

ATTACHMENT I CHDO New Certification Application

ST. CLAIR COUNTY

Department of Planning and Community Development



COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

NEW CERTIFICATION APPLICATION

Effective 2014

ST. CLAIR COUNTY CHDO CERTIFICATION APPLICATION

Organization Name	
DUNS Number	
Tax ID Number	
Mailing Address	
Contact Name / Title	
Contact's Email Address	
Contact's Phone Number	
Board President Name	
Board President's Email Address	
Board President's Phone Number	
Organization's Fax Number	

Please describe the CHDO eligible activities your organization plans to undertake?

Please list each geographic area to be considered for CHDO Certification:

Area Name	Area Description

I certify that the submission of this application has been approved by a 2/3 vote of the Board of Directors.

Board President Signature

Date

ATTACHMENT II CHDO Re-Certification Application

ST. CLAIR COUNTY

Department of Planning and Community Development



COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

RE - CERTIFICATION APPLICATION

Effective 2014

Please list below the names of your HOME eligible projects(s) either begun, in process, or completed:

Name of HOME Eligible Project	# of Units	HOME Activity*	Location

*A HOME eligible activity is defined as activities in the areas of homeowner rehabilitation, homebuyer activities, and rental housing that are eligible to receive HOME funds from St. Clair County.

Describe and attach relevant documentation related to the following questions:

Keep in mind that having low-income representatives on the board of directors does not satisfy the requirements of the low-income advisory process. The low-income advisory process is designed to report the outreach efforts made by the CHDO to the low-income community and must be adhered to as outlined in the CHDO's bylaws.

In what ways was low-income input sought and implemented in the past year and what were the results?
How have the low-income residents and program beneficiaries in your service area been involved with the CHDO to advise on policies and procedures, program design, site location(s), and the development and management of affordable housing?
Are there any unique approaches you have taken to obtain feedback, such as the formation of neighborhood advisory councils, tenant committees, etc.?
Discuss any challenges the CHDO has encountered in obtaining feedback from low-income residents and what avenues will be pursued to overcome these barriers.

Please provide any additional information about the HOME eligible project(s) that began, progressed, or completed this fiscal year. If no HOME eligible projects were begun, progressed, or completed this fiscal year, please explain and include a rationale detailing why you organization wishes to remain a CHDO.

Did your organization complete at least one fair housing activity listed below?

Fair Housing Presentations/Training
of Presentations/Trainings Sponsored or Co-Sponsored:
Description of Audience (i.e. – general public, specific organizations or group etc.):
Fair Housing Topics Addressed:
Estimated Attendance:
Estimated # of Complaints and/or Questions Addressed:
Additional Comments:

Fair Housing Forums
of Forums Sponsored or Co-Sponsored:
Description of Audience:
Fair Housing Topics Addressed:
Estimated Attendance:
Estimated # of Complaints and/or Questions Addressed:
Additional Comments:

Fair Housing Marketing Efforts
Types of Written and/or Electronic Materials Developed (i.e. brochures, logos, display boards, resolutions, website etc.)
Types of Materials Distributed and to Whom:
Types of Materials Displayed and Where:
Description of Newspaper and/or Radio Ads:
Additional Comments:

Attendance at Fair Housing Activity/Training/Workshop Sponsored by Another Organization
Name of Activity/Training/Workshop:
Date of Activity/Training/Workshop:
Name of Sponsoring Organization:
Names of Staff and/or Board Member(s) Who Attended Activity/Training/Workshop:
Additional Comments:

Please note any additional fair housing activities not addressed above:

Training and Technical Assistance Received

Did either one or more members of staff attend at a minimum of two trainings, workshops, or conferences?

Organization Staff	
Name of Training/Workshop/Conference:	
Date of and Brief Description of Training/Workshop/Conference	
Name(s) and Title(s) of Staff Who Attended:	
List Any Certifications Received:	

Did either one or more board members attend at a minimum of one training, workshop, or conference that included topics to address organizational capacity building and /or capacity to develop affordable housing.

Board Members	
Name of Training/Workshop/Conference:	
Date of and Brief Description of Training/Workshop/Conference	
Name(s) and Title(s) of Board Member who Attended:	
List Any Certifications Received:	

**Provide additional Trainings or Direct Technical Assistance Received in an attachment as necessary.
CERTIFICATION OF BOARD STATUS**

Applicants must complete the following Certification of Board Status and submit it along with their application for CHDO recertification. Please list each board member by name, then place a check indicating the representation that member brings to the Board. Please list each board member by name, then identify the representation that member brings to the Board. Please list only current or approved board members.

Board Member Name Residential & E-mail Address	Low- Income	Public Institution	Religious Organization	For Profit	# of Years on Board	Occupation and Place of Employment	Areas of Expertise/ Experience

I certify that the above listing of current, participating board members is accurate.

SIGNATURE

DATE

CERTIFICATION OF LOW-INCOME REPRESENTATION

Each board member representing the interest of low-income families in the Applicant’s target community must complete this certification. Please maintain a copy of this certification in your files and send in a copy to Intergovernmental Grants Department. These certifications may be reviewed during monitoring visits by the County. Note: the board member does need to check at least one of the three criteria listed below but does not need to indicate the specific way in which he or she represents low-income community interests.

Board Member Name: _____

I certify that I am a current member in good standing of the governing board for _____ (name of the CHDO organization seeking recertification) and that I represent the interests of low-income families in the Applicant’s target community.

(Signature)

(Date)

Please check and complete one of the following:

I am a low-income resident of _____	the Applicant’s target community.
In order to qualify under this criteria, the board member must be a low-income resident of a community that the CHDO is certified to serve. Low-income is defined as 80% of less of area median family income.	

I am a resident of a low-income neighborhood in _____	, the Applicant’s target community.
In order to qualify under this criterion, the board member must live in a low income neighborhood where 51% or more of the residents are low-income. The board member does not have to be low-income. Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general ocal government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.	

I am an elected representative of _____	, a low-income neighborhood Organization within _____
, the Applicant’s target community.	
In order to qualify under the third criteria, the person must be elected by a low-income neighborhood organization to serve on the CHDO Board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups. The group must be a neighborhood organization and IT MAY NOT BE THE CHDO ITSELF. If the applicant is representing a low-income neighborhood organization, please attach copy of signed resolution from the neighborhood organization naming the individual as their representative on the CHDO.	

BUDGET

Please submit your organization’s most recent audit or independent financial statements, if they are available, and complete the following:

Operating Budget for Prior Fiscal Year			
Source of Revenue	Amount of Revenue:	Type of Expense	Amount of Expense:
Federal Government Revenue:		Personnel Cost:	
State Government Revenue:		Personnel Benefits:	
Local Government Revenue:		Supplies and Materials:	
Private Foundation Revenue:		Public Relations and Information	
Earned Income Revenue:		Overhead Costs:	
Revenue from Individuals:		Contractual Services:	
Other Revenue Sources (specify)		Other Expenses (specify):	
Total Budget Revenue:		Total Budget Expense:	

Project or Program Budget for Prior Fiscal Year			
Name of Project/ Program	Income	Expenses	Profit (Loss)

FINANCIAL ACCOUNTABILITY STANDARDS

To conform to the financial accountability standards of 24 CFR 84.21, “Standards for Financial Management System”, please attach one of the following:

1. A notarized statement by the president or CFO
2. A certification from a CPA or
3. A HUD approved audit summary

ORGANIZATIONAL CHANGES

Has the organization amended its articles of incorporation or by-laws since in was last recertified as a CHDO?

Yes No If yes, please attach an amended copy.

Has the organization revised its tax-exempt status with the IRS since it was last recertified as a CHDO?

Yes No If yes, please attach an amended copy.

Has the organization revised its purpose or mission since it was last recertified as a CHDO?

Yes No If yes, provide a copy of the by-laws or board resolution with this change.

Has the organization had a change in staff capacity since it was last certified (or Recertified)?

Yes No If yes, can current staff demonstrate capacity for carrying out HOME funded activities?

Yes No If yes, describe capacity below:

If no, does the organization have a contract with a consultant to train appropriate staff members?

Yes No If yes, describe scope of work below:

ADDITIONAL ACTIVITIES

Does your organization administer a County funded Rehabilitation Program?

If YES, please summarize your activities this fiscal year:

--

Does your organization administer a County funded Down Payment Assistance program (DPC)?

If YES, please summarize your activities this fiscal year:

--

Please provide a brief description of any other additional activities, funding or partnerships that were significant to your organization this fiscal year:

--

**ST. CLAIR COUNTY
CHDO CERTIFICATION APPLICATION
EXPERIENCE ASSESSMENT FORM**

Please attach signed copies for each staff whose experience should be considered for meeting the Development Experience/Capacity requirement. Attach one copy for each project. Resumes should also be attached.

Category	Description
Staff or Consultant Name	
Mailing Address	
Phone Number	
Email	
Project Name	
Project Location	
Project Type (Rental / Homeownership, # of Units, Population Served)	
Date of Occupancy	
Source of Funds	
Description of Staff / Consultant Role in Project	
Project Reference (Name Address Phone)	

I certify that the information provided above is accurate and give my consent to contact references listed.

