on the most difficult projects – multi-subsidy projects packaged to serve extremely low income households, small project such as infill and community-based special need homes, difficult to develop sites that go against the market trends but are critical to community revitalization, and other complicated development scenarios.

A CHDO that must operate in the fee-based world of development will learn to be more selective of projects and more persistent in execution. The CHDO will learn to choose projects that can be delivered more quickly and with greater certainty in order to generate fees to support the organization. This will increase productivity and give you assisted units more quickly.

Over time, the successful CHDOs will grow, while the inefficient ones will fade away. Remember, your obligation as a PJ is to nurture successful CHDOs, not to sustain particular organizations on life support. Use the developer fee approach to encourage and reward success in development.

6 Monitor Performance At Least Quarterly



HOME rules require at least annual monitoring of all contractors, including CHDOs. HUD has issued a useful monitoring guide titled *Monitoring HOME Program Performance* and also offers training on monitoring.

However, annual compliance monitoring is not sufficient when it comes to development. Projects can fall apart or come to a stop in a matter of weeks or months. Major mistakes that affect compliance and cost can be made at any time.

We all have to admit that we perform better when we know someone is watching our work. And, the more frequently we are checked, the more likely we are to stay on schedule. So, while the rule requires at least annual monitoring, you need more frequent checkpoints to determine if progress is being made in housing development.

Monthly checkpoints are common with construction projects due to construction draws. At that time, an inspection of the work is usually done, but it doesn't typically address all of the other activities that are critical elements of project performance – marketing, management, recordkeeping and compliance.

A more complete review of project status and compliance should be done at least on a *quarterly* basis. Quarterly options include:

- ◆ **Written progress report** – You may not be able to be on site each quarter, so require the CHDO describe the project status, progress, impediments and revised schedule and budget.
- ◆ **Progress meeting** – Meeting face to face permits interaction, observation and follow-up on the information. This is best done in combination with the written progress report.

- ◆ **Site visit** – It is hardest of all to hide a lack of progress if you have to show someone your progress. So go visit the CHDO, look at records, inspect the project site(s), and do whatever else you need to do on a regular basis to make them realize you are watching.

A second recommendation: give the CHDOs (and your other recipients) the HUD Production Reports (monthly) and SNAPSHOTS (quarterly). While HOME has enjoyed success relative to other HUD programs in the completion of units and reporting of results through the IDIS system, HUD publishes these reports as a way of spurring jurisdictions to increase their efforts to complete and close out projects. You know how you react: you cringe if you are not performing well, beam if you did well, and in either case redouble your efforts to ensure better performance in the future. Why not let CHDOs experience the same sensations of successful or lagging performance by:

- ◆ Forwarding the Production Reports and SNAPSHOTS to the CHDOs and other recipients as HUD publishes the numbers;
- ◆ Compiling your own recipient-by-recipient report on their contribution to your overall performance; and/or
- ◆ Including progress/status reports on CHDOs in the CAPER so the public and HUD know their performance.

Is this being heavy-handed? No, it's the public's funds. The public has a right to know and hold the recipients accountable, as HUD holds you accountable.

7 Train, Train, Train

Sometimes it seems as though the HOME Program is inundated with trainings and technical assistance providers. Sometimes you wonder about the quantity and quality of training. Is it overkill? No, as long as it is focused for maximum effect.



The HOME Program is complicated due to a very detailed statute and rule. It is essential that practitioners using HOME funds have a solid command of the rules. With CHDOs, there is a need to train new CHDOs, but there is also need to provide ongoing training to existing CHDOs to address turnover and to expand the skills of existing staff. Consider the following suggestions:

- 1) Track the HUD web site for HUD-funded training opportunities at: <http://www.icfhosting.com/hcd/cpd/hcdcpd.nsf/webpages/Welcome.html>.
- 2) Contact your CPD Representative in your HUD Field Office to identify scheduled trainings and also the HOME TA Providers and CHDO intermediaries listed with the Field Office. If trainings your CHDOs need aren't scheduled, request them.
- 3) Plan an orientation briefing or training for every new CHDO. If they are new, use the training package provided by HUD for the HOME basics course called *Building HOME*. The overheads and manual are available at: <http://www.hud.gov/offices/cpd/affordablehousing/library/building/index.cfm>.
- 4) Conduct a pre-contract briefing with CHDOs at the time of each new award. Address past performance issues as well as the new award requirements.

- 5) When key CHDO staff or board changes occur, offer the *Building HOME* training to the new staff.
- 6) If you choose to adopt any of the management practices recommended in this guide, conduct a training to introduce the documents. A training package will be made available through your association.
- 7) Consider ways to encourage or reward CHDOs for participation in additional training opportunities. Make it a factor for award in your competition. Let CHDOs demonstrate that their staff have attended trainings and participated in courses to expand their knowledge about affordable housing development and the HOME Program.
- 8) Consider making ongoing training a requirement for CHDO recertification – a continuing education credits. If cost is an issue, and usually it is, consider making available CHDO Operating Expense money as grants to permit CHDO staff to attend training.

In the end, the knowledge that you share with your CHDOs and the additional training they receive will reflect in the quality and timeliness of the projects they do for you.

So, the seven management practices that attempt to introduce a new paradigm for the PJ-CHDO relationship are:

- 1. Make them compete**
- 2. Don't make reservations – make commitments**
- 3. Execute thorough written agreements**

4. *Impose performance standards*

5. *Pay CHDOs as developers, not administrators*

6. *Monitor performance at least quarterly*

7. *Train, train, train*

They are built around the sound concepts of competition, business-like administration, and performance measurement and payment. While the transition might be a bit rocky, if you choose to follow these practices in whole or in part, you are likely to experience improved and sustained performance by your CHDOs.

III. CHDO Tools

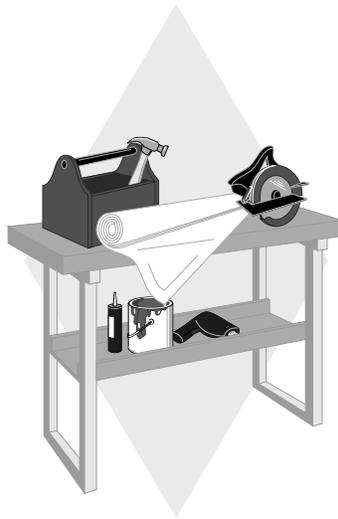
CHDO Quickfinder

Expanded Assessment Tool of CHDO Qualifications & Capabilities

CHDO Project Evaluation & Underwriting Checklist

CHDO Agreement Required Provisions Checklist

Sample CHDO Written Agreement





CHDO QuickFinder

A Reference Guide to CHDO Requirements of the HOME Program

HOME Investment Partnership Program – Title II of National Affordable Housing Act of 1990 (NAHA)

- **Regulations:** 24 CFR Part 92: key CHDO sections
 - 92.2: Definition of CHDO (CHDO qualifications)
 - 92.300 - 92.303: set-aside, pre-dev loans
 - 92.208: CHDO operating expenses
 - 92.504(c)(3): written agreements for developers (incl. CHDOs)
- **HOME Notices:**
 - CPD-97-11 (new version expected in 2003)
 - CPD-01-13: CHDO reservations (annual issuance)
 - CPD-96-09: CHDO operating expenses
 - CPD-97-09: CHDO proceeds
- **HOMEfires Vol 2 No 1 (3/99):** Eligible activities chart
- **Training Manual:** Building HOME, Chapter 8
- **HUD HOME Program:** www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm
- **Community Connections Clearinghouse:** 1-800-998-9999 or www.comcon.org

The CHDO Set-Aside

92.300(a)

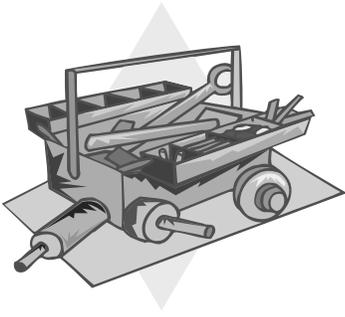
- **15% of PJ's annual allocation must be reserved for CHDO projects**
- **Funds must be committed to CHDO development projects:**
 - Requires acquisition, construction or rehabilitation component to be a "development" project
 - CHDOs must have "effective project control" (CHDO must own, develop or sponsor the project)
- **Funds must be reserved specific CHDOs and committed to CHDO projects within 24 months.**
- **CHDO allocation tracked on cumulative basis (see Commitment Notice CPD-01-13 or successor)**

Eligible CHDO Activities

92.300(a), CPD-97-11

- **Rental housing:**
 - Acquisition and/or rehabilitation of rental housing
 - New construction of rental housing
- **Homebuyer housing:**
 - Acquisition and/or rehabilitation of properties for sale to homebuyer
 - New construction of homebuyer properties
 - Direct financial assistance (i.e. downpayment and closing costs) to purchasers of HOME-assisted homebuyer housing owned, sponsored or developed by a CHDO with HOME funds

