

HOME Investment Partnerships Program FAQs

Description:

This document contains the HOME Investment Partnerships Program FAQs posted on the OneCPD Resource Exchange website (<https://www.onecpd.info/home/>). The FAQs are organized by topic.

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Community Housing Development Organization

CHDO Set-Aside Funds

What types of activities qualify to use CHDO set-aside funds?

Updated: 11/22/13

CHDO set-aside funds may be used for projects that are owned, developed, or sponsored by a nonprofit that qualifies as a CHDO as defined at 24 CFR §92.2. Previously, these roles were limited to development activities—that is, projects that involved acquisition, rehabilitation, and/or new construction of housing for sale or rent to low-income families. However, the 2013 HOME Final Rule amended the definitions of these roles and now nonprofits can also own and manage HOME-assisted housing that it does not develop. CHDO set-aside funds may **not** be used for administering tenant-based rental assistance or downpayment assistance programs (except in combination with a development project in certain circumstances). HUD provides a detailed definition of the roles of owner, developer, and sponsor for rental and homebuyer projects in the HOME regulation §92.300(a).

Can CHDO set-aside funds be used to provide downpayment assistance?

Updated: 11/22/13

Yes. When a CHDO provides downpayment assistance to a buyer of a property that it developed with CHDO set-aside funds, it can use additional CHDO set-aside funds to provide downpayment assistance to that buyer. The 2013 Rule limits this assistance to no more than 10 percent of the total amount of HOME development funds. The 10 percent limitation only applies when additional CHDO set-aside funds are used to provide the homebuyer assistance and to projects for which funds were committed on or after August 23, 2013. When a CHDO administers a downpayment assistance **program**, it is acting as a subrecipient, not a developer of affordable housing; this is not an eligible use of set-aside funds per §92.300.

What does the change from CHDO *reservations* to *commitments* mean to a PJ?

Updated: 11/22/13

In the 2013 Rule, changes to the HOME regulations at §92.300(a)(1) require a PJ to **commit CHDO set-aside funds to a specific project** within 24 months of receiving its HOME allocation. The PJ must enter into a written agreement(s) with one or more CHDOs that the PJ certifies meets the definition a CHDO (as defined at §92.2) and has the capacity to undertake the proposed project in which a CHDO will own, develop, or sponsor an affordable housing project. There must be a written agreement with the CHDO that meets the requirements of §92.504(c). This requirement became effective on October 22, 2013 and applies to all projects that receive a commitment of CHDO set-aside funds on or after that date.

Can a PJ provide CHDO set-aside funds to a CHDO that has the capacity to own and manage rental housing, but does not have the capacity to develop a project?

Updated: 11/22/13

Yes. The 2013 Rule codifies the definition of “**owner**” of rental housing to *clarify* that a CHDO may own and manage affordable housing in this way. The *change* to the definition of CHDO in 92.2 requires the PJ to determine and certify that the CHDO has the capacity to own and manage the rental housing. As an owner, a CHDO without development capacity can acquire an existing property that meets the HOME property standards (see §92.251) and then own and manage that property. Prior to the 2013 amendment, a CHDO could use set-aside funds to purchase a developed property that did not require rehabilitation however, that CHDO was nevertheless required to have capacity to develop affordable housing.

Alternately, in a sponsorship situation, a CHDO (or any other nonprofit) could be the ultimate owner and manager of a property that is developed by another CHDO that serves as “**sponsor**” of the project. The CHDO sponsor develops the property, and once development is completed, conveys the property to a pre-determined nonprofit entity that will own and manage the property during the affordability period. In this situation, the entity that develops the property as the project sponsor must be a qualified CHDO with development capacity; however, the entity that ultimately owns and manages the property could be any nonprofit, including another CHDO that has

the capacity to own and manage the project. Project sponsorship in this form has been a permissible use of CHDO set-aside funds and this has not changed with the 2013 Rule.

Has the definition of *developer* of rental housing changed under the 2013 Rule?