STAFF SIGNATURE

STAFF SIGNATURE

Attachment III
CHDO Affidavit

ST. CLAIR COUNTY



CHDO AFFIDAVIT

Name of Applicant	_____
Organization	_____
Address, City, State, Zip	_____
Date of Last Certification	_____

I hereby certify that:

1. The above mentioned organization has received a certification from the County within the past 90 days.

2. The above mentioned organization maintains it is organized under State or local law.

3. The above mentioned organization maintains it has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

4. The above mentioned organization maintains is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A CHDO may be sponsored or created by a for-profit entity, but:

- (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
- (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;
- (iii) The CHDO must be free to contract for goods and services from vendors of its own choosing; and
- (iv) The officers and employees of the for-profit entity may not be officers or employees of the CHDO.

5. The above mentioned organization maintains it has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes, the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4)

6. The above mentioned organization maintains it is not a governmental entity and is not controlled by a governmental entity.

7. The above mentioned organization maintains it has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;" Prepared by Department of Planning and Community Development

8. The above mentioned organization maintains it has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

9. The above mentioned organization maintains its accountability to low-income community residents by:

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations.

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

10. The above mentioned organization maintains it has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds.

11. The above mentioned organization maintains it has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization.

12. All statements I have provided in this affidavit herein are true; that I am authorized to sign this affidavit and to make these statements, on behalf of the above mentioned organization; and that the organization understands that misrepresentation of any facts which lead to the improper allocation and expenditure of public funds may result in legal action against the organization for retrieval of any such funds and appropriate penalties.

Print Name

Date

Title

Signature

Attachment IV

CPD Notices

CPD Notice 97-11

U.S. Department of Housing and Urban
DevelopmentCommunity Planning and Development

Special Attention of: Notice: CPD-97-11 All Secretary's RepresentativesAll
State/Area Coordinators Issued: October 8, 1997All CPD Division Directors
Expires: October 8, 1998All HOME Program Coordinators

All HOME Participating Jurisdictions

Cross Reference: 24 CFR Part 92
Supercedes: CPD Notice 94-02

Subject: Guidance on Community Housing Development Organizations(CHDOs)under
the HOME Program

- I. BACKGROUND: Among the purposes of the Cranston-GonzalezNational
Affordable Housing Act of 1990 (NAHA), as amended,are: (1) to
promote partnerships between States, units of general local
government and nonprofit organizations, and
(2) to expand nonprofit organizations' capacity to develop and manage
decent and affordable housing. To assist in achieving these purposes,
participating jurisdictions (PJs) under the HOME Investment Partnership
(HOME) Program must reserve not less than 15 percent of their HOME
allocations for investment in housing to be developed, sponsored, or
owned by Community Housing Development Organizations (CHDOs). Each
participating jurisdiction must identify CHDOs that are capable, or can
reasonably be expected to become capable, of carrying out elements of
the jurisdiction's approved housing strategy. A CHDO is a specific type
of nonprofit organization as defined in Sect. 92.2of the HOME final
rule, [24 CFR part 92](#), published in the Federal Register on September 16,
1996. Although many nonprofit organizations share common characteristics
with CHDOs, not all non-profits qualify as CHDOs under the HOME program.
Only nonprofit organizations that have been certified by HOME
participating jurisdictions as CHDOs can receive funds from the minimum
15 percent set-aside. CHDOs play an important role in developing
affordable housing. It is essential, therefore, that participating
jurisdictions be encouraged to build and strengthen partnerships with
them.
- II. PURPOSE: This Notice was developed to provide updated guidance to
Field Offices, participating jurisdictions, and nonprofits on
CHDO requirements and eligible activities, and to set forth HOME
Program requirements relating to CHDOs contained in the HOME
final rule. Attachment "A" is a checklist describing CHDO
eligibility criteria and necessary supporting documentation which
is recommended for use by participating jurisdictions to certify
or recertify CHDOs.

CGHO: Distribution: W-3-1

III. CHDO Requirements and Eligible Activities

In order for a CHDO to be eligible for set-aside funds, the CHDO must be organized and structured according to the standards provided in the HOME regulations (as described in Attachment A), and must develop, own or sponsor the HOME-assisted housing (92.300). In any of these capacities, the CHDO must have effective project control. Where these conditions do not exist, the CHDO is operating as a subrecipient and CHDO set-aside funds may not be used. Because tenant-based rental assistance, existing homeowner rehabilitation projects, and direct homeownership assistance are not eligible development, ownership or sponsorship activities, the CHDO set-aside may not be used for these purposes, except that the Final Home Rule in 92.300(a)(1) permits a CHDO to use its CHDO set-aside to provide direct homeownership assistance (e.g., down payment assistance) in connection with housing it also develops, sponsors or owns using CHDO set-aside funds.

CHDOs, as entities operating independently of the participating jurisdiction, differ from not-for-profit subrecipients in that the uniform administrative requirements in 92.505 (including those related to procurement of goods and services), the audit requirements in §92.506, and the conflict of interest provisions found in §92.356 do not apply to them, except for 92.356(f) which applies to all owners, developers and sponsors, including CHDOs. Subsection 92.356(f)(1) prohibits any officer, employee, agent or consultant of the owner, developer or sponsor, whether private, for profit or nonprofit, from occupying a HOME-assisted affordable housing unit in a project. This provision does not apply, however, to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. The method for obtaining an exception to this prohibition is explained in §92.356(f)(2).

In order to determine the eligibility of projects under the CHDO set-aside, the following definitions for "developer", "owner", and "sponsor" will be used:

A. CHDO as a "Developer"

A CHDO is a "developer" when it (1) either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project; and (2) performs all the functions typically expected of for-profit developers, and assumes all the risks and rewards associated with being the project developer.

- 1) For rental housing, the CHDO must obtain financing, and rehabilitate or construct the project. If it owns the property, the CHDO may maintain ownership and manage the project over the long term, or it may transfer the project to another entity for long-term ownership and management. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

or

- 2) For homebuyer programs, the CHDO must obtain project financing, rehabilitate or construct the dwelling(s), and have title of the property and the HOME loan/grant obligations transferred to a HOME qualified homebuyer within a specified timeframe. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

In both of the above scenarios, developer fees negotiated with the PJ are eligible soft costs under Section 92.206 of the HOME regulations.

B. CHDO as "Owner"

The CHDO is an "owner" when it holds valid legal title to or has a long term (99 year minimum) leasehold interest in a rental property. The CHDO may be an owner with one or more individuals, corporations, partnerships or other legal entities. If it owns the project in partnership, it or its wholly owned nonprofit or for-profit subsidiary must be the managing general partner with effective control (i.e., decision-making authority) of the project. The CHDO may be both owner and developer, or may have another entity as the developer.

C. CHDO as "Sponsor"

A CHDO is a "sponsor" for HOME-assisted rental or homebuyer housing according to the circumstances outlined below. (In either case, the CHDO must always own the property prior to the development phase of the project.):

- 1) For HOME-assisted rental housing, the CHDO may develop a project that it solely or partially owns and agrees to convey ownership to a second non-profit organization at a predetermined time prior to or during development or upon completion of the development of the project. The HOME funds are invested in the project owned by the CHDO. The CHDO sponsor selects prior to commitment of HOME funds the non-profit organization that will obtain ownership of the property. The non-profit assumes from the CHDO the HOME obligation (including any repayment of loans) for the project at a specified time. If the property is not transferred to the non-profit organization, the CHDO sponsor remains liable for the HOME loan/grant obligation.

The non-profit organization must be financially and legally separate from the CHDO sponsor. (The second nonprofit may have been created by the CHDO; nevertheless, it is a separate entity from the CHDO.) The CHDO sponsor must provide sufficient resources to the non-profit organization to ensure the development and long-term operation of the project.

or

- 2) For a HOME-assisted homebuyer program, the CHDO owns a property, then shifts responsibility for the project to another nonprofit at some specified time in the development process. The second nonprofit, in turn, transfers title along with the HOME loan/grant obligations and resale/recapture requirements to a HOME-qualified homebuyer within a specified timeframe.

The HOME funds are invested in the property owned by the CHDO. The other nonprofit being sponsored by the CHDO acquires the completed units, or brings to completion the rehabilitation or construction of the property. At completion of the rehabilitation or construction, the second nonprofit is required to sell (transfer) the property along with the HOME loan/grant obligations to a homebuyer.

This sponsorship role could include a lease-purchase approach whereby the second nonprofit would lease the property to a homebuyer for a period not to exceed three years. At the expiration of the lease, the second nonprofit must sell or transfer the property along with the HOME loan/grant obligations to the homebuyer. If the property is not transferred, the second nonprofit retains ownership and all HOME rental requirements will apply.

IV. Uses of Funds

A. 15% Set-aside

Participating jurisdictions must invest at least 15% of their HOME allocation in housing owned, developed or sponsored by CHDOs (§92.300). Non-profit organizations not meeting the criteria for CHDOs can receive HOME monies. However, these nonprofits are not eligible for any of the funds set aside for CHDOs.

PJs have up to 24 months from the end of the month in which HUD signs the HOME Investment Partnership Agreement to reserve their 15% set-aside for CHDOs. Set-aside funds not reserved for CHDOs within 24 months are recaptured by HUD and are no longer available to the PJ or the CHDO. PJs using the HOME Cash and Management Information (C/MI) must use a specific C/MI form (HUD-40098) to reserve CHDO funds. PJs using IDIS must use the subgrant process to reserve funds to CHDOs as described in Chapter 12 of the IDIS User Manual.