Operating Expenses (Optional)		92.208, CPD-96-09
Amount	<ul style="list-style-type: none"> ■ Up to 5% of PJ's annual allocation ■ No use of the funds is mandated 	
Eligible Uses	<ul style="list-style-type: none"> ■ Uses must be used for "reasonable and necessary costs for the operation" of the CHDO, consistent with 92.208 ■ Eligible costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies. 	
Requirements	<ul style="list-style-type: none"> ■ Written agreement required (can be part of a CHDO project commitment) ■ If CHDO does not have a current commitment, agreement must specify CHDO is expected to receive CHDO funds within 24 months of receiving operating expenses. (92.300(e)) ■ A CHDO may not receive HOME funding for any fiscal year that exceeds 50 percent of the CHDO's total operating expenses in that fiscal year, or \$50,000, whichever is greater [§ 92.300 (f)]. ■ CHDO operating expenses are not subject to HOME match requirements. 	
Pre-Development Loans (Optional)		92.300(c), 92.301
Amount	<ul style="list-style-type: none"> ■ Limited to 10% of total amount reserved for CHDOs from annual allocation; no project-specific limit 	
TA/Site Control Loans(92.301(a))	<ul style="list-style-type: none"> ■ Eligible uses: feasibility studies, consultants, legal fees, preliminary applications, preliminary architectural/engineering, options/site control, title clearance ■ Does not require environmental clearance 	
Seed Money Loans (92.301(b))	<ul style="list-style-type: none"> ■ Uses: pre-construction costs, such as loan commitments, plan & specifications, zoning, engineering, legal, etc. ■ Requires environmental clearance of project ■ Requires site control, development team, preliminary commitment of HOME 	
Repayment provisions	<ul style="list-style-type: none"> ■ Repaid from or rolled into construction/permanent financing ■ Forgivable if project impediments beyond the control of the CHDO 	
CHDO Proceeds (Optional)		92.300(a)(2), CPD-97-09
	<ul style="list-style-type: none"> ■ At PJ option, CHDO can retain proceeds from project, but: <ul style="list-style-type: none"> <input type="checkbox"/> First reuse of proceeds must be for low-income housing or HOME activities <input type="checkbox"/> Recaptured funds from HOME homebuyer notes/mortgages are subject to HOME rules (see recapture 92.503(d)) <input type="checkbox"/> If proceeds not permitted to be retained by CHDO, PJ must treat as program income 	
Written Agreement	<ul style="list-style-type: none"> ■ Must specify whether CHDO can retain proceeds & the reuse of those proceeds (type of activity permitted/required) 	



Expanded Assessment of CHDO Qualifications & Capabilities

Expanded Assessment of CHDO Qualifications & Capabilities

This tool combines the regulatory requirements of CHDO qualification with additional questions to help a PJ to determine if a nonprofit has the capacity to be successful as a CHDO. For each of six topics, the regulatory thresholds are provided. If the organization does not meet these thresholds, then it may not be certified as a CHDO regardless of its overall capabilities. However, if it meets the regula-

tory thresholds, then utilization of the organization as a CHDO may be influenced by the additional questions that indicate capacity to successfully manage housing development activities. If deficiencies are noted, the PJ should provide technical assistance or refer the nonprofit to a CHDO intermediary for assistance prior to the award of CHDO funds.

Topic/Question	Adequate	Deficiency
<p>1 Organizational Status & Mission</p> <p>Regulatory Thresholds:</p> <p>The nonprofit is organized under State or local laws, as evidenced by:</p> <p>_____ A Charter, OR</p> <p>_____ Articles of Incorporation.</p> <p>It has a tax exemption ruling from the Internal Revenue Service as evidenced by:</p> <p>_____ A 501(c)(3) or (4) Certificate from the IRS or</p> <p>_____ A group exemption letter under Section 905 from the IRS that includes the CHDO.</p> <p>It has among its purposes the provision of low- and moderate-income housing, as evidenced by:</p> <p>_____ Charter,</p> <p>_____ Articles of Incorporation,</p> <p>_____ By-laws, OR</p> <p>_____ Resolutions.</p> <p>Additional Questions:</p> <p>Certificate of Good Standing: Can it deliver a certificate of good standing or other documents from the State?</p> <p>Service Area: Does it have a documented service area consistent with its CHDO activities?</p> <p>Strategic Plan: Has it produced a strategic plan that specifies an action plan for housing development?</p> <p>Shared commitment: Do board and staff exhibit shared commitment to its housing development mission?</p> <p>Other organization issues:</p>		

Topic/Question	Adequate	Deficiency
2 Board Composition		
<p>Regulatory Thresholds:</p> <p>At least 1/3 of board membership is for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations, as evidenced by:</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, as evidenced by:</p> <p>_____ By-laws, _____ Charter, OR _____ Articles of Incorporation.</p>		
<p>If the CHDO is sponsored/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:</p> <p>_____ By-laws, _____ Charter, OR _____ Articles of Incorporation.</p>		
<p>Additional Questions:</p>		
<p>Board stability: Has there been stability/continuity of board members over the last several years?</p>		
<p>Development oversight: Does the board have a committee structure or other means of overseeing planning and development?</p>		
<p>Board skills: Do board members have professional skills directly relevant to housing development (e.g., real estate, legal, architecture, finance, management)?</p>		
<p>Decision-making: Has the board demonstrated the ability to make timely decisions?</p>		
<p>Board-staff relations: Is there a good relationship between board and staff? Do they have shared goals?</p>		
<p>Other board issues:</p>		

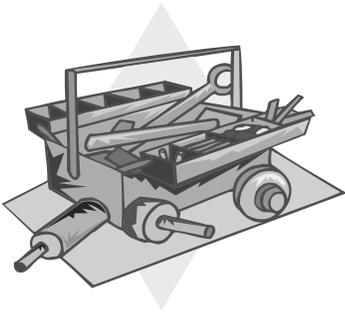
Topic/Question	Adequate	Deficiency
<p>3 Sponsorship/Independence</p> <p><i>Regulatory Thresholds:</i></p> <p>The CHDO is not controlled, nor receives directions from individuals, or entities seeking profit from the organization, as evidenced by:</p> <p>_____ The organization's By-laws, OR</p> <p>_____ A Memorandum of Understanding (MOU).</p> <p>If sponsored or created by a for-profit entity, the for-profit entity's primary purpose does not include the development or management of housing, as evidenced:</p> <p>_____ In the for-profit organization's By-laws</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:</p> <p>_____ By-laws,</p> <p>_____ Charter, OR</p> <p>_____ 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:</p> <p>_____ By-laws,</p> <p>_____ Charter, OR</p> <p>_____ Articles of Incorporation</p> <p><i>Additional Questions:</i></p> <p>Identity of Interest: Are there any identity of interest issues between the CHDO and the contractors/vendors, consultants, and professionals it uses for its CHDO projects?</p>		
<p>4 Relationship/Service to the Community</p> <p><i>Regulatory Thresholds:</i></p> <p>It has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by:</p> <p>_____ Documentation of at least one year of experience in serving the community, OR</p> <p>_____ For new organizations, documentation that its parent organization has at least one year of experience in serving the community.</p>		

Topic/Question	Adequate	Deficiency
<p>4 Relationship/Service to the Community (Cont.)</p> <p>It provides a formal process for low-income, program beneficiaries to advise the organization in decisions regarding design, siting, development, & management of affordable housing projects, as evidenced by:</p> <p>_____ The organization's By-laws, _____ Resolutions, OR _____ A written statement of operating procedures approved by the governing body.</p> <p>Additional Questions:</p> <p>Needs: Are current plans well grounded in an understanding of current housing conditions, housing needs, and need for supportive services? Has it done any analyses of the local housing market and the housing needs of low-income households?</p> <p>Relations: How strong are the current reputation of the corporation and the relationship with the community?</p> <p>NIMBY: To what extent does NIMBY opposition exist to low income housing in the service area? To what extent do channels exist for the CHDO to negotiate with the community and potential opponents?</p> <p>Local government relations: How strong is the CHDO's relationship with the local government? How strongly does local government support its housing activities?</p> <p>Other community issues:</p>		
<p>5 Financial Management & Capacity</p> <p>Regulatory Threshold:</p> <p>It conforms to the financial accountability standards of 24 CFR 84.21, "Standards for Financial Management Systems", as evidenced by:</p> <p>_____ A notarized statement by the president or CFO; _____ A certification from a CPA, OR _____ A HUD approved audit summary.</p> <p>Additional Financial Management Questions:</p> <p>Audit: Does the CHDO have an annual audit? Is the most recent audit current?</p> <p>Audit findings: Were there management or compliance findings in the last two years? Are finding resolved?</p> <p>Budgeting: Does it do annual budgeting of its operations and all activities or programs? Does it track and report budget v. actual income and expenses?</p>		