Updated: 11/22/13

Yes. Effective August 23, 2013, a CHDO that serves as a developer of rental housing must be in sole charge of all aspects of the development of the property, and must own the property during development and throughout the affordability period. Previously, a CHDO could develop a property that it did not own, under contract with the property owner. This is no longer permitted under the developer definition in 24 CFR 92.300.

CHDO Deadlines

What are the effective dates of the 2013 Rule changes related to CHDOs?

Updated: 11/22/13

For the most part, the amendments to the definition of CHDO (found at §92.2) and other amendments related to CHDOs at §92.300 became effective on August 23, 2013. There are only two changes related to CHDOs with delayed implementation dates:

- The change in the definition of *commitment* at §92.2 that no longer permits PJs to *reserve* HOME funds for projects that will be identified at a later date became effective on October 22, 2013. This change requires PJs to commit CHDO set-aside funds to a specific project for a specific amount of HOME funds via a signed and dated written agreement within 24 months of the PJ's receipt of HOME funds. This provision will be implemented by HUD for all commitment deadlines that occur on or after January 1, 2015.
- The requirement that PJs must expend CHDO set-aside funds within 5 years of receipt of HOME funds [found at §92.500(d)(1)(C)] becomes effective on January 1, 2015.

Homebuyer Housing

Homebuyer Program Administration

The 2013 HOME Final Rule imposes a requirement that any homebuyer that receives HOME downpayment assistance or buys a HOME-assisted unit must have housing counseling. What type of homebuyer counseling does the HOME program require?

Updated: 11/22/13

Effective August 23, 2013, any homebuyer that enters into a written agreement for HOME assistance (i.e., downpayment or closing cost assistance) or enters into a sales contract for the purchase of a HOME-assisted unit must receive housing counseling. See §92.254(a)(3).

While the HOME regulation does not specify the type or duration of counseling that the homebuyer must receive, HUD recommends that PJs review and adopt the benchmarks for counseling established by the National Industry Standards for Homeownership Education and Counseling available at: <http://www.homeownershipstandards.com/Home/Standards.aspx>.

When implementing this requirement, PJs should consider:

- Duration of the housing counseling (minimum number of hours)
- Educational content of the counseling (pre or post purchase, credit counseling, introduction to homeownership, how to maintain a house, etc.)
- Form of counseling (one-on-one, small group, classroom setting)
- Who will provide the counseling (PJ staff, subrecipient, contractor, developer)
- How the PJ will ensure the counselors are qualified.

Can the PJ use HOME funds to pay for required homebuyer counseling?

Updated: 11/22/13

While the HOME statute prohibits PJs from using HOME funds to administer a homebuyer counseling program, costs related to counseling a HOME-assisted homebuyer may be charged as eligible project-related soft costs in accordance with §92.206(d)(6), or administrative costs in accordance with §92.207(b). Housing counseling expenses may only be charged as project-related soft costs if the counseled homebuyer ultimately receives HOME assistance, and the cost of housing counseling when added to the amount of HOME assistance does not exceed the HOME maximum per-unit subsidy limit. When housing counseling is provided to a homebuyer that ultimately is not assisted with HOME funds, the cost of counseling must be charged as administrative costs, subject to the ten percent administrative cost cap.

PJs may also choose to pay for required homebuyer counseling with other federal, local, or private funding, if available, or charge reasonable fees to homebuyers in accordance with §92.214(b)(1)(ii). Any fee charged to a potential homebuyer for the cost of housing counseling must be reasonable and not create an undue burden or impediment to low-income families seeking assistance.

Is a PJ allowed to use a for-profit or nonprofit lender to administer its HOME homebuyer assistance program if that lender provides both the HOME financing and other mortgage financing to HOME-assisted homebuyers?

Updated: 11/22/13

Yes, a PJ may allow a nonprofit or for-profit lender to provide both HOME homebuyer assistance and other mortgage assistance to a homebuyer as long as the PJ has implemented the following safeguards now required by §92.254(e):

1. The assistance is provided only as specified in a written agreement between the PJ and the lender. This agreement must specify the forms, amounts, and any conditions of homeownership assistance that the lender is authorized to provide.