B. Capacity Building Funds

If, during the first 24 months of its participation in the HOME program, a PJ cannot identify a sufficient number of capable CHDOs, up to 20 percent of the minimum CHDO set-aside of 15 percent (but not more than \$150,000 during the 24 month period) may be made available to develop the capacity of CHDOs in the jurisdiction. (While this is no longer an option for participating jurisdictions who received allocations in the beginning of the program, the ability to use capacity building funds is possible for newly designated PJs.) For example, a newly designated PJ receives a HOME allocation of \$400,000. The 15 percent set-aside for CHDOs is \$60,000, of which \$12,000 is available to the new PJ for CHDO capacity building activities. Please note that the term "capacity building" does not include in its meaning the day-to day or regular ongoing operating expenses of a CHDO.

C. Project Specific Loans

Up to 10% of each PJ's funds set aside for CHDOs may be used for special project-specific loans (§92.301). These loans assure that CHDOs have access to HOME funds upfront for project pre-development expenditures not otherwise available to other developers. All loans may not exceed customary and reasonable project preparation costs and must be repaid to the PJ from construction loan proceeds or other project income. Repayment of these loans may be waived by the PJ in part, or in whole, if there are impediments to project development that the PJ determines are reasonably beyond the CHDO's control. HUD will not require repayment of these funds by the PJ (§92.503(b)(2)).

There are two types of project specific loans: (1) technical assistance and site control loans; and (2) seed money loans

(1) "Technical assistance and site control loans" are to be used to determine the feasibility of eligible projects by CHDOs in the early stages of site development. These loans may be used only to pay the costs of:

- Consulting, legal, engineering, and/or architectural fees;
- Preliminary financial applications;
- Initial feasibility studies;
- Engaging a development team;
- Site control and title clearance for the project(s);and
- option to acquire property.

(2) "Seed-money loans" may be used to cover preconstruction project costs, including, but not limited to the costs of obtaining: Firm construction loan commitments;

- Architectural plans and specifications;
- Zoning approvals; and
- Engineering studies and legal fees for the project(s).

The activities included under the "technical assistance and site-control loans" category do not require environmental clearance prior to funds being committed to them. (Please note that an option agreement is allowable prior to the completion of an environmental review only if the cost of the option is a nominal portion of the purchase price. Refer to _58.22 for further guidance.)

HOME funds may not be committed for any "seed-money loans" prior to HUD approval of a request for a release of funds(RROF) for that project as required under environmental regulations (24 CFR Part 58). (Part 58 applies to any decision by a PJ or CHDO that is choice limiting.)

D. Operating Expenses

Under §92.208, PJs may use up to 5 percent of their annual HOME allocations for the payment of operating expenses for CHDOs. (This is separate and apart from the minimum 15 percent CHDO set-aside and does not count against the PJ's 10 percent administrative funds.) As is the case with PJ administrative funds, HOME funds expended for CHDO operating expenses do not have to be matched by the PJ.

CHDO operating expenses are defined in §92.208 as reasonable and necessary costs for the operation of the CHDO. Such costs include salaries, wages and other employee compensation and benefits; employee education, training and travel; rent; utilities; communication costs; taxes; insurance and equipment, materials and supplies.

If a CHDO is acting only as a subrecipient or contractor, the CHDO is not eligible to receive any of the 5 percent available to the PJ for the payment of CHDO operating expenses. A PJ may provide a portion of its 10 percent administrative funds to a CHDO for costs incurred while the CHDO is acting solely in the capacity of a subrecipient or contractor. However, even in this case, the CHDO can be provided with CHDO operating expense funds if it is expected that it will be receiving CHDO project set-aside funds within 24 months of receiving funds for operating expenses. The PJ must enter into a written agreement with the CHDO specifying the terms and conditions upon which this expectation is based (§92.300(e)).

For any fiscal year, a CHDO may not receive HOME funded support in an amount that provides more than 50% of the organization's total operating budget in the fiscal year or \$50,000 annually, whichever is greater. This includes funds for operating expenses under §92.208, pass-through funds provided through intermediary organizations selected by HUD, and funds provided to the CHDO from the 20% of the minimum CHDO set-aside that are intended to develop their capacity. HOME administrative funds provided by the PJ under §92.207 to a CHDO which is also acting in a subrecipient or contractor capacity do not count toward this cap.

E. Pass-Through Funds

Through direct contract with the Department, many intermediary organizations provide technical assistance and support to CHDOs and potential CHDOs throughout the country. PJs work closely with these intermediary organizations to identify nonprofit organizations they wish to work with to develop affordable housing. In addition to technical assistance, these intermediary organizations can also pass through to CHDOs a portion of their contract funds to provide housing education and organizational support.

V. CHDO PROCEEDS

The HOME Final Rule at §92.300(a)(2) permits participating jurisdictions to allow a CHDO through the terms of the written agreement to retain any proceeds resulting from the investment of its CHDO set-aside funds for use in HOME eligible or other housing activities which benefit low-income families. This option provides CHDOs with an equity stake in their projects. Examples of CHDO proceeds include funds resulting from:

the permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan; the sale of CHDO sponsored rental housing to a second non-profit; the sale of CHDO developed homeownership housing; the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds.

CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for the requirements of §2.300(a)(2). (This paragraph states that HOME funds recaptured because housing no longer meets affordability requirements under §2.254(a)(5)(ii) are subject to HOME requirements.) Thus, the Davis Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

Once CHDO proceeds are used, there are no further HOME requirements which must be met. Funds generated from the use of CHDO proceeds are not CHDO proceeds.

The participating jurisdiction determines what requirements must be met by the CHDO in using the CHDO proceeds which it retains, consistent with §2.300(a)(2). The participating jurisdiction may use its own definition of "low-income". The participating jurisdiction may also authorize a CHDO to use its proceeds to undertake housing activities which are not eligible for HOME funding, such as emergency repairs, ongoing project operating costs or reserves, or additional CHDO operating expenses. If the written agreement expires before all CHDO proceeds are generated, the written agreement must identify the requirements which continue to apply to the use of these CHDO proceeds. At a minimum, the PJ must require that the CHDO continues to use the CHDO proceeds for HOME-eligible or other housing activities which benefit low-income persons.

Participating jurisdictions also have the option of requiring that CHDO proceeds be returned to the PJ. Proceeds which are returned to the PJ constitute program income, and must be used in accordance with all HOME requirements.

CHDO proceeds do not include any proceeds generated by HOME-assisted activity which is undertaken by a CHDO acting as a subrecipient. Such proceeds are program income. CHDO proceeds also do not include funds which are recaptured by a CHDO in accordance with the homeownership recapture provisions of §2.254(a)(5)(ii).

For a complete discussion of HOME requirements pertaining to program income, recaptured funds, repayments and CHDO proceeds, please refer to Notice CPD 97-09 issued on September 12, 1997.

CHDO CHECKLIST

The information contained in this checklist refers to the definition of Community Housing Development Organizations (CHDOs) in Subpart A, _92.2 of the HOME Rule. The checklist is a tool for participating jurisdictions concerning the documents they must receive from a nonprofit before it may be certified or recertified as a CHDO. For monitoring purposes, PJs should be asked to maintain the completed checklist on file to document compliance with the regulations.

I. LEGAL STATUS

A. The nonprofit organization is organized under State or local laws, as evidenced by:

_____ a Charter, OR_____ Articles of Incorporation.

B. No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

_____ a Charter, OR_____ Articles of Incorporation.

C. Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3) or (4) of the Internal RevenueCode of 1986, as evidenced by:

_____ a 501(c)(3) or (4) Certificate from the IRS.

OR

Is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue code, as evidenced by:

_____ a group exemption letter from the IRS that includes the CHDO.

D. Has among its purposes the provision of decent housing that is affordable to low-and moderate-income people, as evidenced by a statement in the organization's:

_____ Charter,_____ Articles of Incorporation,_____ By-laws, OR_____ Resolutions.

II. CAPACITY

A. Conforms to the financial accountability standards of 24 CFR84.21, "Standards for Financial Management Systems", as evidenced by:

_____ a notarized statement by the president or chief financial officer of the organization;

_____ a certification from a Certified Public Accountant, OR

_____ a HUD approved audit summary.

B. Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

_____ resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, OR

_____ contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

C. Has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by:

_____ a statement that documents at least one year of experience in serving the community, OR

_____ for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community.

The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other official of the organization.

III. ORGANIZATIONAL STRUCTURE

A. Maintains at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations as evidenced by the organization's:

_____ By-Laws, _____ Charter, OR _____ Articles of Incorporation.

Under the HOME program, for urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area (but not the whole state).

B. Provides a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects, as evidenced by:

_____ the organization's By-laws, _____ Resolutions,
OR _____ a written statement of operating procedures
approved by the governing body.

- C. A CHDO may be chartered by a State or local government, but the following restrictions apply: (1) the State or local government may not appoint more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing board members are public officials (including any employees of the PJ), as evidenced by the organization's:

_____ By-laws, _____ Charter, OR _____ Articles of Incorporation.

- D. If the CHDO is sponsored or 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:

_____ By-laws, _____ Charter, OR _____ Articles of Incorporation.

IV. RELATIONSHIP WITH FOR-PROFIT ENTITIES

- A. The CHDO is not controlled, nor receives directions from individuals, or entities seeking profit from the organization, as evidenced by:

_____ the organization's By-laws, OR _____ a Memorandum of Understanding (MOU).

- B. A Community Housing Development Organization may be sponsored or created by a for-profit entity, however:

(1) the for-profit entity's primary purpose does not include the development or management of housing, as evidenced:

_____ in the for-profit organization's By-laws

AND;

(2) the CHDO is free to contract for goods and services from vendor(s) of its own choosing, as evidenced in the CHDO's:

_____ By-laws, _____ Charter, OR _____ Articles of Incorporation.

CPD Notice 97-09

U.S. Department of Housing and Urban Development Community Planning and
Development

Special Attention of: Notice: CPD 97-9

All Secretary's Representatives

All State/Area Coordinators

All CPD Division Directors

Issued: September 12, 1997

Expires: September 12, 1998

All

HOME Coordinators All HOME Participating Jurisdictions Cross Reference:

SUBJECT: HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds

1. PURPOSE

The purpose of this Notice is to provide guidance to HOME participating jurisdictions (PJs) on the requirements governing program income, recaptured funds, repayments and proceeds from CHDO set-asides.