Topic/Question	Adequate	Deficiency
<p>5 Financial Management & Capacity (Cont.)</p> <p>Reporting: Is financial reporting regular, current and sufficient for the board to forecast and monitor the financial status of the corporation?</p> <p>Cash flow management: Does it know its current cash position and maintain controls over expenditures? How regularly does it experience cash flow problems?</p> <p>Internal controls: Does it have adequate internal controls to ensure separation of duties & safeguarding of corporate assets? Is there sufficient oversight of all financial activities?</p> <p>Procurement/Conflict of Interest: 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>Insurance: Does it maintain adequate insurance – liability, fidelity bond, workers comp, property hazard, & project?</p> <p>Financial stability: 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 are predictable year-to-year? Does the CHDO have an established fundraising program for both capital & operational needs?</p> <p>Portfolio Financial Condition: If it has a portfolio of properties, are they are in stable physical and financial condition or are they a drain on corporate resources? Does it collect adequate management fees from the properties?</p> <p>Liquidity: Does the organization have liquid assets available to cover current expenses? Does it have funds available for pre-development expenses or equity investments required for development?</p> <p>Other financial issues:</p>		
<p>6 Development Capacity</p> <p><i>Regulatory Threshold:</i></p> <p>It has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:</p> <p>_____ Experience of key staff who have completed similar projects to HOME-funded activities, OR</p> <p>_____ Contract(s) with consultants who have relevant housing experience, to train key staff</p>		

Topic/Question	Adequate	Deficiency
6 Development Capacity (Cont.)		
<i>Additional Capacity Questions:</i>		
Structure: Can the current corporation structure support housing development activities, or is there a need for a subsidiary or other organizational structure for future development? Are there operations or activities that need to be organizationally separate from housing development activities and portfolios?		
Portfolio: Does its portfolio of projects/properties evidence competent management and oversight? Do the properties appear to have adequate funding?		
Previous Performance: Has it done the CHDO activities previously? Did it perform competently?		
Management capacity: Does the current management have the ability to manage additional development activities? Does the organization have the capabilities to analyze alternative housing projects?		
Procedures: Are the corporate lines of authority for development activities clear? Are policies & procedures in place governing development activities?		
Project management: 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?		
Personnel: Does it have staff that are assigned responsibilities for housing development? Are personnel policies and job descriptions clear?		
Staff skills: How strong are staff in the following areas: <ul style="list-style-type: none"> <input type="checkbox"/> Legal/financial aspects of housing development <input type="checkbox"/> Management of real estate development <input type="checkbox"/> Oversight of design & construction management <input type="checkbox"/> Marketing, intake <input type="checkbox"/> Property management (if applicable) 		
Training: Are staff encouraged to obtain training and develop new skills? What is their potential for learning skills that they currently do not have?		
Member involvement: Is the membership active and in support of the housing activities?		
Use of consultants: 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?		

Topic/Question	Adequate	Deficiency
<p>6 Development Capacity (Cont.)</p> <p>Funding access: 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> <p>Opportunity costs: If the organization pursues housing development, what other activities are likely to suffer or not be able to be pursued due to the effort required for development activities?</p> <p>Other capacity issues:</p>		
<p>7 Conclusions</p> <p>Has the organization met all CHDO regulatory thresholds? If not, these must be corrected prior to CHDO certification.</p> <p>Have capacity deficiencies been identified that should be addressed prior to awarding CHDO funds to this organization or as a condition of the commitment? If not, proceed with CHDO certification and funding.</p> <p>Can the capacity deficiencies be addressed by TA from the PJ or from a qualified CDTA CHDO intermediary? If so, refer for TA.</p>		



CHDO Project Evaluation & Underwriting Checklist

CHDO Project Evaluation & Underwriting Checklist

This tool has been designed to assist PJs in analyzing CHDO projects to determine if it is a project that should be funded. It is organized in four steps:

1. **Threshold Review** – Determine if the project can meet the HOME regulatory requirements, or if there are any “deal killers” in the proposed project that render it ineligible for HOME CHDO funding.
2. **Factors for Award** – Any factors for Award should be evaluated at this point to determine the order in which projects are to be underwritten.
3. **Underwriting Risk Analysis** – Review the market, borrower and project risk factors to determine if the project is feasible and viable as a housing development project. Risk is rated as acceptable, able to be mitigated or adjusted to become acceptable, or unacceptable risk that is a deal killer.

4. **Investment Terms** – Determine the appropriate investment terms (subordination, loan/grant, loan/compliance term, amortization, interest rate, etc.) for the HOME subsidy.

Each step contains a series of statements or questions that the PJ should consider when making the decision regarding a proposed CHDO project. Each step also results in a recommendation of modifications or conditions on the project that will become part of a commitment to reflect the risk, compliance and investment issues raised by the analysis.

Step 1: HOME Compliance Thresholds

HOME Compliance Threshold	Eligible	Change Required	Ineligible
<p>1 Project Eligibility</p> <p>The project is HOME-eligible as low-income housing & is not one of the ineligible types of housing:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Fed public housing w/ operating subsidy <input type="checkbox"/> expiring use property covered by Title VI <input type="checkbox"/> a shelter <input type="checkbox"/> Rental Rehab Program under agreement <p>The project is an eligible CHDO activity (1 of the following)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Rental housing acquisition and/or rehabilitation of rental housing <input type="checkbox"/> New construction of rental housing <input type="checkbox"/> Homebuyer acquisition and/or rehab of units for sale to homebuyer <input type="checkbox"/> New construction of homebuyer properties <input type="checkbox"/> Financial assistance to purchasers of qualified CHDO homebuyer housing <p>The CHDO has effective project control (meets the own, develop or sponsor requirement)</p> <p>All proposed HOME-funded costs are HOME eligible</p> <p>All HOME funds will be used to assist eligible low-income units</p>			
<p>2 HOME-Assisted Units</p> <p>Occupancy:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All proposed HOME assisted units will serve Low-Income <input type="checkbox"/> <i>If rental</i>, the project complies with 90% @ 60% PJ program requirement <input type="checkbox"/> <i>If rental</i> > 5 units, at least 20% @ 50% <p>Affordability:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>If homebuyer</i>, sales price/value is under 203(b) limit <input type="checkbox"/> If rental, rent will meet HOME limits, adjusted for tenant-paid utilities <p>Property standards:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Project will meet local property standards after completion <input type="checkbox"/> <i>If pre-1978 building</i>, project will comply with LBP requirements <input type="checkbox"/> Project will comply with accessibility standards (Section 504 & FHAA) 			

HOME Compliance Threshold	Eligible	Change Required	Ineligible
<p>2 HOME-Assisted Units (Cont.)</p> <p>Compliance period: project will meet minimum compliance period:</p> <ul style="list-style-type: none"> <input type="checkbox"/> If rental, project will maintain occupancy, rent and property standards for period <input type="checkbox"/> If homebuyer, project will meet resale or recapture standards of ConPlan & rule 			
<p>3 Other Key Project Requirements</p> <p>Environmental review: the project can achieve environmental clearance:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Statutory Checklist applies: completed, or no problems anticipated <input type="checkbox"/> NEPA applies: assessment required & completed, or no problems anticipated <p>And, the applicant has not undertaken any “choice limiting actions” such as acquisition, demolition or construction prior to environmental clearance</p>			
<p>Labor standards: if 12+ HOME-assisted units, project costs include Davis-Bacon rates</p>			
<p>Relocation: If occupied, URA/Section 104(d) relocation standards apply</p>			
<p><i>If rental new construction, site & neighborhood standards</i></p>			
<p>Fair Housing: Project can and will comply with fair housing & nondiscrimination laws & regulations</p>			
<p>Affirmative MarketinG: If 5+ HAU, affirmative marketing procedures apply</p>			
<p>Conflict of Interest: The project will comply with conflict of interest provisions</p>			
<p>4 Recommended Changes/Terms for Compliance</p> <p>Recommended conditions for commitment based on compliance changes indicated in Step 2:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 			

Step 2: Factors for Award

At this stage, the application should be reviewed and ranked/rated according to the Factors for Award stated in the RFP, NOFA, Annual Plan or

other funding documents. This rating/ranking should be used to place the applications in order for review at the underwriting stage.