2. Before any HOME assistance is provided, the PJ must either determine the family's income-eligibility for HOME assistance itself, or must verify the income determination done by the lender or another party. The PJ also must inspect the housing for compliance with applicable property standards in §92.251.
3. The for-profit or nonprofit organizations are not permitted to charge fees (such as origination fees or points) to the family for the HOME homeownership assistance that the organization provides. (Reasonable administrative costs may be charged to the HOME program as a project cost.) If the lender charges fees for the first mortgage (non-HOME funds), then the PJ must review these costs and deem them to be reasonable. These requirements are effective August 23, 2013:

These safeguards will ensure that there is not a conflict of interest, as the lender may have a financial incentive to provide HOME assistance to homebuyers potentially jeopardizing the lender's objectivity in assessing the qualifications of the buyer or the eligibility of a property for HOME assistance.

Homebuyer Program Deadlines

Under the 2013 HOME Final Rule, in what timeframe must HOME homebuyer housing units be sold to income-eligible homebuyers?

Updated: 11/22/13

Effective August 23, 2013, the 2013 Rule requires a ratified sales contract* with an eligible homebuyer for HOME-assisted housing within 9 months of the date of completion of construction or rehabilitation. If a HOME-assisted homebuyer unit is not under a contract for sale within this timeframe, the unit must be converted to a rental housing unit and rented to an income-eligible tenant, or the HOME funds invested in the unit must be repaid. This requirement applies to all projects to which HOME funds are committed on or after the August 23, 2013 effective date. It does not affect units that are already built or to which HOME funds were committed before the effective date. When committing FY 2012 and FY 2013 funds, PJs must be cognizant of possible overlapping requirements related to the Consolidated and Further Continuing Appropriations Acts of 2012 and 2103.

Once converted to rental, the unit is subject to the HOME rental housing requirements in accordance with §92.252.

*If the PJ has an established lease-purchase program and executes a lease-purchase agreement with an income-eligible tenant/homebuyer within the 9-month deadline, the property is considered to be under contract and in compliance with this requirement.

In what timeframe must HOME homebuyer housing units be sold to income-eligible homebuyers when the 2013 HOME Final Rule and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013 overlap?

Updated: 11/22/13

The 2013 HOME Final Rule requires a ratified sales contract* with an eligible homebuyer for HOME-assisted housing within 9 months of the date of completion of construction or rehabilitation, while the *Consolidated and Further Continuing Appropriations Acts of 2012 and 2013* establish a 6 month period for selling to an eligible homebuyer. HOME homebuyer projects funded with FY 2012 and FY 2013 HOME funds on or after the August 23, 2013 are subject to the more stringent provisions of the *Consolidated and Further Continuing Appropriations Acts of 2012*, Public Law 112-55 (Nov 18, 2011), and the *Consolidated and Further Continuing Appropriations Acts of 2013*, Public Law 113-6 (March 26, 2013) which establish a **6-month period** for selling HOME homebuyer units or converting them to rental.

Once converted to rental, the unit is subject to the HOME rental housing requirements in accordance with §92.252.

*If the PJ has an established lease-purchase program and executes a lease-purchase agreement with an income-eligible tenant/homebuyer within the 6-month deadline, the property is considered to be under contract and in compliance with this requirement

In a multi-unit homebuyer project, if some units do not sell within the 9-month deadline, and local zoning restrictions prevent the conversion to rental, is the PJ required to repay the entire HOME investment or just the HOME funds invested in the unsold units?