II. BACKGROUND

The HOME program is authorized by Title 11 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), as amended (42

U.S.C. 12701 et seq.). The purpose of HOME is to expand the supply of affordable housing for low- and very low-income families. The Act requires that any repayment of HOME funds drawn from a jurisdiction's HOME Investment Trust Fund, and any payments of interest or other return of investment of such funds, shall be deposited in the jurisdiction's HOME Investment Trust Fund account. Funds in the account may only be used for HOME eligible housing.

The Act further provides for a 15% set-aside of HOME funds for investment only in housing to be developed, sponsored or owned by community housing development organizations (CHDOs). The HOME Final Rule gives participating jurisdictions the option of permitting a CHDO to retain proceeds resulting from the investment of its set-aside funds, provided the proceeds are used for housing activities to benefit low-income families.

The requirements of [OMB Circular No. A-87](#) and those sections of 24 CFR part 85 specified in [24 CFR 92.505\(a\)](#) apply to participating jurisdictions, State recipients and any governmental subrecipients receiving HOME funds. The requirements of [OMB Circular No. A-122](#) and those

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sections of 24 CFR part 84 specified in 24 CFR 92.505(b) apply to subrecipients receiving HOME funds that are non-profit organizations that are not governmental subrecipients. States are also subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

III. PROGRAM INCOME

Program income is defined for the first time in the September 16, 1996, HOME Final Rule. However, program income requirements are not new and have a statutory basis. Program income is the repayment, interest and return on the HOME investment. Not all funds received by a participating jurisdiction are program income. However, for most participating jurisdictions, program income is the most significant category of funds received. Program income may be generated by HOME assisted activities which are administered by a participating jurisdiction, subrecipient or State recipient, or by activities funded from matching contributions. Program income may also be generated by housing which is developed, sponsored or owned by CHDOs when the participating jurisdiction requires the CHDO proceeds to be returned to the local HOME account. Funds generated by CHDOs are discussed more fully under Section VI. CHDO Projects: Proceeds, Program Income and Recaptured Funds.

A. DEFINITION OF PROGRAM INCOME

HOME program income is defined in the Definitions section of the HOME Final Rule at [24 CFR 92.2](#). Program income means gross income received by the participating jurisdiction, subrecipient or State recipient which is directly generated from the use of HOME funds (including HOME program income) and matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds or match used. Following is a list of examples. Please note that this is not an exclusive list.

- (1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
- (2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed with HOME funds or matching contributions, less costs incidental to generation of the income (Note: rental income from property owned by entities other than the participating jurisdiction, a State recipient or a subrecipient does not constitute program income);
- (3) Payments of principal and interest on loans made using HOME funds or matching contributions;
- (4) Proceeds from the sale of loans made with HOME funds or matching contributions;

- (5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
- (6) Interest earned on program income pending its disposition;
and
- (7) Any other interest or return on the investment permitted
under

§92.205(b) of HOME funds or matching contributions (Note: this does not include recaptured funds, repayments or CHDO proceeds).

Income generated by a project which is funded with program income, is also HOME program income. Note that the Final Rule at 24 CFR 92.2 defines HOME funds as funds made available through allocations and reallocations, plus program income.

Also note that interest earned on funds in the participating jurisdiction's local HOME account or on HOME funds retained by subrecipients or State recipients also constitutes HOME program income.

If a jurisdiction is no longer a participating jurisdiction when the program income is received, the funds are not subject to the HOME program income requirements, pursuant to 24 CFR 92.503(a)(2).

B. ACCOUNTING FOR PROGRAM INCOME

Participating jurisdictions must maintain records which adequately identify the source and application of their HOME funds (including program income) as part of the financial transactions of their HOME program, consistent with generally accepted accounting principles and the requirements of 24 CFR part 85.20. States which are participating jurisdictions must expend and account for HOME funds in accordance with State laws and procedures, as required by 24 CFR 85.20(a). States are also governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205 which prescribe rules and procedures for the transfer of funds between the Federal Government and States, including interest accrual provisions.

The participating jurisdiction is not required to identify program income by program funding year. However, the participating jurisdiction must be able to identify which projects generated program income and which projects received program income, including the amount. The participating jurisdiction must also be able to reasonably predict anticipated program income during the next program year. Thus, the participating jurisdiction's financial management system should enable the PJ to track program income receivable (such as the amount and date of principal and interest due on a HOME loan).

The participating jurisdiction is responsible for ensuring that the required program and financial records are maintained for both HOME assisted projects which it administers and projects which are administered by its State recipients or subrecipients. [24 CFR 92.508](#) identifies the records which must be maintained.

C. INTEREST EARNED ON HOME ACCOUNTS

The HOME Final Rule and 24 CFR Part 85 do not specify whether the participating jurisdiction's HOME account must be interest bearing. In accordance with 24 CFR 92.502(c)(2), HOME allocation funds drawn from the U. S. Treasury account must be expended for eligible costs within fifteen days from the date the funds are drawn down.

Participating jurisdictions which are not States may retain interest earned on HOME funds drawn down from the U.S. Treasury, provided the interest is earned within this fifteen day period. The participating jurisdiction may retain any interest earned on other funds in its designated account (such as program income, recaptured funds and repayments) for eligible program costs, regardless of the time period during which the interest is earned.

Participating jurisdictions which are States are governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

D. EXCESS DRAWDOWNS

Any HOME funds which are drawn down in excess of cash needs must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account. In accordance with 24 CFR 92.502(c)(2), for participating jurisdictions which are not States, HOME funds which are drawn down and not expended for eligible costs within fifteen days of drawdown, must be returned to HUD. Any interest which is earned on these HOME funds after fifteen days, from the initial drawdown, belongs to the U.S. Treasury and must be promptly remitted to the Treasury at least quarterly (except that amounts up to \$1 00 per year may be retained for administrative expenses). Participating jurisdictions which are States are governed by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and 31 CFR part 205.

E. DISBURSEMENT OF PROGRAM INCOME

HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before drawdown requests are made for HOME funds in the United States Treasury account, in accordance with 24 CFR 92.502(c)(3). Therefore, program income which is deposited into the local account must be used before additional HOME allocation funds are drawn down. A participating jurisdiction may not draw down HOME allocation funds while allowing program income to accumulate in its local account. Available program income must be used to pay the next eligible program cost (or portion thereof).

Participating jurisdictions are not required to use extraordinary procedures to determine the amount of program income available at the time of a drawdown request. If the participating jurisdiction's accounting system reports on cash balances at reasonable, periodic intervals (not to exceed 30 days), then the participating jurisdiction can wait until its report is generated to determine the cash balance (including program income) on hand. The HOME program does not require that "excess" program income on hand at the end of a participating jurisdiction's program year be returned to its HOME Investment Trust Fund U.S. Treasury account.

F. PROGRAM INCOME AND CONSORTIUMS

Program income derived from consortium activities undertaken by or within a consortium member unit of general local government is program income of the consortium. The Consortium Agreement may permit a member to retain program income for other HOME activities within that member's boundaries, provided the member uses the program income before additional HOME funds are drawn down for use within its boundaries. In accordance with 24 CFR 92.503(a)(3), any program income on hand when a consortium member terminates its participation in the consortium, as well as any future program income (accounts receivable), is program income of the remaining consortium (i.e. the participating jurisdiction) and may not be retained by the former consortium member.

G. SUBRECIPIENT AND STATE RECIPIENT PROGRAM INCOME

In accordance with 24 CFR 92.503(a)(1), a participating jurisdiction may authorize a subrecipient or State recipient to retain program income for additional HOME projects pursuant to a Written Agreement.

Any program income retained by a subrecipient or State recipient must be disbursed by that subrecipient or State recipient before it receives additional HOME funds. When determining whether there are funds available in a participating jurisdiction's Trust Fund local account, program income retained by its subrecipients and State recipients is treated separately. For examples program income which is available in the account of one State recipient would not prevent the State from drawing down funds for another State recipient or subrecipient which has no funds in its account.

Upon expiration of a Written Agreement, any program income on hand as well as any future program income (accounts receivable) must be returned to the participating jurisdiction, as specified in the Written Agreement.

The participating jurisdiction retains responsibility in accordance with 24 CFR 92.504(a) for HOME activities which are carried out by its subrecipients and State recipients. The participating jurisdiction must account for the source and application of HOME funds received by its subrecipients or State recipients. The participating jurisdiction must ensure that its subrecipients and State recipients meet the standards for financial management systems of 24 CFR Part 85.20 or 24 CFR part 84.21, as applicable, including controls for the receipt and expenditure of program income. The participating jurisdiction's Written Agreement with its subrecipients and State recipients should clearly identify the procedures to be followed.