Factor for Award	Max Points Available	Points Awarded
Total Points		
Ranking		

Step 3: Underwriting Risk Analysis

	Risk Category – Risk Factor	Acceptable Risk	Mitigatable Risk	Deal Killer
1	Market Risk Overall Rating: Market trends: General market trends (vacancy levels, prices) support the development of the additional units at the proposed pricing			
	Neighborhood market: Immediate project area market conditions are positive and support development of the units at the proposed pricing			
	Community conditions: The immediate physical/social conditions support the development of housing			
	Target population pool: A sufficient pool of target households exists in the primary geographic market area to support the project; or sufficient primary data (waiting lists or client lists) is presented to support timely occupancy of the development upon completion			
	Affordability: The prices are affordable to a reasonable range of incomes (the range = minimum income required to afford: maximum eligibility income)			
	Needs: The project design (unit types, sizes, amenities, services) reflects the apparent needs & desires of the target population			
	Competition: The project price, location condition and amenities is reasonably attractive in comparison to other housing choices available to low-income area HHs			
	If Homebuyer: Loan Availability – An adequate number of loan sources are available to competitive rates for buyers			
	Other market risk factors:			

Risk Category – Risk Factor		Acceptable Risk	Mitigatable Risk	Deal Killer
2	Borrower Risk Overall Rating:			
	Compatibility: The project is compatible with the mission and strategic focus of the CHDO			
	Board capacity: The board (if a nonprofit) is stable and has the skills and experience to oversee development			
	Staff development capacity: The CHDO staff & development team have the required skills to undertake & complete the project			
	CHDO past performance: The CHDO has performed adequately on previous projects			
	CHDO backlog/current projects: The current workload will not affect the ability of the CHDO to complete this project			
	CHDO liquidity: The CHDO has sufficient liquid assets to meet a short-term emergency needs of the project			
	Equity/pre-dev funds availability: The CHDO has the cash needed for its equity contributions, pre-development costs, & organizational overhead to support the project during planning & implementation (rule of thumb: 5 – 10% of TDC)			
	Liquidity/financial ability to absorb overruns/delays: The CHDO has sufficient financial strength to absorb reasonable project delays and cost overruns			
	Opportunity costs: The CHDO will not be prevented from accomplishing its other activities as a result of undertaking this development project			
	Contingent/portfolio liabilities: The financial obligations of the organization with respect to its portfolio or other programs present no significant risks to the proposed project.			
	Rental only: Ongoing management capacity – the applicant (or its identified management agent) has the capacity to manage the ongoing real estate, and to provide services as proposed			
Homebuyer only: Homebuyer mortgagability – The project provides cost-effective mortgage terms to buyers that maximizes their borrowing potential and minimizes the gap				
Other Borrower risk factors:				

	Risk Category – Risk Factor	Acceptable Risk	Mitigatable Risk	Deal Killer
3	<p>Project Risk Overall Rating:</p> <p>Development budget cost reasonableness</p> <ul style="list-style-type: none"> ■ Acquisition cost: The acquisition cost is supported by appraisal or by evidence of market value, and is reasonable given site remediation and prep costs ■ Hard cost: Construction/rehab costs meet the following: <ul style="list-style-type: none"> <input type="checkbox"/> The design incorporates “green principles” for energy-efficiency <input type="checkbox"/> The scope will ensure property standards compliance & economic useful life for at least the compliance period; <input type="checkbox"/> Costs are reasonably related to scope; <input type="checkbox"/> Costs are final or based on detailed specifications to be considered reliable; and <input type="checkbox"/> There is a reasonable contingency provision for construction costs ■ Soft costs: All non-construction line items are reasonable and supported, and reflect all expected project-related costs ■ Developer/consultant fees: Total fees (including other fees collected by the developer) are reasonable compared to market and costs of doing this project ■ Homebuyer only: Marketing/sales costs – Marketing and sales costs are reasonable and sufficient ■ Rental Only: Reserves – The project has adequate provisions for operating & replacement reserves: <ul style="list-style-type: none"> <input type="checkbox"/> Capitalization of initial operating deficit is sufficient to reflect a reasonable rent-up period; and <input type="checkbox"/> Reserves are capitalized or reasonable annual contributions are in the operating budget 			

	Risk Category – Risk Factor	Acceptable Risk	Mitigatable Risk	Deal Killer
3	<p>Project Risk (Cont.) Overall Rating:</p> <p>Rental Only: Operating budget cost reasonableness</p> <ul style="list-style-type: none"> ■ Rental Revenue: Rents comply with HOME limits and are reasonable compared to market rents; an adequate vacancy/collection loss allowance ■ Operating Expenses: Total operating expenses (per unit per annum or month – PUPA or PUM) are reasonable for this type of project; all line items reasonable ■ Management Expenses: Sufficient allowance for management costs for this type of project ■ Reserve contributions: Reasonable contributions to operating and replacement reserves (taking into account capitalized contributions to reserves) ■ Net Operating Income: NOI and net available for debt service are reasonably calculated to maximum borrowing potential; debt service coverage factor is reasonable or reflects lender requirements ■ Cash flow: Cash flow projections are reasonable and not excessive for equity invested (if any) ■ Services: Adequate provision for services to reflect the target population’s needs; service revenue sources identified sufficient to cover service expenses (separate from real estate operations) 			
	<p>Readiness to proceed: Project plans are sufficiently advanced to ensure timely expenditure of HOME funds upon award:</p> <ul style="list-style-type: none"> ■ Site control: CHDO owns or controls the site ■ Status of approvals: Community approvals are in place or strong support is in evidence ■ Commitment of funds ■ Project designs are complete 			

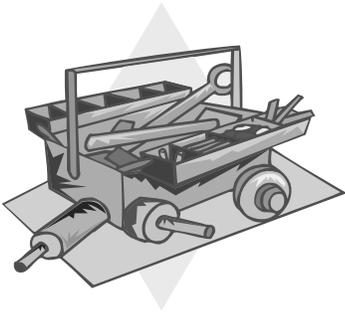
	Risk Category – Risk Factor	Acceptable Risk	Mitigatable Risk	Deal Killer
<p>3</p>	<p>Project Risk (Cont.) Overall Rating:</p> <p>Completion risk: Risk factors that might jeopardize completion of the project on time and within budgeted resources:</p> <ul style="list-style-type: none"> ■ Site acquisition: The risk of not being able to complete acquisition of the site or require environmental remediation ■ Likelihood of approvals: The risk of obtaining approvals to develop the site ■ Adequacy of funds: The risk of losing or not being able to finalize all critical funding commitments ■ Firmness of budget: The risk that budget estimates are insufficient to cover construction scope or unfunded cost overruns ■ Realistic schedule: The risk of failing significantly behind on the implementation schedule ■ Homebuyer only: The marketing/ outreach plans are sufficient to deliver an adequate number of buyers by the time units are available 			
	<p>Viability risk: The risk that the project, upon completion, will not be able to be maintained as affordable housing for at least the compliance period:</p> <ul style="list-style-type: none"> ■ Rental housing only: <ul style="list-style-type: none"> <input type="checkbox"/> Long-term operating projections (based on reasonable year-to-year rent and expense increases) provide adequate reserve contributions and positive cash flow; <input type="checkbox"/> Management & maintenance plans are sufficient to protect physical property long-term ■ Homebuyer housing only: <ul style="list-style-type: none"> <input type="checkbox"/> The project offers adequate homebuyer pre/post counseling ■ Permanent financing is based on reasonable & affordable ratios 			
<p>4</p>	<p>Overall Risk Rating:</p> <p>Recommended Project changes and conditions for CHDO commitment based on underwriting risk analysis:</p> <ul style="list-style-type: none"> ■ ■ ■ ■ ■ 			

Step 4. Terms of Investment

Risk Category – Risk Factor	Comments/Conclusion
<p>1 Pre-Gap Analysis Review: Questions to be reviewed prior to calculation of the gap to ensure that the gap is minimized</p> <p><i>Rental</i> only:</p> <ul style="list-style-type: none"> ■ Rents: Are rents maximized to market conditions yet affordable to the target households? ■ Operating costs: Do operating expenses reflecting full yet efficient operation of the property? ■ Development costs: Do development costs reflect what is necessary, do they reflect competitive pricing, and are there sufficient controls on expenditure to ensure cost effective development? ■ Primary mortgage(s) terms: Are the first and any other junior lien terms the best available to maximize other borrowings? ■ Other subsidies: Has the CHDO identified all possible other public subsidies for the project? 	
<p><i>Homebuyer</i> only:</p> <ul style="list-style-type: none"> ■ Development costs: Do development costs reflect what is necessary, do they reflect competitive pricing, and are there sufficient controls on expenditure to ensure cost effective development? ■ Price/Value relationship: Is the proposed sales price of the unit reflective of fair market value? ■ Primary mortgage: Are first mortgage terms and commitments maximized to minimize the amount of subsidy required? ■ Homebuyer subsidy: Does the proposed amount of HOME subsidy to the homebuyer reflect what is needed to make the home affordable? ■ Resale/recapture: Do the proposed note/mortgage terms reflect HOME resale/recapture requirements? 	
<p>2 Layering Review</p> <p>If one or more public sources of subsidy are proposed for the project,</p> <ul style="list-style-type: none"> ■ Identify & review the terms of each public source ■ Consult with other public agencies if possible to confirm the terms and discuss possible changes ■ Include all public subsidies in the gap analysis below ■ Conduct a final pre-closing review to determine if any changes in sources 	