Updated: 11/22/13

The PJ is required to repay only the HOME funds that were invested in the unsold units. In this situation, the PJ must amend the project in IDIS and in its local records to remove the unsold units from the project. The PJ must repay the costs associated with the unsold units based on the original cost allocation used for the project (e.g., actual cost per unit or pro-rata cost allocation). In IDIS, the repaid funds are used to reduce the draws and activity funding associated with the unsold units. Instructions for repaying funds can be found in HOME FACTS Vol.1, No.1 (<https://www.onecpd.info/resource/2978/home-facts-vol1-no1-repayment-to-pj-home-investment-trust-fund-treasury-account/>)

Lease Purchase Programs

Does the execution of a lease-purchase agreement meet the requirement to sell the HOME-assisted unit within 9 months?

Updated: 11/22/13

Yes. Under the 2013 Final Rule requirements, if the PJ has an established lease-purchase program and an income-eligible tenant/homebuyer executes a lease-purchase agreement for a homebuyer unit within the 9-month deadline, the property is considered to be under contract and in compliance with this requirement. The agreement must comply with the HOME lease-purchase requirements specified at §92.254(a)(5)(ii)(A)(7). The unit must be purchased by the tenant/homebuyer within 36 months of signing the lease-purchase agreement with the PJ. The PJ has 42 months after project completion to transfer the property to a homebuyer or it must convert the unit to rental housing and follow the HOME rental housing rules under §92.252.

HUD will issue additional guidance on lease-purchase programs in the near future.

Homeowner Rehabilitation

Homeowner Rehabilitation Administration

In an owner-occupied rehabilitation program, is it permissible for a PJ to provide HOME assistance to a homeowner who has a “living trust” or a life estate on the property?

Updated: 11/22/13

Yes. In addition to traditional forms of ownership interest (defined under “homeownership” at §92.2), the 2013 Rule identifies four additional forms of ownership interest under which an owner can qualify for assistance for homeowner rehabilitation programs only, effective August 23, 2013. These include:

- Life estates
- Inherited property
- Inter vivos trust (i.e., a “living trust”)
- Beneficiary deeds.

For each of these new forms of ownership interest, the beneficiary must (1) be low-income and (2) use the property as his/her principal residence at the time of receiving HOME assistance. Homeowner rehabilitation activities are not subject to long-term affordability requirements under HOME; however, PJs may choose to require continued occupancy for some specified period of time when providing this type of assistance. For more information on these types of legal mechanisms and the requirements for each, refer to §92.254(c) of the 2013 Rule.

Rental Housing

Rental Housing and Utility Allowances

Section 92.252(d) requires the participating jurisdiction (PJ) to use the HUD Utility Schedule Model to determine a project's annual utility allowance or otherwise determine a project's utility allowance based upon the utilities used at the project. Is this requirement applicable to a PJ's entire rental housing portfolio?

Updated: 11/22/13

No. HUD is making a technical correction to the 2013 HOME Final Rule which will delay the effective date of this requirement until January 24, 2015. When it becomes effective, PJs will only have to meet this requirement for projects that it funds on or after January 24, 2015. Also, HUD will issue further guidance on other models that can be used to determine a projects annual utility allowance.

Tenant-Based Rental Assistance

TBRA and Utility Allowances

Section 92.252(d) requires the participating jurisdiction (PJ) to use the HUD Utility Schedule Model to determine a project's annual utility allowance or otherwise determine a project's utility allowance based upon the utilities used at the project. Is this requirement applicable to a PJ's HOME Tenant-based Rental Assistance (TBRA) Program?

Updated: 11/22/13

No, the requirement to use HUD's Utility Schedule Model is only applicable to HOME-assisted rental housing projects. However, PJs administering a TBRA program must establish a payment standard which represents the rent plus utility cost of moderately priced units that meet HUD HQS in the jurisdiction. Therefore, when tenants pay their own utilities, the PJ must establish a utility allowance amount that is deducted from the tenants' rent payment to the owner. HUD recognizes that Public Housing Authorities (PHAs) often administer a PJ's TBRA program and in the interest of reducing the administrative costs to TBRA administrators, the HOME Program permits the PJ to use the PHA's utility allowance schedule for its HOME TBRA program. The PJ may also use other HUD-approved methodologies to establish utility allowances for its HOME TBRA program.