Participating jurisdictions must carefully monitor each subrecipient and State recipient to ensure adequate program performance in accordance with the terms of the Written Agreement. If a subrecipient or State recipient is accumulating a substantial amount of program income, the participating jurisdiction needs to take appropriate actions to address this performance issue. These actions may include requesting that the subrecipient or State recipient return the program income to the participating jurisdiction's Trust Fund local account.

H. USE OF PROGRAM INCOME

The Resources Section of the Consolidated Plan's Action Plan must describe the Federal resources, including program income, which are expected to be available to address priority needs and specific objectives during the consolidated program year, pursuant to [24 CFR 91.220](#) for local governments, [24 CFR 91.320](#) for State governments and [24 CFR 91.420](#) for consortia. Participating jurisdictions must also describe the activities to be undertaken with the Federal resources which have been identified.

Activities assisted with HOME program income are treated the same as those assisted with the HOME allocation. All HOME program rules and requirements apply. For example, all costs financed with program income must be HOME eligible. The amount of program income must be included when calculating the total amount of HOME assistance for the purposes of allocating costs in accordance with [24 CFR 92.205\(d\)](#) and designating Home-assisted units in accordance with [24 CFR 92.2520](#)). In addition, the amount of assistance provided by program income must be included when determining compliance with the following requirements: [24 CFR 92.250\(a\)](#) concerning the maximum per-unit subsidy amount; [24 CFR 92.250\(b\)](#) concerning subsidy layering; [24 CFR 92.252\(b\)](#) concerning additional rent limitations; [24 CFR 92.252\(e\)](#) concerning applicable affordability periods for rental housing; and [92.254](#) concerning applicable affordability periods for homeownership housing.

1. PROGRAM INCOME AND REVOLVING LOAN FUNDS

The HOME program does not permit the establishment of Revolving Loan Funds. However, when a subrecipient or State recipient administers only one HOME activity (such as a rehabilitation loan program) and the participating jurisdiction has authorized that program income may be retained, the activity may operate in a manner which is similar to some Revolving Loan Funds. In such cases, program income is deposited directly into the State recipient or subrecipient account for use in funding additional HOME projects. All requirements governing the receipt and expenditure of HOME program income must be met in administering the funds in this account. These requirements include the prohibitions against drawing down additional HOME funds from the

- Treasury before using cash balances in the designated account, and accumulating program income. Participating jurisdictions may not authorize the establishment of multiple HOME accounts for the same subrecipient or State recipient in order to create "de facto" Revolving Loan Funds.

• PROGRAM INCOME AND THE ADMINISTRATIVE COST CAP, CHDO SET ASIDE AND MATCHING CONTRIBUTIONS

The amount of program income deposited in the Trust Fund local account increases the amount a participating jurisdiction may expend on eligible administrative and planning costs. In accordance with [24 CFR 92.207](#), a participating jurisdiction may use additional HOME funds for eligible administrative and planning costs in an amount up to 10% of the program income amount deposited in its Trust Fund local account during the program year. Only program income deposited in the local Trust Fund account may be included when making

this calculation. Program income which is retained by State recipients or subrecipients may not be included, and therefore such income does not increase the amount of funds which may be used for administrative and planning costs. If the participating jurisdiction does not expend the full amount authorized for eligible administrative and planning costs during the program year, it may use any remaining balance during subsequent program years.

The amount of program income deposited in the Trust Fund local account during a program year is not included when calculating the minimum amount of HOME funds which must be reserved for projects which are developed, sponsored or owned by CHDOS. In accordance with 24 CFR 92.300(a), compliance with this requirement is based on reserving within 24 months, an amount for CHDO projects which is not less than 15% of the HOME allocation. Likewise, the amount of program income deposited during a program year does not increase the maximum amount of funds which may be used for CHDO capacity building [(24 CFR 92.300(b)], CHDO operating expenses ([24 CFR 92.208](#)) or CHDO project-specific technical assistance, site control and seed money loans (24 CFR [92.301](#)).

The amount of program income deposited in the Trust Fund local account during a program year is not included when calculating the amount of required matching contributions. In accordance with [24 CFR 92.218](#), matching contributions must total not less than 25% of the funds drawn down from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year (except for funds drawn for certain identified purposes).

K. PROGRAM INCOME AND INCOME TARGETING In accordance with [24 CFR 92.216](#) "Income targeting: Tenant-based rental assistance and rental units", HOME funds made available during a fiscal year must be invested so that not less than 90% of all families receiving rental assistance or occupying rental units assisted from a fiscal year HOME allocation are families whose annual incomes do not exceed 60% of the median family income for the area. When calculating whether the income targeting requirement has been met, program income must be included.

When program income is used in combination with HOME allocation funds for the same rental assistance or rental units, no separate record keeping for the program income investment is required. For such activities, the income targeting requirement is met for the program income investment to the same extent that it is met for the investment of the fiscal year HOME allocation.

When the participating jurisdiction (or subrecipient or State recipient) funds a rental assistance activity or activities solely with program income, then the participating jurisdiction must document that the income targeting requirement has been met as follows. The participating jurisdiction must record all rental assistance activities which are wholly set-up or committed with program income during a fiscal year. Upon completion of these activities, the participating jurisdiction must record the income of the families receiving the rental assistance or occupying the rental units and combine this data with the data on families who are assisted with the corresponding fiscal year HOME allocation. The combined total of assisted families is then used to determine whether the income targeting requirement has been met for the fiscal year HOME allocation plus program income.

In accordance with [24 CFR 92.217](#) "Income targeting: Homeownership", HOME funds made available during a fiscal year must be invested so that 100% of these funds are invested in dwelling units that are occupied by households that qualify as low-income families. When program income is used in combination with Home allocation funds for the same homeownership activity, no separate record keeping for the program income investment is required. When the participating jurisdiction (or subrecipient or State recipient) funds an entire homeownership activity or activities with program income, the participating jurisdiction must document that 100% of the program income funds have been used for homeownership assistance which meets the requirements of 24 CFR 92.217.

L. PROGRAM INCOME AND HOME DEADLINES

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 24 month CHDO commitment deadline required by 24 CFR 92.500(d)(1), since compliance with this deadline is determined by the amount of HOME funds reserved regardless of whether future costs are paid with program income or the HOME allocation.

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 24 month HOME funds commitment deadline required by 24 CFR 92.500(d)(2), since compliance with this deadline is determined by the amount of HOME funds committed regardless of whether future expenditures are funded with program income or the HOME allocation.

The amount of program income deposited and expended during a program year does not affect a participating jurisdiction's ability to meet the 25% match requirement required by 24 CFR [92.218](#), since compliance with the matching requirement is based on the percent of HOME allocation funds drawn down from the jurisdiction's HOME Investment Trust Fund Treasury account during the fiscal year. Program income must be expended before additional HOME funds are drawn down from the Treasury.

However, the amount of program income may affect a participating jurisdiction's ability to meet the five year expenditure deadline required by 24 CFR 92.500(d)(3). Since program income must be disbursed before additional HOME funds are drawn down from the

- Treasury account, a participating jurisdiction with significant amounts of program income may find that it has an unanticipated balance of unexpended HOME allocation funds at the end of the deadline period. A participating jurisdiction must give careful attention to program design and management to ensure that it is able to expend both program income and its HOME allocation within the regulatory deadline timeframes.

- C/MI AND PROGRAM INCOME

The Cash and Management Information System (C/MI) does not record the receipt of program income. Since program income is deposited in the Trust Fund local account (or retained by an authorized subrecipient or State recipient) and not in the U.S Treasury account, program income is not drawn down through the C/MI system.

A project is set-up in C/MI for the estimated amount of the HOME funds which will be needed. The estimated amount of program income is not identified in the C/MI at project set-up since program income must be used to pay the next cost and cannot be set aside for a specific project. Thus, it is difficult for a participating jurisdiction to estimate at set-up how much program income will be used to fund a project. Upon completion of a HOME rental or homeownership (but not TBRA) project, the actual expenditure of any program income is reported on the HOME Program Income line on the HOME C/MI Project Completion Report. At that time, any HOME allocation funds set-up but not expended (because program income was available or for other reasons) are available to commit to other HOME projects.

In the limited circumstances where program income may be used to fully fund a project, a participating jurisdiction may find it useful to set up a project in C/MI with at least \$1 of HOME allocation funds, in order to use the C/MI system to report the total use of HOME allocation and program income used for a completed project. There is no similar provision for TBRA since there is no TBRA completion report. In those cases where sufficient program income is available to fund an entire project, and the participating jurisdiction chooses not to set up the project in the C/MI system, the project would not be reported through C/MI. However, the project would be reported as part of the Consolidated Plan annual performance report.

A participating jurisdiction, subrecipient or State recipient may not allow program income to accumulate for the purpose of funding an entire project with program income, or for any other purpose. A project may be fully funded with program income only if full expenditure will occur immediately (for example, a down payment assistance project which is set-up the day before the closing) or in the case of certain subrecipient or State recipient activities (see Section III. I. Program Income and Revolving Loan Funds). Otherwise, the project must be set-up in C/MI for the estimated amount of HOME funds that are needed for the project.

N. IDIS AND PROGRAM INCOME

The CPD Integrated Disbursement and Information System (IDIS) is designed to record the receipt and use of HOME program income. Note that HUD through IDIS does not actually collect or disburse the program income. A participating jurisdiction sets up a Program Income Fund through IDIS to record the receipt of program income. Once the Program Income Fund is set-up, IDIS automatically applies the program income reported to the next activity or activities for which a drawdown is requested. Participating jurisdictions also have the option of correlating each program income receipt with the IDIS activity which generated the program income. The IDIS User Manual provides specific instructions on the IDIS program income process and identifies the various reports which can be generated.