Risk Category – Risk Factor	Comments/Conclusion
<p>3 Gap Analysis</p> <p><i>Rental</i> only:</p> <ul style="list-style-type: none"> ■ Compute maximum debt: Divide the approved Net Operating Income (NOI) by debt service coverage factor of primary debt; use mortgage factor to capitalize monthly available for debt service into maximum borrowing amount ■ Subtract all identified sources (equity, maximum loan and other public subsidies) from approved Total Development Cost (TDC) to determine the gap ■ Compute the subsidy per HOME-assisted unit 	
<p>Homebuyer Development Subsidy:</p> <ul style="list-style-type: none"> ■ Determine Total Development Cost (TDC) ■ Determine average/total net sales proceeds (after sales costs) from sale of property(ies) at market value ■ Determine Development Subsidy: <ul style="list-style-type: none"> □ TDC: net sales proceeds = the potential Development Subsidy amount; deduct other public development subsidies from difference to determine maximum HOME development subsidy. □ If net sales proceeds exceed TDC, determine if developer profits, repayable HOME subsidy, or CHDO proceeds (if CHDO project) 	
<p>Home Buyer Subsidy:</p> <ul style="list-style-type: none"> ■ Determine fair value sales price of property(ies) ■ If buyers are known, compute maximum first mortgage amount per buyer; if buyers not known, compute average and range of mortgage amounts for likely buyers ■ Compute total amount of buyer price subsidy needed ■ Add closing cost assistance proposed to determine total buyer subsidy amount ■ HOME-compliant note & mortgage will be used to cover this amount 	
<p>4 Investment Terms</p> <p>Subordination: Determine what debt will be permitted to be senior to the HOME lien, and what inter-creditor arrangements will be required/permitted</p>	
<p>Loan Term: Length of the loan should reflect at least the minimum HOME compliance period and may also consider:</p> <ul style="list-style-type: none"> ■ useful life of HOME-funded improvements ■ term for expected repayment (if applicable) ■ other public subsidy compliance periods 	

Risk Category – Risk Factor	Comments/Conclusion
<p>4 Investment Terms (Cont.)</p> <p>Interest rate: Determine if interest will apply to loan principal, whether it will accrue/compound</p>	
<p>Amortization: Determine whether loan payments are to be made initially or over the life of the loan</p>	
<p>Forgiveness: Determine whether unamortized principal will be forgiven at the end of the loan term or will remain due and payable</p>	
<p>Legal mechanism: Determine which of the follow legal documents are required by HOME and are to be used:</p> <ul style="list-style-type: none"> ■ Note & mortgage ■ Deed covenant or restriction ■ Right of first refusal or purchase option ■ Other 	
<p>Assignability: Determine if there are any circumstances under which assignment might be permitted or required</p>	
<p>Use of CHDO Proceeds: determine whether any proceeds from the sale of properties or repayments of HOME notes/ mortgages are to be repaid to the PJ or retained by the CHDO:</p> <ul style="list-style-type: none"> ■ Repayment of homebuyer note/mortgage principal is considered “recaptured” funds and must be reinvested as HOME funds by the PJ ■ If the CHDO is permitted to retain net sales proceeds from the initial sale of homebuyer properties (or conveyance of rental properties under HOME agreements), the PJ must specify the use of the CHDO proceeds in the agreement (at a minimum, proceeds are restricted in their first reuse to affordable housing for low income persons ■ Any proceeds returned to the PJ are subject to HOME program income requirements 	
<p>Homebuyer only: Recaptured Funds: Terms include the accounting and reuse of recaptured funds under the terms of the rule and CPD-97-09</p>	
<p>5 Recommended Terms/Conditions</p> <p>Recommended loan provisions & conditions for commitment based on project analysis (in addition to risk factor changes and compliance changes indicated in Steps 1 & 2:</p> <ul style="list-style-type: none"> ■ ■ ■ ■ ■ 	



CHDO Written Agreements Required Provisions Checklist

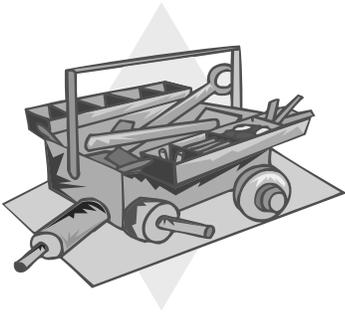
CHDO Agreement Required Provisions Checklist

Agreement Provisions	Rule Reference	Covered
Required Provisions		
Use of HOME Funds:	92.504(c)(3)(i)	
■ type & number of units to be produced		<input type="checkbox"/>
■ schedule		<input type="checkbox"/>
■ budget		<input type="checkbox"/>
Affordability requirements	92.504(c)(3)(ii)	
■ If rental:		
<input type="checkbox"/> restrictive covenant/other mechanism	92.252(e)	<input type="checkbox"/>
<input type="checkbox"/> initial rents	92.252(a)-(c)	<input type="checkbox"/>
<input type="checkbox"/> basis/process for rent adjustments	92.252(f)	<input type="checkbox"/>
■ If homebuyer:		
<input type="checkbox"/> Resale/recapture mechanism	92.254(a)(5)	<input type="checkbox"/>
Project requirements	92.250 – 92.258	
■ If rental:		
<input type="checkbox"/> occupancy/income requirements	92.252(a), (h), (i)	<input type="checkbox"/>
<input type="checkbox"/> tenant protections	92.253	<input type="checkbox"/>
<input type="checkbox"/> affordability period	92.252(e)	<input type="checkbox"/>
<input type="checkbox"/> rent limits	92.252(f)	<input type="checkbox"/>
<input type="checkbox"/> income certification/recertification	92.203, 252(h)-(i)	<input type="checkbox"/>
<input type="checkbox"/> fixed/floating election	92.252(j)	<input type="checkbox"/>
■ If homebuyer:		
<input type="checkbox"/> price/value limits	92.254(a)(2)	<input type="checkbox"/>
<input type="checkbox"/> affordability period	92.254(a)(3)-(4)	<input type="checkbox"/>
<input type="checkbox"/> ownership interest	92.254(c)	<input type="checkbox"/>
Physical Standards		
■ Property Standards	92.251	<input type="checkbox"/>
■ Accessibility Standards	92.251(a)(3)	<input type="checkbox"/>
■ Lead-Based Paint (if pre-1978)	92.355	<input type="checkbox"/>
Affirmative Marketing (if 5+ assisted units)	92.504(c)(3)(v)(A), 92.351	<input type="checkbox"/>
Non-discrimination	92.504(c)(3)(v)(B), 92.350	<input type="checkbox"/>

Agreement Provisions	Rule Reference	Covered
Displacement & Relocation (if occupied properties)	92.504(c)(3)(v)(C), 92.353	<input type="checkbox"/>
Environmental Review <ul style="list-style-type: none"> ■ Conditional commitment until environmental clearance and release of funds ■ CHDO will assemble information as required by PJ to complete environmental assessment and/or statutory checklist completed as applicable ■ No choice limiting actions may be taken prior to clearance 	92.352	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Contract & Labor Standards (if applicable) <ul style="list-style-type: none"> ■ Davis-Bacon (if 12+ assisted units) ■ Section 3 ■ M/WBE 	92.354 92.508(a)(7) 92.508(a)(7)	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Conflict of interest (award of rental units)	92.504(c)(3)(v)(E), 92.356(f)	<input type="checkbox"/>
CHDO Provisions	92.504(c)(3)(xi)	
<ul style="list-style-type: none"> ■ Develop, own or sponsor requirement 	92.300(a)(1)	<input type="checkbox"/>
<ul style="list-style-type: none"> ■ Use of CHDO Proceeds (if applicable) 	92.300(a)(2)	<input type="checkbox"/>
<ul style="list-style-type: none"> ■ Pre-development loan repayment (if applicable) 	92.301	<input type="checkbox"/>
<ul style="list-style-type: none"> ■ Tenant participation plan (if applicable) 	92.303	<input type="checkbox"/>
Records & Reports	92.508(a)(3)	
<ul style="list-style-type: none"> ■ Records required for all CHDO projects: <ul style="list-style-type: none"> <input type="checkbox"/> CHDO documentation <input type="checkbox"/> Income documentation on all assisted HHs <input type="checkbox"/> Property standards compliance documents <input type="checkbox"/> Financial records (vouchers & disbursements) 		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<ul style="list-style-type: none"> ■ Records required if rental: <ul style="list-style-type: none"> <input type="checkbox"/> income eligibility documentation <input type="checkbox"/> rent rolls <input type="checkbox"/> leases for assisted units 		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<ul style="list-style-type: none"> ■ Records required if homebuyer: <ul style="list-style-type: none"> <input type="checkbox"/> price/value documentation <input type="checkbox"/> resale/recapture documents 		<input type="checkbox"/> <input type="checkbox"/>

Agreement Provisions	Rule Reference	Covered
<ul style="list-style-type: none"> ■ If rental, annual report as specified by PJ 	92.252(f)(2)	<input type="checkbox"/>
Requests for Disbursements	92.504(c)(3)(viii)	<input type="checkbox"/>
Enforcement of the agreement: <ul style="list-style-type: none"> ■ If rental, deed restriction required ■ If homebuyer, liens or other 	92.504(c)(3)(i)	<input type="checkbox"/>
Duration of the agreement	92.504(c)(3)(ix)	<input type="checkbox"/>
Conditions for religious organizations (if applicable)	92.504(c)(3)(x)	<input type="checkbox"/>
Return of Repayments, Recaptured Funds (if applicable)	92.503(b), (c)	<input type="checkbox"/>
Access for Monitoring	92.504(a), (d)	<input type="checkbox"/>

Additional Recommended provisions	Recommended Reference	Covered
Performance Standards <ul style="list-style-type: none"> ■ Project completion deadline & penalties ■ Interim milestones ■ Developer fee schedule tied to milestones ■ Reporting/monitoring schedule 		<input type="checkbox"/>
Procurement <ul style="list-style-type: none"> ■ Procedures ■ Conflict of interest (award of contracts) 	24 CFR 84.40 - .48 92.356(b)-(e)	<input type="checkbox"/>
Sources/Uses of Non-HOME Funds		<input type="checkbox"/>
Project audit, cost certification		<input type="checkbox"/>
If homebuyer project: <ul style="list-style-type: none"> ■ Designation of development subsidies ■ Homebuyer subsidies & terms ■ Repayment required from sales proceeds 		<input type="checkbox"/>
Conflict of interest (award of homebuyer or owner-occupied rehab unit benefits)	92.356(f)	<input type="checkbox"/>
Maintenance of Property & Insurance		<input type="checkbox"/>
Termination/Destruction of Property		<input type="checkbox"/>



Sample CHDO Written Agreement

Disclaimer:

This document has been provided for the sole purpose of demonstrating how recommended CHDO performance terms discussed in the **CHDO Toolbox** can be incorporated into a standard CHDO Written Agreement.

Although this document contains required HOME regulatory provisions, it is not represented to be a complete agreement, and it also contains numerous provisions that are not required by regulations.

It has not been reviewed or approved by HUD or legal counsel.

**AGREEMENT BETWEEN
THE CITY OF _____
AND
_____**

THIS AGREEMENT MADE this _____ day of _____, _____, by and between the City of _____, hereinafter referred to as the "CITY", and _____, a nonprofit corporation hereinafter referred to as the "AWARDEE" and which is located at:

WITNESSETH

WHEREAS, the CITY is the recipient of HOME Investment Partnerships Program Funds from the U.S. Department of Housing and Urban Development (HUD), including funds that are reserved for the use of Community Housing Development Organizations (CHDOs); and

WHEREAS, the AWARDEE has been certified with the CITY as a CHDO, and has submitted a proposal for use of CHDO funds for a CHDO-eligible project under HOME regulations;

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

Section I - Definitions

A. **AGENCY** – is hereby defined as the _____, the HOME Program administering agency of the City of _____. For the purpose of this Agreement and all administration of HOME funds, the AGENCY shall act on behalf of the CITY in the execution and fiscal and programmatic control of this agreement. The term "Approval by the CITY" or like term used in this Agreement shall in no way relieve the AWARDEE from any duties or responsibilities under the terms of this Agreement, or obligation State or local law or regulation.

- B. **DIRECTOR** – is hereby defined as the Director of the _____Agency of the CITY.
- C. **FEE** – is hereby defined as the amount of money the CITY agrees to pay and the AWARDEE agrees to accept as payment in full for all the professional, technical and construction services rendered pursuant to this Agreement to complete the WORK as further defined in Section IV - SCOPE OF PROFESSIONAL SERVICES, hereof.
- D. **WORK** – is hereby defined as all the professional, technical and construction services to be rendered or provided by the AWARDEE as described here.
- E. **PROJECT** – is defined in Section IV below.
- F. **HOME** – is hereby defined as the HOME Investment Partnerships Program as described in 24 CFR Part 92, under the authority of 42 U.S.C. 3535 (d) and 12701 - 12839.

Section II - Term

The AWARDEE expressly agrees to complete all work required by this agreement in accordance with the timetable set forth.

<i>Milestone</i>	<i>Deadline</i>
Project Start Date	
Interim Milestones/Deadlines (list below):	
Project Completion Date	

In addition, this project is subject to ongoing compliance requirements of HOME for ___ years from the date of initial occupancy. During this compliance period, the AWARDEE will assure continued compliance with HOME requirements. For homebuyer units this includes monitoring units for principal residency and recapture of funds at time of resale. For rental units, this includes ongoing property standards, occupancy and rent limits compliance.

Timely completion of the work specified in this agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this agreement, it is understood and agreed by the AWARDEE that the PROJECT will be completed as expeditiously as possible and that the AWARDEE will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds.

Since it is mutually agreed that time is of the essence as regards this agreement, the AWARDEE shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, in order to ensure that the PROJECT will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the CITY and enforceable by the CITY against the AWARDEE and its successors and assigns to the project or any part thereof or any interest therein.

In the event the AWARDEE is unable to meet the above schedule or complete the above services because of delays resulting from Acts of God, untimely review and approval by the CITY and other governmental authorities having jurisdiction over the PROJECT, or other delays that are not caused by the AWARDEE, the CITY shall grant a reasonable extension of time for completion of the WORK. It shall be the responsibility of the AWARDEE to notify the CITY promptly in writing whenever a delay is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.

Section III – Scope of Work

The AWARDEE, in close coordination with the CITY, shall perform all professional services (the “WORK”) necessary to complete the development and occupancy of the following project in full compliance with the terms of this Agreement:

(insert project description, including HOME-assisted units description & compliance term)

It is understood that the AWARDEE will provide a specific working budget and realistic timetable as relates to: acquisition, construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage. Said budget shall identify all sources and uses of funds, and allocate HOME and non-HOME funds to activities or line items.

The aforementioned Work tasks will be performed in essentially the manner proposed in the AWARDEE’s proposal as received by the AGENCY on_____. The aforementioned document will be considered to be a part and portion of this agreement for reference.

Section IV – Reimbursement of Expenses & Developer Fees

- A. Project expenses (excluding developer fee) shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the AWARDEE on forms specified by the CITY, with adequate and proper documentation of eligible costs incurred in compliance with 92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance to the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the approved project budget.
- B. The CITY shall pay the AWARDEE, as maximum compensation or FEE for the developer services required pursuant to the Scope of Work thereof,

_____ (\$_____) of HOME Funds. Progress payments of FEES (if applicable) will not exceed the following cumulative maximum percentages of total developer fee at the following stages of project completion:

Milestone	Max. Cumulative Developer Fee %
Acquisition closing	25%
Construction closing / start of construction or rehab	40%
50% construction completion	60%
Construction completion (certificate of occupancy)	75%
Sustaining occupancy (or sale) & completion report	100%

If multiple projects or buildings are involved, the developer fee may be pro-rated to each building or project, and the applicable percentage may be applied to each.

- C. The CITY reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The CITY also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- D. The AWARDEE may submit a final invoice upon completion. Final payment shall be made after the CITY has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.
- E. The CITY shall have the right to review and audit all records of the AWARDEE pertaining to any payment by the CITY. Said records shall be maintained for a period of five years after completion.

Section V – Project Requirements

The AWARDEE agrees to comply with all requirements of the HOME Program as stated in 24 CFR Part 92, including but not limited to the following.

- A. No HOME project funds will be advanced, and no costs can be incurred, until the City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project.

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of a release of funds from the U.S. Department of Housing and Urban Development [or the State of _____] under 24 CFR Part §58.

Further, the AWARDEE will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement.