O. PROGRAM INCOME AND MATCH

To be recognized as a cash contribution, matching funds must be non-federal and permanently contributed to affordable housing or to the HOME program. Therefore, in accordance with 24 CFR 92.220(a)(1), to receive match credit for the full amount of a loan to a HOME assisted project or to affordable housing that is not HOME assisted, all

repayment, interest or other return of the investment from the match contribution must be deposited in

the participating jurisdiction's HOME Investment Trust Fund local account (or in a designated subrecipient or State recipient account in accordance with the Written Agreement). If such funds are not deposited in the required account, the participating jurisdiction can not take match credit for the full loan amount. Requirements for how to determine the grant equivalent of such loans are set forth in 24 CFR 92.220(a)(1)(iii). Further guidance is provided in [Notice CPD 97-03](#) "HOME Program Match Guidance" (as may be updated).

IV. RECAPTURED FUNDS

Recaptured funds are HOME funds which are recouped by the participating jurisdiction (or subrecipient, State recipient or CHDO) when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a)(4). The amount of the recapture is determined by the recapture requirements established by the participating jurisdiction in accordance with 24 CFR 92.254(a)(5)(ii). In accordance with 24 CFR 92.503(c), recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account, unless the participating jurisdiction permits a subrecipient, State recipient or CHDO to retain the recaptured funds pursuant to the Written Agreement required by 24 CFR [92.504](#). The Written Agreement must state that upon termination, recaptured funds must be returned to the participating jurisdiction.

Recaptured funds deposited in the local HOME account (or subrecipient, State recipient or CHDO account pursuant to the Written Agreement), become part of the HOME funds available for payment of the next program cost. Thus, recaptured funds must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used (see guidance under Section III. Program Income). However, unlike program income, since recaptured funds represent a return of the original HOME investment, 10% of the recaptured funds may not be used for eligible administrative and planning costs.

The C/MI system does not provide for a separate tracking or accounting for recaptured funds. Participating jurisdictions which are using IDIS, must report recaptured funds as additions to the IDIS Program Income fund, in the same manner as program income is reported. This ensures that IDIS automatically applies reported recaptured funds to the next activity or activities for which a drawdown is requested.

Participating jurisdictions must enforce the recapture agreements and account for the source and application of recaptured funds, in accordance with the record keeping requirements of 24 CFR [92.508](#). If a subrecipient, State recipient or CHDO is permitted to retain recaptured funds, participating jurisdictions must monitor to ensure compliance with all applicable HOME requirements and the terms of the Written Agreement.

Participating jurisdictions may establish affordability periods which exceed the minimum periods established by the HOME regulations. Any funds recouped after the period mandated by 24 CFR 92.254(a)(4) constitute program income.

V. REPAYMENTS

Repayments are HOME funds which the participating jurisdiction must repay because the funds were invested in a project which was terminated before completion (either voluntarily or involuntarily), or invested in housing which failed to comply with the affordability requirements specified in [24 CFR 92.252](#) or [92.254](#). Repayments also include the repayment of project specific CHDO technical assistance, site control and seed money loans pursuant to [24 CFR 92.301](#), when the participating jurisdiction does not waive loan repayment and the project is terminated before completion.

In accordance with [24 CFR 92.503\(b\)\(3\)](#), if the HOME funds were originally disbursed from the participating jurisdiction's HOME Investment Trust Fund U.S. Treasury account (i.e., the HOME allocation), they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account (i.e., program income or recaptured funds), they must be repaid to the local account. Repayments may not be made to a subrecipient, State recipient or CHDO account.

Repayments deposited in the local HOME account become part of the HOME funds available for payment of the next program cost. Thus, repayments must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used. (See guidance under Section III. Program Income). However, unlike program income, since repayments represent a return of the original HOME investment, 10% of the repayment funds may not be used for eligible administrative and planning costs.

The C/MI system does not provide for a separate tracking or accounting for repayment funds. Participating jurisdictions which are using IDIS, must report repayment funds as additions to the IDIS Program Income fund, in the same manner as program income is reported. This ensures that IDIS automatically applies reported repayment funds to the next activity or activities for which a drawdown is requested.

Participating jurisdictions must enforce the repayment requirements. The participating jurisdiction must ensure that the full amount of any required repayment is made to the appropriate Trust Fund account, even when it is unsuccessful in obtaining the required repayment from a subrecipient, State recipient, CHDO, project owner, project developer or other entity.

VI. CHDO PROJECTS: PROCEEDS, PROGRAM INCOME AND RECAPTURED FUNDS

The HOME Final Rule at [24 CFR 92.300\(a\)\(2\)](#) gives participating jurisdictions the option of permitting CHDOs to retain any proceeds resulting from the CHDO's investment of its CHDO set-aside funds or requiring the CHDO to return these proceeds to the participating jurisdiction. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds. Proceeds which are returned to the participating jurisdiction constitute HOME program income and are subject to all of the HOME program income requirements. Proceeds which the CHDO is permitted to retain are not HOME program income and, therefore, are not subject to the HOME requirements, except as described

below. This option provides CHDOs with an equity stake in their projects. Examples of CHDO proceeds are funds resulting from: the permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan; the sale of CHDO sponsored rental housing to a second non-profit; the sale of CHDO developed homeownership housing; the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing.

Once CHDO proceeds are used, there are no further HOME requirements which must be met. Funds generated from the use of CHDO proceeds are not CHDO proceeds.

A. USE OF CHDO PROCEEDS

The CHDO must use any CHDO proceeds which it is authorized to retain, for HOME-eligible or other housing activities to benefit low-income families, as required by 24 CFR 92.300(a)(2). A participating jurisdiction may use its own definition of "low-income" family. Examples of affordable housing activities which may be funded with CHDO proceeds include: emergency repairs, project operating costs and reserves, housing refinancing costs, CHDO operating expenses and homebuyer counseling.

CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). Thus, the Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

B. WRITTEN AGREEMENT

The participating jurisdiction (or subrecipient or State recipient) must execute a Written Agreement with the CHDO in accordance with 24 CFR 92.504(c)(3). The Agreement must specify whether any proceeds resulting from the use of the CHDO set-aside, may be retained by the CHDO or must be returned to the participating jurisdiction (or subrecipient or State recipient).

If the CHDO proceeds are retained, the Written Agreement must identify the HOME eligible or other housing activities to benefit low-income families which will be funded with the proceeds, as well as any other requirements, such as expenditure deadlines, which must be met. The participating jurisdiction may establish more stringent requirements than those required by the HOME Final Rule. The Written Agreement also must clearly identify the records to be maintained by the CHDO and any reports which must be submitted. The participating jurisdiction must monitor the CHDO's compliance with the terms of the Written Agreement.

HOME requirements continue to apply as long as a CHDO receives and uses CHDO proceeds, even if the CHDO proceeds are received or used after the Written Agreement has expired. For example, if a CHDO's Written Agreement expires after a five year affordability period, but the CHDO has developed a project which includes a CHDO financed loan with a ten year repayment term, the HOME requirements governing CHDO proceeds apply to the

repayments received during the full ten year term. The participating jurisdiction's Written Agreement with the CHDO should identify the requirements which apply to any CHDO proceeds which are received after the agreement's expiration date.

C. CHDOS ACTING AS SUBRECIPIENTS

If a CHDO is functioning in the capacity of a subrecipient, any funds generated from HOME assisted activity are program income and not CHDO proceeds. Therefore, such funds are subject to the HOME requirements pertaining to program income. The HOME Final Rule at 24 CFR 92.300(a)(1) clarifies that a CHDO, in connection with housing it develops, sponsors or owns using CHDO HOME funds, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient, at the option of the participating jurisdiction.

D. RECAPTURED FUNDS

CHDO proceeds do not include funds which are recaptured by the CHDO because the assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the affordability period, as required by 24 CFR 92.254(a)(5)(ii). Recaptured funds are subject to the requirements of 24 CFR 92.503(c). Recaptured funds must be deposited in the participating jurisdiction's HOME Trust Fund local account. Participating jurisdictions may not authorize CHDOs to retain recaptured funds.

CPD Notice 96-09

U.S. Department of Housing and Urban Development Community Planning and Development

Special Attention of:	Notice CPD 96-9
All Secretary's Representatives All State/Area Coordinators All Regional Directors for CPDAll CPD Division Directors	Issued: December 20, 1996Expires: December 20, 1997
All HOME Program CoordinatorsAll HOME Participating Jurisdictions	Cross References:

SUBJECT: Administrative costs, project-related soft costs, and community development housing organization (CHDO) operating expenses under the HOME Program

I. PURPOSE

This Notice defines administrative costs and project-related soft costs in the HOME Program ([24 CFR Part 92](#)), clarifies the distinction between them, and provides guidance to participating jurisdictions (PJs) on how to categorize costs.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act (NAHA), which established the HOME Program, did not provide authority for PJs to use HOME funds for costs incurred for administering their local HOME programs. On October 28, 1992, the Housing and Community Development Act of 1992 (HCDA) amended NAHA to permit each PJ to use up to ten percent of its total Fiscal Year HOME allocation to defray administrative costs and up to five percent for Community Housing Development Organization (CHDO) operating expenses. In addition, HCDA of 1992 permitted PJs to use a portion of their fifteen percent CHDO set-aside, during the first 24 months of participation in the HOME Program, for CHDO capacity building. The Department implemented these provisions of HCDA 1992 immediately, and incorporated them through amendments to the HOME interim rule published in the Federal Register on December 22, 1992, and June 23, 1993.