- B. The HOME funds advanced to the PROJECT will be secured by a note and mortgage, and in the case of a rental project, a deed covenant as required by 24 CFR Part 92.
- C. The AWARDEE will ensure that any expenditure of HOME funds will be in compliance with the requirements at 92.206, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.
- D. If the project is to be owner-occupied, the AWARDEE will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254, including documenting that the property is eligible under 92.254(a)(1) – (2), and will maintain compliance during the minimum compliance period. (If the property also contains a rental unit assisted with HOME funds, the AWARDEE will ensure that occupancy complies with the requirements of 92.254(a)(6).) If the project is to be rental, the AWARDEE will ensure that that project is eligible under 92.214, and that it will meet the applicable standards of 24 CFR 92.252 – 253 at occupancy and for the minimum compliance period.
- E. The designated HOME-assisted units of this PROJECT will meet the affordability requirements as found in 24 CFR 92.252 (rental) or 92.254 (owner-occupied) as applicable. The AWARDEE shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD ***Technical Guide for Determining Income and Allowances Under the HOME Program.***

- F. In the selection of occupants for PROJECT units, the AWARDEE shall comply with all non-discrimination requirements of 24 CFR 92.350. If the project consists of 5 or more units, the AWARDEE will implement affirmative marketing procedures as required by 24 CFR 92.351. Such procedures are subject to approval of the AGENCY.
- G. If the PROJECT is occupied at the time of this commitment, the AWARDEE will comply with the relocation requirements of 24 CFR 92.353.
- H. The AWARDEE shall assure compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable, and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.
- I. If the PROJECT is to be owner-occupied, the AWARDEE shall assure that any NOTES and MORTGAGES recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that the AWARDEE will monitor each unit for principal residency (under 92.254(a)(3)) and resale/recapture (under 92.254 (a)(4) – (5)).
- J. The AWARDEE will provide any documentation required by the AGENCY regarding match as may be required to document match for purposes of the HOME program.
- K. If any project under this agreement involves the construction or rehabilitation of 12 or more HOME-assisted units, the AWARDEE shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276 a to a - 7) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.
- L. If the property is sold through a lease-purchase agreement, the AWARDEE will ensure compliance with 92.254(a)(7), as modified by the 1999 Appropriations Act, Section 599B.
- M. The AWARDEE will be monitored by the AGENCY for compliance with the regulations of 24 CFR 92 for the compliance period specified above. The AWARDEE will provide reports and access to project files as requested by the AGENCY during the PROJECT and for Five (5) years after completion and closeout of the AGREEMENT.

Section VI – Repayment of Loan

- A. All HOME funds are subject to repayment in the event the PROJECT does not meet the Project Requirements as outlined above.
- B. It is understood that upon the completion of the PROJECT, any HOME funds reserved but not expended under this agreement will revert to the CITY.

C. If the PROJECT is rental, funds will remain a deferred loan for the period of _____, at which time the loan may be forgiven or extended in the sole discretion of the CITY for another term. Sale of the property to another party may occur only with the approval of the CITY, and the purchaser shall assume all obligations of the AWARDEE under this agreement, the note and mortgage, and the deed covenants. Provisions in those documents will provide for the extinguishment of the requirements only in the event of a third-party foreclosure or deed in lieu of foreclosure.

D. If the PROJECT is for owner-occupancy, the AWARDEE shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that reduce the price of the property below the fair market value of the property shall be secured by a HOME note and mortgage as required in 92.254(a)(5)(ii), using the note and mortgage prescribed or approved by the AGENCY (and consistent with the method of recapture identified in the CITY’s Consolidated Plan.”)

1) All net sales proceeds from the sale of units are considered to be either:

_____ Program Income and must be returned to the AGENCY as repayment of the HOME loan; or

_____ CHDO proceeds that may be retained by the AWARDEE and used in conformance with 24 CFR 92.300(a)(2), or as specified below:

2) Prior to each closing, the AWARDEE will provide to the AGENCY the estimated settlement statement, along with a reconciliation statement and the draft note and mortgage. The reconciliation statement shall account for the pro-ration of HOME project funds to the individual unit, and identify those funds that are to be lent to the buyer as “Buyer subsidies” secured by the HOME note and mortgage, the pro-rated HOME development funds that are to be forgiven as “Development subsidies”, and the amount of developer fee or CHDO sales proceeds to be retained from settlement funds.

3) All resale proceeds that are received from buyers as they resell the properties during the compliance period to other buyers shall be considered “Recaptured Funds” under 24 CFR 92.254(a)(5)(ii)A)(5) and must be repaid to the CITY for use in eligible HOME projects as required by 24 CFR 92.503. The AWARDEE shall promptly notify the AGENCY of such transactions and will promptly convey any Recaptured Funds to the AGENCY.

Section VII – CHDO Provisions

It is understood that the AWARDEE has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the PROJECT/AGREEMENT in accordance with 24 CFR 92. AWARDEE agrees to provide information as may be requested by the AGENCY to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance.

Any funds advanced as CHDO pre-development funds must be in compliance with 92.301, and are forgivable only under the terms in 92.301.

Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208.

Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Agreement.

If the project is rental, the AWARDEE will create and follow a tenant participation plan as required in 24 CFR 92.303.

Section VIII – Procurement Standards

The AWARDEE shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring for services to be provided under this agreement, the AWARDEE shall comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40 - .48.

In addition, the following requirements are imposed on any procurement under this PROJECT:

In addition, it is understood that any AWARDEE that can be considered to be a religious organization shall abide by all portions of 24 CFR 92.257.

Section IX – Conflict of Interest Provisions

The AWARDEE warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. The AWARDEE further warrants and covenants that in the performance of this contract, no person having such interest shall be employed.

HOME conflict of interest provisions, as stated in 92.356, apply to the award of any contracts under the agreement and the selection of tenant households to occupy HOME-assisted units.

No employee, agent, consultant, elected official, or appointed official of the AWARDEE may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the AWARDEE, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with HOME projects or programs administered by the AWARDEE, including:
 - Occupancy of a rental housing unit in a HOME-assisted rental project;
 - Receipt of HOME tenant-based rental assistance;
 - Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
 - Receipt of HOME homebuyer acquisition assistance; or
 - Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the AWARDEE who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the Participating Jurisdiction shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the AWARDEE in writing to the Participating Jurisdiction. The AWARDEE must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The Jurisdiction may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply.

Section X – City Responsibilities

The CITY shall furnish the AWARDEE with the following services and information from existing CITY records and CITY files:

- A. The CITY shall provide to the AWARDEE information regarding its requirements for the PROJECT.
- B. The CITY will provide the AWARDEE with any changes in HOME regulations or program limits that affect the project, including but not limited to income limits, property value limits and rent limits.

- C. The CITY will conduct progress inspections of work completed to protect its interests as lender and regulatory authority for the project, and will provide information to the AWARDEE regarding any progress inspections or monitoring to assist it in ensuring compliance.

The CITY's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME regulations, and all CITY regulations and ordinances.

Nothing contained herein shall relieve the AWARDEE of any responsibility as provided under this Agreement.

Section XI – Equal Employment Opportunity

During the performance of this contract, the AWARDEE agrees as follows:

- A. The AWARDEE will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The AWARDEE will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The AWARDEE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.
- B. The AWARDEE will, in all solicitations or advertisements for employees placed by or on behalf of the AWARDEE, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The AWARDEE will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the CITY's contracting officer, advising the labor union or worker's representative of the AWARDEE's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The AWARDEE will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The AWARDEE will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

- F. In the event the AWARDEE is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the AWARDEE may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.
- G. The AWARDEE will include the provisions of paragraphs (a) through (g) of this agreement in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The AWARDEE will take such action with respect to any subcontract or purchase order as the AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the AWARDEE becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the AGENCY, the AWARDEE may request the United States to enter into such litigation to protect the interest of the United States.

Section XII – Labor, Training & Business Opportunity

The AWARDEE agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

- A. It is agreed that the WORK to be performed under this agreement is on a project assisted under a program providing direct Federal financial assistance from the US Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given low and moderate income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the project area.
- B. The AWARDEE shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. The AWARDEE certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.
- C. The AWARDEE will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the CITY, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations. The

AWARDEE will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

- D. Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the AGENCY of Housing and Urban Development issued thereunder prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the PROJECT as well as a continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the AWARDEE or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

Section XIII – Compliance with Federal, State & Local Laws

The AWARDEE covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME INVESTMENT PARTNERSHIP PROGRAM. The AWARDEE covenants and warrants that it will indemnify and hold the City forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract.

The AWARDEE agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

The AWARDEE further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of \$100,000. The AWARDEE also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

Section XIV – Suspension & Termination

In accordance with 24 CFR 85.43, suspension or termination may occur if the AWARDEE materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

If, through any cause, the AWARDEE shall fail to fulfill in timely and proper manner its obligations under this contract, or if the AWARDEE shall violate any of the covenants, agreements, or stipulations of this contract, the CITY shall thereupon have the right to terminate this contract by giving written notice to the AWARDEE of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the AWARDEE shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, the AWARDEE shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the AWARDEE and the CITY may withhold any payments to the AWARDEE for the purpose of setoff until such time as the exact amount of damages due the CITY from the AWARDEE is determined whether by court of competent jurisdiction or otherwise.