DGHP: Distribution: W-3-1, Special (CPD Regional and Field Office Directors) Under the original HOME regulations, administrative costs were ineligible. These costs were defined as all staff costs, whether for overall HOME program administration or for project delivery. When the statute was amended in 1992 to permit the use of HOME funds for administrative costs, the revised HOME regulations retained the definition of administrative costs and imposed the statutory 10 percent cap on these costs.

In early 1993, the Department formed a task force to review policy inconsistencies between the HOME and Community Development Block Grant (CDBG) programs. As a result of that review, the Department made regulatory changes to the definition of administrative costs under the HOME Program to bring it into conformance with the CDBG program rules.[These changes were included in an interim rule published in the Federal Register on April 19, 1994.] Specifically, HUD amended the HOME Program definition of administrative costs. This notice discusses the circumstances under which a PJ might choose each option.

The April 19, 1994 interim rule removed the definition of administrative costs from §92.2 and redefined it at '92.207 as eligible administrative and planning costs. Administrative costs now include all general management, oversight and coordination costs. Project-related soft costs are costs incurred by the owner or the PJ that are associated with the financing and/or development of affordable housing. Staff and overhead costs that are directly related to carrying out a project and/or to provide relocation assistance were redefined and included as both project-related soft costs at §92.206(d)(6) and (f)(2), respectively, and as administrative costs at §92.207(.b).

The Multifamily Housing Property Disposition Reform Act of 1994 permitted the use of CDBG funds for HOME general management, over sight and coordination costs, which are analogous to costs eligible under 24CFR Part 570.206. CDBG funds can be used for HOME project costs, provided the HOME project meets CDBG national objectives.

On September 16, 1996, the Department published a final rule for the HOME Program. The final rule made numerous changes to clarify requirements and ease administration of the program. Among these changes, a new section, § 92.212, has been added to explain the circumstances under which a PJ may incur costs prior to the award of its fiscal year HOME allocation.

III. ADMINISTRATIVE COSTS

A PJ may use up to ten percent of its annual HOME allocation to pay administrative and planning costs for the HOME Program. A PJ may also use up to 10 percent of any HOME program income received during the program year for administrative and planning costs. Allowable administrative costs, chargeable to the 10 percent cap, may be incurred by the PJ, state recipients, or subrecipients. It is up to the PJ to determine how administrative funds are to be allocated among subrecipients or, in the case of State PJs, State recipients.

A PJ cannot charge points on HOME loans and include them in the cost of a loan to repay a PJ's administrative costs. PJs may not charge monitoring, servicing, and origination fees in HOME-assisted projects. However, PJs may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications (§92.214 (b)). Such fees are applicable credits under [OMB Circular A-87](#).

The following are included in the definition of administrative costs, as described in §92.207: (a) general management, oversight and coordination; (b) staff and overhead; (c) public information; (d) fair housing; (e) indirect costs; (f) preparation of the Consolidated Plan and (g) other Federal requirements. Of these costs, it is only (b), project-related or relocation-related staff and overhead costs and (g) certain environmental costs that a PJ has the option to charge as either administrative costs or project-related soft costs. These will be discussed more fully in Section V. All other administrative costs, as described below, may be charged only to the administrative category:

General Management, Oversight, and Coordination Costs

General management, oversight, and coordination costs are always categorized as administrative costs. These include staff salaries, wages and other costs related to the planning and execution of HOME activities such as: program coordination, management and evaluation; travel costs incurred for official business in carrying out the program; administrative services performed under third party agreements, such as legal, accounting and audit services; other costs for goods and services required for the administration of the program, such as rental or purchase of equipment, insurance, and utilities; and the costs of administering tenant-based rental assistance.

By accepting HOME funds, a PJ assumes the responsibility for meeting all HOME requirements over time. To meet this obligation, the PJ will incur administrative costs related to activities such as annual reviews of information on rents and tenant income in HOME-assisted rental properties; post-completion property inspections in accordance with § 92.504(e) during the period of affordability; environmental review, whether program-wide or project-specific; disbursement of HOME funds; and the information and financial management of HOME funds.

HOME funds may be used to pay the cost of providing tenant-based rental assistance (TBRA) to individuals or families (that is, security deposit payments and direct rental assistance to the tenant). However, costs related to providing TBRA are always administrative costs and never project-related soft costs.

TABLE 1 includes some examples of general management, oversight and coordination costs.

TABLE 1: EXAMPLES OF GENERAL MANAGEMENT, OVERSIGHT AND COORDINATION COSTS*

- providing local officials and citizens with information about the program
- preparing program budgets and schedules preparing reports and other documents related to the program for submission to HUD outreach activities
- renting office space and the cost of utilities
- purchasing equipment, insurance, and office supplies
- monitoring program activities to assure compliance with program requirements
- coordinating the resolution of audit and monitoring findings
- evaluating program results against stated objectives in the action plan of the Consolidated Plan
- program or neighborhood wide environmental reviews
- In accordance with [OMB Circular A-87](#), Attachment B, C.2.

Public information

These are the costs incurred to provide information to the general public about the HOME program, or to residents and citizen organizations to encourage their participation in the planning, implementation or assessment of projects being assisted with HOME funds.

Fair housing

Any activities undertaken to affirmatively further fair housing in accordance with the PJ's certification in its Consolidated Plan are administrative costs.

Indirect costs

Indirect costs may only be charged to the HOME Program under a cost allocation plan prepared in accordance with OMB Circulars A-87 (Cost Principles for State and Local Governments) or A-122 (Cost Principles for Nonprofit Organizations), as applicable. Indirect costs (such as rent, utilities, maintenance and other costs that are shared among several departments of the PJ) are always categorized as administrative costs.

Preparation of the Consolidated Plan

Because an approved Consolidated Plan is a required under 24 CFR Part91 for participation in the HOME Program, costs related to the its preparation are eligible administrative costs under the HOME Program .This includes the cost of document preparation, public hearings, consultations and publication.

IV. ELIGIBLE PROJECT-RELATED SOFT COSTS

Costs related to the development or financing of HOME-assisted housing are related soft costs of a project and are eligible under the HOME Program, as outlined in §92.206(d). These costs must be "reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds." (As stated earlier, costs associated with a TBRA program are not project-related soft costs.) Some of these costs may be for services required by private lenders. Services charged as project-related soft costs may be performed by a third party, the PJ, a subrecipient, or a State recipient.

Staff and overhead costs that are directly related to a project and/or to the provision of relocation services, and certain information services and environmental costs can be charged either as administrative costs or project-related soft costs. These will be discussed more fully in Section V.

TABLE 2 illustrates a variety of costs that are eligible under the HOME Program and always categorized as project-related soft costs:

TABLE 2. PROJECT-RELATED SOFT COSTS

- architectural, engineering or related professional services required to prepare plans, drawings, or specifications of a project
- costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees
- costs of a project audit that the PJ may require with respect to the development of the project
- an initial operating deficit reserve which is a reserve to meet any shortfall in project income during the period of rent-up (of a new construction or rehabilitation project) and which may only be used to pay operating expenses, scheduled payments to replacement reserves, and debt service
- impact fees that are charged for all projects within a jurisdiction

V. PJ CHOICE: ADMINISTRATIVE OR PROJECT-RELATED SOFT COSTS

PJs must choose whether to charge certain costs as project-related soft costs or as administrative costs. Costs eligible under either category fall into three primary areas: (1) staff and overhead costs directly related to carrying out a project, including certain fair housing and housing counseling activities; (2) staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project; and (3) environmental review costs directly related to the project. These costs can be charged either as administrative costs or project-related soft costs, regardless of whether they are incurred by the PJ, a State recipient, subrecipient or third party contractor. However, if these costs are incurred by an owner or developer (including a CHDO) in whose project HOME funds are invested, they can only be charged as project-related soft costs. It should be noted that if a PJ has contracted with

another entity (contractor or subrecipient) to perform administrative tasks (including project-related tasks), a PJ must have a written agreement with each entity receiving HOME funds in accordance with §92.504(b).

TABLE 3 helps identify the types of costs that can be either administrative costs or project-related soft costs:

TABLE 3. ADMINISTRATIVE OR PROJECT-RELATED SOFT COSTS

- processing of applications for HOME assistance
- appraisals required by HOME program regulations
- preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared
- project underwriting
- construction inspections and oversight
- project document preparation
- costs associated with a project-specific environmental review
- costs associated with informing tenants or homeowners about relocation rights or benefits
- costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by §92.351

Consider this example: A developer submits a proposal to a PJ to newly construct several properties for HOME-assisted homebuyers. The proposal includes, among other things, a market feasibility study and an appraisal conducted by the developer. As a prudent lender, the PJ should assess this information by:

- 1) assessing the project's feasibility and borrower's qualifications,
- 2) conducting its own credit check for all investors,
- 3) reviewing architectural plans, work specifications and cost estimates to determine that they meet the PJ's standards, comply with local codes, and that the costs are reasonable, and
- 4) evaluating the developer's appraisal, or conducting its own, to determine that the project's after-rehabilitation value will not exceed 95% of the area's median purchase price.

Costs associated with this assessment of information can either be administrative costs or project-related soft costs.