Section XV – Termination for Convenience of the CITY

The CITY may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the AWARDEE. If the contract is terminated by the CITY, as provided herein, the City will reimburse for any actual and approved expenses incurred, including those costs involved in terminating the contracts and shutting down the work as of the date of notice, and the AWARDEE will be paid as a FEE an amount which bears the same ratio to the total compensation as the services actually performed bear to the total service of the AWARDEE covered by this contract, less payments of compensation previously made. Claims and disputes between the parties will be submitted to the American Arbitration Association for resolution. Award or judgment may be entered in any court having jurisdiction thereof.

Section XVI – Default-Loss of Grant Funds

If the AWARDEE fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, and more particularly if the AWARDEE refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in ATTACHMENT C of this agreement, the AWARDEE shall be in default and notice in writing shall be given to the AWARDEE of such default by the AGENCY or an agent of the AGENCY. If the AWARDEE fails to cure such default within such time as may be required by such notice, the CITY, acting by and through the AGENCY, may at its option terminate and cancel the contract.

In the event of such termination, all grant funds awarded to the AWARDEE pursuant to this agreement shall be immediately revoked and any approvals related to the PROJECT shall immediately be deemed revoked and canceled. In such event, the AWARDEE will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement, as the grant funds will no longer be available for this project.

Such termination shall not effect or terminate any of the rights of the CITY as against the AWARDEE then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the CITY under the

law and the note and mortgage (if in effect), including but not limited to compelling the AWARDEE to complete the project in accordance with the terms of this agreement, in a court of equity.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

Section XVII – Reporting Responsibilities

The AWARDEE agrees to submit any and all quarterly reports required by HUD or the CITY to the AGENCY on the following due dates: October 1, January 1, April 1, and July 1, next following the date of this agreement.

The AGENCY will send the AWARDEE one reminder notice if the quarterly report has not been received fourteen (14) days after the due date. If the AWARDEE has not submitted a report fourteen (14) days after the date on the reminder notice, the CITY will have the option to terminate the contract as described in this agreement. In addition, the AWARDEE agrees to provide the AGENCY information as required to determine program eligibility, in meeting national objectives, and financial records pertinent to the project. Additional reporting requirements are included as ATTACHMENT ____.

Section XVIII – Inspection, Monitoring & Access to Records

The CITY reserves the right to inspect, monitor, and observe work and services performed by the AWARDEE at any and all reasonable times.

The CITY reserves the right to audit the records of the AWARDEE any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement.

If required, the AWARDEE will provide the AGENCY with a certified audit of the AWARDEE's records representing the Fiscal Year during which the PROJECT becomes complete whenever the amount listed in SECTION VII is at or exceeds \$300,000, pursuant to the requirements of OMB Circular A-133.

Access shall be immediately granted to the CITY, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the AWARDEE or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Section XIX – General Conditions

A. All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to

time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

City address

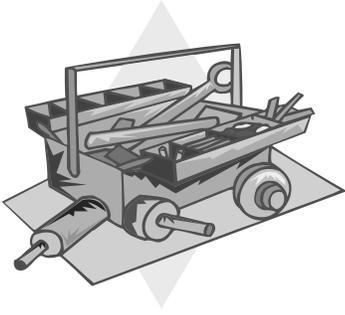
Awardee address

- B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- C. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
- D. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- E. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of _____.
- F. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of _____ or the City of _____, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
- G. The AWARDEE shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the AGENCY of Labor Regulations (29 CFR Part 3), as amended.
- H. The AWARDEE shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by AGENCY of Labor regulations (29 CFR, Part 5), as amended.

- I. The AWARDEE further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every nonexempt subcontract. The AWARDEE also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.
- J. The obligations undertaken by AWARDEE pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless CITY shall first consent to the performance or assignment of such service or any part thereof by another person or agency.
- K. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.
- L. AWARDEE shall indemnify and save CITY harmless from and against any negligent claims, liabilities, losses and causes of action which may arise out of AWARDEE's activities under this Agreement, including all other acts or omissions to act on the part of AWARDEE, including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which may be entered, and from and against all costs, attorneys fees, expenses and liabilities incurred in the defense of any such claims, or in the investigation thereof.
- M. AWARDEE and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the CITY, and shall not attain any rights or benefits under the civil service or pension ordinances of the CITY, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to state Compensation benefits as an employee of the CITY.
- N. Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

IN WITNESS WHEREOF,

the City of _____ and the AWARDEE have caused their signatures to be here-
unto affixed and duly attested



Expanded CHDO Conflict of Interest Policy

Expanded CHDO Conflict of Interest Policy

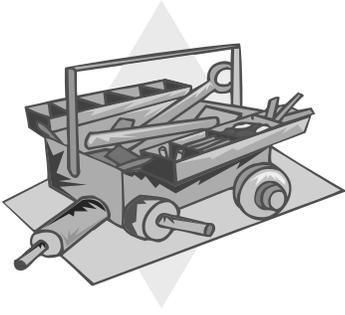
No employee, agent, consultant, elected official, or appointed official of _____ (the “CHDO”) may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- ◆ Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the CHDO, or the proceeds thereunder; or
- ◆ Any unit benefits or financial assistance associated with HOME projects or programs administered by the CHDO, including:
 - ❑ Occupancy of a rental housing unit in a HOME-assisted rental project;
 - ❑ Receipt of HOME tenant-based rental assistance;
 - ❑ Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
 - ❑ Receipt of HOME homebuyer acquisition assistance; or
 - ❑ Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of the CHDO who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the Participating Jurisdiction shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the CHDO in writing to the Participating Jurisdiction. The CHDO must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The Jurisdiction may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply.



CHDO Homebuyer Project Proceeds Instructions & Worksheet

Instructions for CHDO Homebuyer Project

HOME Funds Reconciliation & CHDO Proceeds Worksheet

The purpose of this worksheet is to assist the CHDO and PJ for tracing the ultimate distribution of HOME funds in a CHDO homebuyer project. It is intended to be used at a closing to reconcile the HOME investments and determine what HOME funds were written off as Development Subsidy, provided as buyer assistance, repaid from the closing, or retained by the CHDO as CHDO proceeds.

Step 1. Determine Total HOME Investment

The first step is to 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.

Step 2. Determine Development Subsidy

The second step is to 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 mortgaged to the buyer(s).

Please note that Development Subsidy write-off is eligible only using the recapture method, and not the resale method.

Step 3. Calculate Total HOME Buyer Subsidies

HOME buyers can be assisted in several ways. They can receive:

- ◆ 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 downpayment assistance or purchase assistance, and must be mortgaged to the home buyer
- ◆ Closing Cost Assistance – which does not have to be mortgaged as it falls outside of the sales price/fair market value of the property; and/or
- ◆ 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

These must be totaled to determine the Total Buyer Subsidies.

Step 4. Determine HOME Funds To Be Repaid

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 PJ’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 PJ.

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 PJ.

Step 5. Reconcile HOME Funds & CHDO Proceeds

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. Take the total HOME investment in the unit, and subtract funds allocated as Development Subsidies, Buyer Subsidies, and any Repayments from Sales Proceeds. The net result is any CHDO funds that are to be retained by the CHDO as CHDO proceeds.

Again, CHDO proceeds are the option of the PJ. Essentially, the PJ’s choice is to permit them to be retained or to be repaid as program income to the PJ. 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. PJs are responsible for monitoring the reuse of CHDO proceeds.

CHDO Homebuyer Project Funds Reconciliation & Proceeds Worksheet

CHDO/Project: _____

Property: _____

Purchaser: _____

Date of Closing: _____

Step	Project	Per HOME-Assisted Unit	
Step 1. Determine Total HOME Investment			
HOME Development Financing + HOME Buyer Assistance (Not part of Dev Cost)			
Total HOME Investment	\$	-	\$ -
Step 2. Determine Development Subsidy			
Total Development Costs - Sales Price/Fair Market Value			
Excess Costs = Development Subsidy	\$	-	\$ -
Step 3. Calculate Total HOME Buyer Subsidies			
HOME Development Funds mortgaged to Buyer + Buyer Closing Cost Assistance + New HOME Buyer Purchase Assistance			
Total Buyer Subsidies	\$	-	\$ -
Step 4. Determine HOME Funds To Be Repaid			
Sales Proceeds - Sales Costs - Construction/Other Debt Payoff - Allowed Developer Fees/Costs			
Net Proceeds Available to Repay HOME	\$	-	\$ -
Step 5. Reconcile HOME Funds & CHDO Proceeds			
Total HOME Investment - Development Subsidy - not mortgaged to buyer - HOME Buyer Subsidies - HOME Dev Funds to be Repaid from Closing*			
HOME Funds Retained as CHDO Proceeds	\$	-	\$ -
* program income			