When categorizing costs related to the provision of information services (for example, program, project, and fair housing information), PJs must consider who is incurring such costs. When costs are incurred by a property owner, they are project-specific and must be charged to the project. For instance, the affirmative marketing costs incurred by a project owner are costs associated with marketing a specific project for that owner's benefit. On the other hand, when costs are incurred by a PJ, State recipient, subrecipient, or third party contractor thereof, the costs might be categorized either as administrative costs or as project-related soft costs. For example, PJ staff might conduct affirmative marketing for several projects throughout its jurisdiction. It could charge each project individually for these costs, or charge these costs as administrative costs.

Homebuyer or tenant counseling are eligible project-related soft costs. However, staff and overhead costs, and other services related to assisting potential owners, tenants, and homebuyers, may be charged as project-related soft costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project as specified under § 92.206(d)(6).

Relocation Costs

Required relocation assistance costs are eligible costs under the HOME Program. Such costs include relocation payments and other relocation assistance for permanent and temporary relocation of families, individuals, businesses, nonprofit organizations and farm operations where assistance is required to meet a PJ's relocation responsibilities under the HOME Program. (See §§92.206 (f) and 92.353)

There are two types of relocation costs: (1) relocation payments and (2) other relocation assistance, typically, advisory services. Relocation payments are always project costs and include replacement housing payments, payments for moving expenses, and payments for there imbursement of reasonable out-of-pocket expenses incurred in connection with temporary relocation.

Other relocation assistance means staff and overhead costs directly related to providing advisory and other services to persons displaced by the project, including the provision of timely written notices, referrals to comparable and suitable replacement housing, property inspections, counseling, and other assistance necessary to minimize hardship.

Before categorizing the cost of other relocation assistance the PJ must, again, assess who is incurring the cost. For example, when a property owner or an owner's agent provides advisory services, the cost of such services are project-related soft costs. However, if a PJ, State recipient, subrecipient, or contractor provides such services the costs may be treated as either administrative costs or project-related soft costs.

PJ considerations when choosing administrative or project cost category

Administrative cap vs. maximum per unit subsidy limits

In deciding whether to charge project-related staff and overhead costs to the administrative or project-related soft cost categories, PJs should be aware of the limits that apply in each circumstance. The amount of HOME funds for administrative costs cannot exceed ten percent of the PJ's Fiscal Year HOME basic formula allocation plus program income, as specified at §92.207. This includes project-related soft costs that a PJ chooses to charge to the administrative category. Conversely, when project costs are charged to a specific project as project-related soft costs, these costs are included in the determination of the PJ's per unit cost, which is limited by the maximum per unit subsidy limits, as specified at §92.250.

Match issues

The HOME statute prohibits the recognition of administrative costs as match, even if the costs are paid with non-Federal funds. HOME funds used for administrative expenses of the PJ and for operating expenses of CHDOs do not have to be matched, thus reducing a PJ's overall match liability. Should a PJ charge staff and overhead costs to a project, those costs would trigger the 25 percent matching requirement.

Viability of project

With the exception of CHDO projects that receive project-specific technical assistance, seed money or site control loans, costs (including relocation costs) related to a project that does not go forward to formal commitment cannot be charged to the project. For relocation expenses, any costs for initial notices or other advisory services for a project that is not completed must be charged to the administrative category.

Mandatory relocation services

Because advisory services are not optional services, PJs must budget for these costs. For example, if a PJ is at, or near, its administrative cost cap, relocation advisory services must still be provided to tenants and homeowners and it might be advisable for the PJ to treat these costs as project-related soft costs. Alternately, if the amount of HOME funds in a project is at or near the maximum per unit subsidy limit, it might be advisable for the PJ to charge these relocation costs to the administrative category.

VI. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

The HOME Program provides funds specifically for use by nonprofit housing developers that qualify as CHDOS. Each HOME PJ must set-aside a minimum of 15 percent of each annual HOME allocation exclusively for housing that is owned, developed or sponsored by CHDOS. In addition, the HOME Program provides special operating assistance for CHDOs in the form of funds for capacity-building, pass through funds from technical assistance intermediaries and funds for operating expenses.

Section 234 of the NAHA, as amended, limits the amount of operating assistance a CHDO may receive under the HOME Program for any Fiscal Year to an amount that provides no more than 50 percent of the organization's total operating budget in the Fiscal Year or \$50,000 annually, whichever is greater. This limitation applies to any combination of capacity building funds, pass through funds from technical assistance intermediaries and operating expense assistance.

When a CHDO administers a program on behalf of a PJ as a subrecipient, any administrative costs incurred by the nonprofit are treated as administrative costs of the PJ; these are not CHDO operating funds. For example, if a CHDO is administering a HOME-funded owner-occupied housing rehabilitation program on behalf of a PJ, the costs incurred by the CHDO may be charged as administrative costs or as project-related soft costs (where appropriate). These costs would not be eligible for HOME funding as CHDO operating expenses. The HOME final rule eliminated the requirement that administrative funds that a CHDO receives in its capacity as a subrecipient be counted under the 50 percent or \$50,000 limit.

Operating Expenses

A PJ may use up to 5 percent of its annual HOME allocation for the payment of operating expenses of CHDOs (§92.208). Operating expenses are defined as reasonable and necessary costs for the operation of a community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.

PJs may normally provide funds for the operating expenses only of CHDOs that are receiving HOME funds to own, develop or sponsor affordable housing. However, in recognition of the need to support and build capacity of new or expanding CHDOS, the regulation also allows PJs to provide operating funds to CHDOs who are not yet receiving set-aside funds when there is a written agreement between the PJ and the CHDO. The agreement must state that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the funds for operating expenses. In addition, it must set forth the terms and conditions upon which this expectation is based.

Project-specific technical assistance, site control loans, and seed money loans

Up to ten percent of the each PJ's CHDO set-aside may be used for activities specified under §92.301, project-specific technical assistance and site control loans, and project specific seed money loans. PJs that reserve more than 15 percent of their HOME allocation for CHDOs may use up to 10 percent of their total CHDO set-aside for such loans. Unlike CHDO capacity building funds, this loan authority is permanently available to Pjs.

Loans may be provided to cover project expenses necessary to determine project feasibility. TABLE 4 illustrates such expenses.

TABLE 4: ELIGIBLE PROJECT-SPECIFIC TECHNICAL, ASSISTANCE& SITE CONTROL LOAN EXPENSES

- an initial feasibility study
- engineering studies
- consulting fees
- costs of preliminary financial applications
- engagement of a development team
- site control and title clearance
- legal fees* options to acquire property

Project-specific seed money loans may be made available to CHDOs to cover preconstruction costs the PJ determines to be customary and reasonable. Such costs include obtaining loan commitments, the preparation of architectural plans and specifications, and obtaining zoning or other local approvals.

PJs may waive repayment of these loans, in whole or in part, under §92.301 (a)(3) and (b)(3), if there are impediments to project development that the PJ determines are reasonably beyond the control of the borrower and the project does not go forward. The HOME final rule eliminates match liability for project-specific technical assistance, site control and seed money loans for which the PJ has waived repayment.

These loans cannot be used to pay for administrative costs incurred by the PJ. If the project proceeds and the only HOME funds used are those for project-specific seed money, site control or technical assistance loans, all applicable HOME requirements are triggered for that project.

Capacity building

PJs must reserve or commit CHDO set-aside funds to specific CHDOs within 24 months of their obligation by HUD. PJs are required under §92.300 (b) to make reasonable efforts to identify CHDOs "that are capable, or can reasonably be expected to become capable," of carrying out elements of the PJ's approved Consolidated Plan.

During the early months of their participation in the program, new PJs may be unable to identify a sufficient number of organizations that qualify as CHDOS. Consequently, these PJs may use a portion of their CHDO set-aside for capacity building. If during the first 24 months of its participation in the HOME Program (commencing on the date that HUD executes the first HOME Investment Trust Agreement with a PJ), aPJ cannot identify a sufficient number of capable CHDOS, then up to 20 percent of the minimum 15 percent CHDO set-aside (in other words, three percent of the PJ's total allocation) may be made available to develop the capacity of CHDOs in the jurisdiction. This capacity building expenditure cannot exceed \$150,000 over the 24-month period.

PJs must commit capacity building funds within 24 months from the obligation date of the HOME Investment Partnership agreement. If set-aside funds are not committed to capacity building within the 24 month period, they must be committed to CHDO projects to avoid being recaptured.

Capacity building funds can be used in various ways: 1) a PJ may contract with an intermediary organization, or other entity, to provide technical assistance to CHDOS, 2) a PJ may provide funds directly to CHDOs to obtain training or technical assistance, or 3) aPJ may pay the costs of CHDO operating expenses, including staffing. However, PJs should be aware that they cannot use capacity building funds to pay their own staff to train a CHDO. This is an administrative cost to the PJ, and capacity building funds may not be used to exceed the ten percent cap on administrative funds.

PJs should assess the types of technical assistance available whether they be from HUD designated intermediary organizations or other technical assistance providers in their area. Capacity building funds should be used to complement, not duplicate, intermediary organizations' and other technical assistance providers' efforts.

Pass-through funds

Through direct contract with the Department, many intermediary organizations provide technical assistance and support to CHDOs and potential CHDOs throughout the country. PJs work closely with these intermediary organizations to identify organizations they wish to work with to develop affordable housing. In addition to technical assistance, these intermediary organizations can also pass through to CHDOs a portion of their contract funds to provide housing education and organizational support.